

THE REVIEW OF THE CONSUMER ACQUIS IN A CONTEXT OF THE CZECH LAW DE LEGE LATA

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Vlastní text resumé

The article deals about the review of consumer acquis. The consumer acquis cover 8 directives that protected consumers (Directive 85/577/EEC, Directive 90/314/EEC, Directive 93/13/EEC, Directive 94/47/EC, Directive 97/7/EC, Directive 98/6/EC, Directive 98/27/EC and Directive 1999/44/EC). The author tries to find the most serious problematic parts of implementation directives in Czech Law.

The notion of the ‘consumer’ is closely linked with the notion of the ‘supplier’ who makes legal acts as a part of its entrepreneurial activities, while the consumer does not make such acts as a part of its entrepreneurial activities. The definition of ‘acting’ is, as regards entrepreneurial activities, somewhat problematic in the particular legal systems (the broad and the narrow conception of entrepreneurial activities; objective and subjective assessment of one’s own acts) and is not uniform even in judicial decisions by the ECJ.

In the Czech legal regulation, the interconnection of the notion of ‘consumer’ and ‘entrepreneurial activities’ is made even more complicated because of the unclear definition of ‘entrepreneurial activities’ and ‘entrepreneur’ in the Commercial Code and the Trade Licences Acts and their mutual links.

Under the Czech law, a ‘consumer’ can be both a natural person and a legal person. In the case of Directive 93/13/EEC, this is a non-conforming implementation. A member state may, in our opinion, extend the protection provided to consumers even to non-professionals (legal persons) but it may not subsume such subjects under the notion of ‘consumers’: there needs to be a different term, e.g. ‘non-professionals’.

It cannot be generally stated that a consumer is protected less than subjects in B2B or C2C relationships. In certain cases, however, the Czech legislation does provide a lesser protection to consumers than that normally accorded to subjects in similar general relationships under civil law (cf. Section 56 of the Civil Code, under which unfair contractual understandings are voidable, while similar acts are null and void in the case of B2B, as governed by Section 39 of the Civil Code). From the point of view of the sense and purpose of consumer protection, such a state of legal regulation is unacceptable and should be removed in the future.

The fragmentary nature of implementation of directives may be evidenced by only partial implementation of some provisions of certain directives, such as Directive 1999/44/EC (failure to implement the right to withdraw from a contract in the event a supplier fails to rectify a faulty situation within a reasonable period of time or if a supplier rectifies a faulty situation but causes significant discomfort to the consumer), Directive 97/7/EC (failure to implement the release from the consumer’s obligation to pay the price in the event of an inertia selling; the transposition has been only partial because the consumer is merely not obliged to surrender any performance that has not been ordered).

The lack of an interconnection between the implemented directives on consumer protection is not always immediately apparent, though it is sometimes directly obvious from the diction of e.g. translation or the actual transposition (this is, for instance, typical of the notion of ‘good faith’, which should have the counterpart of ‘good manners’ in the Czech law; however, the notion ‘good faith’ was slavishly and non-systematically included in the legal regulation). At other times, the absence of links to existing private law institutes becomes clear from explanatory and contextual implications. This concerns, for instance, the failure to implement the duty to provide information in a clear and comprehensible manner in the event of pre-contract duty to inform as a part of solution acts, which stands in contrast to legal acts of obligation (information constituting the offer), which do include this duty. Thus while acts of obligation may be generally prosecuted under Section 37 of the Civil Code as null and void

legal acts (whose implementation is therefore essentially superfluous), the pre-contract duty to inform, which does not manifest signs of the offer, badly misses the provision setting the duty to inform in a clear and comprehensible manner because Section 37 of the Civil Code is not applicable.

The Czech Law contains some problematic parts that need to be amended. The amends have to be realised in the context of existing institution of the Czech Law and in the context of the review of consumer acquis.

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