

Legal regulations of the consumer protection in Ukraine with regard to Ukraine's obligation of adaptation to the EU legislation¹

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Abstract

Since 2014 Ukraine has been implementing the EU–Ukraine Association Agreement in its domestic legal system and facing a lot of challenges introducing European rules and practices into the country's daily life. The area of consumer protection is one of the most challenging fields due to the cross-cutting nature of consumer protection and its high relevance for all stakeholders: the state, businesses, and consumers. Reforming the Ukrainian consumer protection system and policy is one of the key tasks for the Government of Ukraine. These changes will affect almost the entire population of the country, but – as presented in this article analysis demonstrates – the progress in adjusting Ukrainian legislation in this field to the level needed to correspond to the European standards is moving rather slowly. The author concludes that a comprehensive and well-balanced consumer protection policy model instead of constant amendments to the consumer rights legislation needs to be developed in Ukraine with the proper consideration of the interests of businesses, the state and, first of all, the consumers. Amending the consumer rights legislation does not mean automatically the improvement of the consumer protection level in the country, especially in the situation, when the efficiency of the developed remedies and protection mechanisms depends on wider reforms in judiciary and executive branches in the state.

Keywords: consumer protection policy, consumer rights, Ukrainian consumer protection legislation, EU–Ukraine Association Agreement, EU legislation, Ukraine

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Regulacje prawne dotyczące ochrony konsumentów na Ukrainie w odniesieniu do zobowiązań Ukrainy w zakresie dostosowania do ustawodawstwa UE

Streszczenie

Od 2014 roku, po podpisaniu Umowy stowarzyszeniowej z UE, Ukraina dostosowuje swoje prawodawstwo do wymagań unijnych, w związku z czym przyszło jej stanąć w obliczu wielu wyzwań związanych z wprowadzeniem europejskich zasad i praktyk. Kwestia związana z ochroną praw konsumentów jest jedną z najtrudniejszych ze względu na jej skomplikowany charakter i duże znaczenie dla wszystkich zainteresowanych (przedsiębiorstw, państwa oraz konsumentów). Reforma ukraińskiego systemu i polityki ochrony konsumentów jest jednym z kluczowych zadań dla rządu Ukrainy, w wyniku czego zmiany dotkną prawie wszystkich mieszkańców. Jednak zaprezentowana w niniejszym artykule analiza wskazuje na to, że dostosowywanie ukraińskiego ustawodawstwa w tej dziedzinie do poziomu odpowiadającego standardom europejskim przebiega dość wolno. Autorka dochodzi do wniosku, że zamiast ciągłych zmian w przepisach dotyczących praw konsumentów, Ukraina musi opracować kompleksowy i wyważony model polityki ochrony konsumentów, z należytym uwzględnieniem interesów przedsiębiorstw, państwa, a przede wszystkim samych konsumentów. Nowelizacja przepisów nie oznacza przecież automatycznej poprawy poziomu ochrony praw konsumentów w kraju, zwłaszcza w sytuacji, gdy skuteczność opracowanych środków i mechanizmów ochrony zależy od szerszych reform w sądownictwie i organach władzy wykonawczej.

Słowa kluczowe: polityka ochrony konsumentów, prawa konsumentów, ukraińskie ustawodawstwo dotyczące ochrony praw konsumentów, Umowa stowarzyszeniowa UE–Ukraina, ustawodawstwo UE, Ukraina

Ukraine inherited the consumer protection policy model from the Soviet times with a number of rules and practices, which need to be adjusted to the contemporary economic and social development trends, as well as to the challenges that modern consumers face in the digital era. After signing the EU–Ukraine Association Agreement and getting it fully into force in 2017, Ukraine currently faces the acute need and societal pressure to introduce changes into almost all aspects of the country's life and its policies. In some sectors the changes have been introduced quite efficiently (e.g. banking services), whereas in others – the European standards still require a lot of attention in terms of the development of domestic policies to introduce European standards into such important areas as labour relations, gender issues, energy and infrastructure. The *Governmental Report on the Implementation of the Association Agreement between Ukraine and the European Union* (ukr. "Звіт про виконання Угоди про асоціацію між Україною та впропейським Союзом", see: Zvit... 2018) states the overall improvement in the implementation of the Ukraine's commitments arising from the AA, however in the development of the consumer protection policy aligned to the EU's practices a lot still needs to be done.

Research methodology used in this article is based upon the *desk research* and expert discussions at the Ministry of Development of Economy, Trade and Agriculture of Ukraine in the course of developing the consumer protection policy of Ukraine and discussing practices used by Ukraine in order to implement the AA-based commitments.

The aim of the article is to analyse the consumer rights protection regime in Ukraine for its compatibility with the European practices and the EU standards in the field of consumer protection and consumer rights protection. The main hypothesis is that the current consumer rights protection regime in Ukraine, even if being aligned to the fundamental EU standards, remains still ineffective and inefficient countrywide. Following the hypothesis, the research questions are:

- 1) Which consumer rights are regulated in the domestic consumer protection legislation?
- 2) How does Ukraine approximate its domestic consumer rights legislation to the EU requirements?

This article has the following structure: the first part outlines Ukraine's obligations to approximate its consumer protection legislation to the EU standards; the second part presents current consumer protection policy of Ukraine and the third part focuses on a consumer rights protection mechanism and its compatibility with the EU-Ukraine Association Agreement.

The EU-Ukraine Association Agreement provisions concerned cooperation in consumer protection

The cooperation between the EU and Ukraine in consumer protection area is regulated by Chapter 20 of the *Title V. Economic and Sectoral Cooperation* of the EU-Ukraine Association Agreement (AA) and by Annex XXXIX. The AA provisions set framework obligations for the parties and specify a high level of consumer protection and compatibility between consumer protection systems in the EU and Ukraine as goals of mutual cooperation. It contains a unilateral obligation of Ukraine to approximate its domestic legislation to the EU consumer *acquis* (Association Agreement 2014: art. 417), especially as specified in Annex XXXIX and covers such issues as EU product safety requirements, EU marketing rules and requirements for consumer-fair business practices, EU standards for consumer contracts, including door-selling arrangements, time-sharing and holiday packages, consumer credits and financial services, redress in consumer protection, and cooperation rules for national consumer protection authorities.

The forms of the cooperation between the parties have been also laid down, for example: mutual information exchange, legislative and regulatory expertise on legislation and market surveillance enforcement, improvement of consumer information mechanisms, training activities for administration officials and persons representing consumer interests, encouraging the development of independent consumer associations and contacts between consumer representatives (Association Agreement 2014: art. 416). These areas of cooperation are supplemented by a commitment to establish a regular dialogue about consumer protection issues (Association Agreement 2014: art. 418).

Although textual AA provisions on the cooperation between the EU and Ukraine in consumer protection are very general, they have a tremendous impact on the modernisation of the Ukrainian consumer protection system. Notwithstanding the fact, that

Ukraine is slowly approximating its domestic consumer protection legislation to the EU standards, in some areas the progress is remarkable. Starting from 2014 Ukraine has implemented several amendments to the Ukrainian consumer protection legislation. Ukraine applies a diversified approach to the approximation of the domestic consumer protection legislation, using a mix of legal techniques ranging from the adoption of new laws e.g. Law of Ukraine «On Consumer Credits» (Law of Ukraine 1734-VIII/2016), or amending the existing legislative acts, e.g. Civil Code of Ukraine, Consumer Rights Protection Act (hereafter – CRPA 1991, Law 1023-XII/1991); market surveillance legislation (Law of Ukraine 2735-VI/010) introducing amendments to the existing trade rules (e.g. Order 104/2007). On the one hand, the way Ukraine is introducing the European consumer protection standards can be considered positive, but on the other hand, such practice has resulted in the complicated CRPA and the consumer protection system in general, which can hardly be defined as consumer-friendly.

Most amendments concern the CRPA, which entails the consumer rights, guaranteed by the Ukrainian legislation and which are almost aligned to the EU practices (14 days return period, distance contracts, consumer information requirements, etc.). On October 25, 2011, the EU replaced its consumer rights directives by the *Directive 2011/83/EU on consumer rights* repealing directives 85/577/EEC and 87/7/EC and amending directives 93/13/EEC and 1999/44/EC, thus created a uniform consumer rights regime throughout the EU (see: Directive 2011/83/EU). On November 27, 2019, the EU adopted a new *Directive (EU) 2019/2161 as regards the better enforcement and modernisation of the EU consumer protection standards*. This document harmonises EU-wide minimum requirements for consumer protection for consumer contracts other than distance and off-premises contracts, for the withdrawal rights of consumers and information requirements in case of distance and off-premises contracts, delivery rules and risk passing. It sets requirements and criteria for the determination of penalties for infringements of consumer rights and clarifies issues related to unfair and misleading business practices and also provides a right to individual remedies for consumers in such cases. The EU consumer rights approach is based on the repay/replace and reduce/refund options for the consumers in case of unsafe and faulty products. Currently Ukrainian government is working on the new CRPA, aiming to unify, simplify and modernize the consumer rights regime in the country and to synchronize its content and the provisions with other consumer protection relevant legislation.

Ukrainian consumer protection policy: at the crossroads between legislative and political dimensions

A comprehensive consumer protection policy model is rooted deeply in the social and economic processes in society. In terms of the governmental approach towards the regulation of consumer matters, consumer protection policy as such goes aligned to the basic triangle: consumption as an economic phenomenon – consumer rights – and consumer protection institutions, which at different levels and for different stakeholders

(state, businesses and consumers) determine ultimate goals and visions of the consumer protection policy. Consumer protection issues are complex, and deal, on the one hand, with production and marketing rules and practices in all branches of the national economy, while on the other hand, address individual rights of consumers as a less powerful counterpart in business transactions both aiming to achieve well-functioning markets and market economies. Consumption as a social and economic phenomenon is very complex, and it deals predominantly with disparities in the relations between the businesses and consumers, thus legal rules regulating consumptions are traditionally very diverse across countries and their legal cultures. Consumer policy in Europe has been studied from legal or political science perspectives (Nessel 2019). A legal studies approach to the consumer policy focuses mainly on consumer rights and their enforcement in domestic legal systems, while from a political studies perspective it addresses a broader scope of issues such as policy-making, consumer education, institutional aspects of the consumer protection issues, including the role of consumer associations, etc. Seeing the EU fundamental directives on consumer protection as setting a minimal standard requirement for consumer protection throughout the EU, the consumer protection policy can be studied from legal, social, enforcement and associational dimensions, which combined together can characterise the consumer protection regime as such (Nessel 2019). The legal dimension in a consumer policy research seems to be quite effectively structured, predominantly due to the fact, that countries worldwide have adopted domestic consumer protection legislation and enforce it within domestic procedures and institutions, whereas the broader context on consumer protection policy needs more operational data to be gathered and theoretical approaches to be developed for their generalisation.

Analysing the formation of the Ukrainian consumer protection system it's necessary to bear in mind that after gaining independence, Ukraine inherited the Soviet approach towards consumer protection issues, where relations between consumers and businesses based upon the Civil Code provisions and regulated by a huge number of special legislative acts, which very often worsened the level of protection of consumer rights and created colliding legal regimes for trade in goods and services (Korshakova 2012). Moreover, even being linked to the UN Guidelines for Consumer Protection (UN Guidelines, 2016), the Soviet consumer protection system did not include all internationally agreed rights and principles for consumer protection, or simply declared them with no effective protection instruments for individual consumer rights, thus making them impossible to be put in practice in real life. In the historical perspective Ukrainian consumer protection legislation is based on the Soviet draft law «On Quality of Products and Consumer Rights Protection» (1988) and the respective consumer protection standard in Ukraine has been introduced by the adoption of the special Consumer Rights Protection Act in 1991, which remains until today the basic legal framework for protecting individual consumer rights. Since 1991 CRPA has experienced numerous amendments, thus the need to adopt a new law became tremendously important after Ukraine signed and ratified the EU-Ukraine Association Agreement with the obligation to adjust its consumer protection policies and mechanisms to the EU standards. CRPA (1991) is considered to be an important de-

velopment for the consumer rights and consumer protection regimes, since it identifies a person, who uses products for personal purposes, as a «consumer», and incorporates their right to moral damages. The CRPA 1991 also sharpened the liability of producers, included legal remedies for the protection of collective consumer rights, as well as guaranteed the right to association for consumers. The CRPA 1991 introduced also the independent National Consumer Protection Committee, which was eliminated in 2000, and until today there is no single independent national consumer protection agency in the country.

Ukrainian consumer protection policy is rooted in the Ukrainian Constitution, adopted in 1996. Article 42 of the Constitution of Ukraine addresses the economic freedom regime in the country and identifies tasks of the state in the area of competition and consumer protection. Article 42 (3) of the Constitution of Ukraine stipulates that "state protects consumer rights, exercises control over quality and safety of products and all types of services and works, supports activities of consumer rights organisations" (Constitution 1996: art. 42(3)).

These goals of the state consumer protection policy are formulated quite simply, but the consumer protection system of Ukraine is regulated rather heavily.

Contemporary Ukrainian consumer protection legislation can be traced back to the constitutional provisions; the second level includes provisions of the Civil Code of Ukraine, the Commercial Code of Ukraine, the Criminal Code of Ukraine, the Code of Ukraine about Administrative Misconduct, and relevant procedural codes. The third group of norms is embedded in the specialised consumer protection legislation: Law of Ukraine «On Consumer Rights Protection» (Law of Ukraine 1023-XII/1991), Law on State Market Surveillance and Control of Non-Food Products (Law of Ukraine 2735-VI/2010), Law of Ukraine «On Consumer Cooperation» (Law of Ukraine 2265-XII/1992), Law of Ukraine „On Civic Organisations» (Law of Ukraine 4572-VI/2012). The fourth bloc of legal acts dealing with consumer protection and consumer rights can be found in specialised legislation on competition issues (Law of Ukraine 3659-XII/1993; 236/96-BP/1996; 1682-III/2000; 2210-II/2003; 1555-VII/2014), on technical standards (Law of Ukraine 1315-VII/2014), data protection (Law of Ukraine 2297-VI/2010) and digitalisation aspects (Law of Ukraine 675-VIII/2015; 2155-VIII/2017). The fifth set of provisions is linked to the international commitments of Ukraine in the field of consumer protection, e.g. provisions on cooperation in consumer protection issues as embedded into AA or arising from the bilateral treaties of Ukraine dealing with legal aid, cooperation of administrative and judicial bodies.

The strategic goals of the consumer protection policy of Ukraine have been prioritised by a set of national concepts, which are predominantly aimed towards reforming the consumer rights protection mechanism. Thus, the National Concept 2013 dealt with the inefficiency of the consumer right protection mechanisms (see: On approval of the Concept... 2013); the National Concept of 2017 defines the creation and installment of the effective consumer rights protection system in Ukraine based on EU standards and best practices of the EU Member States as an aim of the state policy in the field of the

consumer rights protection, and not the national state consumer protection policy (see: Concept... 2017). Being predominantly focused on the consumer rights protection, the Concept 2017 sets also a number of specific priorities with regard to the protection of rights and interests of marginalised groups, consumer empowerment and increasing role of consumer associations in the domestic consumer protection system.

The Concept 2017 was substantiated by the National Action Plan on the implementation of the State Consumer Rights Protection Policy (Order 983-p/2017), which had activities in 3 blocks – on legislative amendments, on the work with consumer civil society organisations and on education and information activities in the field of consumer protection, the implementation of which was based upon the participation of various actors – the Verkhovna Rada of Ukraine (Ukrainian Parliament), the Ministry for Development of Economy, Trade and Agriculture of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Foreign Affairs of Ukraine, National Financial Services Commission, Antimonopoly Committee of Ukraine, State Service of Ukraine on Food Safety and Consumer Protection, municipal consumer protection institutions, HEIs (Kyiv National University of Trade and Economy), National Academy of Public Administration by the President of Ukraine, National Academy of Pedagogical Sciences, Institute for Modernisation of Education, National Regulatory Commission on Energy and Utilities, National Commission for the State Regulation of Communications and Informatisation, State Fiscal Service, local state bodies as well as consumer civil society organisations. In terms of legislative activities for the period from 2017 till 2020 the Action Plan provided one basic way to deal with the adjustment of the Ukrainian consumer protection legislation to the EU requirements: amending existing CRPA and numerous sectoral laws in such areas as insurance, financial market (on financial leasing and credit unions), etc. In terms of work with consumer civil society organisations, a set of capacity-building instruments for empowering citizens and consumer organisations is foreseen, however the impact of those activities remains very low. Since 2018 the National Consumer Protection Forum has been launched and supported by the government, being a platform to discuss policy initiatives and challenges for national consumer protection policy and consumer rights protection as such, where consumers, business and the state can publicly address governmental initiatives in the field of consumer protection.

As a result, it is expected that until the end of 2020 the national consumer rights legislation will be fully adjusted to the EU legal framework as it is required by the Association Agreement between the EU and Ukraine; the instruments for the consumer rights protection aimed at prevention/reduction of consumer legislation violations will be introduced; the knowledge of the population about consumer rights and available remedies will be enhanced; unfair and consumer-unfriendly businesses and business practices will be eliminated from the market; domestic living and consumption standards will be adjusted to the EU-acknowledged standards and consequently the trust of citizens to the state consumer rights protection system will increase.

The contemporary legal framework for the protection of consumer rights, as well as for the formation of the national consumer protection policy seems to be quite developed

and sophisticated, however the internal debate is underway inside the country as to the differences between the national consumer protection policy (called also the national consumption policy) and the national consumer rights protection policy (Tolstonog 2015), or in *Nessel's terminology* between political and legal dimensions of the consumer protection policy. These dimensions differ in their aims. The first is more general and deals with social and economic implications of the consumer protection policy as such filling-in consumption markets with high-quality and safe products, legislative improvements, creating mechanisms for consumer education and ensuring cooperation with all interested stakeholders, as well as supporting research in consumer-related topics. The second deals merely with the establishment of efficient mechanisms for the protection of consumer rights: the right to information, the right to education, the right to establish associations, the right to redress and the right to consumer-friendly contracts and policies. Being focused on the legislative approach, current governmental efforts in reforming the Ukrainian consumer protection systems are concentrated around consumer rights and adjusting Ukrainian consumer rights regime to the EU standards. The difference between the two dimensions of the consumer protection policy – legal and political – is becoming more and more important in terms of the elaboration of the national state consumer protection policy, which would enable the effective enforcement of these rights within the Ukrainian legal system and efficient economic and social models for ensuring the sustainable consumption in the country.

The legal dimension of the Ukrainian consumer protection regime: Consumer Rights Protection Act

As it has already been mentioned, the CRPA was adopted in 1991 and since that time has experienced a lot of amendments (last introduced in December 2019, new revision is expected in 2020). Structurally this law has four parts dealing with definitions and general scope of its application, consumer rights and their protection, consumer civil society organisations, powers of state bodies entitled with consumer rights protection and closing provisions. The CRPA currently includes a wide range of definitions of basic notions, among which "consumer", "service", "product", "work" etc., as well as such special notions as "distance contract", "unfair business practice", "counterfeit", etc. (Law of Ukraine 1023-XII/1991: art. 1). The subject matter of this law is limited to the relations between consumers of goods, services and works except for food, if not otherwise regulated by this law) and producers, sellers of goods, providers of services and contractors (Law of Ukraine 1023-XII/1991: art. 1¹). Article 2 of the CRPA specifies the legislation applicable to the consumer rights protection which is linked to the Civil Code of Ukraine and Commercial Code of Ukraine and, as the law generally formulates "other legislation", which contain provisions on consumer rights protection» (Law of Ukraine 1023-XII/1991), thus widening its scope of the application to all kinds of relations which may arise between consumers and businesses without further specifications or limitations. Despite the fact that the Civil Code of Ukraine does not contain a separate chapter on consumer protection, it

encompasses numerous provisions, which are relevant both for consumer protection and consumer rights protection, for example, the *Book V of the Civil Code of Ukraine on Contracts and Obligations* plays a crucial role in shaping consumer contract regime e.g. on sale contracts (Civil Code of Ukraine 2003: Chapter III, Subchapter 1, Part 54) or warranties (Civil Code of Ukraine 2003: art. 675, 676). Provisions on consumer rights regime are included in the Commercial Code of Ukraine, which stipulates that consumers, who are in the territory of Ukraine, when purchasing, ordering or using goods (works, services) to satisfy their needs, are entitled to the state protection of their rights, guaranteed level of consumption, proper quality of goods, services and works; safety of goods, works and services; necessary, accessible and reliable information about quality, quantity and assortment of goods, services and works; compensation for damages; legal remedies, including the appeal to the court and other authorised authorities for the protection of violated rights or legitimate interests and the establishment of consumer civil society organisations. The state shall guarantee to its citizens the protection of their interests as consumers, free choice of goods, services and works, equipping them with necessary knowledge and qualifications needed for a conscious consumer choice. Moreover, the state shall guarantee the consumption volume sufficient to maintain health and life (Commercial Code of Ukraine 2003: art. 39). The Commercial Code of Ukraine contains the cross-reference to the CRPA and other consumer rights relevant legislation. It also stipulates the priority of international treaties if duly ratified by the Verkhovna Rada of Ukraine over domestic consumer rights legislation, if case its provisions are not compatible with international rules (Commercial Code of Ukraine 2003: art.39, similarly Law of Ukraine 1023-XII/1991: art. 3). The consumer rights list, as embedded in Article 39 of the Commercial Code of Ukraine, is regulated in detail in the CRPA. Moreover, the consumer rights list in the CRPA was extended in 2019 by adding the right to be serviced in the official language and mandatory product information in the official language (Law of Ukraine 1023-XII/1991: art. 4¹). The CRPA also identifies a set of duties: consumers are expected to get acquainted with product exploitation rules, delivered by a producer, seller or contractor and to require additional information on goods, services or works before the initial exploitation; to use the products for intended purposes and to follow operational documentation rules as set by manufacturers or contractors and to apply safety precautions according to the operational documentation or any reasonable precaution prescriptions for such products if otherwise not specified in the exploitation documentations.

Ukraine installed a dual institutional mechanism for protection of consumer rights and observance of safety provisions concerning industrial and food products (Law of Ukraine 1023-XII/1991: art. 5): Starting from 2015 the safety and quality of products in food industries has been ensured by the State Service of Ukraine on Food Safety and Consumer Protection (SSFSCP); with the safety rules and quality assurance for industrial products at national level deals the Ministry for Development of Economy, Trade and Agriculture, however the internal system is of state control in the consumer protection area is much more complicated and linked to the state inspections and monitoring of economic activities in the country. Due to the fact that the state controlling functions are very often complicated

and require cooperation among different line ministries and monitoring bodies the Better Regulation Delivery Office introduced a pilot portal for market surveillance, where businesses operating in Ukraine can learn about annual inspections plans, elaborated by state bodies including ministerial inspections, State Regulatory Service inspections and other state bodies entitled to exercise controlling functions over the business activities in the country². In 2018 the Ministry for Development of Economy, Trade and Agriculture introduced the idea of the on-line platform «I – inspector», where consumers, businesses and state controlling institutions are brought together with a possibility for consumers to lodge a complaint about violation of their rights and consumer legislation and to monitor on-line solution options for the individual case at hand. A mobile application is under the development and will be merely dealing with safety rules for industrial products, whereas controlling and surveillance mechanisms for the food products remain focused on the SSFSCP. This mobile application will deal with the state market surveillance, company law and corporative governance legislation, public procurement, integration into EU digital market and sustainable management of forest resources in the country.

The CRPA provisions on product quality are linked to warranty rules: the seller/producer/contractor is obliged to deliver products of proper quality as supported by consumer-relevant product information and quality certificates upon the consumer request. Safety rules and provisions are to be defined by domestic legislation, including technical standards. The counterfeit is prohibited. The producer (contractor) is obliged to ensure the use of products for the intended purpose within service terms as stipulated by regulatory requirements or a consumer contract; in the absence of such terms – for 10 years. The producer is also obliged to ensure a warranty repair and to provide maintenance for the whole product or its parts during the term the product is manufactured and the entire term of service; in the absence of the term of service – for 10 years (Law of Ukraine 1023-XII/1991: art. 6). The warranty obligations arise mainly by producers and have to be followed by them during warranty periods. The warranty period needs to be included into a product passport or any operational document attached to the product. Warranty obligations extend to any warranties of producers/sellers as included in product advertisement materials. The warranty for product parts is tied to the warranty period of the main product and cannot be less than the warranty period for the main product. The expiration date is considered to be a warranty period for products, when product quality can deteriorate over time and cause threat to consumers' life and health and to the environment. In the latter case such products are to be properly labeled and marked as well as their shelf time needs to be included into a product operational documentation. Selling products without expiration dates or with not dully marked expiration dates is prohibited. The warranty rules specify that the warranty period starts from the date, when products are delivered to the consumer. In case the warranty periods do not exist the consumer is entitled to bring any claims to a seller, a producer or a contractor for any defects identified within two years, and in case of construction objects – not later than 10

² <https://inspections.gov.ua/static/help>

years from the moment they were delivered to a consumer. The warranty repairs extend the warranty period (Law of Ukraine 1023-XII/1991: art.7).

The repair, replacement, refund and price reduction provisions are regulated in details in case of a purchase of goods of inadequate quality which include the right for proportional price reduction, free repair within the reasonable time, compensation of costs for defects repairing; to contract termination, money return or product replacement in case the warranty period for products has not expired. This article explains step-by-step consumer conduct in all these cases (Law of Ukraine 1023-XII/1991: art. 8). The product replacement rules seem to be quite confusing, since Article 8(6) CRPA provides for immediate product replacement in case goods/products are available in natural form, however, if a quality control needs to be performed the replacement period can last for 14 days. Moreover, if the consumer does not present the product for replacement in res, the replacement period can be extended up to 2 months. If products cannot be replaced within the specified terms, the consumer is entitled to any other claims available under the CRPA. The free repair is also to be provided within 14 days; in case producers/sellers don't ensure this right, the consumer is also entitled to other remedies. If the warranty period expires, the consumer is entitled to free repair during the entire service period for the product in case defects or major failures appear. However, the payment documents need to be preserved by the consumer as a prerequisite for these rights to be exercised fully. The dilemma of missing payment documents has been partially eliminated by introducing in 2019 the mandatory payment registration for cash operations, so that currently any purchase needs to be confirmed by a duly issued fiscal receipt (Law of Ukraine 265/95-BP/1995). In case of imported products these consumer rights are to be guaranteed by a seller (or an importing company). This article also provides a detailed cost-sharing regime between producers and sellers in the course of the fulfilment provisions of this article. It also states that producers/sellers/contractors can be exempted from the obligations arising from Article 8 CRPA if proven that product defects appear in the course of non-proper exploitation or product conservation by the consumer.

The consumer right to return the product is based upon the EU requirements and provides a 14-days period for return of products of proper quality in case the purchased product does not satisfy the consumer and cannot be used by the consumer for intended purposes. It stipulates the procedure of the product return, which is again linked to the mandatory presence of purchase documents (fiscal receipts or other payment documents) (Law of Ukraine 1023-XII/1991: art. 9). The consumer rights in case of infringements of work contracts/service contracts are regulated separately, which are similar to those the consumers are entitled in case of goods; it includes detailed rules on non-performance and performance delays, which require a sound judicial practice for these rights to be properly protected (Law 1023-XII/1991: art.10).

Starting from Article 12 of the CRPA and on a set of "European" consumer rights is introduced. Article 12 of the CRPA deals with consumer rights if consumer contracts are concluded out of office or commercial premises. It lays down the rule that the seller is obliged to establish and maintain the product return system at its own expenses.

If the consumer was not equipped by a seller (contractor) with electronic or other documents, which prove the contract conclusion, no obligations arise at the side of the consumer. It specifies requirements to such contracts and imposes on the economic entities a responsibility for breaches if such contract information is not provided (contract date, name and location of a seller, product name, price, terms of performance, other essential contract terms as well as rights and duties of contracting parties). It stipulates that if consumer credits on goods and services are provided, they terminate if the main contract is terminated. This article does not apply to contracts dealing with consumer credits, real estate transactions, security transactions, and insurance contracts. A 14-days rule on product return/repair period applies here, however it can be modified by mutual consent (Law of Ukraine 1023-XII/1991: art.12).

The CRPA regulates consumer rights in case of distance contracts. Consumer rights in case of distance contracts and off-premises contracts are very similar, but the distance contract information requirements are very detailed and include as mandatory parts of the consumer contract the warranty rules and other related services, delivering information and conditions, minimal contract duration, the price for telecommunication services if it differs from marginal tariffs; it also regulates in details an acceptance period and distance contract termination requirements. Moreover, the consumer is not allowed to terminate the distance contract if the contract termination takes place during the period, when the termination was impossible according to the contract per se; when the product price is out of control of the seller (depends upon financial market fluctuations); if the product cannot be sold to other consumers or can be sold with significant financial losses for the seller; if the consumer opened sealed audio-, video- or computer materials; if the contract subject concerns periodicals, lotteries or gambling. The exemptions apply to real property transactions except for rent contracts, security transactions, financial services, selling goods by vending machines, telecommunication services and auction transactions, even if participation at the auction is possible without using remote distance means. The consumer has a right to terminate the distance contract within 14 days. Additionally, the CRPA provides basic requirements for the product replacement under the distance contracts to be used as a standard rule for sellers, ensuring the fairness of the replacement proposal: if a replaced product suits the consumer's intended purpose; if it is of the same or better quality and if the price for replaced products is not higher than the price of ordered goods (Law of Ukraine 1023-XII/1991: art. 13).

The CRPA also address the right for safe products and imposes a number of obligations on producers, sellers or contractors, who must inform about the safety of the products used within the shelf term and after it. If special rules for consumers regarding the usage, storing, transportation or recycling are required, producers are supposed to develop such rules and inform sellers or consumers; sellers are obliged to inform consumers about safety precautions in products. Producers are obliged to use international labeling and marking standards for hazardous products if otherwise not specified by technical regulations and standards. Producers are liable for damages caused if products are recalled (Law of Ukraine 1023-XII/1991: art.14).

Further on, the CRPA deals with the consumer right for necessary, accessible, reliable and timely information and prescribes in details, which product information is mandatory for sale, as well as regulates price reductions, sales and sets liability rules for unfair and abusive advertisement (Law of Ukraine 1023-XII/1991: art.15).

The most crucial article for the effective and efficient application of the CRPA is Article 16, which addresses liability regimes in case of violation of the consumer legislation. However, this article is very sparsely regulated and states that damages, caused by product defects are to be compensated according to the law, however it leaves the question of the applicable law and procedures open for the consumer, thus causing ambiguity regarding the enforcement of the consumer claims (Law of Ukraine 1023-XII/1991: art.16). The CRPA identifies a set of consumer rights in trade and other services, for example, consumer right to free choice of goods and services in convenient time, to use electronic means of payment, to reliable and accessible information from the seller on trade name, ownership and working regime of the trading/service company, to check quality, safety, completeness, measure, weight and price of purchased products as well as to require operational documentation and measuring instruments to perform such checks (Law of Ukraine 1023-XII/1991: art. 17), aiming to ensure the fairness in sale operations and reliable check instruments, consumers can use on spot.

The invalidity of consumer-limitation clauses in consumer contracts is regulated by postulating that any contract clause is deemed to be unfair if contrary to the principle of *bona fide* it leads to essential imbalance of contract duties and obligations to the detriment of the consumer. The CRPA stipulates that any ambiguities and unclarity in the consumer contract are to be interpreted in favour of consumers (Law of Ukraine 1023-XII/1991: art. 18). The provisions on consumer-unfair business practices, which are prohibited and defined as any activities, which can be qualified under the legislation as unfair competition practice or any activity or its omission, which misleads the consumer, form the consumer protection regime in case of unfair consumer practices. The CRPA includes a list of the practices, which are prohibited, and stipulates that any contracts concluded are to be recognised as invalid, and they invoke liability for economic entities (Law of Ukraine 1023-XII 1991: art. 19). The consumer rights are considered to be violated if:

- 1) the consumer right to free choice is violated during the sale;
- 2) the consumer's will is violated during the sale;
- 3) the service is provided by a sole contractor so the consumer does not have a choice,
- 4) no liability for the contract non-performance or unduly performance is included;
- 5) the equality principle is violated;
- 6) the consumer right to information is restricted except cases foreseen by legislation;
- 7) the product price is not properly identified or the documents, certifying consumer contract performance, are not timely handed out to the consumer (Law of Ukraine 1023-XII/1991: art.21).

General rules on the judiciary protection of consumer rights provide that courts decide both on material and non-pecuniary damages at the same time, as well as

consumers are exempted from court fees on consumer claims (Law of Ukraine 1023-XII/1991: art.22), setting-up administrative fines for consumer rights infringements. Thus, fines for violation of articles 8, 9, and 10 are up to ten times of price for goods at the time of purchase and not less than 5 non-taxable minimal incomes; for production of hazardous or non-compatible to technical standards and mandatory requirements up to 50 non-taxable minimal income in Ukraine; for selling of prohibited by state controlling institutions goods and services 500 times of the product price up to 100 non-taxable minimal incomes; for selling of dangerous products without proper labeling and marking up to 25 non-taxable minimal incomes; for the lack of reliable, timely, accessible and necessary information up to 5 non-taxable minimal incomes; for creation obstacles to state consumer protection bodies up to 10 non-taxable minimal incomes; for non-fulfillment or non-timely fulfilment of state controlling bodies or consumer protection institutions' orders up to 20 non-taxable minimal incomes; for the sale of goods beyond the expiration date not less than 5 non-taxable minimal incomes and up 200% on balance of products left; for contract breaches of contracts between a consumer and a service provider – 100% of contract price but not less than 5 non-taxable minimal incomes; for the violations of Article 17(10) of the CRPA – up to 500 of non-taxable minimal income (Law of Ukraine 1023-XII/1991: art. 23). The non-taxable minimal income in Ukraine is 17 UAH (approximately 0,8 USD at the exchange rate for January 2020), (Tax Code of Ukraine 2011: p. 5, subdivision 1, Chapter 1 «Transitory Provisions»). The fines applied are very small, consequently not effective to ensure the proper application of the CRPA both for businesses and for consumers. However, in case the criminal procedures are invoked, the minimal non-taxable income can be set as tax social benefit, as defined by pp. 169.1.1. of the Tax Code of Ukraine. The tax social benefit in Ukraine is calculated as 50% of the minimum living wage (set-up for January 2020 at 2027,00 UAH), setting the fine amount considerably higher.

Thus, the CRPA includes a set of detailed provisions, stipulating main consumer rights in Ukrainian legal system. However, as the practice shows, it remains quite an ineffective instrument to protect them. Some reasons for such situation are linked to the inefficiency of legal proceedings and court proceedings, the lack of proper state and public control instruments, lack of the out-of-court settlement procedures and effective practices, low level of consumer empowerment and insufficient consumer education policies and low level of consumer self-organisation practices. Moreover, CRPA is complicated in language and style, as well as after the amendments *a la carte*, which were introduced to its main body, the need to make a coherent consumer rights legislation has become an urgent task in order to avoid the collisions with other related legal acts and ensure strengthening its enforcement practices countrywide.

Conclusions

The consumer protection policy of Ukraine is based on the constitutional provisions, oblige the country to establish an effective consumer protection regime. Despite the

general legal framework of the consumer protection is based on provisions of the Civil Code (basic rules on contracts, torts and liability) and Commercial Code of Ukraine (general rules on consumer rights), the CRPA 1991 is currently the most important special normative act, which regulates the relation in this area. Although the CRPA originates from 1991, the efficiency of the consumer protection policy was always challenged because of the low enforcement level and its institutional weakness: since 2000 there is no independent National Consumer Protection Agency of Ukraine, thus institutionally the consumer protection system is very decentralised.

Consumer protection policy discourse in Ukraine is mostly focused on consumer rights and their enforcement, leaving little space for a social dimension of consumer protection, as well as strengthening the role of consumer associations and consumer empowerment practices to be discussed widely. Being quite complicated, the domestic consumer protection legislation is consumer rights-focused, thus leading to the legislative amendments to the CRPA and not effectively affecting its enforceability within the domestic legal system.

After the EU and Ukraine signed and ratified the EU-Ukraine Association Agreement, Ukraine speeds up the alignment of its national legislation and regulatory practices to the EU standards. While approximating its national legislation to the EU consumer *acquis*, Ukraine introduced amendments *a la carte* to its CRPA, making the law text complicated and incoherent: e.g. some of consumer rights were already included in the first CRPA redaction of 1991 (right to high-quality products, right to information, right to redress, etc.), some of them were introduced in the course of the implementation of the obligations under the EU-Ukraine Association Agreement (for example, rights in case of distance contracts, in case of off-premises contracts, etc.), some EU-based rules from relevant consumer *acquis* were not reflected at all. Since the amendments of the consumer protection legislation of Ukraine in the course of the approximation to the EU *acquis* cover not only CRPA as such, the need for systematic changes in the Civil Code and Commercial Code of Ukraine becomes also evident, making the internal alignment of the consumer-protection relevant legislation in the country also an immanent task for the national consumer protection legislation reform.

In a short-term perspective the Ukrainian government will have to deal with developing policies and instruments to ensure the proper enforcement of the CRPA, and in a long-term perspective it will face the need to adjust the consumer protection policy with its social and economic policies in order to guarantee sustainable economic and social development of the country in digitalised world.

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