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CONSUMER SAFETY IN EUROPEAN UNION CROSS-BORDER TRADE. SELECTED ASPECTS

Introductory remarks

The Maastricht Treaty[2] enacted by the European Union is based on three pillars. One of them was common security and foreign policy. The Treaty contained resolutions concerning the realization of the Economic and Monetary Union essential for European consumers. Its purpose was, in its broadest sense, economic integration. From the point of view of an ordinary consumer interested in cross-border purchasing, the concept of creating a single market with common rules regarding products and the free movement of goods, capital, work force and services, with a common currency and monetary policy was of key importance. The common currency allowed consumers to compare prices on the market of the EU countries that, undoubtedly, facilitates shopping in various member states. Additionally, settling payments became easier as well. Intensifying mutual trade ties also favoured the elimination of fluctuations in the currency markets and the cost of currency exchange[3].

The main purpose of article is to present selected aspects of consumer protection in European Union cross-border trade. The essence of the analysed matter is to set the limits for consumers in cross-border shopping.

In the article it is proposed that there are three basic elements that influence the consumer safety in European Union cross-border. Firstly it is properly functioning law regulations. Secondly, elimination of the lawful and intellectual limits in cross-border shopping and a creation of an easy access to dispute trans border resolutions. At the same time, it is assumed that the development of European Union cross-border trade is highly influenced by the level of knowledge as well as consumer awareness about their rights. The next hypothesis indicated systematic growth of interests with

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[2] Treaty on European Union, signed at Maastricht on 7 February 1992, O.J. C 191, 29.07.1992.
[3] Ewa Latoszek, *Integracja europejska. Mechanizmy i wyzwania*, (Warszawa: Wydawnictwo Książka i Wiedza, 2007), 177.

cross-border shopping as it gives the consumers a large variety of choice, an opportunity to save the money or to get an access to products which are unavailable in state market.

When it comes to consumers in the context of cross-border agreements, it has to be mentioned that there is lack of a comprehensive definition in the EU legislation[4]. The definition is created in Union law for specific normative acts. For instance, 'consumer' means any natural person who, in contracts is acting for purposes which are outside his trade, business, craft or profession[5], or 'consumer' means any natural person who, in contracts and is acting for purposes which are outside his trade, business or profession[6], as well as 'consumer' means a natural person who is acting for purposes which are outside that person's trade, business, craft or profession[7].

The reason for this lack of clarity is because the definitions are created in the European Union law for concrete normative acts. For instance, in article 169 of the treaty on the functioning of the European Union it is indicated that the European Union tends to support the consumer interests and provide high level of protection of their health, safety and economic interests, as well as to support their rights for information, education and to organize themselves into self-interest groups. The Union's internal market was intended to encourage purchasers to make cross-border agreements. The consumer internal market of the European Union is a market of a common tariff, unfettered movement of goods, people, services and the capital having regard for common competition policy, with consistent regulations by law in the scope of protection and safety of consumers[8]. Articles 28-37 of the treaty on the functioning of the European Union include regulations essential for consumers signing cross-border agreements in the scope of the free movement of goods. The free movement of goods[9] means that any products from one of the member countries, or originating from a non-EU country but legally imported to a member state, are subject to the free movement within the whole area of the European Union. That is why for the realization of the free movement of goods there is a ban on introducing tariffs and charges which might equate to tariffs, a ban on discriminatory and protective taxation and a ban on introducing the quantitative limits. The legislator

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[4] Ewa Łętowska, *Europejskie prawo umów konsumenckich*, (Warszawa: C.H. Beck 2004), 45.

[5] Directive 2011/83/EU of the European Parliament and of the council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, O.J. EC L 304, 22.11.2011, article 2, subparagraph 1.

[6] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, O.J. EC L 95, 21.4.1993, article 2.

[7] Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts, O.J. EC L 33, 3.2.2009, article 2 paragraph 1.j.

[8] Neil Nugent, *Unia Europejska*, (Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2012), 414-417.

[9] The notion of goods has not been defined in a single treaty or legal act of the EU. In accordance with a verdict of the European Court of Justice it is possible to state that goods are all products which can be expressed in monetary terms, and that may be the subject of a transaction.

allowed a number of restrictions on the free movement of goods, such as public order, public morality, public security, protection of life and health of people, animals and plants, the protection of national, cultural property as well as the protection of industrial and trade property[10].

Barriers for consumers in cross-border shopping

A contemporary, European consumer is a digital person making cross-border agreements via the Internet, who can shop wherever they are using mobile devices. Thus they seek the most attractive offers, even from abroad[11]. Thanks to cross-border online shopping special offers for consumers have become more popular. Communication from the Commission on Cross-Border Business to Consumer e-Commerce in the EU[12] shows the visible benefits for those consumers conducting cross-border transactions. These are a wider variety of products, the opportunity to save money, and access to products unavailable on the consumer's domestic market.

Unfortunately, there are situations where cross-border agreements are dangerous for consumers. What is more, several problems may occur while signing a consumer agreement in a different member country. For example, the common issue of the refusal to complete an order. As can be seen in the European Commission report from 2009[13], 60 percent of cross-border transactions are unattainable for consumers because a merchant does not send the product to the country of the consumer, or is not prepared to receive cross-border payments. The consumers are not sure what to do in the event of any problems occurring, especially when it comes to foreign complaints procedures. „This assumes that consumers do not shop across borders because of the differences in national consumer laws, which means that consumers are not sufficiently confident that they will be adequately protected when buying goods or services abroad"[14]. „The growth of e-commerce and consumers' increasing desire to purchase goods cross-border has prompted interesting debates within legislative drafting bodies concerning the best way to protect the online consumers"[15].

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[10] Renata Maria Pal, „Swobodny przepływ towarów", in: *Prawo materialne Unii Europejskiej*, red. Artur Kuś, (Lublin: Wydawnictwo KUL, 2011), 257-258.

[11] „Digitalizacja rynku staje się faktem", retrieved 13.03.2015, http://fashionbusiness.pl/digitalizacja-rynku-staje-sie-faktem/.

[12] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and Committee of the Regions on Cross-Border Business to Consumer e-Commerce in the EU, COM (2009) 557 final, Brussels 22.10.2009.

[13] Dismantling barriers to cross-border online shopping. Frequently Asked Questions, MEMO/09/475, Brussels, 22 October 2009.

[14] Christian Twigg-Flesner, „Good-Bye Harmonisation by Directives, Hello Cross-Border only Regulation? A way forward for EU Consumer Contract Law", *European Review of Contract Law* 7 (2011): 240.

[15] Anjanette H. Raymond, „Yeah, But Did You See the Gorilla? Creating and Protecting an Informed Consumer in Cross-Border Online Dispute Resolution", *Harvard Negotiation Law Review* 19 (2014): 131.

Consumers will have much more confidence in cross-border transactions if they know that consumer protection agencies monitor the merchants' business practices. The activities to monitor the market, led by some bodies enforcing consumer law in the scope of the regulation of cooperation in consumer protection, allowed national agencies to examine irregularities and provide legality within the consumer protection[16].

The next pitfall precarious to consumer protection when signing agreements is the use of unfair practices by traders[17]. These include such acts as misleading or misleading action, or aggressive commercial practices (use of harassment, coercion and undue influence). Effective cross-border enforcement of regulations will trigger the influence of trust of consumers and the sellers will benefit from the limited numbers of competitors.

Consumer safety & consumer product safety

The activities of the EU in the scope of a guarantee of consumer protection while signing the cross-border agreements can be considered in two dimensions: firstly, by ensuring consumers that the products they buy are safe for their health and life; secondly, through the creation of a suitable system of investigation of consumer cross-border claims.

The safety guarantee of products available on the European market is of a key importance for the consumer. They have to be sure that the products present no threat to their lives and health. That is why the EU takes action by legislative, educative and informative steps. Within numerous legal acts regulating the issue of security of different products a leading position is taken by the Directive on general product safety[18]. It defines a 'safe product', which means 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 Directive indicates general safety requirements, conformity assessment criteria and European standards as well as obligations of producers and obligations of distributors in the sphere of product security. It regulates specific obligations and powers of the Member States in the case of

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[16] Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation), O.J. EU 9.12.2004.

[17] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), O.J. EU L 149/22, 11.6.2005.

[18] Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, O.J. EC L 11/4, 15.1.2002.

violation of the rules, and on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The elimination of risk of buying a dangerous product while signing cross-border agreements within the EU is facilitated by the Rapid Alert System for dangerous non-food products „ RAPEX”. According to article 10 of Directive on general product safety The Rapid Alert System enables the quick exchange of information between European countries and the European Commission about dangerous non-food products posing a risk to health and safety of consumers. In all the UE country members there are national contact points which convey to the European Commission all the information about those products considered dangerous in a particular country[19].

Another issue that influences the feeling of security of consumers while purchasing products abroad 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 Union harmonisation legislation 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[20].

Cross-border dispute resolution

Another essential and frequently occurring barrier for consumers that causes a sense of lack of security on the cross-border market and further resignation from purchasing is a lack of knowledge and awareness of one’s own rights in the scope of pursuing consumer claims

In the scope of UE law-making two legal acts were drawn up: Regulation no. 1896/2006 of the European Parliament and the Council of 12 December 2006 creating a European order for payment procedure[21] and Regulation (WE) no 861/2007 the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure[22]. The acts can be directly used and do not require any implementation of national legal regulations in EU member country.

The aim of the ordinance into European regulation payment is the simplification and acceleration of judicial proceedings and the limitation of costs of cross-border situations regarding undisputed cash claims through establishment of proceeding into European regulation (article 1.1). It is used in a case of cross-border civil and

[19] An analogous information system functions throughout the EU regarding consumable goods, the Rapid Alert System for Food and Feed – RASFF.

[20] Commission notice, The 'Blue Guide' on the implementation of EU product rules 2016, C(2016) 1958 final, Brussels, 5.4.2016.

[21] Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, O.J. L 399/1, 30.12.2006.

[22] Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, O.J. EU L 199/1, 31.7.2007.

trade cases, in which at least one party lives in a member country different from the member country of court of trial (article 2.1, 3.1). The action for issuing a warrant of payment must be submitted with the use of a standardised form. It includes a declaration of the claimant that given information is accordant with their best knowledge and belief (article 7.1, 7.3). If the formal conditions are fulfilled the court issues a demand for payment as soon as possible. It contains caution that the defendant can pay the claimant the costs included in the regulation, or raise an objection by forwarding it to the court (article 12.3). If the objection arrives on time, the court certifies the viability of the European regulation of payment with the use of the appropriate form (article 18.1).

The purpose of regulation establishing the European procedures in the case of small claims is the simplification and acceleration of dispute proceedings regarding small claims in the case of cross-border issues as well as for the reduction of costs. It is available for the parties as an alternative for existing proceedings envisioned in the law of member countries (article 1). It is used for cross-border civil trade cases regardless of the kind of the court or tribunal in a case of when the value of dispute does not exceed 2 000 EUR (article 2). According to article 4, the institution of the proceedings in a case of small claims succeeds by the claimant who fills in the form of summons and lodges the form in a proper court or tribunal directly, by post or another channel of communication, such as fax or e-mail. The action form includes the description of proofs justifying the action, and in some cases some supplementary documents need to be added. The court or tribunal can conduct the case as a conference or by means of different communication tools if the technical means allow for it, if it is considered necessary and whether one party files for it (article 5, 8). The representation of parties by a lawyer or different legal agent is not obligatory (article 10).

The informed purchasers signing cross-border consumer agreements ought to know that when the purchase is contrary to agreement claims can be made not only by means of litigation but also extralegal channels, using some alternative ways of pursuing claims (alternative dispute resolution). „From the standpoint of a consumer, he is willing to choose the dispute resolution that is less costly, easier, or less time consuming”[23].

The consumers have an opportunity to complain against the activity of some entrepreneurs to suitable extralegal entities. The entities offer impartial, clear, effective, fast and honest alternative methods of deciding disputes[24], in particular mediation. The mediation of cross-border consumer disputes is regulated by the directive on certain aspects of mediation in civil and commercial matters[25].

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[23] Wenqing Liao, „Efficient breach in the common European sales law”, *Syracuse Journal of International Law & Commerce* 41 (2014): 373.

[24] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), O.J. EU L 165/63, 18.6.2013.

[25] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, O.J. EU L 136/3, 24.5.2008.

According to it, the dispute is trans-boundary if at least one party lives in a different member country than the country or place of residence any other party (article 2). The mediation is a fast and economical method for the extra-legal resolution of consumer disputes in civil and trade cases owing to the possibility of adjusting it to the individual needs of the party.

Settlements reached by means of mediation are realized voluntarily and lead to the maintenance of friendly and balanced relations between the parties. These kinds of benefits become much more visible in situations involving cross-border elements (article 3).

Closing remarks

Analyzing some chosen aspects of cross-border consumer agreements it has to be mentioned that the European Union takes care of purchasers mostly by means of creating crucial legal regulations. It is a general rule that country members, for the provision of high standards of protection for consumers, adjust or maintain stricter rules in the scope of consumer security than the union, which is regarded as the minimum.

„It can be safely assumed that European consumer protection cannot be reduced according to the principle of *acquis communitaire*. However, levels of European consumer protection are mostly kept to a minimum level of harmonization, at least for the time being, and what is high for some may be low for other”[26].

Influence on the security of the consumers on the European market, besides legal regulations, is exerted by a knowledge of the benefits as well as possible pitfalls and difficulties connected to cross-border trade. Those consumers who are aware of their rights and are able to report some violation have greater chances for benefitting from cross-border shopping. Thus „a further impediment to cross-border shopping may be a lack of awareness by consumers of the rights that they do have in relation to information and cooling-off periods when the role of consumer education in fostering a single market will be reviewed in conjunction with single market initiatives”[27].

Unfortunately, existing trade barriers, such as difficulties in gaining some products from another member country via the Internet, or the problem with the advertisement of the product lead to consumer trade taking place within the boundaries of the country.

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[26] Ruth Sefton-Green, „Choice, Certainty and Diversity: Why More is Less”, *European Review of Contract Law* 7 (2011): 142.

[27] Stephen Crampton, „Consumer protection in a brave new world”, *Consumer Policy Review* 12 (2002): 11.

Bibliography

1. „Digitalizacja rynku staje się faktem". Retrieved 13.03.2015, http://fashionbu siness.pl/digitalizacja-rynku-staje-sie-faktem/.
2. Commission notice, The 'Blue Guide' on the implementation of EU product rules 2016, C(2016) 1958 final, Brussels, 5.4.2016.
3. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and Committee of the Regions on Cross-Border Business to Consumer e-Commerce in the EU, COM(2009) 557 final, Brussels 22.10.2009.
4. Consolidated version of the treaty on the functioning of the European Union, O.J. EC C 326/49, 26.10.2012.
5. Crampton Stephen, „Consumer protection in a brave new world", *Consumer Policy Review* 12 (2002): 9-17
6. Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, O.J. EC L 11/4, 15.1.2002.
7. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European
8. Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts, O.J. EC L 33, 3.2.2009.
9. Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, O.J. EU L 136/3, 24.5.2008.
10. Directive 2011/83/EU of the European Parliament and of the council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, O.J. EC L 304, 22.11.2011.
11. Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC
12. Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, O.J. EC L 95, 21.4.1993.
13. Directive on consumer ADR, O.J. EU L 165/63, 18.6.2013.
14. Dismantling barriers to cross-border online shopping. Frequently Asked Questions, MEMO/09/475, Brussels, 22 October 2009.
15. Latoszek Ewa, *Integracja europejska. Mechanizmy i wyzwania*. Warszawa: Wydawnictwo Książka i Wiedza, 2007.
16. Łętowska Ewa, *Europejskie prawo umów konsumenckich*, Warszawa: C.H. Beck, 2004.

17. Liao Wenqing, „ Efficient breach in the common European sales law*", Syracuse Journal of International Law & Commerce* 41 (2014): 335-378.
18. Nugent Neil, *Unia Europejska*, Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2012.
19. Pal Renata Maria, „Swobodny przepływ towarów". In: *Prawo materialne Unii Europejskiej*, ed. Artur Kuś, 255-287. Lublin: Wydawnictwo KUL, 2011.
20. Raymond Anjanette H., „Yeah, But Did You See the Gorilla? Creating and Protecting an Informed Consumer in Cross-Border Online Dispute Resolution". *Harvard Negotiation Law Review* 19 (2014): 129-171.
21. Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, O.J. L 399/1, 30.12.2006.
22. Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation), O.J. EU 9.12.2004.
23. Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, O.J. EU L 199/1, 31.7.2007.
24. Sefton-Green Ruth, „Choice, Certainty and Diversity: Why More is Less", *European Review of Contract Law* 7 (2011): 134-150.
25. Treaty on European Union, signed at Maastricht on 7 February 1992, O. J. C 191, 29.07.1992.
26. Twigg-Flesner Christian, „Good-Bye Harmonisation by Directives, Hello Cross-Border only Regulation? A way forward for EU Consumer Contract Law", *European Review of Contract Law* 7(2011): 235-256.

Abstract

The article is based on the analysis of some legal acts and literature. Its purpose is to present selected aspects of consumer protection in European Union cross-border trade. Some legal regulations of the union law concerning cross-border consumer agreements were discussed. In the article some pitfalls are indicated, regarding cross-border purchasing that the consumer can encounter. The next section of the paper shows the connection between product safety, its proper marking and the health security of a consumer. It is highlighted that awareness of pursuing claims has an influence on safe cross-border purchasing.

The last part of the paper is a conclusion and includes consideration about real safety of consumers while making cross-border agreements. Trade barriers in purchasing products via the Internet from another member country, or the issue of advertising a product cause that the process of purchasing takes place within the boundaries of the country.

Bezpieczeństwo konsumentów w trans-granicznym handlu w Unii Europejskiej. Wybrane aspekty

Artykuł oparty na analizie aktów prawnych oraz literatury przedmiotu ma na celu przedstawienie wybranych aspektów bezpieczeństwa konsumentów w Unii Europejskiej w kontekście zawierania umów trans-granicznych. Omówione zostały wybrane regulacje prawa unijnego dotyczące trans-granicznych umów konsumenckich. W artykule wskazano na niebezpieczeństwa z jakimi spotkać się może konsument dokonując zakupów poza granicami swojego kraju. W kolejnej części artykułu określono związek bezpieczeństwa produktów, jego odpowiedniego oznakowania na bezpieczeństwo zdrowotne konsumenta. Zaznaczono również, że na bezpieczne zakupy trans-graniczne wpływa świadomość konsumentów w zakresie dochodzenia swoich roszczeń.

Ostatnia część artykułu pełni rolę konkluzji, zawiera rozważania na temat faktycznego bezpieczeństwa konsumentów podczas dokonywania umów trans-granicznych. Wskazano w niej, iż bariery handlowe takie jak trudności w nabywaniu produktów z innego kraju członkowskiego przez Internet, czy problem z reklamacją towaru powodują, że handel konsumencki nadal odbywa się w większości w obrębie granic krajowych.

Key words
alternative dispute resolution, consumer, cross-border, product safety, shopping, unfair business.

Słowa kluczowe
alternatywne sposoby pozasądowego rozwiązywania sporów konsumenckich, bezpieczeństwo produktów, konsument, nieuczciwe praktyki rynkowe, trans-graniczny handel, zakupy.

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