

New, Newer, Newest (From the Volume Editor)

Articles

K Małgorzata Sieradzka, **A provisional decision on consumer matters – a new instrument for responding to practices threatening the collective interests of consumers**

Table of contents:

- I. Introduction
- II. Legal nature of a provisional decision on consumer matters
 - 1. Objective of a provisional decision
 - 2. Prerequisites of a provisional decision
 - 3. Validity period of a provisional decision
- III. Effects of a provisional decision with regard to entrepreneur interests
- IV. Summary

R **Summary:** Strengthening consumer protection was among the objectives of an amendment introduced on 5 August 2015 to the Polish Act on the Protection of Competition and Consumers (Journal of Laws, Dz.U. 2015, item 1634). The legal instrument meant to ensure this is a 'provisional decision' issued before the end of proceedings regarding practices violating collective consumer interests. This paper's objective is to analyse the nature of provisional decisions issued in the course of proceedings regarding practices violating collective consumer interests. Having regard to the prerequisites for the issuance of a provisional decision, it is also considered whether it will become an instrument facilitating quick responses to practices threatening collective consumer interests.

Key words: collective consumer interests, provisional decision, active participation a party in administrative proceedings, serious and hard-to-remove effects of practice.

JEL: K21

Paulina Korycińska-Rządca, **The legal status and the role of consumer organizations in proceedings on the recognition of provisions found in model contracts as prohibited clauses**

Table of contents:

- I. Introduction
- II. Role of consumer organizations before the initiation of proceedings
 - 1. Proceedings conducted on the basis of legal provisions in force until 16 April 2016
 - 2. Proceedings conducted on the basis of legal provisions in force as of 17 April 2016
- III. Powers of consumer organizations within the course of proceedings conducted before the Polish NCA
 - 1. Proceedings conducted on the basis of legal provisions in force until 16 April 2016
 - 2. Proceedings conducted on the basis of legal provisions in force as of 17 April 2016
- IV. Powers of consumer organizations after the issuance of a decision by the Polish NCA
- V. Summary and conclusions

Summary: This article presents changes in Polish legislation on the participation of consumer organizations in proceedings on the recognition of provisions of model contracts as prohibited clauses. Unlike their past judicial character, the conduct of such proceedings is since 17 April 2016 within the competences of the Polish NCA – the UOKiK President. The Author presents powers granted to consumer organisation in connection to the (now administrative) proceedings, the purpose of which is to exercise abstract control over the provisions of model contracts. The article considers these powers in the time frame before the initiation of such proceedings, within their course and after their closure. The Author compares current powers of consumer organisations with those granted to them by earlier legislation within the old framework of judicial proceedings on the recognition of the provisions of model contracts as prohibited clauses. The paper assesses also how the legal situation of consumer organizations has changed over time in proceedings the purpose of which is to exercise abstract control over provisions of model contracts.

Key words: consumer organizations, prohibited provisions, abusive clauses, register of prohibited clauses, model contracts, proceeding in the cases of recognition of the provisions of model contracts as prohibited clauses.

JEL: K20, K23

Monika Jagielska, Aleksandra Kunkiel-Kryńska, **'Choice of law' as an unfair provision in consumer contracts concluded online**

Table of contents:

1. Introduction
2. Governing law for consumer contracts according to Regulation Rome I
3. 'Choice of law' clause as an unfair contractual provision
4. Summary

Summary: An increased risk exists now related to the correct determination of the applicable law in consumer contracts (with an international aspect) concluded online. In case of a dispute regarding contracts between a consumer and a foreign entrepreneur, the consumer may face procedural difficulties. It is also possible that the law which has been applied, on the basis of the 'choice of law' clause, does not provide the type of protection which the consumer may have in his own place of residence. The Polish Supreme Court Such analysed this issue in a judgment dated 17 September 2014 (I CSK 555/13). The Court ruled therein that a clause in standard consumer contracts predetermining the application of law foreign to the consumer, but 'domestic' to the entrepreneur, should be considered an unfair contractual provision in light of Article 385(1) § 1 of the Polish Civil Code. The above mentioned ruling leads to the question if, in practice, the 'choice of law' clause is thus excluded in consumer transactions (B2C).

Key words: consumer contracts, choice of law, abusive clause, online sale, contracts concluded by the Internet, directed activity, international private law, Regulation Rome I.

JEL: K12

Marzena Czarnecka, **The application of the Consumer Rights Act in the electricity market**

Table of Contents:

- I. Introduction
- II. Information duties of energy companies
 1. Information requirements under the Consumer Rights Act
 2. Information requirements under the Energy Law
 3. Rules on information to be provided for distance contracts, off-premises contracts by energy companies
- III. Right of withdrawal
- IV. Summary

Summary: The article presents selected issues related to the responsibilities of energy companies in the context of consumer rights. The considerations presented in this paper determine what disclosure obligations were imposed upon energy companies in relation to consumers. Households are often confused by the 'jungle' of information made available to them and resulting competitive bids. Consumers should thus have clear and transparent information to allow them to make informed decisions in the electricity field.

Key words: consumer, energy market, the right to information, withdrawal.

JEL: K29

Michał Strzelecki, **Unfair market practices and the Act on Combating Unfair Competition**

Table of contents:

- I. Directive 2005/29/EC and its implementation
 1. Introduction
 2. Implementation of Directive 2005/29/EC
 3. Adoption by the Polish legislature of an artificial division in the law applicable to B2C and B2B
- II. Application of the provisions of the Act on Combating Unfair Competition to commercial practices within the meaning of Directive 2005/29/EC
 1. Scope of issues
 2. Commercial practices under the Act on Combating Unfair Competition
 3. Relationship between the Act on Combating Unfair Competition and the Act on Counteracting Unfair Commercial Practices
 4. Ability to pursue claims based on the Act on Counteracting Unfair Commercial Practices under Article 3(1) of the Act on Combating Unfair Competition
 5. Pro-EU interpretation of the Act on Combating Unfair Competition
- III. Summary

Summary: This article aims to analyze the relationship between Directive 2005/29/EC of 11 May 2005 on unfair commercial practices (Directive 2005/29/E”) and the two Polish legal acts applicable in this area: the Act of 23 August 2007 on Counteracting Unfair Commercial Practices and the Act of 16 April 1994 on Combating Unfair Competition.

Key words: Unfair commercial practices; counteracting unfair market practices; unfair competition.

JEL: K39

Monika Chojecka, Adam M. Nowak, **Evaluation of *acquis* legislation and jurisprudence in the shaping of the definition of the consumer on the basis of Article 22¹ of the Civil Code**

Table of Contents:

- I. Historical overview
- II. Latest legal changes
- III. Components of the definition of a consumer
- IV. Selected examples of „atypical” consumer
 1. Insured consumer?
 2. Farmer - entrepreneur or a consumer?
 3. Consumer - the cooperative or a member of the cooperative?
- V. Summary

Summary

The article contains the analysis of the definition of a consumer in the light of the provisions of the Polish Civil Code. The paper presents the historical development of the legal category in question as well as discusses its components. Included is also an analysis of selected jurisprudential lines that relate to the interpretation of the presented legal definition.

Key words: Consumer, Civil Code, definition.

JEL: K10

Case Law Review

The consequences of reaching substantive finality of a ruling recognising that a provision of a model contract is abusive. Comment to the Supreme Court judgment of 20 November 2015, III CZP 17/15 (Anna Oponowicz)

JEL: K12, K19

Qualification of a property development agreement in the light of the prohibition of practices violating collective consumer interests – what is decisive: the practice on the property development market or the legally-prescribed content of a property development agreement? Comment to the judgment of the Competition and Consumer Protection Court of 25 January 2016, XVII AmA 153/14 (Małgorzata Sieradzka)

JEL: K12

Books Reviews

Monika Namysłowska, *Black List of Unfair Commercial Practices and the Limits of Unfair Competition Law*, Wolters Kluwer 2014, 628 p. (review by Anna Zientara)

Dorota Leczykiewicz, Stephen Weatherill (eds.), *The Images of the Consumer in EU Law*, Hart Publishing 2016, 470 p. (review by Monika Namysłowska)

Reports

New Rules for Contracts in the Digital Single Market, Vienna 21-22 January 2016 (Agnieszka Jabłonowska)

Consumer Protection on the Market for Services, Katowice 10–11 March 2016 (Klaudia Łyszczek)

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