

# LEGAL DEFINITIONS OF CONSUMER PROTECTION LAW IN THE EU.

EUROPEAN CONSUMER PROTECTION LAW

**DR. KITTI BAKOS-KOVÁCS PHD.**

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## LEGAL DEFINITIONS OF CONSUMER PROTECTION LAW IN THE EU.

READING LESSON

 30 MINUTES

*Dr. Kitti Bakos-Kovács PhD.  
assistant professor*

University of Szeged  
Faculty of Law and Political  
Sciences  
Institute of Civilistic Sciences

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### 1. Legal foundation of consumer protection law in the EU

The **Treaty of Rome**<sup>1</sup> contained only four references to the consumer in 1957, but no explicit basis is in the original text for making community legislation in the field of consumer protection.

(1) In the framework of agricultural policy appeared as an objective of the common agricultural policy to ensure that supplies reach consumers at reasonable prices.

(2) As common principles rules of Treaty of Rome regarding organization of common agricultural market excluded any discrimination between producers and consumers in the community.

(3) Firms in that case allow to conduct such agreements between each other that result any restriction or distortion of competition within the common market if consumers are allowed a fair share of the resulting benefit.

(4) As abusive market behaviour can be qualified if abusive conduct of undertaking of dominant position consists in limiting production, markets or technical development to the prejudice of consumers.

These abovementioned references **didn't set purpose to develop common framework and legal rules of consumer protection law at EU level** or establish special legal protect of consumer interests and rights. Rules of Treaty of Rome **grant for consumers to enjoy benefits** from the process of integration, for example wider choice, lower prices or higher quality products or services.

In 1987 the *Single European Act* offered two possibilities for improving of consumer protection: at first the harmonization of national rules leads to evaluation of consumer protection at community level. Secondly consumer protection could be also expanded through soft law initiatives. Diversity of different legal consumer protection rules of Member States obstructed market integration, so harmonization of national consumer protection laws was necessary.

An explicit provision was added to the **Treaty at Maastricht** for ensuring and **empowering community legislation in the field of consumer protection**, that was modified by the Amsterdam Treaty.

According to the Article 169 of **Treaty on the European Union** principle of legal foundation of consumer protection in the European Union is the following:

*„In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.”*

In order to establish legal basis and backgrounds of effective common market in the European Union it is necessary to determine the measure of harmonization of consumer protection law and the competent of national legislation in order to reduce differences between legal rules of Member States. **Shared competence is declared between the European Union and Member States in the field of consumer protection.**

**Common legal acts appearing at EU level harmonize indirectly through directives the national legislation of Member States.**

EU norms tried to approach divergence rules of national legislation and establish common legal basis for consumer protection with technique of minimum harmonization. It means that regarding legal acts of the EU stated minimum standards that Member States had to implement into national legislation. In addition to this obligation Member States were entitled to settle further, stricter provisions in order to protect national consumers.

In order to ensure higher level for consumer protection directives of European Union aimed the exhaustively **full harmonization after 2002**. *That means national legislation cannot regulate divergent rules from provisions of regarding directive. Deviation from rules of directives also is not possible in that case if Member State would like prescribe divergent, more or less stringent rules of consumer protection.*<sup>2</sup> Through full harmonization of legal foundation of consumer protection and establishing uniform legal institutes legal certainty can be increased for both consumers and traders. Such regulatory framework that based on clearly defined legal concepts across the Union can eliminate fragmentation of divergent rules on the internal market or between national rules of Member States.<sup>3</sup>

**It is principal required that consumer protection shall be taken into account in defining and implementing other Union policies and activities.**<sup>4</sup> According to regarding provision of **Charter of Fundamental Rights of the European Union** high level of consumer protection shall be ensured during the union policies. It can be summarized that **consumer policy is no longer subordinated and treated as part of internal market policy, but can be evaluated as an independent, autonomous policy in the European Union.**

**European Court of Justice** has developed trade law in the European Union into a charter of consumer choice; the role of consumer choice appears systematically in decisions and judgments of ECJ. Consumers can buy goods or services under the same conditions from traders across border who are settled in another Member States. Therefore, free movement of goods concerns not only traders but also individuals, so market integration also serves benefits for consumers.<sup>5</sup>

*Consumer protection law is a varied, many-sided, pluralistic legal field as consequences of new tendencies of economical and legal evolution. Legal institutes of consumer protection law lie on border of private and public law; it can be qualified as an interdisciplinary, assorted special legal field. It covers both protection of safety of consumers and their economic interests. Numerous legal acts were adopted under the legislative harmonization at EU level.*<sup>6</sup>

## 2. Legal definition of consumer in the European Union

*One party of concluded contract* is protected as a consumer. **There is no uniformed definition for consumer in the legal norms of European Union.**

**The EU adopts majority negative definition; consumer usually is someone who contracts for purposes, which are outside his trade, business, craft or profession.**

Depends on real circumstances of each cases **it is required further to analyse** (1) *what type of contract was concluded by the consumer*, and (2) *whether this specific category of contract fall within the scope of one of the EU legal acts that aims to protect consumers.*

**Definitions are regulated in each directive.** It is necessary to detect how consumer shall be determined and interpreted by applying of regarding directive. According to provisions of directives regarding consumer protection as a *common feature of applied consumer definitions* can be mentioned that **only natural person can be qualified and protected as consumer.** This statement was also confirmed in the decisions of ECJ. If the legal regulation protects only natural person as consumer, *legal person is exhausted from protection* in that case if (1) legal person act outside its trade or profession or (2) legal person is active in field of non-profit sector or doesn't carry out economic activities (for example society, foundation).

In the case of **dual purpose contracts**, where the contract is concluded for purposes partly within and partly outside the person's trade or profession, that person should also be considered as a consumer if *professional purpose of the contract is so limited or not to be predominant in the overall context of the concluded agreement.*

As **measure of level of consumer protection** it can be stated according to the case C-220/98. of ECJ that only **average consumer can be legally protected who are reasonably well informed and reasonably observant and circumspect.**<sup>7</sup> Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market **makes a distinction for consumers with special features and demands to foster higher standards of consumer protection.** As special measure it is required to adjudicate commercial practices *from the viewpoint of the perspective of the average member of that group* which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers **who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity.**

**Member States are obligated to implement provisions of directives into national law. For consumers and undertakings rules of national law have to be applied directly.**

Arise from this statement, definitions regulated in national law have to be analysed to prejudice whether a person can be qualified and protected as a consumer taking also all circumstances of legal relationship into consideration. **National law also prescribes definitions of consumer divergent in each legal fields.**

As an example can be settled in Hungarian law consumer shall mean any natural person acting for purposes which are outside his trade, business or profession according to interpretative provisions of *act on Civil Code*. Another legal norm, *act on consumer protection* defines consumer as any natural person who is acting for purposes of purchasing, ordering, receiving and using goods or services which are outside his trade, business or profession, or who is the target of any representation or commercial communication directly connected with a product. In the application of the provisions on arbitration boards consumer shall also mean any civil society organization, ecclesiastical legal entity, condominium association, housing cooperative, micro, small and medium-size enterprise acting for

purposes of purchasing, ordering, receiving and using goods or services which can be regarded as outside its trade, business or profession, or that is the target of any representation or commercial communication directly connected with a product. Furthermore, for the purposes of Regulation (EU) 2018/302 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and any company that qualifies as a customer under Regulation 2018/302/EU shall also be treated as a consumer. *The scope of referred legal acts is different:* act on Civil Code has to be applied for the property and personal relations of persons in the field of private law, act on consumer protection shall apply to all activities conducted by business entities which involve or may involve consumers.

### 3. Legal definition of undertaking in the European Union

**Applying rules of consumer protection law, it is required that consumer concludes contract with another seller or trader who acts within the exercise of his trade or profession.**

Undertakings would like to sell products or goods and provide services for other parties, included for consumers. Consumers can choice from supply according to his or her preferences, but *consumer is in weaker position in this relationship* for the reason that consumer acts outside his trade or professional and has fewer and imperfect information about product or service. This *inequality of economic power between consumer and undertaking* offer reasons for compulsory legislative intervention on the part of the European Union and states at national level. Legal institutes of private and public law provides **compulsory applicable securities for ensuring an effective consumer protection**.<sup>8</sup>

**From legal aspects undertakings can be interpreted as heterogeneous bunch. Different perspectives of definition of type of undertakings are regulated in interpretative provisions of each legal acts in the European Union.**

Business entity, business party, producers, traders, sellers, service providers, purchasers, distributors, retailers can be also qualified as an undertaking.

*Measures of application and interpretation of EU norms are the same that were presented by legal definition of consumer.* At first, legal requirements of **interpretative definitions of regarding legal act** of the EU **shall be applied and analysed**. Secondly, it has to be examined whether the **contractual relationship** between the parties **falls within the scope of regarding directive**. In legal framework provided by directives in the EU law national legislator is entitled to define undertaking in **domestic law** that is directly applicable for each legal relationship or contracts concluded between a consumer and an undertaking.

According to *Directive 2011/83/EU on consumer rights* trader means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting for purposes relating to his trade, business, craft or profession. Text of directive qualifies other persons as trader if this person acting in the name of a trader or on his behalf.

*By consumer credits* creditor means a natural or legal person who grants or promises to grant credit in the course of his trade, business or profession. Otherwise, this directive regulates that credit intermediary also can be qualified as an undertaking and obligated to ensure consumer rights.

#### 4. Legal protected contractual relationship

Consumer protection law provides legal securities and – on the other side – declares **compulsory provisions for each element of contracts concluded by consumer and undertaking**. Specific issues of consumer contract law arise from subjects of these contracts, namely one of the contractual party is a consumer who acts outside his trade or profession. Legal structure of consumer contract law in the EU bases on those directives that regulate obligatory consumer protection rules **applicable by certain type, object or specific issues of contracts**. These legal acts regarding consumer protection at EU level *don't compose a general contract law or general consumer contract law in the field of private law and don't statute new forms of contracts*; general regulation of special private law contracts belongs to competence of national legislator.



Crocus<sup>10</sup>

Contracts between two or more private individual parties who sell or buy outside their trade or profession fall outside the scope of consumer protection law.<sup>9</sup>

If legal person contracts outside his trade or business with another undertaking, consumer protection rules only applied in that case if the for the legal or contractual relationship applicable legal act make possibility for an extended interpretation of consumer for legal entities.

**Each directive specifies such types of contracts that fall within the scope of regarding EU norm.**

It is necessary to examine which contracts are excluded from the scope of each directive, because EU legislator determines that cases when the directive shall not be applied for certain type of contracts or other specific sectors of EU consumer protection policy and law.

*Directive 2011/83/EU on consumer rights* shall be applied for any contract concluded between a trader and a consumer. It shall also apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis. If any provision of this directive conflicts with a provision of another act governing specific sectors in the European Union, the provision of that other directive shall prevail and shall apply to those specific sectors. This directive is not to be applied for social services, healthcare, gambling, financial services, transfer of immovable property, construction of new buildings, travelling and timeshare contracts, foodstuffs etc.

*Directive 2008/48/EC on credit agreements* defines credit agreement as an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation. Exception from scope of this directive is regulated in Article 2; setting an example this directive shall not be applied for credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on immovable property or secured by a right related to immovable property.

## EXERCISE

1. Search and download the directive on credit agreements for consumers.
2. In which Article is consumer defined in this legal act?
3. Research in your national law: how consumer is defined in relation to consumer credits? Make a comparison about interpretative provisions of EU law and your national law.
4. Analyse the definition of consumer according to rules your domestic law in relation to consumer credits. Follow these uniformed assessment viewpoints:
  - Natural person or also legal person can be qualified as a consumer relating to credit agreements?
  - Requirements for purposes of legal transactions are required in legal regulation?
  - For which type of contracts shall this definition be applied?
  - Who is the other party of credit agreements? Find the regarding definition in directive on credit agreements.
  - Research in your national law: how undertaking is defined in relation to consumer credits? Make a comparison about interpretative provisions of EU law and your national law.

## QUESTIONS

- In which treaty was authorization given for consumer protection legislation for the European Union?
- Make a sketch about principles that is necessary to analyse by qualification of a contractual party as a consumer.
- How can undertaking be prescribed?
- What are the main objects of legal examination to prejudice the contractual relationship between a consumer and an undertaking?

## ENDNOTES

<sup>1</sup> Official text and consolidated versions are available at <https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/treaty-of-rome>

<sup>2</sup> Szikora Veronika „A fogyasztóvédelmi jog történeti kialakulása Európában, különös tekintettel a magánjog-egységesítési folyamatokra” In: Szikora Veronika (szerk.) „Magyar fogyasztóvédelmi magánjog – európai kitekintéssel” (Fogyasztóvédők Magyarországi Egyesülete; Debrecen; 2010.) 19-31.

<sup>3</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights; Preamble 7.

<sup>4</sup> Consolidated versions of Treaty on the European Union are available at <https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=celex%3A02016ME%2FTXT-20160901>

<sup>5</sup> See in details Weatherill, Stephen „EC Consumer Law and Policy” (European Law Series; Longman; London and New York; 1997.) 1.; 4-7.; 12-13.; 24-27.; 36-39.

<sup>6</sup> Hajnal Zsolt „A fogyasztóvédelem alapjai” In: Szikora Veronika (szerk.) „Magyar fogyasztóvédelmi magánjog – európai kitekintéssel” (Fogyasztóvédők Magyarországi Egyesülete; Debrecen; 2010.) 15-17.; Kóhidi Ákos „A fogyasztóvédelem pragmatikus aspektusa” available at [kohidi\\_akos-a\\_fogyasztovedelem\\_pragmatikus\\_aspektusa\[jogi\\_forum\].pdf](http://kohidi_akos-a_fogyasztovedelem_pragmatikus_aspektusa[jogi_forum].pdf)

<sup>7</sup> C-220/98.: Judgment of Court; Estée Lauder Cosmetics GmbH & Co. OHG v Lancaster Group GmbH; Reference for a preliminary ruling; 30. point; Hajnal Zsolt „A fogyasztóvédelem alanya: a fogyasztó” In: Szikora Veronika (szerk.) „Magyar fogyasztóvédelmi magánjog – európai kitekintéssel” (Fogyasztóvédők Magyarországi Egyesülete; Debrecen; 2010.) 39-51.

<sup>8</sup> Howells, Geraint – Weatherill, Stephen „Consumer Protection Law” (Ashgate; Aldershot; 2006.)

<sup>9</sup> Zeng Sophia Tang „Electronic Consumer Contracts in the Conflict of Laws” (Oxford and Portland; Oregon; 2015.) 27-30.

<sup>10</sup> Crocus available at <https://en.wikipedia.org/wiki/Crocus>