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## CONSUMER POLICY IN POLAND IN THE PERIOD OF TRANSFORMATION

*The article is based on an analysis of Polish and international legal acts, government programs and literature, and aims at presenting the concept and the scope of consumer policy in the period of systemic transformation in Poland. The publication features an analysis of the major factors shaping consumer policy in Poland in the years 1989–2004. Selected international legal acts affecting consumer protection in the years 1989–1997 were also analyzed. Elements of consumer policy present in selected governmental economic programs in the period of transformation were synthesized. It was assumed that consumer policy in the period of systemic transformation indirectly resulted from the economic policy of the government. Its shape was primarily affected by the social and economic transformation occurring since 1989 and the birth of free market economy. The process of adjusting the Polish legislation to the European Union standards, which began in 1991, and subsequent accession to the European Union in 2004 also played an important role.*

**Keywords:** *consumer protection, economic policy, consumer policy, social policy, systemic transformation*

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### INTRODUCTION

In Poland, consistent and protective consumer policy started to develop after the year 1989, in the period of systemic transformation that led to the emergence of an efficient and mature market economy. Introduction of free market principles posed a real threat to consumers' interests, mainly due to the lack of appropriate legislation and the dynamic activity of economic entities. At that point, consumer policy became a fundamental instrument for safeguarding the position of consumers who were the vulnerable party in the free market system. In research on this subject, consumer

policy is understood as all intentional actions of the state aiming at achieving such conditions in which consumers can make use of their income to optimally satisfy their needs [Niepokulczycka M. 1998: 105].

The research covers the years 1989–2004. 1989 is the year of systemic transformation in Poland, which allowed for the development of free market economy, adoption of the Act of February 24, 1990 on Counteracting Monopolistic Practices, and the establishment of the Polish Competition Council. In the following years, consumer policy gradually progressed, as reflected by consumer legislation. Initially (i.e. in the years 1989–1997), Polish consumer policy was primarily shaped by two factors. Firstly, it was an integral part of the government's socio-economic policy. Secondly, it resulted from legally binding international agreements that Poland entered into (including the resolution of the United Nations on consumer protection, the Europe Agreement, and the instruction of the OECD Committee on Consumer Policy). Consequently, the undertaken actions initiated the Polish journey towards creating a modern national consumer policy in the conditions of free market economy.

Since 1998, the Polish government engaged in shaping consumer policy. At that time consumer policy began to be identified with setting strategic goals and directions for action, required to achieve the desired level of consumer protection. The 1990s were also the time during which Poland was preparing to join the EU through a process of harmonization of national legislation with EU requirements, including consumer protection law. The last year discussed in this paper is the year 2004, when Poland became a member state of the European Union. This involved the introduction of a multidimensional consumer policy, identical with EU policy, implemented by a variety of governmental and non-governmental organizations.

## CONSUMER POLICY IN POLAND IN THE YEARS 1989–1997

The development of consumer policy in Poland in the years 1989–1997 can be analyzed in two aspects. Firstly, it resulted from various obligations that Poland undertook as a member of international organizations. Secondly, it was part of governmental programs, which involved socio-economic and competition policies.

With regards to international obligations, Poland's membership in the United Nations was fundamental. The guidelines of the United Nations

Consumer Protection Resolution [<http://www.un.org/>] adopted during the 39<sup>th</sup> session of the General Assembly, on April 16, 1985 in New York, were an impulse for the development of consumer policy in Poland. The resolution took into account the welfare and needs of consumers everywhere, but particularly in developing countries. According to the resolution, the main objectives of the UN included supporting the member states in providing and maintaining an adequate level of consumer protection. This objective was to be achieved by facilitating the production and distribution of goods that met the required standards and satisfied consumers' needs and desires, supporting ethical behavior of businesses dealing with the production and distribution of consumer goods and services, and assisting member states in preventing abusive business practices, both on a local and on a global scale. This document also emphasized the need to promote the development of independent consumer groups and organizations, as well as their international cooperation.

Another impulse was provided by a resolution adopted in 1988 by the United Nations Economic and Social Council, which encouraged the governments of member states to create and implement consumer policy, and to apply the UN guidelines in national legislation. During a session of the UN Economic and Social Council in 1990, it was pointed out that in the face of intensifying international movement of goods, people, and information, consumer protection was no longer a domestic issue, but a global one [Niepokulczycka M. 1999: 14].

Other actions related to consumer policy in the years 1989–1997 were determined by the fact that on November 22, 1996 Poland joined the Organization for Economic Co-operation and Development [Journal of Laws 1996, no. 128, item 603]. Consumer rights declaration can be found in the instructions of the OECD Committee on Consumer Policy [Ringstedt N. 1990: 467]. The Committee closely cooperated with the governments of its member states, experts from consumer organizations, and entrepreneurs. The Committee made a distinction between physical and economic consumer rights. Physical consumer rights featured the aspect of health and safety, considered important in OECD countries. Economic consumer rights involved protection against fraud and deception, offensive sales techniques and misleading advertisements [Day G., Aaker D. 1970: 15].

The main element that, in a way, pushed Poland to develop a consistent consumer policy was its signing of the Europe Agreement with the European Communities on December 16, 1991 [Journal of Laws 1994, no. 11, item 38]. Articles 68 and 69 of the Agreement obliged Poland to align

its domestic consumer law with the legislation of the Communities. It also meant that its consumer policy had to be consistent with the Community consumer policy.

In the discussed period, consumer policy-related activities were also indirectly affected by the socio-economic policy of the government. Some regulations regarded broadly understood consumer welfare. The directions of socio-economic policy of the Polish government in the years 1989–1997 were mainly defined within two programs. The first economic program adopted by the Council of Ministers on October 9, 1989 highlighted the need to undertake actions aiming at protecting the economic interests of consumers by counteracting monopolistic market practices. In the mid-1990s the structures, forms of ownership, and the rules of trade changed entirely. In terms of their range and dynamics, these transformations were ahead of transformations in other sectors of the economy. The development of the private sector was accompanied by a threefold increase in the number of retail and wholesale outlets [*Retail and services...* 1995: 113].

Until 1990, there had been no Polish governmental body dealing with consumer protection. This situation changed when the Act of February 24, 1990 established the Polish Competition Council – a central national administrative body for counteracting monopolistic practices [Journal of Laws, 1990, no 14, item 88]. From the consumers' perspective, two provisions of article 4(1) of the Act were particularly important. First of all, the article prohibited any monopolistic practices which involved imposing onerous contract terms in order to obtain unjustified advantages for the business. Furthermore, it was illegal to make the conclusion of a contract contingent on the other party accepting or performing another service, not connected with the object of the contract, which they would not have accepted or performed otherwise. Additionally, according to article 4(2), it was considered harmful for the consumer, and thus prohibited, to fix prices among competitors, share markets according to any criteria, limit the volume of production or sales, restrict competitive economic entities from accessing the market or eliminate them from the market, and agree among competitors on the terms of contracts with consumers. Article 5 prohibited restricting competition and offering privileged status to certain economic entities in acquiring, selling, and purchasing of goods. All such actions were illegal, except when necessary to conduct a business activity and when they did not result in a significant restriction of competition (Article 6).

Another medium-term socio-economic development program, important from the point of view of consumer protection in the discussed peri-

od, was the *Strategy for Poland* for the years 1994–1997 [Kołodko G. 1994: 41-90].

Point 7 of the program stipulated that the international competitiveness of the economy is a measure of economic success and the source of cultural progress. It was emphasized that the position of consumers and producers depends on the level of competitiveness. One of the goals of the policy was to increase the competitiveness of Polish producers in the domestic market and to improve their global position. In order to achieve that goal, the influx of foreign capital was increased, particularly in private direct investments. The program provided for creating stable and favorable conditions for these investments, in accordance with the principle of sector equality. In order to increase international economic competitiveness and to attract foreign capital, the government was to initiate various infrastructure-related projects. The strategy comprised ten chapters discussing “key programs” [*Strategy for Poland...*, 1994: 47–69]. For the consumers, the most important regulations were those discussed in Chapter 9, which concerned “the safety of economic activities and the absorption of gray market”, and Chapter 10, which concerned “the international competitiveness of the Polish economy” [*Directions of socio-economic policy until 1994, 1992: 47-49*].

The development of adequate pro-competition policy was in the interest of consumers. This involved state interventions in market distribution mechanisms and the creation of opportunities and conditions for individualizing the process of satisfying needs. The policy resulted in a diversification in the level and structure of consumption and a dominance of the incentive functions of consumption [Malysa-Kaleta A. 2002: 22–23].

Protecting consumers as the more vulnerable party in economic activity was strictly related to the protection of competition. The *Government program of competition development in the years 1991–1993*, adopted during the seating of the Council of Ministers on May 14, 1991, confirmed the need to develop a comprehensive consumer policy in Poland. It highlighted the fundamental objective of the government’s economic policy in the process of developing market economy – protection and promotion of competition. Competition was supposed to drive efficiency among economic entities, and was considered the basic condition for protecting consumer interests (Chapter 2, point 1). The problem with implementing the policy of direct competition, i.e. competition between entities operating in the market, and potential competition in the form of competing over the market, lay in the immaturity of market relations in the economy. In prac-

tice, this was reflected in excessive concentration of the production, complicated and unstable legal regulations, dominance of national ownership, insufficiency of modern technologies of production and service provision, and lack of staff qualified in enterprise management in market economy conditions (Chapter 2, point 2). The markers of the pro-competition policy included the liberalization of economic cooperation with foreign entities and the corresponding anti-monopoly policy, as well as the restructuring and privatization of national companies [*The Government Program for the Protection of Competition*, 1993: 9–13].

### CONSUMER POLICY IN POLAND IN THE YEARS 1998–2004

Consumer policy in Poland in the years 1998–2004 developed rapidly. This was the period when the real need to create national programs, including strategic goals important from the perspective of consumers and methods for their implementation, was acknowledged. In the analyzed period, three government consumer policy programs were implemented: for the years 1998–1999, 2000–2001, and 2002–2003. The programs included the main goals, which involved the creation of relevant institutions and legislation to enable the protection of consumers in terms of health and economic safety, consumer claims, and the development of consumer education and information.

On September 15, 1998, the Council of Ministers adopted the *Government project of consumer policy for the years 1998–1999* developed by the President of the Office of Competition and Consumer Protection (UOKiK). UOKiK had an exceptional role in shaping national consumer policy, though other national administration bodies, consumer organizations, and local governments were also involved in implementing the strategic tasks [*Government consumer policy program for years 1998–1999*, 1998]. This document was the first detailed action program aiming at protecting consumers' welfare. It provided for the creation of a pro-consumer formal and legal base, adjustment of Polish regulations to the legal standards of the EU, as well as education, information, and control activities. Consumer policy was meant to provide health and economic security for consumers, increase access to the justice system, create legal and financial conditions fostering the development of a consumer movement, and activate local government bodies in terms of protecting consumer interests [Ostrowska E. 1998: 16].

The program indicated the need to promote consumer policy and emphasized its significance as an important field of the government's socio-economic activity. The consumer policy strategy for the years 1998–1999 comprised five parts. Part one introduced the issues of consumer policy. Part two identified the basic problems of protecting consumers in Poland. Part three indicated the objectives, directions, and instruments of consumer policy. Part four featured a detailed timetable of actions to be implemented in the years 1998–1999. The final part was a summary. The introduction referred to the fundamental legal regulations for protecting consumer rights in the EU: the Maastricht Treaty and the subsequent legislative initiatives in the form of consumer policy programs. It was pointed out that in member states, legislative activity should be accompanied by the creation of institutional infrastructure aiming at implementing and supervising actions for the benefit of consumers [*Consumer policy program for the years 1998–1999*, 1998: 100].

Consumer policy of the government for the years 2000–2001 was adopted by the Council of Ministers on May 30, 2000. This document was the second governmental strategy concerning consumer protection. It described the progress of works in the field of consumer policy and the direction of actions for the years 2000–2001, along with a detailed schedule for implementing the tasks. The consumer policy program for the years 2000–2001 reaffirmed the significance of the following fundamental principles: stronger health-related and economic consumer security, easier access to the justice system, development of consumer awareness, establishment of consumer organizations, active local government bodies, and strong position of UOKiK. As these were long-term aims, it was pointed out that the relevant activities must be continued. As a consequence of the development of consumer needs in Poland, the methods of achieving the desired level of consumer right protection were modified. If an average consumer were to experience real benefits, legal standards of consumer protection had to be improved through the implementation and efficient enforcement of new regulations. The consumer policy strategy for the years 2000–2001 defined six basic areas where the state can operate. The first area involved the introduction of new pro-consumer regulations regarding the protection of the economic interest and health of consumers in the market practice. The second one was about increasing the effectiveness of market supervision and coordinating actions of inspectors and supervisory bodies. The third one aimed at developing laws enabling further alignment of the domestic consumer law with EU standards. The

fourth aspect involved strengthening the regional institutional infrastructure for consumer protection. The fifth one was related to expanding cooperation and dialogue with non-governmental organizations. The sixth one was related to promoting consumer knowledge. The actions included in the consumer policy for the years 2000–2001 were financed from the state budget, as well as from the PHARE fund, in particular when building the system of product safety supervision [*Governmental consumer policy for the years 2000–2001*, 2000: 130–132].

Governmental consumer policy for the years 2002–2003 was a set of priority concepts and government plans in the field of protecting consumer interests. The document comprised an introduction, five sections, and a timetable for implementing the planned actions. In the introduction, the document reaffirmed the integral role of consumer policy in the socio-economic policy of the government. Section one included a description of the overall consumer policy implementation in the years 1998–2001. Section two identified the indicators of the governmental consumer policy for the years 2002–2003. The document pointed out that the government's activity concerning the protection of consumers in the years 2002–2003 resulted from the obligation to harmonize the Polish law with the EU legislation, as well as from the program of the government. The adopted time frame allowed for formulating and implementing specific tasks related to the end of preparations for EU accession with regard to consumer protection. Therefore, priority actions aimed at fully adjusting the organizational and legal infrastructure for consumer protection to the EU standards. The directions of consumer policy in the discussed period were shaped by the governmental program for improving citizens' safety and protecting the most vulnerable social groups. The strategy highlighted the need to increase economic and health-related safety of consumers, taking into account the difficult economic situation in Poland at that time. Unemployment levels were high, as was the number of families living at the minimum subsistence level. The deteriorating financial situation of the society and the need to protect those most economically vulnerable justified the priority given to actions aiming at providing economic security to the consumers. The document highlighted the unacceptability of a situation in which citizens with just enough means to satisfy the most basic needs can lose even these means as a result of frauds committed by certain business operators. To prevent such situations, actions directed towards counteracting behaviors harmful to consumers were intensified. Improved protection of customers and the elimination of market practic-

es violating their interests were important elements in building trust in the democratic procedures of the state and law among citizens. These actions were also meant to enhance market transparency and fair competition between businesses [*Governmental consumer policy for the years 2002–2003*, 2002: 140–142].

When Poland joined the European Union, the domestic consumer policy was coordinated with the consumer policy of the EU. All major objectives of the governmental consumer policy for the years 2004–2006 were identical with the EU consumer policy strategy for the years 2004–2006 [*Consumer Policy Strategy 2002–2006*, 2002]. The Strategy referred to fundamental European values: democracy, subsidiarity, and solidarity. It identified four main goals, having taken into consideration previous experiences concerning the functioning of the consumer protection system, as well as new challenges related to Poland's membership in the EU and the European single market. The first goal concerned the creation of a safe and consumer-friendly market. The second one was related to undertaking actions aiming at promoting self-regulation mechanisms and social dialogue for consumer protection. The third goal regarded the creation of an efficient system of information, advice, and consumer claims. The last goal highlighted the importance of a pro-active information and education policy [*The strategy of consumer policy for the years 2004–2006*, 2004: 112–113].

## CONCLUSIONS

Social and economic transformation that occurred in Poland in the early 1990s, revolutionized the situation of consumers. In the previous system of deficits and controlled prices, the problem of demand for specific consumer products was solved either by spending more time in queues or by imposing informal limitations-related charges [Rosati D. 1998: 322]. In the new market situation, consumers could choose from a wide range of consumer goods and services, both in terms of quantity and quality. The diversity was thrilling, but also confusing, as consumers wondered how to make the right choice [Światowy G. 1998: 133]. Financial means were the main factor restricting consumption. Consumer goods with their new prices were simply unattainable for a large group of consumers.

Systemic transformation in Poland put the issue of consumer protection in a whole new light. With the development of market economy, threats to consumer interests did not decrease, but simply changed in nature and

scope. Free market eliminated the problems known in the previous system, but also introduced new ones [Wilk K. 2000: 230]. Aggressive market offers, marketing techniques, out of office transactions and a growing importance and new forms of loans – all of which had been unknown until that point and were brought about by the emergence of private capital, diffusion of economic entities and open borders – became real threats to consumers [Ozimek I. 1999: 282]. It became crucial to protect the consumers against the problems with which the developed countries had struggled previously. These included unfair commercial practices associated, for example, with signing contracts, unfair contract terms, abusing the element of surprise, unusual or misleading market offers, lack of transparency of contract terms, and lack of information concerning the service, its subject, or the terms of the whole contract. The market saw the emergence of new, anonymous products, unknown to the general audience, lacking clear identification of the producer and importer, with labeling in foreign languages. Very often these were dangerous products, introduced into the market with no information or warning [Łętowska E. 2002: 6]. As Poland was evolving towards the free market economy, it became an ideal place for importing both desired new products, and unacceptable and illegal products, techniques, and behaviors that consumers in more developed countries were legally protected against [Łętowska E. 2002: 8]. The developing market saw the appearance of offers and services among which the consumers could not make a rational choice. They completely trusted advertisements, and they did not know what rights they had and how to enforce them.

The social and economic transformation led to the emergence of a peculiar vision of the market economy. It was commonly believed that in the market economy, as privileges for national companies were abolished, privileges for consumers would not be tolerated either [Łętowska E., 2002: 2]. Another proposed view was related to the conviction that free market and competition would naturally provide protection to the consumers. The practice of economic life revealed that the situation of entities in the market was unequal – the consumer was the more vulnerable party [Próchniak E., Zgadło J. 1998: 151].

In Poland, new challenges included: providing consumers with adequate legal protection, allowing for the satisfaction of conscious consumer needs, protecting consumers against producers' manipulation, as well as education concerning the market, products, threats, and consumer rights. Consistent consumer policy was meant to help achieve these objectives.

The analysis of the development of consumer policy in Poland in the years 1989–2004 brings several important conclusions. In the initial period, i.e. in the years 1989–1997, though there was no single governmental document featuring directions of actions related to consumer policy, numerous organizational and legal actions were undertaken to protect consumer interests. They resulted from international obligations, but also from the needs which emerged due to the development of free market economy. Since 1998, Poland has had a specific consumer policy (aiming at the achievement of major strategic goals) set for subsequent periods. After 2004, the objectives of domestic consumer policy have been harmonized with EU standards. At present, legal and organizational standards in Poland do not differ from those of the EU, and Polish consumers can make transactions freely and safely, not only in Poland, but also in the whole European Union.

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