

**OTHER FIELDS OF CONSUMER PROTECTION LAW.**

**Access to justice.**

**Public law nature of consumer protection law.**

**EU CONSUMER PROTECTION LAW**

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	<p><b>OTHER FIELDS OF CONSUMER PROTECTION LAW. ACCESS TO JUSTICE. PUBLIC LAW NATURE OF CONSUMER PROTECTION LAW.</b></p> <p>READING LESSON</p> <p> 40 MINUTES</p>	<p><i>Dr. Kitti Bakos-Kovács PhD. assistant professor</i></p> <p>University of Szeged Faculty of Law and Political Sciences Institute of Civilistic Sciences</p>
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1. Introduction.
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3. Common procedural aspects of effective enforcement of consumer protection law.
4. Alternative dispute resolution.
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**1. Introduction.**

Solving legal disputes in another country has difficulties (costs, language, legal advice from lawyer, duration of procedure etc.). Imbalance appears between the low price of goods or services ordered by consumers and high costs of judicial procedure. Contrast tenses also between the needs of consumers to use the inconformity product or services within reasonable time and the long duration of judicial proceedings. Some legal acts of European Union aim to contribute common framework for each redress mechanism that can also be resorted by consumers. **There are number of ways to sort consumer complaints.** The list of rights of consumers contains the right of information and right to redress since its inception. This reading lesson introduce the steps and various legal tools at union level toward improvement and operation of legal framework of access to justice in the field of consumer protection law.

**At first, the consumer shall return to his or her contractual partner (trader, seller, undertaking, distributor etc.) and parties shall conciliate about the lack of conformity of the contract or malpractice followed by the undertaking. If the complaint is resolved, the consumer needs no litigation before court or in the way of alternative dispute resolution.**

Effective and adequate rules of enforcement are prescribed in national laws. **Procedural law legislation concerns traditionally to the domestic law of each Member States.** Legal consequences of lack of conformity or claiming compensation or damage on the ground of private law can be demanded by judicial way. Consumers can take the dispute to court individually to defend their rights or demand compensation or damage. Rules also promote out-of-court procedures to ease access to justice. Special legal bodies are also entitled to take actions to the court to ensure collective interests of consumers by wide-range malpractices. Market monitoring tools have a wide-range regulation through the European Union.

**Magisterial condemnations issued by the competent national administrative authorities can state public sanctions by infringement of norms of consumer protection, but repairing the defect product or service or damages can be adjudicated only ground of civil law by the competent court.**

By regulation of procedural rules, Member States should remain free to set out conditions and limits for the exercise of the powers in national law, in accordance with Union law. They can also regulate other forms of redress mechanism in domestic law, for example ombudsman, mediation, class actions to ensure the consumer protection.

## 2. Legal framework in material laws.

*Article 23 of Directive 2011/83/EU on consumer rights, Article 19 of Directive 2019/771/EU on certain aspects concerning contracts for the sale of goods and Article 21 of Directive 2019/770/EU on certain aspects concerning contracts for the supply of digital content and digital services* regulate that **public bodies** or their representatives, **consumer representative organisations and professional organisations have a legitimate interest to initiate proceedings before courts and administrative authorities in order to protect consumer contractual rights** according to the legal procedural rules determined at domestic level. This right is granted for abovementioned organisations in *the Article 7 of Directive 91/13/EEC on unfair terms in consumer contracts* to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers. They can bring claims into the court to ask decision whether a contractual term is unfair. The directive offers the possibility for national legislation to allow these organisations to bring an action before court **separately or jointly against a number of sellers or suppliers** from the same economic sector or their associations which use or recommend the use of the same general contractual terms or similar terms.

*Article 17 of Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce* contains expressly warrant to ensure the possibility of the out-of-court dispute settlement under national law, including using appropriate electronic communication forms. Alternative dispute resolution bodies have to operate in consumer disputes in a way which provides adequate procedural guarantees for the parties concerned. These bodies shall provide information for Commission about their significant decisions regarding information society services and electronic commerce. *Article 18 of this directive* requires that rapid adoption of measures, including interim measures, shall be available under national law in the framework of court actions on order to terminate the infringement and prevent any further impairment of the interests.

*Article 11 of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market* contains detailed regulation about legal remedies. Persons and organisations regarded under national law as having legal interest in consumer protection and competitors have right to **take actions before courts against unfair commercial practices or can initiate the control procedure of administrative authorities**. Establishment of an effective enforcement system of legal remedies in case of unfair commercial practices concerns to the competence of national legislator of each Member State. Member States can decide about which is the appropriate legal remedies to deal with complaints or previous recourse is necessary or not. The possibility is offered for domestic laws to allow legal facilities jointly or separately against number of traders from the same economic sector or code owners where the relevant code promotes non-compliance with legal requirements. As legal consequences courts or administrative bodies can order the cessation of unfair commercial practices with interim or definitive effect; are entitled to initiate judicial procedure before court for an order of cessation of infringement; they can prohibit the application of planned unfair commercial practices or initiate the appropriate legal proceedings before courts in case of that hazard if the unfair commercial practice has not yet been carried out but is imminent. Trader is required to furnish evidence as to the accuracy of factual claims in relation to the commercial practice. Full or partially publication of such decisions can be required by national law. If administrative authorities have competence to control and make decision regarding unfair commercial practices, impartiality of bodies, adequate powers to monitor and enforce the observance of their decisions and justification of decisions has to be granted.

By procedure of administrative authorities Member States are obligated to prescribe the conditions of **judicial review** of these decisions.

*Article 8 of Directive 98/6/EC on consumer protection in the indication of the prices of products* offered to consumers prescribes that Member States shall lay down penalties for infringements of national provisions adopted in application of this directive, and shall take all necessary measures to ensure that these are enforced. Other procedural rules concerning competence of national administrative authorities or courts are not mentioned in this legal act.

Claims be based on *Directive 85/374/EEC concerning liability for defective products* can be brought into **court**. National courts have competence to judge about damage that was caused by a defective product. *Article 13 of this directive* allows possibility to consumers to demand damage also on ground of contractual or non-contractual liability or other specific liability system under national law.

*Directive 2001/95/EC on general product safety* entitles Member States that national legislator should establish or designate administrative authorities which are responsible for monitoring product safety and have powers to take appropriate measures. **The primary legal remedy is the market surveillance and procedure of administrative authorities in the field of product safety.** Action possibilities of administrative authorities is regulated in Article 8 of this directive depending on safety measure of controlled product. **Commission has to be informed** about decisions that restrict distribution of an unsafe product on the market or order withdrawal or recall from the market. **Rapid alert system** is functioning at community level in order to ensure effective and quick exchange of information in case of serious risk of distribution of either unsafe or dangerous product. Possibility of **judicial review** is required in the directive against decisions of administrative authorities if the decision orders the restriction of distribution on the market or withdrawal or recall the product from the market.

Establishment, periodical updating and implementation of **sectoral surveillance programmes** by categories of products or risks and the monitoring of surveillance activities, findings and results, follow-up and updating of scientific and technical knowledge and periodical review and assessment of the functioning of the control activities and their effectiveness and revision of the approach are special methods that Member States can endorse in order to reach the high level of consumer protection regarding product safety. Consumers are entitled to take complaint to the competent authorities to ask the appropriate following of infringement of product safety rules.

### 3. Common procedural aspects of effective enforcement of consumer protection law.

Emergence of an enforcement mechanism is restricted by multi-side way: at first, the unlawful practice has effect in another Member State at cross-border level other than it was exposed. Secondly, procedural rules are regulated in national laws.

*Directive 2009/22/EC on injunctions for the protection of consumers' interests* approximates some procedural aspects of national laws in the field of actions for an injunction aimed at the protection of the collective interests of consumers. This legal act regulates the main definition and principles of **injunction procedures** with method of **minimum harmonization** because Member States can adopt more extensive regulation at national level. **Procedural rules are not approximated in this directive**, so national procedural provisions are valid for conduction of these procedures.

**Infringement** means any act contrary such transposed consumer protection directives that are listed in the annex of this legal act and harms the collective interests of consumers. **Independent public bodies and organisations whose purpose is to protect the interests of consumers** are entitled to bring

action for an injunction. Action for an injunction can be also taken in case of **cross-border unlawful practices**. This type of procedure, where legitimacy of initiating process is special, is conducted by national administrative authorities or courts depending on rules of national regulation.

*Commission Recommendation 2013/396/EU on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law* addresses national legislator to facilitate access to justice by **collective redress mechanisms in mass harm situations**. Conditions are laid down for representative entities who are entitled to bring **representative actions** into courts. This is a form of collective redresses that can be invoked in case of mass harm situations. Specific principles are determined relating the object of claims (injunction, compensatory actions), and the recommendation makes foundation and possibility for collective alternative dispute resolution and settlements.

**European small claim procedure** as an adequate tool can be invoked in **cross-border consumer disputes**. Common procedural framework is prescribed on autonomous way at union level; this procedure **has special own, European procedural rules**. Eliminating obstacles before civil proceeding *Regulation 861/2007/EC establishing European Small Claims Procedure* contains common regulation for simplifier and accelerated cross-border litigation in small consumer and commercial disputes. As a rule, it is a **written** procedure. Initiation of this procedure passes with using **forms**; narrows **time limits** are indicated for communication and make judgement in the dispute. **Value of claims cannot exceed EUR 2000** without interest, expenses and disbursement.

#### 4. Alternative dispute resolution.

Parties can negotiate to reach an agreement and solve the dispute with assistance of alternative dispute resolution bodies.

**Alternative dispute resolution offers for consumers and traders to settle the dispute without going to court. Two directives regulate the alternative dispute resolution in the field of consumer protection law. These legal acts are interlinked and complementary legislative instruments.**

*Directive 2013/11/EU on alternative dispute resolution for consumer disputes* paves the way towards access to simple, efficient, fast and low-cost redress mechanism to resolving **domestic or cross-border disputes** which arise from **sales or service** contracts concluded by consumer and undertaking. This legal act has **horizontal effect** and is applied for all types of out-of-court mechanism, for example mediation, arbitration, conciliation in consumer disputes. **Member States can decide about form of alternative dispute resolution (ADR) that can be invoked in consumer disputes in accordance with principles and preferences prescribed in the directive.**

Undertaking is obligated to inform consumers about address and websites of alternative dispute resolution entities. Trader can feature this information in the terms of conditions. Parties are not obligated to take part in alternative dispute resolution procedure; **participation is voluntary**. Directive states principles of alternative dispute resolution such as independent, impartial, fair and transparent body shall decide in disputes. Quality requirements is prescribed for out-of-court redress and operation of alternative dispute resolution entities.

For **online trading** an **online interactive alternative dispute resolution platform** was established by *Regulation 524/2013/EU on online dispute resolution for consumer disputes* in order to contribute appropriate functioning of internal market, included its digital dimension. This possibility offers consumers and traders for solving the dispute regarding with **online sales or service contracts on online out-of-court redress mechanism through the intervention of an alternative dispute resolution**

**entity also in case of domestic too cross-border malpractices.** This regulation should not apply to disputes between consumers and traders in case of offline concluded sales or service contracts and to disputes between traders. ODR platform functions as an interactive website and is online available.

The complainant shall fill in the electronic complaint form. The ODR platform transmits automatically the complaint to the alternative dispute resolution entity that the parties have agreed. ODR platform builds on existing alternative dispute resolution entities operating in Member States and respects the legal procedural traditions of Member States. Alternative dispute resolution entities should therefore apply their own procedural rules, however, the regulation intends to establish some common rules applicable for procedural aspects of online dispute resolution. **Traders are obligated to represent an electronic link to ODR platform.**

### 5. Public enforcement.

**Member States shall cooperate** with other Member States and shall assign contact points to communicate to other Member States and to the Commission of the European Union. *Regulation 2017/2397/EU on cooperation between national authorities responsible for the enforcement of consumer protection laws* facilitates **cooperation network** (Consumer Protection Cooperation Network – CPC Network) between the competent national public authorities through the European Union in order to promote an effective countenance against cross-border infringements. Minimum requirements of powers of administrative authorities are listed in the regulation (for example power of access to relevant documents, data or information, power to carry out necessary on-site inspections, power to purchase goods or services as test purchases etc.). Tasks of applicant authority and requested authority with some procedural rules are detailed in the framework of mutual assistance mechanism. **National authorities shall apply the same sanctions and penalties by cross-border malpractices than it is ordered for domestic regime of public enforcement acts.** It is a fundamental measure that national authorities shall choose the most appropriate sanctions or penalties; **the applicable legal consequences should be proportionate, effective and dissuasive.** This principle is followed by each legal acts of consumer protection law.

In the field of product safety *Regulation 765/2008/EC* unified rules of market surveillance and cooperation and communication between national authorities of Member States.

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*Kosztá József: Pipacsos mező  
(Közelítő vihar), 1920-as évek.*

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## EXERCISE

Write a short essay about alternative dispute resolution mechanism in consumer disputes in your country. Introduce some features of ADR mechanism according to your national law. What is the connection with EU law? *Extension of essay shall be maximum 3 pages.*

## QUESTIONS

- Summarize the legal tools that consumer can invoke in consumer disputes or infringement of provisions of consumer protection law?
- In which way can consumer demand legal consequences on the ground of private law?
- What does injunction procedure mean? By which conditions can this procedure initiate?
- By unfair commercial practices what kind of legal remedies solves the protection of consumers?
- How is collective interest of consumers protected in the legal acts of the European Union?
- Where can the consumer choose the possibility of alternative dispute resolution in case of online trading?

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**\* Date of downloading of online literature sources is 30 April 2021.**