

The Process of Shaping Consumer Protection in European Union Law: Source Review *

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* Presented at the 46th IBIMA International Conference, 26-27 November 2025, Ronda, Spain

Abstract

Consumer protection in European Union law remained on the margins of Community policy for a long time, which stemmed from the prevailing belief in the effectiveness of free market mechanisms and the rationality of the consumer. The initial actions of Community institutions in this area lacked a treaty foundation. It was only in the late 1980s that consumer protection was incorporated into primary law as an autonomous objective of Community policy. From that moment on, protective regulations began to be introduced. The article presents the process of shaping the normative dimension of consumer protection in the European Union. Using the dogmatic and legal method, it discusses the development of consumer rights protection, including EU consumer programmes and the most important consumer directives. Furthermore, it describes the impact of consumer directives on the legal systems of the European Union Member States. The analysis of EU law in the field of consumer rights protection leads to the conclusion that the continuous amendments, repeals, and replacements of existing provisions with new, increasingly detailed regulations do not foster legal stability. Moreover, the excessive complexity of consumer directives, which often employ language incomprehensible to the average consumer, may burden consumers with the need to remember too much information. As a result, this gives rise to legal and practical problems, as it may lead to consumers' misunderstanding of the provisions and, consequently, to the failure of these provisions to fulfil their intended protective function. Thus, the directive does not appear to be an effective legislative instrument.

Keywords: EU consumer policy, EU consumer directives, consumer rights

Introduction

In the legal regulations of the European Community – as in many other legal systems – the protection of consumer rights – broader than protection against traditional commercial fraud (such as those concerning weight or quantity) – had for years remained a secondary concern. This was due to the fact that the Treaty of Rome (1957, unpublished, hereafter as EEC) did not recognize consumer protection as an independent, separate objective of the Community (Lawlor, 1998, p. 3). The foundation of the Community's operation was to ensure the proper functioning of the internal market. Consequently, the protection of this market was intended to serve as a sufficient guarantee for safeguarding consumers' interests, without the need for separate regulation of this matter. The Community legislator likely assumed that the protection of weaker parties „should develop naturally on the basis of provisions concerning the common market, free competition, and the common agricultural and transport policies” (Węgrzyn, 2013, pp. 51-52). In practice, this approach proved ineffective, and the EU legislator took action to ensure autonomous protection of consumer rights. These activities included the development of EU consumer programmes and the adoption of EU directives on consumer rights. The aim of the following considerations is to show, using the method of dogmatic-legal analysis, the direction of development of consumer protection in the EU and the impact of EU regulations on national legal systems, including the Polish one.

The beginnings of consumer rights protection

The issue of consumer protection has a long tradition both in Europe and worldwide. The need to address this matter was first recognized in the United States. A breakthrough came with U.S. President John F. Kennedy's speech delivered before Congress on March 15, 1962. The president said that „consumers include us all”. At the same time, he emphasized that consumers constitute the largest economic group in the nation's economy, fundamentally influencing nearly every public and private economic decision. In his speech, J.F. Kennedy (The American Presidency Project, [Retrieved October 5, 2025], see also: Jurczyk and Majewska-Jurczyk, 2015, p. 453) identified four fundamental consumer rights:

- 1) the right to safety,
- 2) the right to be informed,
- 3) the right to choose,
- 4) the right to be heard.

In the 1970s, Esther Peterson added a fifth right to these categories of consumer rights: the right to recourse and redress (Peterson, 1974, pp. 91).

The rights formulated by President Kennedy were later expanded by the International Organization of Consumer Unions, eventually becoming the foundation for the „United Nations Guidelines for Consumer Protection” (9 April 1985, A/RES/39/248; see also: Niepokulczycka, 1999, pp. 5-7) issued by the UN General Assembly in 1985.

In Europe, the large-scale development of consumer law dates back to the early 1970s. At that time, numerous legislative initiatives were undertaken, which shaped consumer protection law into its present form.

Article 2 EEC Treaty established as one of the Community's tasks the pursuit of „raising the standard of living”. This wording can be interpreted as a precursor to the later development of consumer policy.

The first impulses to create a unified consumer protection policy for the entire Community emerged during the summit conference of EEC heads of state and government held in Paris in 1972 (Ramsay, 1989, p. 57). At that conference, there was a call to intensify efforts to ensure adequate consumer protection, as it had become clear that the belief that competition alone would guarantee consumer protection was an illusion. It turned out that consumer protection in modern economic transactions was no longer about combating traditional fraud related to weight, measurement, or product quality—these threats were well-known, and appropriate remedies already existed in that regard. In modern economic transactions, the consumer finds themselves in a weaker position compared to their economic counterpart – the professional producer, seller, or service provider, which means that traditional economic mechanisms, shaped as early as the 19th century and based on the assumption of relative market balance, have ceased to function effectively. A consumer may fail to realize that a contract they sign contains provisions unfavorable to them – provisions that, on the one hand, deprive them of certain claims and, on the other, limit the liability of the contracting party, all due to the use of incomprehensible clauses. Consumer protection, therefore, concerns safeguarding the consumer's position in the marketplace, which they might otherwise be forced to abandon due to a lack of adequate knowledge. In today's context, it is no longer sufficient to rely on the principles of *volenti non fit iniuria* (no harm is done to one who consents) and *coactus tamen voluit* (if you entered into a contract, it means you wanted to).

Legal foundations of consumer protection in EU law and Polish law

Consumer protection at the Community level developed with the entry into force of the Single European Act in 1987 (hereafter as SEA). Previously, activities in this area had only secondary importance, as under the Treaty of Rome, consumer protection did not constitute an autonomous objective of the Community. This was changed by Article 18 SEA, which added a third paragraph to Article 100A EEC, stating that „in developing the internal market, the Commission shall take as a basis a high level of protection of health, safety, the environment, and consumers”. However, the practical significance of this provision proved limited due to the wording used and the content of paragraph 4 of Article 100A EEC. This paragraph allowed a Member State to derogate from Community provisions and apply national regulations in cases of justified higher-level needs as defined in Article 36 EEC, or concerning the protection of the natural environment or the working environment. Although the provision did not contain an explicit reference to consumer protection, it did not serve as a basis for excluding Article 100A(4) EEC (Węgrzyn, 2013, p. 53). Guidelines on how to ensure a „high level” of consumer protection were adopted in the Maastricht Treaty (1992, hereafter as TEU), which introduced a separate Title XI (Article

129A) dedicated to consumer protection. From that moment on, Community legal acts regulating consumer protection could be based either on Article 100A EEC or on Article 129A TEU.

Although Article 129A TEU provided the EU legislator with a legal basis for adopting acts aimed at protecting consumers, in practice, Article 100A EEC was used more frequently in this regard. Article 129A TEU could serve as a basis for actions intended to protect consumers beyond efforts to realize the concept of a single internal market. Member States were allowed to maintain or introduce stricter consumer protection requirements, generally without the need to meet additional conditions other than the obligation to notify the Commission. Despite the fact that this provision explicitly constituted a legal basis for adopting secondary legislation, only one directive concerning consumer issues was adopted under it — the one regulating the indication of price information on products (Directive 98/6/EC). It was recognized that the best way to protect consumers was through the harmonization of laws and the removal of barriers to the free movement of goods. Consumer protection took the form of actions implemented indirectly, within the framework of other Community objectives, and the adoption of consumer law acts under Article 100A of the EEC Treaty required a qualified majority rather than unanimity.

After the entry into force of the Treaty of Amsterdam (1997, hereafter as TA), Article 129A TEU was replaced by Article 153 TA, which marked a strengthening of the policy by incorporating it into the primary law of the Community (Stuyck, 2000, p. 384). This was to be achieved not only by the Communities „contributing” to „ensuring a high level of consumer protection,” but also by promoting consumer interests. Among these interests, in addition to the protection of health and safety, the right to information and education, as well as the ability to organize in order to safeguard those interests, were also included (Łętowska, 2004, p. 10).

As a result of the entry into force of the Treaty of Lisbon (2007, hereafter as TFEU) the actions previously undertaken by the Community were transferred to its legal successor – the European Union. Consumer protection is now defined in Title XV (Article 169 TFEU). An analysis shows that the content of paragraph 1 of this provision is essentially identical to that of paragraph 1 of Article 153 TA. The only difference concerns the change in terminology from „Community” to „Union”.

In Poland, the highest-ranking provision concerning consumer protection is Article 76 of the Constitution (Journal of Laws 1997, no. 78, item 24 as amended) which states: „Public authorities shall protect consumers, users, and tenants against actions threatening their health, privacy, and safety, as well as against unfair market practices. The scope of this protection shall be specified by statute”. The provision indicates that the Constitution outlines a normative path for the legislator to ensure appropriate consumer protection. However, since Poland's accession to the European Union, all statutory regulations protecting consumers stem from the need to adapt Polish law to EU standards.

EU consumer policy programmes

In 1975, the Council of the then EEC adopted the „First Programme for a Common Consumer Protection and Information Policy” (ABI EG 1975) covering five basic consumer rights:

- the right to the protection of health and safety,
- the right to the protection of economic interests,
- the right to redress for damages suffered,
- the right to education and information,
- the right to representation, that is, the right to form pressure groups.

During its implementation period, it was not possible to fully achieve all the objectives of the first programme. Therefore, it was decided to continue these efforts in the „Second Consumer Programme” of 1981 (ABI EG 1981), extending their scope to other areas, in particular industrial, agricultural, and competition policies (Dausies and Sturm, 1998, p. 36). Additional consumer rights were also introduced – namely, protection in the area of services, which should meet appropriate quality standards (Bridge and Lasok, 1994, p. 728).

In 1985, the European Commission undertook measures to protect consumers through the „New Impetus for Consumer Protection Policy” (COM (85) 314), which also included an assessment of the Community's achievements in the field of consumer protection. Compared to previous programmes, this one devoted less attention to the five fundamental consumer rights. It emphasized, among other things, „the need to standardize Community products in order to ensure a high level of product quality by establishing standards and technical norms” (Banasiński, 2004, p. 14).

In March 1990, an action plan for consumer protection for the years 1990-1992 (COM (90) 98, more: Maliszewska-Nienartowicz, 2004, p. 136, Dausen and Sturm, 1998, p. 37) was approved. Its main objectives focused on protective measures in the areas of representation, information, safety, and consumer-related transactions. To achieve these goals, it was planned to adopt directives concerning, among other things, comparative advertising, general product safety, unfair terms in consumer contracts, distance selling, and timesharing.

As a continuation of the above plan, new objectives for the years 1993-1995 were published in 1993 under the title „The Single Market in the Service of European Consumers” (COM (93) 378, more: Maliszewska-Nienartowicz, 2004, p. 172). The main goals were defined as the consolidation of existing Community regulations and the development of priority directions aimed at improving the level of consumer protection and awareness of consumer rights.

The continuation of the objectives that had not been achieved in the previous plan was another one for the years 1996-1998 (COM (95) 519), which covered the following issues: improving consumer information, supporting the adaptation of consumer habits to technological changes, and examining the extent to which consumer policy could in the future support key Union objectives such as the realization of economic and monetary union and the enlargement to include the countries of Central and Eastern Europe (Maliszewska-Nienartowicz, 2004, p. 184). No draft legal acts were foreseen in this plan.

The next plan for the years 1999-2001 (COM (98)) covered the following issues: strengthening the voice of consumers within the European Union, ensuring a high level of consumer health and safety, and fully respecting consumers economic interests. It is easy to notice that in this plan, the Commission once again emphasized the same consumer rights.

In May 2002, a strategy for the years 2002-2006 (COM (2002) 208) was adopted. It covered the following areas: protection of consumer safety, economic and legal interests, consumer information and education, as well as the promotion of consumer organizations and their contribution to the development of the discussed policy (Maliszewska-Nienartowicz, 2004, p. 229). In this strategy, the Commission presented a new approach based on „full harmonization”. Full (total) harmonization means that the Member States must implement the provisions of the directive without any deviations.

In 2007, a plan for the years 2007-2013 (COM, (2007) 99) was adopted. Its objectives included: strengthening consumer empowerment; increasing consumer welfare with regard to prices, product quality, accessibility, and the safety of goods and services; and effectively protecting consumers from serious risks, especially those they cannot cope with on their own. The strategy’s underlying assumption was to create a more integrated and effective internal market by enhancing consumer awareness, improving consultation processes and the representation of consumer interests, and ensuring the effective enforcement of legal provisions.

The consumer programme for the years 2014-2020 was established by Regulation (EU) No 254/2014. This programme included four main objectives: strengthening and enhancing product safety through effective market surveillance; improving law enforcement by fostering closer cooperation between national enforcement authorities; and supporting consumers by providing them with advice and assistance. In general, the programme, like the previous ones, aimed to ensure a high level of consumer protection, to strengthen consumers’ position, and to place the consumer at the heart of the internal market within the overall strategy for smart, sustainable, and inclusive economic growth.

The Consumer Programme for 2020-2025 (COM (2020) 696) was adopted already in 2020 due to the COVID-19 pandemic. The crisis prompted Member States to take decisive action to ensure that all individuals had equal access to testing, personal protective equipment, treatment, and COVID-19 vaccines at affordable prices. The pandemic highlighted the importance of consumer protection and close cooperation between authorities within the EU (OJ L 151), especially as it intensified consumer-targeted fraud, misleading marketing practices, and scams related to distance purchases. It became necessary to address challenges affecting consumers’ daily lives – particularly regarding the availability of goods and services, as well as the ability to travel, enter the European Union, and leave its territory.

All EU consumer protection programmes have influenced and continue to influence the shape of protective policy. An analysis of these programmes shows that the Commission consistently emphasizes the same consumer rights. This is partly the result of the ineffectiveness of earlier measures and partly the need to adapt regulations to the

changing economic reality. To some extent, such actions by the Commission can be justified, as the repetition of many issues across various documents and programs, „although overwhelming in its scope, has a profound meaning: it shapes the awareness of those who come into contact with these documents” (Łętowska, 2002, p. 31).

The normative dimension of consumer rights protection

At the EU level, the primary instruments for the protection of consumer rights are directives. Initially, their nature was minimal. Member States were allowed the freedom to supplement EU provisions with stricter national regulations that were more favorable to consumers. Such an approach was justified at a time when consumer rights varied significantly among Member States. However, as legal regulations became increasingly harmonized with the goal of improving the internal market and strengthening consumer protection, it became clear that the EU legislative authorities, within their granted competences, should not leave room for supplementary national provisions. The method of minimum harmonization led to divergences in the internal regulations of Member States, which adversely affected the economic objectives of integration. Moreover, such a system did not create coherence among the various national legal orders. On the other hand, the use of directives made it possible to combine Community standards with the specific features of domestic legal systems. However, as this approach to harmonization ultimately proved unsuccessful, a policy of maximum harmonization began to be pursued, even though Article 169(4) TFEU maintained the rule of minimum harmonization.

At present, the most important directives for protecting consumer interests include, in particular:

- Directive (EU) 2024/2853 on liability for defective products, which repealed Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products,
- Directive (EU) 2023/2225 on credit agreements for consumers, which repealed Directive 2008/48/EC on consumer credit,
- Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods, which repealed Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees,
- Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services,
- Directive (EU) 2015/2302 on package travel and linked travel arrangements, which repealed Directive 90/314/EEC on travel and package tours sold as a package,
- Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property,
- Directive 2011/83/EU on consumer rights, which repealed Directive 85/577/EEC on the protection of consumers in respect of contracts negotiated away from business premises and Directive 97/7/EC on the protection of consumers in respect of distance contracts,
- Directive 2006/114/EC concerning misleading and comparative advertising,
- Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market,
- Directive 2002/65/EC concerning the distance marketing of consumer financial services,
- Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market,
- Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers,
- Directive 93/13/EEC on unfair terms in consumer contracts.

As can be seen from the above list, directives may vary in their subject matter – some are general, such as the Consumer Rights Directive, while others are more specific, such as the Directive on the indication of product prices offered to consumers. For consumers, however, this diversity may have negative consequences, as an excessive number of overly detailed regulations can make it difficult not only to understand their content but even to remember their titles.

The use of directives as an instrument for regulating consumer protection stems from the fact that a fundamental feature of the EU legal system is its ability to create legal norms that gain acceptance from all Member States and can replace national provisions that hinder the exercise of the freedoms of the internal market. Since directives are addressed to individual Member States, they must be incorporated into each country’s domestic legal system through the process of implementation.

When implementing a directive, the language it uses is of particular importance, especially if the directive regulates matters of private law. Private law consists of norms expressed through precise concepts, which may differ between legal systems. Therefore, a directive that defines the objective to be achieved by the Member States may lack precision. In practice, this problem is addressed either by specifying the directive's objective in greater detail – which creates significant difficulties in integrating the directive into the domestic legal system (for example, a directive may introduce a new legal institution unknown in a given legal system) – or by formulating the objective in very general terms, in which case it may be more difficult to align the national legal systems of the Member States with one another.

All the directives cited in this study represent the implementation of the policy objectives of consumer protection. As can be seen, with the development and expansion of these objectives, new legal regulations have emerged, while earlier ones have been amended or replaced by entirely new instruments. These measures are justified by the need for the law to keep pace with changing socio-economic conditions and the emergence of new regulatory challenges for legislators. However, such an approach is not entirely appropriate, since legal norms should, by their very nature, be as abstract as possible — this ensures their flexibility and ability to adapt to a changing reality without the need for constant updates and, consequently, continuous amendments to the law.

Summary

Ensuring proper protection for consumers is a multi-stage process. The actions initiated within the Community are being continued by the European Union. Initially, the goal was not to protect the weaker party in transactions, but rather to remove barriers to the functioning of the internal market and to safeguard competition. However, this approach gradually evolved, especially from the moment consumer protection became an autonomous objective of the Community. At the beginning of the process, the focus was placed on the protection of health and safety; later, the right to information and education was added, as well as the possibility for consumers to organize themselves to defend their interests. The directive became the main instrument of the common protection policy. However, its main drawback is the lack of horizontal direct effect (Weatherhill, 1999, p. 144) meaning that a directive cannot be invoked in relations between private parties – a circumstance that may be disadvantageous to consumers. Additionally, the situation – not only for consumers but also for other entities such as businesses, courts, the legal profession, and consumer protection authorities – is further complicated by the need to adapt to new regulations following the implementation of frequently changing directive provisions. In practice, this may create a sense of instability in the legal framework. Moreover, directives (especially those adopted in recent years) often use language that is incomprehensible to the average consumer and are so detailed and extensive that assimilating their content can lead to consumer „information overload”. The introduction of such regulations into national legal systems may result in the practical non-fulfilment of the requirement to protect consumers. Moreover, in countries where consumer protection has been elevated to the constitutional level (e.g., in Poland), it may contribute to a crisis of the rule of law.

Acknowledgment

The publication was financed by the Cracow University of Economics as part of the „Potencjał” research program (PRW/PPOT/2025/0005).

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