2. DEFINITION AND MODEL OF CONSUMER

2.1. Consumer and trader: directives

Directive 85/577: Contracts negotiated away from business premises

Article 2: For the purposes of this Directive: ‘consumer’ means a natural person who, in transactions covered by this Directive, is acting for purposes which can be regarded as outside his trade or profession; ‘trader’ means a natural or legal person who, for the transaction in question, acts in his commercial or professional capacity, and anyone acting in the name or on behalf of a trader.

Directive 90/314: Package travel

Article 2: For the purposes of this Directive (…) 4. ‘consumer’ means the person who takes or agrees to take the package ('the principal contractor'), or any person on whose behalf the principal contractor agrees to purchase the package ('the other beneficiaries') or any person to whom the principal contractor or any of the other beneficiaries transfers the package ('the transferee')

Directive 2011/83: Consumer Rights

Article 2 [Definitions] For the purpose of this Directive, the following definitions shall apply:

1) "consumer" means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;

2) "trader" means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive.

2.2. Consumer and trader: judgments of European Court of Justice

Judgment of 14 March 1991 - Criminal proceedings against Patrice Di Pinto; Case C-361/89

It follows from Article 2 of that directive [on doorstep selling] that the criterion for the application of protection lies in the connection between the transactions which are the subject of the canvassing and the professional activity of the trader: the latter may claim that the directive is applicable only if the transaction in respect of which he has been canvassed lies outside his trade or profession. Acts which are preparatory to the sale of a business are connected with the professional activity of the trader; although such acts may bring the running of the business to an end, they are managerial acts performed for the purpose of satisfying requirements other than the family or personal requirements of the trader.
In the context of the specific regime established by Article 13 et seq. of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, only contracts concluded for the purpose of satisfying an individual's own needs in terms of private consumption come under the provisions designed to protect the consumer as the party deemed to be the weaker party economically. On the other hand, the specific protection sought to be afforded by those provisions is unwarranted in the case of contracts for the purpose of trade or professional activity, even if that activity is only planned for the future, since the fact that an activity is in the nature of a future activity does not divest it in any way of its trade or professional character. It follows that the regime in question applies solely to contracts concluded outside and independently of any trade or professional activity or purpose, whether present or future, so that a plaintiff who has concluded a contract with a view to pursuing a trade or profession, not at the present time, but in the future may not be regarded as a consumer within the meaning of the first paragraph of Article 13 and the first paragraph of Article 14 of the Convention.

On a proper construction of the first indent of Article 2 of Directive 85/577 to protect the consumer in respect of contracts negotiated away from business premises, which defines a 'consumer' for the purposes of the directive, a contract of guarantee concluded by a natural person who is not acting in the course of his trade or profession does not come within the scope of the directive where it guarantees repayment of a debt contracted by another person who, for his part, is acting within the course of his trade or profession.

2.3. Consumer good

Directive 85/374: Product liability

Article 9: (...) the item of property:

(i) is of a type ordinarily intended for private use or consumption, and

(ii) was used by the injured person mainly for his own private use or consumption.

Directive 1999/44: Sale of Consumer Goods:

Article 1 2. For the purposes of this Directive:

(b) consumer goods: shall mean any tangible movable item, with the exception of:

- goods sold by way of execution or otherwise by authority of law,
- water and gas where they are not put up for sale in a limited volume or set quantity,
- electricity
2.4. Definition of the consumer and consumer good in polish law

Consumer:

Art. 22¹ of Civil Code: The consumer shall be deemed to be any natural person who performs actions in law which are not directly connected with his professional or business activity.

Project of new Civil Code:

Art. 55: Consumer is a natural person, who performs action in law which is not directly connected with his business activity with a business acting in his business capacity.

Art. 56: The protection concerning consumers is granted to small business in case of purchase of goods or services from another business according to rules concerning consumers; the parties may exclude the protection in the contract.

Consumer good:

Art. 449² of Civil Code: The producer is responsible for the damage caused to another person only where an item having been damaged or impaired can be regarded as an item commonly designed for personal use and when the sufferer has used it mainly for such purpose.

Art. 1 of Act on Sale of Consumers’ Goods: The act regulates the sale being made within the scope of business activity of the seller concerning a movable item for a natural person which purchase the item for the purpose not connected with his business or professional activity (consumer good).

Judgment of polish Highest Court of 27 September 2007; Case No IV CSK 122/07

The holder of the cooperative quasi-ownership title to the apartment [who is typically also a member of the cooperative being full owner of the ground and building where the apartment is located- AR] should be deemed as a consumer in the meaning of Art. 22¹ polish CC. Thus, the Court may control if the statutory provisions of the cooperative are unfair clauses in the meaning of legal provisions implementing the Directive on unfair clauses in consumer contracts.

Judgment of polish Competition Court of 20 February 2007, Case No XVII Ama 95/05

The legal provisions regulating protection of consumer against unfair commercial practices are applicable also when consumer fails to fulfill his legal obligations arising from properly entered contract.

Judgment of polish Competition Court of 15 March 2000, Case No I CKN 1325/99

A person taking part in a contest organized by the trader is a consumer.
2.5. Model of the consumer

ECJ-Judgment of 16 January 1992 - Criminal proceedings against X. [Nissan]; Case C-373/90

Concerning the claim that the cars are cheaper, such a claim can only be held misleading if it is established that the decision to buy on the part of a significant number of consumers to whom the advertising in question is addressed was made in ignorance of the fact that the lower price of the vehicles was matched by a smaller number of accessories on the cars sold by the parallel importer.

Judgment of 6 July 1995 - Mars GmbH; Case C-470/93.

It is contended that the measure in question is justified because a not insignificant number of consumers will be induced into believing, by the band bearing the "+ 10%" marking, which occupies more than 10% of the total surface area of the wrapping, that the increase is larger than that represented. Such a justification cannot be accepted. Reasonably circumspect consumers may be deemed to know that there is not necessarily a link between the size of publicity markings relating to an increase in a product’s quantity and the size of that increase.

Judgment of 4 April 2000- Darbo; Case C-465/98

It is common ground that lead and cadmium are present in the natural environment as a result, in particular, of air pollution and pollution of the aquatic environment, as evidenced by several Community legislative instruments (...). Since garden fruit is grown in an environment of that kind, it is inevitably exposed to the pollutants present in it. In those circumstances, even if it is assumed that, in certain cases, consumers might be unaware of that fact and thereby be misled, that risk remains minimal and cannot therefore justify a barrier to the free movement of goods (...). The same conclusion is called for, thirdly, in relation to the presence of traces or residues of pesticides in d’arbo jam. (...) the use of pesticides, even by private individuals, is one of the most usual means of combating the presence of harmful organisms on vegetables and agricultural products. Thus, that fact that garden strawberries are grown ‘naturally’ does not in any event mean that they are free of pesticide residues.