

УДК 327(470+571:430):620.9

CONSUMER SAFETY IN THE POLICY OF THE EUROPEAN UNION

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The aim of the article is to present the issue of consumer safety in the Policy of the European Union and is based on the analysis of the legal acts of the Union law and the subject based literature. A great variety of methods and techniques have been used for this research. The institutional-legal method has been applied for the analysis of the selected regulations of the Union law, while the comparative method has been used to exemplify the possible consumer threats. The use of particular elements of the systems' analysis was possible as the consumer policy has been recognized as part of the European Community's Policy subsystem.

The first part of the article reveals that consumer safety is the one of the core business areas of The European Union. Modern consumer policy guarantees the buyers a high level of protection in the three basic social areas: health safety, economic safety and efficient judicial dispute resolution. Health protection guarantees that any goods purchased on the territory of the European Union are consumer safe. Economical safety is to prevent any illegal and unfair market practices. The alternative dispute resolution provides the consumers with a higher sense of security. Mediation or arbitration procedures are cheaper, faster and more convenient than the ordinary lawsuit. The safety standards are mostly created within the programme and strategies of consumer policy.

The final part of the article includes conclusions and considerations relating to consumer safety in the European Union. Moreover, it indicates that there is a need to monitor certain areas of the Union trade market and detect any risk posing products.

Key words: consumer policy; consumer safety; consumer product safety; consumer protection; alternative dispute resolution.

Introductory remarks

Generally consumer protection policy was established after the year 1992. At that time, on 7 February 1992 in Maastricht, the Treaty on the European Union undertaken to integrate Europe was signed by the members of the European Community. The Treaty devoted to consumer protection is under a separate title, XI [19].

The Union shall promote the interests of consumers and ensure a high level of consumer protection as required by the Article 169 on the Treaty on the functioning of the European Union [5]. The Union shall also contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organize themselves in order to safeguard their interests. Consumer safety in the European Union is guaranteed by certain regulations and legislation. They should be adopted to the economic and social changes and should provide the buyers with safety especially on the food, energy, financial, transport and digital technologies markets [21, p. 225–226].

After the year 1992, consumer policy of the European Union became closely linked to consumer protection. The Policy had to guarantee that any product purchased on the market was safe and the buyers' choices were made on the basis of clear and

precise information. In a further six strategies and programmes of consumer policy prepared for the years 1993–1995 [8], 1996–1998 [3], 1999–2001 [7], 2002–2006 [5], 2007–2013 [4] and 2014–2020 [18] the Union indicated the need to create an appropriate legal and factual situation that would provide the buyers with safety in the Community market. The regulations were intended to contribute to the protection of consumer's health and safety from the moment they buy a product until the time it is used at home.

The concept of consumer protection in the European Union

Defining the notion of consumer protection, it is vital to point out the three basic areas incorporated within concept. The first relates to the health safety, second to economic safety and the last concerns the redress system. To provide health safety means to guarantee that the products purchased in the Community market do not pose any risk to the life and health of the consumers. The safety regulations shall ensure the consumers that all the goods available on the Union market meet the safety requirements. Moreover, the regulations should guarantee free access to high quality products, available at reasonable prices on the open market that shall fulfill the individual needs of any consumer.

According to the Directive 2001/95/EC on general product safety [10] in the article 2 «‘safe product’ shall mean any product which, under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons». The safety of products should be assessed taking into account all the relevant aspects, in particular those categories of consumers which can be particularly vulnerable to the risks posed by the products under consideration, in particular children and the elderly [20].

Taking up the problem of consumer safety it is important to notice that the most characteristic features of consumer-producer relation is inequality. This is the relation between strong and weak, individual and organization, amateur and professional. Purchasing decisions made by consumers are usually not sovereign. They result from manipulation by different marketing tricks and advertising. Consumers have not decided about the number, type, conditions, price or method of manufacture of the products which are available on the market. The producers effectively manipulate consumers to make such decisions which are in their own interests. Those choices, besides being often unfavourable for consumers, encourage unethical behaviour on the part of the producer, devastation of the natural environment and infringe social and human rights [17, p. 163].

Economic safety of purchasers means to prevent any unfair market practices used by the traders that result in the financial loss of the consumers. Misleading advertisements and aggressive trade techniques have been banned in the EU since 2005. The Community ensures an equal level of consumer protection throughout the territory of European Union. This question is regulated by the Unfair Commercial Practices Directive [11].

The Directive in article 5 defines trade practices which are banned in the European Union and at the same time it protects the consumers before, during and after the transaction. Unfair business practices encompass fraud, misrepresentation and oppressive or unconscionable acts or practices by business, often directed against consumers, and are prohibited by law in many countries.

The Directive in sections 1 and 2 defines two specific categories of unfair trade practices: misrepresentation (by action or discontinuance) and oppressive practices [13, p. 210]. An important issue within the concept of consumer protection is the redress system. The European Union indicates the importance of the further development of alternative redress systems (Alternative Dispute Resolution ADR). There are many concepts regarding ADR, however the traditional and most common defines ADR as a range of possible techniques that act as a means for disputing parties to come to an agreement short of litigation. The activities of ADR are regulated by the Directive on consumer ADR [12]. The European Union aims at providing the consumers with the possibility of making free complaints against the traders to the authorities offering effective, fast, fair and alternative methods including mediation or arbitration. Such actions shall result in the achievement of a high level of consumer protection [9, p. 12–13].

The consumer safety in the years 2014–2020

The modern programme implemented under the Consumer Policy is Regulation (EU) No 254/2014 of the European Parliament and of the Council of 26 February 2014 on a multiannual consumer programme for the years 2014–2020. According to article 3 of the Act the general objective of the Programme is to ensure a high level of consumer protection, to empower consumers and to place the consumer at the heart of the internal market, within the framework of an overall strategy for smart, sustainable and inclusive growth. The Programme will do so by contributing to protecting the health, safety and the legal and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests, and supporting the integration of consumer interests into other policy areas (Art. 2).

In order to strengthen consumer safety certain qualifying actions have been taken. The operations include reinforcing the product safety through market surveillance. To measure the effectiveness of the strategy the union uses The Rapid Alert System for non-food dangerous products (RAPEX). The Rapid Alert System for non-food dangerous products facilitates the rapid exchange of information between the national authorities of 31 countries and the European Commission on dangerous products found on the market [16].

In accordance with Article 10 Directive on general product safety, the Commission shall support and participate in any actions referring to consumer protection and administrative cooperation taken by the authorities of the Member States. All the activities shall support the development of the RAPEX system and shall be harmonized with the procedures followed by the Community. The prevailing role of the system is to facilitate the flow of information concerning dangerous products, research techniques and the results of the latest scientific discoveries and any other aspects referring to monitoring activities. The system also seeks to establish a

common plan for surveillance and research, to exchange expert knowledge, knowledge on practices and finally cooperation concerning training. The system intends to ensure enhanced cooperation within the Community related to activities such as detection, withdrawing from the market and recalling products posing the risk.

Another issue that influences the feeling of security of consumers is their proper marking. Among the information marks on the consumer products the label «CE» is highly significant. By affixing the CE marking to a product, the manufacturer declares on his sole responsibility that the product is in conformity with the essential requirements of the applicable legislation on Union harmonisation providing for its affixing and that the relevant conformity assessment procedures have been fulfilled. Products bearing the CE marking are presumed to be in compliance with the applicable Union harmonisation legislation and hence benefit from free circulation within the European Market [2].

In order to increase the safety of consumers in the years 2014–2020 the Union shall fulfill three specific tasks. First one refers to scientific advice and risk analysis within the area of consumers' health and safety with relation to non-food products and services. Such activities shall be supported by independent scientific committees established under the Commission decision of 5 August 2008 [1].

In accordance to Article 1, the Commission established the Scientific Committee on Consumer Safety – SCCS which is a specific advisory structure for the scientific evaluation of the potential risk within the scope of consumer safety. The Commission may consider the scientific opinion of the Committee in any case relating to consumer safety and request immediate advice concerning potential risk. Moreover, the Committee may be requested to determine the research needs and evaluate the research results. It can decide about organizing a subject-focused workshop to review the data and scientific knowledge related to risk assessment. At the request of the Commission, the Committee shall elaborate the reports, views known in writing, or conclusions about the workshop (Art. 2). The Committee consists of no more than 17 members and may cooperate with at most of five advisors from the Team who take part in the specific activities of the Committee. The Members of the Committee are appointed by the Commission on the basis of their expert knowledge and according to the geographical spread which reflects the variety of scientific issues and general attitudes especially in Europe (Art. 3).

The Committee members are appointed for a period of three years and may perform their functions for a maximum of three terms in the same Committee (Art. 5). The members may also establish special task groups that would prepare the drafts of scientific opinions. Such groups are established in the eventuality of acquiring external report on a particular subject (Art. 15). The Committee acts transparently and confidentially. The Committee members, scientific advisors and external experts do not reveal any information concerning their work (Art. 16, 17).

The second task for Consumer Policy for the years 2014–2020 is to coordinate the activities related to surveillance of the market and executing the rights for consumer safety as the Directive 2001/95/WE of the European Parliament and Council, and to take appropriate measures to ensure and strengthen safety within consumer services.

The final task is the maintenance and further development of databases on cosmetics; clear and detailed information about the product and educated buyers guarantee the safety of a purchase. The programme seeks to raise the education level of consumers and to devote particular attention to vulnerable consumers (children and elderly). An important influence for consumer safety would be an initiative to capacity building of consumer organizations on the Union, national and regional level [14, p. 7].

Closing remarks

Consumer protection within the European Union is influenced by the legal acts protecting consumers' health, life, business and effective redress systems. They are the core elements of strategies and programmes concerning consumer policy. The programmes are not legally empowered, however they give rise to improvements in consumer safety. A modern consumer is exposed to a number of dangers, the most common of which include misinformation and offensive market practices. Every consumer shall be educated to prevent them from becoming a victim of dishonest market activities. Consumer education plays a vital role in consumer protection. An educated consumer is the best partner in trading, as he is not afraid of new challenges and is open to cross-border trading. A confident customer is the one who is aware of his rights.

The European Union intends to create a consumer friendly market and protect the consumers. The Union regularly monitors consumer markets in order to evaluate consumers' attitudes and their trading experiences.

All the information gathered by the Union are used to estimate the influence that the policy has on the consumers and to identify any threats to the internal market that limit the consumers' sense of security.

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Стаття надійшла до редколегії 10.12.2016

Прийнята до друку 23.12.2016

БЕЗПЕКА СПОЖИВАЧІВ У ПОЛІТИЦІ ЄВРОПЕЙСЬКОГО СОЮЗУ

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Стаття базується на аналізі деяких правових актів Євросоюзу та літературі предмета, має на меті представлення суті безпеки споживачів у політиці Європейського Союзу. Для реалізації питання дослідження використано багато методів і дослідницьких технік. Інституційно-правовий метод використано під час аналізу деяких регулювань законодавства Євросоюзу. Під час ілюстрування споживацьких загроз застосовано метод компаративізму. Крізь призму споживацької політики як підсистеми європейських політик спільноти використано елементи системного аналізу.

У першій частині статті йдеться про те, що безпека споживачів належить до основних сфер діяльності Європейського Союзу. Сучасна споживацька політика гарантує покупцям високий рівень безпеки в трьох основних сферах: безпеки здоров'я, економічної безпеки та справної альтернативної досудової системи розслідування претензій.

Забезпечення безпеки здоров'я пов'язано з гарантуванням, що товари, які продають на території Спільноти, безпечні для життя і здоров'я споживачів. Економічна безпека стосується, перш за все, запобігання недобросовісній і шахрайській ринковій практиці, яку застосовують підприємці. Можливість альтернативного досудового розслідування споживацьких претензій дає

споживачам відчуття більшої безпеки. Медіація чи арбітраж становлять швидшу і зручнішу альтернативу, ніж стандартний судовий процес. Стандарти безпеки формуються перш за все в програмах і стратегіях споживацької політики.

Остання частина статті виконує роль висновку та містить роздуми на тему фактичних і майбутніх проблем безпеки споживачів у Європейському Союзі, вказує на потребу розвитку елементів нагляду за ринком Євросоюзу та виявленню небезпечних споживацьких продуктів.

Ключові слова: споживацька політика; безпека споживачів; безпека товарів; захист споживачів; альтернативні методи вирішення суперечок споживачів.