

## A few words about consumer protection on the market and current problems

(from the volume editor)

### ARTICLES

**Martyna Wurm, Łucja Olszewska**, Protection of consumers against unfair practices concerning the dual-quality of products in the light of the changes introduced by the Omnibus Directive

#### Table of contents

- I. Introduction
- II. Protection against dual-quality or against the differentiation of products
- III. Inadequate protection under existing regulations
- IV. Legislative procedure and various concepts for regulating the dual-quality practice
- V. Prerequisite of significant difference in the composition or characteristics of a product
  1. Studies of food products carried out by the Polish NCA
  2. Harmonized testing methodology
  3. EU-wide testing campaign
- VI. Possible exceptions to the prohibition on product differentiation
- VII. Enforcement of the new regulations on dual-quality
  1. Changes to Polish law
  2. Cross-border cooperation between authorities on dual-quality issues
  3. Adjustment to the new legislation
- VIII. Summary

**Summary:** Strengthening consumer protection against unfair market practices in the area of so-called 'dual-quality of products' is one of the key changes introduced by the Omnibus Directive, which is part of the New Deal for consumers. The article is devoted to the legal analysis of the problem of dual-quality of products, in particular the regulatory changes in this area introduced by the Omnibus Directive. Particular importance was attached to the description of key issues, from the perspective of the application of the new legal solutions in practice, and their impact on consumer rights protection in the European Union. In particular, the study analyses the prerequisites for ascertaining an unfair business practice in relation to the dual quality of products, as well as the catalogue of possible objective justifications that maybe used by entrepreneurs to try to justify their actions. Taking into account the results of research efforts of national authorities and the European Commission, the article discusses the understanding of the term 'significant difference' between products intended for different markets and indicates the means by which entrepreneurs should adjust their practices to the new regulations.

**Key words:** dual-quality; product differentiation; Omnibus Directive; New deal for consumers, misleading commercial practices; unfair commercial practices; consumer protection law; consumer; branded products.

**JEL:** K15, K20, K23

**Justyna Ziobrowska**, Social Trading as an alternative form of investing for non-professional investors

### Table of contents

- I. Introduction
- II. Investing in terms of definition
- III. Individual (non-professional) investor and the consumer
- IV. Social trading as an investment model
- V. Review of brokers and social trading platforms
- VI. Opportunities and threats for beginner investors
- VII. Summary

**Summary:** The aim of the study is to present the concept of social trading as an alternative form of investing for non-professional investors. The research methods used includes the critical appraisal of literature, document research and reasoning. The analysis carried out indicates that social trading is an attractive alternative to traditional investing or investment funds. It is a good way to build relationships between investors, get to know their points of view and discuss techniques. However, this is not a flawless solution. This concept, which involves copying or duplicating the strategies of other players, no matter how experienced the entity is, doesn't guarantee a profit.

**Key words:** social trading; investor; consumer; crowd.

**JEL:** E2, G10, G18, G23

**Małgorzata Krzemińska, Maciej Rzeszutek**, Application of smart contracts in consumer transactions – selected problems

### Table of contents

- I. Introduction
  1. The term 'smart contracts'
  2. The interpretation of smart contracts
  3. The use of smart contracts
- II. Potential problems in the application of smart contracts in consumer transactions
  1. Pre-contractual stage – information obligations
  2. Conclusion of the contract
    - 2.1. Transcription in blockchain as a carrier of the standard contract
    - 2.2. Prohibited contractual clauses
  3. Performance of the contract
    - 3.1. Withdrawal from the contract
    - 3.2. Warranty for defects of a token
    - 3.3. Impossibility of service
    - 3.4. Contractual liability and unjust enrichment
- III. Summary

**Summary:** The progressive development of new technologies contributes to the more and more frequent use of smart contracts in consumer trading. This is due to the specific features of smart contracts, which affect the availability and ease of use of this legal solution, but, on the other hand, may also lead to negative consequences for the consumer. In the context of potential threats that

may be faced by consumers, the immutability of smart contracts is particularly important. This article explains why attention should be paid to consumers who use smart contracts. The article focuses on possible solutions to problems connected with consumers who perform legal transactions using smart contracts at every stage of the transaction, starting from the pre-contractual stage, through the conclusion of the contract, to its performance.

**Key words:** smart contracts; blockchain; consumer protection; token.

**JEL:** K15, K24

**Aleksandra Gnas**, Responsibility for intelligent robots

#### Table of contents

- I. Introduction
- II. The gist of intelligent robots
  1. The concept of an intelligent robot
- III. The concept of artificial intelligence
- IV. Legal personality of an intelligent robot
- V. Principles of responsibility of an intelligent robot
  1. General remarks
  2. Strict liability
  3. Liability for defective products
  4. Fault-based liability
- VI. Intelligent robots and insurance
  1. General remarks
  2. Mandatory civil responsibility insurance
  3. *No-fault insurance*
- VII. Conclusions

**Summary:** The article presents the concepts of intelligent robots and artificial intelligence. The author analyzes the possibility of giving intelligent robots a legal personality and defines the rules, regimes and premises of responsibility for actions caused by an intelligent robot. The subject of the work is also to characterize possible variants of insurance against damages caused by an intelligent robot – compulsory liability insurance and no-fault insurance.

**Key words:** artificial intelligence; intelligent robots; liability for intelligent robots; liability insurance; no-fault insurance.

**JEL:** K1, K15

**Adrianna Michałowicz**, Facial recognition systems and the protection of individuals – challenges, threats, opportunities

#### Table of contents

- I. Introduction
- II. Facial recognition technologies – general characteristics in the context of threats to the rights and freedoms of individuals
- III. Use of systems based on processing biometric data, including facial recognition, from the General Data Protection Regulation (GDPR) perspective

IV. Remote biometric identification systems in the light of the draft act on artificial intelligence

V. Summary

**Summary:** In recent years, we have observed a dynamic development of technologies based on the processing of personal data using biometrics, that is, special data processing techniques that allow the unequivocal identification of an individual. This growth is largely supported by the increasing use of artificial intelligence in individual identification processes, enabling better and more accurate results when processing biometric data. However, the use of different biometric techniques in connection with the provision of services to consumers, including facial recognition systems, and the processing of data in this way on a massive scale, raises legal and ethical questions as well as questions about the legitimacy and necessity of 'biometric control' over society. This article deals with the processing of biometric data of consumers, with particular emphasis on one of the methods of biometric processing namely facial recognition. This is an issue that raises many legal questions, especially in the context of a possible interference with the fundamental rights of individuals, as well as in the context of the growing use of artificial intelligence mechanisms for this type of processing. The publication presents a general overview of the purposes and uses of facial recognition systems, including the risks they may pose to individuals. This is followed by an analysis of the most frequently observed violations of the GDPR in connection with the processing of biometric data, including those in systems equipped with facial recognition functions. The analysis also takes into account the proposed regulations for the use of remote biometric identification systems in the EU.

**Key words:** personal data; biometric data; artificial intelligence; GDPR; remote biometric identification systems; facial recognition systems.

**JEL:** K32

**Piotr Gałązka**, Statutory credit moratorium in Poland in the context of the crisis caused by Covid-19 – in the light of the Constitution and the proportionality principle

#### **Table of contents**

- I. Introduction
- II. Definition of a moratorium and a credit moratorium
  1. The concept of a moratorium
  2. Definition of a credit moratorium
- III. Credit moratoria in the pandemic era in Poland
  1. Private banking moratorium in Poland
  2. Statutory moratorium in Poland
- IV. Analysis of a statutory moratorium in the light of constitutional norms
  1. Constitutional restrictions on the freedom of economic activity
    - 1.1. Condition of a statutory path
    - 1.2. Important public interest
    - 1.3. Proportionality of a restriction on the economic freedom
  2. Assessment of the compatibility of provisions on a statutory moratorium in Poland with constitutional premises

- 2.1. Formal prerequisites
- 2.2. Substantive prerequisites

## V. Conclusions

**Summary:** The article covers the general definition of a moratorium and the definition of a credit moratorium based on the European Banking Authority's (EBA) definitions, as well as the presentation of Polish solutions regarding credit moratoria – both statutory and non-statutory – announced in the face of the Covid-19 coronavirus pandemic in the first half of 2020. Statutory solutions (a statutory moratorium) – introduced pursuant to the Act of 19 June 2020 on interest subsidies for bank loans granted to entrepreneurs affected by COVID-19 and on simplified proceedings for approval of an arrangement in connection with the occurrence of COVID-19, have been assessed for their constitutional compliance principles of restricting the freedom of the economic activity under the Polish Constitution. Non-statutory solutions – based on the moratorium announced by the Polish Bank Association – have been presented for comparison with the statutory provisions.

**Key words:** credit; consumer credit; financial services; European Union; credit moratoria.

**JEL:** G21, G28, K22

**Damian Littwin,** The scope of cover for damages resulting from non-physical business disruptions, based on the example of BI and NDBI insurance in the context of the COVID-19 pandemic

### Table of contents

- I. Introduction
- II. The concept of 'damage'
- III. The subject of the insurance in BI and NDBI insurances
- IV. Premises of insurer's liability
- V. Limitations and exclusion of liability
- VI. The temporal scope of insurance protection
- VII. The liability of the insurer for damages caused by the COVID-19 epidemic under an insurance contract for lost profits
- VIII. Summary

**Summary:** The article presents legal issues related to loss of profit management, such as the concept of 'damage' and material damage in the context of the practices in the insurance sector. In the global context, the paper characterises Business Interruption (BI) and Non Damage Business Interruption (NDBI) insurance, as well as their subject and scope. The author analyses also what is actually on offer in Poland with respect to loss of profit insurance considering insurance protection in the wake of the pandemic taking into account the jurisprudence and legal solutions applicable in other countries.

**Key words:** business insurance; BI; NDBI; pandemic as a premise for the payment of compensation; first party insurance; damage; insurance interest.

**JEL:** K12, K15

**Anna Urbanek**, Decisions of the Polish competition authority concerning infringements of collective consumer interests for 2020–2021 in non-financial cases

### Table of contents

- I. Introduction
- II. Infringements of the Act on Combating Unfair Market Practices
  1. Misrepresentation of prices and the characteristics of goods as well as of the conditions of promotions – decisions concerning Jeronimo Martins Polska S.A.
  2. Misleading as to the identity of the trader
  3. Misleading as to the real reason for the market practice
  4. Using aggressive market practices
- III. Violation of the Telecommunications Law
- IV. Violation of the Consumer Rights Act
- V. Infringement of other selected legal acts
- VI. Conclusions

**Summary:** This paper presents selected decisions of the President of the Office for Competition and Consumer Protection (the Polish NCA) concerning infringements of collective consumer interests issued in the period from June 2020 to September 2021. The paper analyses and assesses practices of entrepreneurs contrary to selected legal acts and the general principles of fairness in relations with consumers. The article also includes the most frequent violations as well as cases of particular interest due to their circumstances.

**Key words:** Office of Competition and Consumer Protection; collective consumer interests; decisions by the President of OCCP; consumer protection.

**JEL:** K12, K15, K42

## LAW AND CASE LAW REVIEWS, REPORTS, DISCUSSIONS

**Małgorzata Miś, Grzegorz Miś**, Implementation of the Omnibus Directive into the Polish legal order – selected comments on the draft of Act amending the draft Act on consumer rights and certain other acts

### Table of contents

- I. Introduction
- II. Comments on specific provisions
  1. Definition of an online trading platform
  2. Definition of product demonstration
  3. Exclusion of the application of consumer rules to contracts where the offeror is not a trader
  4. Prohibition of accepting payment before the end of the withdrawal period
  5. Inclusion of VAT and excise duties in the price
- III. Summary

**Summary:** This paper evaluates selected provisions of the draft Act on amending the Act on consumer rights and certain other acts. The authors have adopted a practical point of view, without going into far-reaching theoretical considerations; instead, they follow the criteria of legal utilitarianism and the possibility of applying the law in practice. The critical remarks included in

the text are intended to draw attention to the direction that practice and jurisprudence may take if the legislation in the proposed form is enacted and enters into force. Finally, the authors formulate postulates *de lege ferenda* aiming to improve the draft to such an extent that it does not become a dead law in the future.

**Key words:** online platform; demonstration; consumer protection; information obligations.

**JEL:** G21, G28, K22

## REPORTS

**Report on the 8<sup>th</sup> International Consumer Science Conference ‘Challenges for Consumer Law in the Global, Regional and Local Dimension’, Łódź, 5–6 October 2021** (Anna Urbanek)

**Report on the 2<sup>nd</sup> edition of the TechLawClinic’s project at the Jagiellonian University and the University of Łódź (academic year 2020/2021)** (Monika Namysłowska, Piotr Tereszkiwicz)