

Consumer, web surfer, passenger, patient (from the Volume Editor)

Articles

Agnieszka Kubiak-Cyruł: **Standard contract terms in consumer contracts concluded online from the perspective of EU Law and the case law of CJEU**

Table of contents:

- I. Introduction
- II. Standard contract terms in an electronic form in the light of EU law
- III. Providing standard contract terms through a hyperlink in the case law of CJEU
- IV. Providing standard contract terms via a website in the case law of CJEU
- V. Summary

Summary: Almost all online consumer contracts are concluded using standard contract terms and model adhesion contracts. Conclusion of contracts using standard contract terms requires, however, respect for existing regulations aimed at protecting the weaker participants of electronic commerce, that is, consumers. The aim of this study is to present the problem of using a standardized template in consumer e-commerce in the context of the existing legal obligation placed on the trader to provide the consumer with proper information. If required information was not provided before concluding a contract, the trader is obliged to confirm its content on a durable medium. This issue will be discussed from the perspective of EU law and the case law of the Court of Justice. The analysis will include, in particular, a detailed examination of the admissibility of the click-wrapping technique as well as a website acting as a durable medium within the scope of EU consumer law.

Key words: standard contract terms; durable medium; website; click wrapping; hyperlink; consumer; information requirements.

JEL: K12, K15, K24

Jan Marek Szczygieł, **Durable medium in consumer trade**

Table of contents:

- I. Introduction
- II. Concept and characteristics of a durable medium in consumer trade
- III. Types of durable mediums
 1. E-mail and internal post banks
 2. SMS and MMS
 3. Website
- IV. Effects of a failure to provide information on a durable medium
- V. Conclusion

Summary: The article presents selected issues relating to the responsibilities of entrepreneurs to provide consumers with specific information about their durable medium. Not only is the discussion focused on the definition of a durable medium and its characteristics, but it also indicates the types

of materials and tools that may be recognised as permanent durable media, and as such be used in the modern consumer transactions.

Key words: consumer; the right to information; durable medium.

JEL: K15

Iga Małobęcka, **Consumer protection in the internet – the case of free services offered by internet platforms**

Table of contents:

- I. Introduction
- II. Legal methods of consumer protection against the practices of internet platforms
 1. Consumer protection law
 2. Data protection law
 3. Competition law
- III. Need for a holistic approach to violations of consumer rights by internet platforms
- IV. Summary

Summary: Global internet platforms, such as Google, Facebook, Amazon or LinkedIn, increasingly offer consumers free of charge services. Such services, however, are only seemingly free – consumers pay for their use with their own data. The problem with such seemingly free services lies, *inter alia*, in the lack of reliable and complete information about all elements of the agreement. Hence, consumers are being misled as to the actual remuneration for such services, as well as further use of their data by the internet platforms and other entities. This article analyzes possible ways of a legal classification of such practices of internet platforms, and legal methods of consumer protection against such practices. It indicates possible legal solutions available under Polish law, including consumer protection law, data protection law and competition law. It also proposes a change to the current approach to the practices of internet platforms and presents an alternative solution based on the cooperation of national and EU agencies and institutions.

Key words: internet platforms; data; information obligations; consumer protection law; data protection law; competition law.

JEL: K20, K21, K24, K42

Dorota Ambrożuk, **On the choice of the way of seeking compensation by air passengers pursuant to Regulation No 261/2004**

Table of contents:

- I. Introductory remarks
- II. Competences of common courts and the President of the Civil Aviation Authority
- III. Possibility to choose the way of seeking compensation resulting from the resolution of the Polish Supreme Court
- IV. Consequences of the possibility to choose the way of seeking compensation
- V. Direction of future legislative amendments

Summary: The aim of this article is to present issues concerning the choice of how air passengers are able to seek compensation referred to in Article 7 of Regulation No 261/2004, in the light of Article 12 and 16 of the said Regulation. The resolution of the Polish Supreme Court of 7 February

2014 is discussed. The author points out to problems arising from the position taken by the Supreme Court, which allows passengers to seek compensation before common courts as well as before the President of the Civil Aviation Authority. These problems are mainly due to the division of competences which exists in Polish law between judicial and administrative authorities. Therefore, civil and administrative procedures do not regulate a situation where the competence to decide on specific matters has been entrusted both to common courts and to administrative bodies. The author attempts to assess the solution adopted in Polish law, in particular with regard to the CJEU judgement of 17 March 2016 in joined cases C-145/15 and C-146/15.

Key words: alternative jurisdiction, seeking compensation, passenger, compensation in accordance with the Article 7 of Regulation No 261/2004, President of the Civil Aviation Authority

JEL: K12

Daniel Dąbrowski, **The rights of passengers to withdraw from the carriage contract and to one-sidedly modify such contract**

Table of content:

- I. Introduction
- II. Scope of the application of rules granting passengers the right to withdraw from the contract and to modify it
- III. Rules governing the exercise by passengers of their right
- IV. Carriage fee in case of withdrawal from the contract
- VI. Legal nature of rules granting passengers the rights to withdraw from the contract or to modify it
- VII. Conclusions

Summary: The article discusses the right of passengers, granted to them by the Transport Law Act and the Maritime Code, to withdraw from the carriage contract without giving a reason, as well as their right provided only in the Transport Law Act, to one-sidedly modify the carriage contract. The author presents the essence and the scope of these rights, pointing out that they are applicable also in relation to those carriage contracts, which are subject to EU rules concerning the protection of passenger rights as well as the CIV convention. The author formulates also certain *de lege ferenda* proposals in relation to some doubts concerning the interpretation of the provisions which confer the discussed rights.

Key words: transport; passenger rights; carriage contract of persons; withdrawal from the carriage contract; modification of the carriage contract; transport law

JEL: K12

Agata Sobusiak, **Rights of bus and coach transport passengers as a condition of the development of transport in the EU**

Table of contents:

- I. Introduction
- II. Characteristics of bus and coach transport in the EU
- III. Consumers, passengers, travellers
- IV. Rights of passengers in bus and coach transport

1. Purpose and scope of the application of Regulation No 181/2011
2. Rights of passengers with respect to distances of less than 250 km
3. Rights of passengers with respect to long-distance services exceeding 250 km

V. Transport as an essential element for the functioning of modern economies – the concept of sustainable development of transport in the EU

VI. Conclusions

Summary: The article presents the main features of Regulation No 181/2011 of 16 February 2011 concerning the rights of passengers in bus and coach transport. The author analyzes passenger rights provided by this act in the context of the idea of the development of sustainable transport in the EU. The article presents the characteristics of coach and bus transport and indicates factors which shape its development.

Key words: Bus and coach transport; sustainable transport; passenger; passengers' rights;

JEL: K39

Legislation and Case Law Review

Małgorzata Ganczar, Marcin Szewczak, **The patient as the consumer of healthcare services – chosen legal aspects**

Table of contents:

- I. Introduction
- II. Characteristics of the healthcare services market
- III. Patient protection as consumers on the grounds of current regulations
- IV. Exclusion from the law on consumer rights for agreements on healthcare services
- V. Patient's rights to information and information duties to consumers
- VI. Consumer protection in the sale of medical devices (medical products)
- VII. Conclusions

Summary: The main aim of this article is to analyse key issues concerning patient rights in their capacity as consumers. The healthcare services market has been subject to dynamic development in recent years. For that reason, it is very important to be open to new forms of risk. The present situation in the healthcare services market is important, because a consumer able to clearly identify the character of these services, will be able to protect his rights. Summing up, there is no doubt that the relation between consumer and patient are quite complicated, but on the other side, very important from the legal point of view.

Key words: consumer, patient, health services,

JEL: K10, K15

Monika Przybylska, **Rights of the prosumer in the electricity market**

Table of contents:

- I. Introduction
- II. Legal basics for electricity generation in micro-installations
- III. Prosumer-producer on the electricity market
 1. Legal status of the prosumer-producer on the electricity market

- 2. Rights of the prosumer-producer on the electricity market
- IV. Prosumer-consumer on the electricity market
 - 1. Legal status of the prosumer-consumer on the electricity market
 - 2. Rights of the prosumer-consumer on the electricity market
- V. Conclusion

Summary: This article refers to the legal status of a prosumer as a participant of the electricity market or, more precisely, to an entity to which the legislator has granted the right to produce electricity from renewable energy sources in micro-installations. The considerations presented in this article are twofold, and thus coherent with the economic and legal concept of a prosumer in the market economy, including the electricity market. The analysis concerns, on the one hand, the prosecutor's legal situation in the field of electricity generation activities as well as, on the other hand, the conditions of the use of self generated electricity in order to meet their own needs. The issue is important because the legal definition of a prosumer is a new concept in the legal order.

Key words: Prosumer, micro-installations, renewable energy, producer, consumer

JEL: K29

Hanna Misiak, **Consumer class action against the transport carriers – US and EU cases**

Table of contents:

- I. Introduction
 - 1. Benefits of consumer class actions
 - 2. Class actions in US law
 - 3. Introduction of class actions into the legal systems of EU Member States
- II. Cases in the United States
 - 1. Preliminary remarks
 - 2. *Sala vs. National Railroad Passenger Corp.*
 - 3. *In re Delta Airlines/AirTran Airways* baggage fee litigation
 - 4. Summary
- III. Cases in the European Union
 - 1. Preliminary remarks
 - 2. *Altroconsumo vs. Trenord*
 - 3. *Test-Aankoop vs. NMBS*
 - 4. Summary
- IV. Passenger redress in Poland
- V. Summary

Summary: Class actions derive from the Anglo-Saxon legal tradition and yet they have recently appeared in the legal systems of the countries of continental Europe. In the United States, a class action is a reliable and sufficient instrument of redress used by consumers that act as passengers against transport carriers. The effectiveness of class actions in Poland and in other EU countries depends on the jurisdiction and the collaboration of the Member States.

Key words: carrier, class action, consumer redress

JEL: K41

Katarzyna Morawska, **Punishment policy in selected decisions of the President of UOKiK in the telecommunication services market**

Table of Contents:

- I. Introduction
- II. Decision of the President of UOKiK of 20.12.2016, RPZ 10/2016 vs. PGT S. A.
- III. Decision of the President of UOKiK of 27.12.2016, DDK 20/2016 vs. T- mobile Polska S.A.
- IV. Decision of the President of UOKiK of 29.08.2016, RPZ 4/2016 vs. INEA S. A.
- V. Summary

Summary: This article presents three decisions issued by the President of the Office of Competition and Consumer Protection (UOKiK) in December 2016 concerning the telecommunication services market. All of the proceedings described in this paper affect collective consumer interests and consumer rights.

Key words: telecommunication services market, consumer protection, collective consumer interests, illegal practices, decision, UOKiK, Office of Competition and Consumer Protection

JEL: K10

Book Reviews

Alberto De Franceschi (ed.), *European Contract Law and the Digital Single Market*, Intersentia 2016, pp. 266 (review by Agnieszka Jabłowska)

Contemporary challenges of consumer law, ed. Bogusława Gnela, Kinga Michałowska, C.H. Beck, Warsaw 2015, pp. 317 (review by Iwona Miedzińska)

Reports

International Conference 'Protection of consumers' rights on the transport services market', Toruń, December 16–17, 2016 (Łukasz Maszewski)

4th International Consumer Conference 'Consumer rights in theory and practice', Katowice, February 23–24, 2017 r. (Monika Michońska, Marta Pasieka, Sylwia Zemła)