

COUNTRY REPORT ON CONSUMER PROTECTION POLICY

POLAND 2002

OFFICE FOR COMPETITION AND CONSUMER PROTECTION
FOR OECD CCP

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TABLE OF CONTENTS:

1. General tasks description in the field of consumer policy – page 3
2. Ensuring consumer health protection by providing effective market supervision – page 5.
3. Economic safety of consumers – page 9.
4. Providing better access to justice – page 16.
5. Consumer information and education – page 17.
6. Conclusions – page 20.

I GENERAL TASKS DESCRIPTION IN THE FIELD OF CONSUMER POLICY

Governmental consumer protection policy includes a list of planned public administration actions aimed at ensuring proper level of protecting the consumer rights and their interests. It is designed to tip the balance of market position in favor of the consumers rather than the usually much stronger entrepreneurs as well as to protect basic consumers' rights. Consumer policy is closely related to other governmental policies, especially to the competition policy, since it is not possible to ensure high level of consumers' needs satisfaction and high legal standards of consumers' protection without ensuring competitive market conditions at first. Assumptions for the consumer protection policy are evaluated every two years and submitted by the President of the Office for Competition and Consumer Protection for the approval to the Council of Ministers. The submission serves as a draft for the government's consumer protection policy. Current consumer protection policy consists of a detailed plan of actions to be undertaken by the public administration in order to ensure proper level of protecting the consumer rights and interests. The plan aims at attaining the following general objectives:

1. The right to safety and health protection

Goods and services proposed to consumers may not endanger their life or health. This means that it is necessary to define proper product-safety standards and to develop mechanisms preventing dangerous products from being allowed to the market. In case however such products are found on the market, warning-mechanisms and measures for discontinuing their sale will also be needed.

2. The right to protection of their economic interests

Consumers must be protected against any actions from entrepreneurs with dominant or monopolistic position which could harm their economic interests by imposing unfavorable terms of agreements, unfair competition, artificially high prices and other unfair marketing and commercial practices.

3. The right to information and education

Consumers should be able to make informed decisions and conscious choices regarding goods and services. Reliable information describing characteristics of proposed goods and services, conditions of safe use and complaint procedures, in case quality of such goods or services is found unsatisfactory, should provide a proper basis for rational and conscious choices.

4. The right to efficient handling of claims

Procedures for handling claims submitted by consumers against manufacturers should be fair, quick, inexpensive and accessible to anyone. Consumers should obtain necessary assistance in exercising their due rights. To this end, governments should provide legal and administrative avenues in order to enable consumers to seek compensation, both formally and informally.

5. The right to associate and use representation

Consumers should have conditions allowing them to associate and present their view in all matters pertaining to them. It is proposed that governments should facilitate and support activity of independent consumer bodies and take their opinions into consideration while making decisions.

Poland must observe the above consumer rights in view of its current social and economic conditions as well as due to international commitments, including those imposed by the European Agreement it has recently signed.

Article 69 of the above Agreement quotes consumer law as one of the prospective areas of harmonization. The issue of harmonizing legal acts regulating consumer protection and adjusting them to EU levels has recently become particularly important in view of the Poland's accession to the EU.

The Constitution of the Republic of Poland stresses the importance of consumer protection. Under the Art. 76 all public authorities shall duly protect consumers, users and lessees against any actions which could result in endangering their health, privacy or safety as well as against unfair market practices. However, in order to translate the constitutionally defined standard into practical measures which are expected from governments and entrepreneurs it is necessary to develop new laws or amend existing ones in order to maximize the consumer protection level and full convergence of Polish regulations with EU's consumer law.

The Office for Competition and Consumer Protection, as a public administration body statutorily responsible for protecting consumers, undertakes ongoing legislative, educational and supervisory efforts. The Office's activity was thoroughly described in "Government's draft consumer policy for 2002-2003" prepared for the Council of Ministers.

The timeframe of the *Government's consumer policy for 2002-2003* is aligned with the last stage of Poland's preparations to join the EU, which is why the harmonization of legal and organizational framework of consumer protection with EU standards is now considered to be a top priority. In its National Accession Partnership Agreement Poland has agreed to adjust its legal regulations and administrative structures to *acquis communautaire*. This has already been accomplished, what allowed "Health and consumer protection" negotiation chapter to be closed. European Commission's approval for the harmonization of Poland's law with community regulations is essential considering the importance that EU has assigned to this issue. Poland's record of implementing consumer-related directives is important not only to progress of the accession preparations, but it is also crucial to ensuring consumer safety now that the Polish market is gradually opening for EU products and new commercial and marketing practices are permeating Polish economy.

The policy, as it is implemented in 2002-2003, significantly affects the scope of duties of the President of the Office for Competition and Consumer Protection, who from now on will be responsible for comprehensive market surveillance, including enforcement of the "new approach" directives, which until now had been in competence of relevant Ministries and their respective inspectorates. The new framework also brings a profound changes to the administrative procedures, empowering the President of the Office to issue decisions ensuring protection of collective consumer interests violated by entrepreneurs (until now only the courts could intervene in civil relations between a consumer and an entrepreneur). Detailed solutions are outlined below.

II ENSURING CONSUMER HEALTH PROTECTION BY PROVIDING EFFECTIVE MARKET SUPERVISION

- the concept of the new system for market surveillance has been laid out in the Act of 30 August 2002 on compliance evaluation Systems, which implements the new approach directives and whereby the President of the Office shall have in its competences surveillance of the products admitted to the market, exercising his/her duties through specialized bodies (Trade Inspectorate, National Labor Inspectorate, Mining Supervision Inspectorate, Chief Building Supervision Inspectorate, Office for Telecommunications and Post Regulation) which possess authority to inspect goods admitted to the market. Some of the implementation measures which regulate the principles of marking goods with the CE mark in the Polish legal system are included in regulations to the effective Act of 28 April 2000 on the system of compliance, accreditation and amendment of certain laws

(official Journal no. 43, item 489 as amended). By the end of 2003 at the latest they will be replaced with new legal acts issued under the new law on compliance evaluation system. It has been agreed that all regulations implementing the CE marking principles will become effective as soon as Poland becomes EU member. The law of 30 August 2002 on compliance evaluation system was signed by the President of the Republic of Poland on 22 September 2002 and published in the Official Journal no. 166, item 1360 as of 7 October 2002. Its regulations will take effect as of 1 January 2003 while other regulations will be applied as soon as Poland becomes member of the EU. The Office for Competition and Consumer Protection already started work on preparing the Market Surveillance Strategy, in conjunction with specialized supervisory bodies. First meeting will be held next November;

- Food safety – last August the Office asked the Chief Health Inspector to intensify actions within the framework of national system of information on dangerous foodstuffs. Last September it also demanded that the Chief Inspector of the Trade Inspectorate should precipitate inspections at super- and hypermarkets in the fourth quarter of the year, as required under *the resolution of the Polish Parliament of 5 July on public administrative bodies' obligation to hold inspections at super- and hypermarkets*;
- Controlling product safety at the border – regulation of the Council of Ministers of 4 June 2002 on products to be inspected, procedures applicable to customs authorities during such inspections as well as competences and responsibilities of bodies entitled to evaluate such products (Official Journal no. 91, item 809) issued under the law of 22 January 2000 on general product safety defines: list of products which are to be subject to the market admission procedure, the competences available to customs authorities when seizing products potentially harmful to human health, life or otherwise dangerous. The regulation does not apply to issues covered by separate laws on plant protection, veterinary examinations and protection of animals, food substances, stimulants, processing substances, acceptable additives, other food additives and stimulants as well as materials and products to be used in contact with food, which are subject to inspection pursuant to the law of 11 May 2001 on health conditions of food and nutrition (Official Journal no. 63, item 634 and no. 128, item 1408) as well as the law of 6 September on materials and products to be used in contact with food (Official Journal, no. 128, item 1408). The regulation shall not apply to products imported from countries with which Poland has signed agreements on mutual recognition of compliance certificates, if the shipment documents do include such relevant compliance certificates;

OFFICE FOR COMPETITION AND CONSUMER PROTECTION

- Withdrawal of dangerous products from the market – since January 2002 the Office for Competition and Consumer Protection has initiated preliminary proceedings concerning such products as:
 - collector's items for adults – lead soldiers, which are potentially harmful since lead could be consumed by a child
 - beauty products for dolls, which may contain harmful chemicals and though intended for doll make-up only, should be safe for children as well
 - bottles with pacifiers for small babies,
 - pinewood cribs which design or construction may be harmful;

- The Office has also under its authority the markets for building materials, such as tar board, bricks, hollow bricks, ball and angle valves, tap installations for bathroom sinks and showers, whose manufacturers did not obtain proper safety compliance certificates. Due to insufficient funding for expensive lab tests, the Office's activities, as far as building materials inspection is concerned, are very limited;

- the Office has so far opened and investigations into the safety of such items as ironing boards, electric kettles, sofas, rust-brushes, non-certified electrical outlets, branch-joints, hammocks, aluminum ladders. These products have failed to meet Polish Standards requirements;

- participation in the TRAPEX program – following the information received from the TRAPEX system coordination office in Budapest, the Office took measures to detect and possibly withdraw from the market the following products, considered harmful by TRAPEX countries: German-made chocolates, Bulgarian electric kettles, coffeemakers, food mixers, corrective glasses, electrical outlets and hammers non-certified as to their country of origin, Chinese toys with whistles, water heaters, Christmas tree lights, precarious metal ladders and Italian olive oil containing prohibited flavoring additives and other;

- under the regulation of the Council of Ministers which took effect on 4 June 2002 on products to be seized for customs inspection, procedures applicable to customs authorities during such inspections as well as competences and responsibilities of bodies entitled to evaluate such products (Official Journals no. 91, item 809), the President of the Office for Competition and Consumer Protection and the Head of Customs Services (as well as other bodies responsible for supervising the safety of products) will conclude an agreement on mutual exchange of information received from the TRAPEX system, which will

enable authorities to control and seize on the border products considered harmful by the other TRAPEX member countries;

- cooperation with inspection bodies and accredited labs – the Office cooperates on a permanent basis with PCBC, PCA and bodies accredited to investigate the duration of safety certificates issued by them for specific products; the Office is entitled to request inspection of a product for the certificate supervision purposes and asks a relevant SWW group or the PKWiU (a Polish body classifying goods and services into different categories) to state, whether the product in question has been correctly certified;
- establishment of the National System of Information on Harmful Products – the System's register already lists several foodstuffs, such as imported feta cheese in olive oil, Polish-made liver sausage manufactured in a plant violating virtually all health regulations possible (it was shut down and to remain so, until new Health Inspection certificates were issued). The final activation of the information transfer system is scheduled after the planned amendment of the law of 22 January 2000 on general product safety (Official Journal no. 15, item 179), under which the register will list genuinely harmful products for which explanatory proceedings have not been as yet concluded (currently in order to list a product in the register it is necessary, under art. 10 of the regulation of 28 December 2001 on the KSPiN system, to obtain a final decision from the President of the Office for Competition and Consumer Protection – under art. 17, section 2 of the law – which will not be issued e.g. in case the manufacturer notifies the Office that it has voluntarily discontinued sale of such product;
- action on improvement of health care system– the Minister of Health proposed - at the government's session - a draft of a health care reform which would establish the National Health Fund with 16 regional offices and remove the former health care units.

III ECONOMIC SAFETY OF CONSUMERS

- the amendment of the law of 16 April 1993 on preventing unfair competition (Official Journal no. 47, item 211 of 1996, no. 106, item 496 of 1997, no. 88, item 554 of 1998, no. 106, item 668 of 2000, no. 29 item 356, no. 93, item 1027) – the law of 5 July 2002 on amending the law on preventing unfair competition (Official Journal no. 126, item 1071) broadens the scope of unfair competition, prohibiting (with certain exceptions) the organization of landslide sales as well as bonus-driven ones and promotional competitions. Landslide (chain) sales consist in selling “very attractive” products and promising substantial benefits to those who encourage other people to buy those products as well. The amendment prohibits landslide sales, except for cases where products or services are sold at a price which does not substantially differ from their actual value and a person who refused to participate would have the right to return all goods, samples and promotional kits to the organizers against a refund amounting to at least 90% of the purchase price. The offenders might be subject to imprisonment for a period from 6 months to 8 years;
- promotional lotteries consist in assuring a consumer that he/she has won a prize by stating “you have won a car” or “claim your prize by sending us back this coupon and purchasing one of the items in our catalog” etc. The amendment also prohibits sending consumers documents made to resemble official letters, e.g. entitled “official notice” or “certificate”, issued by a “Prize Committee”, bearing stamps and signatures of directors or members of the management board. Entrepreneurs who send advertising mail to consumers, assuring them of having won a prize in a promotional campaign will be fined or arrested;
- the amendment prohibits awarding purchases of products with free-of-charge bonus items different from the purchased product unless the bonus item is of no substantial value or is a sample product won in a promotional campaign organized under regulations on lotteries, mutual pools and gambling machines or competitions where results do not depend on chance;
- implementation of the directive no. 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees - the law of 27 July 2002 on specific terms of consumer sale and on amending the Civil Code provides that the Civil Code regulations on warranties and guarantees shall no longer apply to consumer sales. For the purposes of assessing whether a complaint is justified, the term “defect” shall be replaced by “non-compliance with the sale agreement”, as specified in the directive 1999/44/EC. If a “non-compliance with the sale

agreement” is found in a product, the buyer shall notify the seller thereof within 2 months of such an event. The buyer may consequently demand that the seller repair the merchandise or replace it with a new one or, alternatively claim a discount off the purchase price or terminate the sale agreement. The regulations of the law shall take effect as of 1 January 2003;

- regulation of “Argentine sales” – by its decision of 3 October 2002 the Council of Ministers’ Committee appointed a Group for Developing Assumptions for the Law on Consumer Consortia. The President of the Office for Competition and Consumer Protection presides over the Group’s proceedings;
- regulation of the Minister of Finance of 10 June 2002 on principles of displaying prices of goods and services and putting price tags on goods for sale (Official Journal, no. 99, item 894) – the obligation to put price tags on retail goods for sale results from the law on prices effective since 12 December 2001, while the regulation defines how sellers are expected to quote the prices. Prices must be placed in a visible and legible manner on all goods for sale, except for those furnished with a barcode. However, the Seller is expected to provide a price tag next to them. Super- and hypermarkets, which use barcodes on a large scale must provide an appropriate number of barcode readers so as not to force customers to look for one around the entire store. There must be two barcode readers supplied for each 50 sq. m. If a product weighs more than 5 kg or its volume exceeds 5 l, it needs to be furnished with a price tag, since one cannot expect the customer to drag it to the nearest available reader;
- e-commerce – the law of 18 July 2002 on providing services via electronic channels (Official Journal no. 144, item 1204) – defines duties of providers of electronic services, their responsibility in relation to electronic services and rules of protecting personal data of customers using such services. Providing services via electronic channels consists in performing that service by sending and receiving data through data transmission systems upon the request of service buyer without simultaneous participation of both parties to the transaction. The data in question are transmitted via public networks, as understood in the law of 21 July 2000 – Telecommunications Law. The law does not cover interbank clearing and settlement transactions via electronic media of information or the issuance and usage of payment cards and electronic money. The service provider is expected to present the consumer with such basic information as his/her e-mail address, first and last name, place of residence or the name of his/her company and place of business. The service provider is also expected to furnish the consumer with up-to-date information on specific risks involved in using the

electronically provided service and supply, free of charge, rules of providing services before the agreement is concluded. Such rules are to specify types and extent of electronically provided services, terms of providing such services, terms of concluding and terminating agreements on electronic provision of services as well as the complaint procedure. It is forbidden to send specific consumers unordered commercial information using electronic means of communication, particularly by e-mail.

The most essential legal acts concerning competition and consumer protection are as follows:

- the law of 16 April 1993 on preventing unfair competition (Official Journal no. 47, item 211, as amended),
- the law of 15 December 2000 on competition and consumer protection (Official Journal no. 122, item 1319, as amended),
- the law of 22 January 2000 on general terms of product safety (Official Journal no. 15, item 179, as amended),

The above legal regulations affect both rights of consumers and related obligations of entrepreneurs whose business consists in providing consumers with various goods and services. However, their effect may vary and results of legislative changes do not always live up to expectations which inspired them.

As one of the best examples to illustrate this discrepancy, let us quote the law on preventing unfair competition. Its goal is to protect rules governing competition among entrepreneurs from being undermined or distorted and to make them fair. However, regulations of art. 15, section 1, point 5 of the law caused much controversy, providing that it is considered to be an unfair competition to obstruct access to the market to other entrepreneurs, particularly by forcing customers to choose a specific entrepreneurs as a contractor or by ensuring such conditions as enable third parties to force customers to purchase goods or services from a specific entrepreneur, in relation to art. 15, section 2-5, which deal with issues related to so-called shopping coupons. In practice, such regulations provide a particular kind of legal tool enabling certain entrepreneurs to monopolize the shopping coupon market. Regulations of art. 15, section 3-5 of the above law are also questioned. It should be stressed that those regulations were enacted on the government's initiative and constituted one of the core components of the "Entrepreneurship first" reform package. Their objective was to prevent chains of large stores from using their economic potential to enforce aggressive price policy by selling goods without a margin or at a margin below costs. In this case it is considered unfair competition to

obstruct access to the market to small entrepreneurs by selling goods or services at commercial facilities larger than 400 m², at a price without a margin.

After the law was adopted, it turned out that the regulation in question was objected to by the European Commission as violating both EU's law and the European Agreement. In its current form it violates the law on non-discrimination of the freedom of establishment applicable in Poland to citizens/companies from the member states and considering that most of large store chains are owned by foreign-based operators (German, French, British), this regulation directly discriminates against them. It may also infringe the community's principle of freedom to provide services.

Art. 17 d is another controversial regulation of the law in question. This article considers it unfair competition if more than 20% of all products sold at a large store are marketed under private labels owned directly by the store operator or by its subsidiaries. This legislation not only violates community law, but also threatens economic growth. Its application is highly objectionable in the first place. First of all, the definition of a discount store is non-existent in the Polish legal system.

Furthermore, it is unclear how exactly 20% of sales turnover is to be calculated, since it is not known whether this figure should be computed on an annual basis or otherwise. The economic threat of art. 17d is confirmed by public spoken and written announcements from small and medium companies, and also from representatives of large retail chains and their associations, which are submitted to administrative bodies. The abovementioned announcements have on numerous occasions stressed the obvious adverse effects that such legislations may have on the economic condition of such companies. Attention has been drawn to the fact that limitations related to the number of a large store's own products it is expected to sell will enforce dramatic cuts in output of companies supplying goods, which are sold at retail chains under private labels. This will entail losses of jobs and result in a huge number of small suppliers going out of business. It is obvious that for many small companies the only way to sell their products is through a large retail chain under its private label.

Such suppliers cannot afford to promote their own brand names, which would involve huge advertising expenses. In addition, distribution of products in smaller stores cannot ensure them stabilization, growth, continuity of demand or a steady outlet, primarily because this sector is worst affected by market fluctuations. It is worth noting that for many smaller suppliers private labels are a majority of their total production (60-90%). Considering this, to implement the above changes could lead to a further increase of unemployment rate, which has already reached monstrous proportions, and adversely impact thousand of people supplying semi-finished products (mostly farmers) to such entrepreneurs. All things considered, it should be acknowledged that the art. 17d of the law on preventing unfair competition will badly

affect the Polish economy and that it contradicts the principles of the “Entrepreneurship first” reform package that the Polish Parliament has adopted.

Another argument against this legislation is that it is non-compliant with community law and with Poland’s international agreements. Under art. 25, section 2 of the European Agreement, Poland and EU agreed not to impose any new limitations on mutual trade, import and export or to introduce any new similar measures. On the other hand, quotas existing at the time that the European Agreement takes effect may not become more restrictive for trade between parties to the Agreement. The above regulation clearly indicates that currently Poland may enact no new legislation resulting, even inadvertently, in imposing new restrictions on trade with the EU.

The percentage limitation of private label products may, if only potentially, adversely affect trade between Poland and the EU, since it will also pertain to goods manufactured in the EU. Store operators, under the art. 17d of the legislation as proposed, would have to impose constraints also on quantities of EU-made products sold under their private labels.

Art. 17d will thus restrict the possibility to import community products from EU member states to be sold under the store operator’s private label. Therefore, it clearly corresponds to the premises of a legislative measure imposing quota restrictions, as discussed in art. 22, section 5 of the European Agreement.

Differences of interpretation which arose with regard to those regulations indicate that the Parliament misconstrued the project author’s (Government’s) intent in the course of legislation. Amended regulations in their current form – as practice shows – neither protect consumers’ interests nor contribute to the competitiveness of stores issuing shopping coupons. On the contrary – one may even go as far as to say that they distort fair competition.

In order to remedy this situation so badly affecting Polish competitive market, the Office for Competition and Consumer Protection proposed an amendment to remove the questionable regulations.

New amendments to the law of 15 December 2000 on competition and consumer protection (Official Journal, no 122, item 1319 as amended), which furnish the Polish consumer protection legal system with a new court and administrative procedure applicable to actions violating collective consumer interests, significantly affect rights and obligations of entrepreneurs proposing goods and providing services to consumers. Under those regulations, the President of the Office has a new power – to initiate an investigation and, consequently, to issue a cease and desist order to the entrepreneur. The President of the Office may define measures for remedying such a

violation, and in particular request the entrepreneur to provide one or several information, whose content and form are specified in the decision.

Furthermore, if the entrepreneur fails to comply, the President of the Office is entitled to fine him for delay on a per-day basis. Ombudsman, Commissioner for Protection of the Insured, Commissioner for Protection of Consumers and consumer associations or a relevant foreign body may request that such a procedure be initiated. The procedure is brief (it is expected to reach conclusion within 2 months at the most, and 3 months for issues of outstanding complexity); furthermore, it is free of charge, which is clearly an encouraging factor. As can be seen, consumers themselves do not have the right of action because of the "collective" nature of violated or threatened interests. The enforcement procedure does not in any manner restrict the President of the Office's powers to prevent unfair illegal practices of entrepreneurs (e.g. initiating legal action on grounds of violating the law in preventing unfair competition). The enactment of the abovementioned procedure complies with harmonization requirements, providing a direct implementation of the directive 98/27/EC on injunctions for the protection of consumers' interests.

The abovementioned amendment is effective since 15 December 2002 and it was implemented to ensure full protection of collective consumers' interests by providing a mechanism for swift and efficient enforcement of violated rights. Its efficiency and swiftness should increase consumer confidence in the market and contribute to further removal of factors distorting fair competition. It should also make entrepreneurs aware of certain facts, discouraging them from any possible anti-consumer activity. As of now, it is difficult to provide a clear evaluation of the implemented solution since they have been in effect for only a short time, and consequently, the number of legal actions initiated is small. However, it seems that we have gained an efficient and effective tool to combat unfair entrepreneurs.

Ensuring consumer safety and in particular, safety of goods sold by entrepreneurs, is yet another issue. The principal legal act governing this matter is the law of 22 January 2000 on general product safety (Official Journal no. 15, item 179, as amended). It gave rise to 7 regulations. In 2002 the Council of Ministers adopted a regulation on products to be inspected at the border, procedures applicable to customs authorities during such inspections as well as competences and responsibilities of bodies entitled to evaluate such products. The purpose of this regulation was to prepare legal grounds for applying the Council's regulation no. 339/93/EEC of 8 February 1993 on checks for conformity with the rules on product safety in the case of products imported from third countries. The regulation is to prevent products which are potentially harmful to human life or health and do not have appropriate marking or documentation required in the Union from entering the

EU's markets. The Polish regulation involved numerous problems of interpretation. Customs authorities on numerous occasions seized textile products lacking appropriate markings. They also requested the President of the Office to officially declare whether a product is harmful to human life or health or if it is dangerous. The President of the Office – under the regulation of 4 June 2002 – is not competent to present opinions on such issues. Nevertheless, the Office did provide an opinion, according to which the lack of markings on textile goods which are required under the regulation on safety and marking of textile products, does not really constitute hazard to human life or health. Textile products are not subject to customs inspection due to missing documentation or markings required under specific safety regulations. On many occasions customs offices also seized toys lacking appropriate information, required under the regulation of the Council of Ministers of 18 September 2001 on specific terms pertaining to toy safety.

Proceedings maintained by the Office pursuant to the law on general product safety are usually preliminary proceedings. Where reasonable, administrative proceedings are held. Most manufacturers present the Office with documents certifying that their products comply with relevant requirements or agree to ensure compliance with safety requirements, including by discontinuing the sale of such product. Therefore it is not necessary to impose on manufacturers – by administrative decision - obligations provided in the law.

In 2002 the Office for Competition and Consumer Protection began efforts to change the law on general product safety; the change of the regulation is forced by the adoption of the new directive 2001/95/EC of the European Parliament and European Council of 3 December 2001 on general product safety and is designed to implement this directive. The mechanisms used in the draft law correspond to those of EU's regulations. Besides, the Office intends to change the law so as to facilitate registration of dangerous products in an open register, referred to in the regulation of the Council of Ministers of 28 December 2000 on the national system of information on dangerous products (Official Journal of 2001, no. 4, item 28). Currently, under §10, paragraph 2 of the law on “the open section of the register shall include entries pertaining to proceedings concluded with a final administrative decision issued under section 17, paragraph 2 of the law” (on general product safety), which means “if there is no decision or the request is denied”. However, the Office may not make an entry based on negative results of an examination or if the retailer agrees to discontinue the sale of the dangerous product and the manufacturer's identity cannot be established. In such event it seems necessary to enter the product into the open register, so that both consumers and other potential retailers (distributors) could be advised of the risk involved.

The register of products considered dangerous by a decision of the President of the Office for Competition and Consumer Protection is open and available to all parties concerned at the Office's website (www.uokik.gov.pl), except for details of administrative action undertaken to establish whether the product is actually dangerous and invalid administrative decisions (§11, paragraph 1). On the other hand, confidentiality of some information is to protect entrepreneurs from adverse effects of premature public disclosure of product information (even before the related risks have been established).

IV PROVIDING BETTER ACCESS TO JUSTICE

- simplified claim procedures: as of March, the Banking Arbiter started acting. He is responsible for settling disputes between consumers and Polish banks. The banking arbiter examines property claims of banks' customers, and the banks voluntarily submit to the Arbiters' decisions. By mid-July, customers submitted 315 complaints for arbitration, with the average claimed amount of PLN 4,200. The maximum amount thus claimable is PLN 8 thousand. Almost half of the cases were settled amicably where the Banks agreed to pay customers amounts they had claimed. Two thirds of the remaining cases were not examined due to formal reasons. One of such reasons was failure to pay an arbitration fee. Everyone filing a complaint is expected to pay a PLN 50 fee. For those who claim less than PLN 50, the fee is lowered to PLN 20. If no fee has been deposited, the Arbiter does not examine the case. The most frequent reason for complaint customers quoted was incorrect interest calculation. Before seeking assistance of the Arbiter, one should lodge a relevant complaint with the Bank. If the Bank rejects it or fails to provide a reply within 30 days, the Arbiter may deal with the case. Customers unsatisfied with the Arbiter's decisions may pursue legal action in court. For Banks, however, such decisions are final;
- collective claims : the law of 5 July 2002 on amending the law on competition and consumer protection, the law – the Code of Civil Proceedings and the law on preventing unfair competition (Official Journal, no. 129, item 1102) – provides that the President of the Office for Competition and Consumer Protection may issue cease and desist order in regard of violations of collective consumer interests following the administrative and civil proceedings, which are expected to be faster than the formerly used civil proceedings. Within a month of initiating the procedure (no later than within 2 months, for complex cases), the President of the Office may issue decisions against which the entrepreneur may appeal to the Antimonopoly Court – renamed to Court for Competition and Consumers

Protection. The decision of this court may not be appealed against, but only abrogated at the Supreme Court. Proceedings related to practices violating collective consumer interests will be started against entrepreneurs that obstruct consumers in the pursuit of their rights, for instance by including in their agreements clauses that were prohibited by the court;

- further development of operations of amicable consumer courts at Voivodship Trade Inspectorates. Proceedings before such courts are much easier and take less time, which contributes to the progress in settlement of disputes involving consumers and ensures availability of an efficient system of handling complaints and claims, where subject of litigation is of lesser value;
- Currently legislative work has been undertaken to further simplify proceedings involving consumers. Draft of a relevant amendment of the Code of Civil Proceedings is currently consulted by the Ministries. The objective of this amendment is to ensure transparency and the greatest possible simplification of forms used in such proceedings.

V CONSUMER INFORMATION AND EDUCATION

1. Increasing consumer knowledge and awareness

The most important for the years 2002-2003 is also to ensure that the general public and business operators have a sufficient understanding of the legislation and of the rights and obligations which it generates within both consumer policy and competition policy. Consumer policy is integrated with competition policy by giving both responsibilities to the OCCP. Consumer protection is promoted by competitive pressure, and buyers are protected by eliminating monopoly where it is not justified and by controlling monopolistic practices in sectors where some monopoly may still be economically inevitable. The OCCP recognizes the long run consistency and complementarity between competition policy and consumer interests. The OCCP's consumer protection powers include educating businesses and consumers about consumers rights, dealing with other state administrative bodies on the same subject, overseeing product safety, co-operating with local governments and international organizations, supervising product testing by consumer organizations, and publications and educational programs.

The Office develops the program of education and information activities of national and international reach. We want to strengthen the participation of consumer organizations, businesses and academics in information activities which could provide better consumer protection.

On the 19th of March we set up the National Competition and Consumer Council, composed of representatives of the Office for Competition and Consumer Protection and other relevant ministries, consumer and business organizations, consumer ombudsmen, and academics. The Council forms a platform for discussion and elaboration of ideas and acts of common interests, like e.g. codes of good practice or improved mechanism of out of court dispute resolution systems.

Furthermore we organise the seminars and conferences on consumer issues (e.g. telecommunication service, financial service, advertising and education of young consumers).

Another important area of our education and information activities is media relations. The general objective of the communication projects with media is to raise media ability and interest in informing about consumer policy in the context of the European Union accession process and the consequences of European integration for each Polish consumer. The OCCP develops various activities towards media in order to broaden their knowledge and understanding of the present situation.

To accomplish the objective of increase consumer awareness we also prepare the program of publications – brochures and leaflets on consumer policy that could serve as an important education tool for consumers and opinion leaders.

2. Cooperation with consumer associations

- The Office ordered consumer associations to provide nationally available, free-of-charge legal consulting and assistance services related to consumer rights and pursuit of consumer claims to the amount of PLN 1,600'000 – with regard to the Consumer Federation (payable in installments by October) and consumer consulting by implementing a consulting program for consumers and regional (municipal) consumer ombudsmen to the amount of PLN 300'000 – with regard to the Polish Consumers' Association.
- Publications: the Office ordered the Polish Consumers' Association to prepare and publish a quarterly designed to address selected issues submitted by consumers and consumer ombudsmen. The bulletin includes a variety of decisions issued in consumer-related cases (e.g. pertaining to defects in declarations of will, or to clauses considered illegal), new regulations and opinions

of ministers, such as the opinion of the Minister of Finance regarding the request to exempt pharmacies from the obligation to place price tags on reimbursable medications or the Power Regulation Office's opinion on heating expenses divisors – as well as pieces written by consumer ombudsmen, e.g. on cover versions of songs (new versions of songs issued on MCs and CDs, which, if inappropriately labeled, may mislead consumers as to who the actual performer is), costs of litigation, time sharing.

3. Cooperation with consumers' representatives in local self-governments

The Office promotes cooperation with regional (municipal) consumer ombudsmen on a regional and national scale, by:

- furnishing local self-governments, free of charge, with educational materials and sets of regulations which provide legal grounds for operation of regional (municipal) consumer ombudsmen;
- providing ombudsmen with consulting, details and clarifications regarding consumer law;
- appealing, jointly with ombudsmen, for entrepreneurs to stop violations of consumer rights;
- participating in regional councils with ombudsmen during which expertise is exchanged and new courses of action for consumer protection are agreed;
- 9-member Ombudsmen Council for the President of the Office provides a forum for nationwide cooperation. The Council's responsibilities include presenting proposed amendments of consumer rights-related regulations, evaluating draft laws and draft consumer policies. The President of the Office may invite guests other than ombudsmen to participate. For instance, the Banking Arbiter attended last session of the Council;
- the cooperation between ombudsmen and the Trade Inspection consists in exchanging information and working together on issues submitted by consumers. The ombudsman directs consumers to the Trade Inspection in order for it to start mediation and provide services of its shoe expert, while the Trade Inspection sends to the ombudsmen such consumers whose complaints require professional assistance in complaint or legal proceedings;

VI CONCLUSIONS

Summarizing the 2002 implementation of the Government's Consumer Policy for 2002-2003, one should note that a vast majority of its goals have been attained. Also, one of the state's major tasks, following Poland's commitments to harmonize its law with that of the EU and pursuant to the program of the SLD-UP-PSL coalition, which is acting to protect consumers, has been gradually completed, which brings us acclaim from the EU and contributes to a steady improvement of the consumers' market position as well as to the growth of their awareness of rights that they have in relations with entrepreneurs.

Priority action aimed at fully harmonizing the Polish legal and organizational consumer protection framework to EU's standards has been consequently pursued by both the Office for Competition and Consumer Protection and other designated government bodies and permitted to adopt a variety of laws and executive regulations fully adjusting Poland's legal system to *acquis communautaire*. In order to fulfill legislative objectives involved in the harmonization process and implementation of adopted regulations in practice, the following has been provided:

- amendment of the law on preventing unfair competition of 5 July 2002 (Official Journal, no. 126, item 1071),
- law of 27 July 2002 on specific terms of consumer sale and on amending the Civil Code (Official Journal, no.141, item 1176),
- law of 18 July 2002 on providing services via electronic channels (Official Journal no. 144, item 1204),
- regulation of the Minister of Finance of 10 June 2002 on principles of displaying prices of goods and services and putting price tags on goods for sale (Official Journal, no. 99, item 894)
- regulations accompanying law on general product safety:
 - regulation of the Council of Ministers of 19 October 2001 on terms and procedure of evaluating compliance and method of toys packaging (Official Journal no. 144, item 1617)
 - regulation of the Council of Ministers of 18 September 2001 specific terms pertaining to toy safety (Official Journal no. 120, item 1278)
 - regulation of the Council of Ministers of 4 June 2002 on products to be inspected, procedures applicable to customs authorities during such inspections as well as competences and responsibilities of bodies entitled to evaluate such products (Official Journal no. 91, item 809).
 - It is very essential for consumer interests protection to develop a law on consumer consortia (sales in so-called "Argentine systems"). Works on the draft law are already at an advanced stage – on 3 October 2002 by a decision

of the Council of Ministers' Committee a Group for Developing Assumptions for the Law on Consumer Consortia was appointed. President of the Office is in charge of the Group.

- The second objective under the Government's Consumer Policy is to build an efficient system for supervising the market. It was achieved through the Parliament's enactment of the law of 20 August 2002 on compliance evaluation system (Official Journal of 2002, no. 166, item 1360), which is expected to take effect in January 2003.
- In order to raise standards of consumer protection in Poland it is also crucial to increase the level of consumer awareness – by intensive educational programs related to consumer rights, entitlements, ways to pursue one's claims and defend one's interests. To achieve this objective, a spectacular information campaign has been launched, which involves frequent media statements (press, radio, television) from the management, spokesman and experts of the Office aimed at spreading knowledge on consumer rights, on changes to applicable laws, on the construction of new regulations and solutions to problems encountered in practice. Consumer associations have also set out to raise consumer awareness, as ordered by the Office.

The same objective underlies the pursued strengthening of dialog with consumer organizations. The pursuit of that objective is exemplified by an agreement entered into on 12 July 2002 by the Office for Consumer Interest Protection, Consumers' Federation, Polish Consumers' Association and a Board of Consumer Commissioners, aimed at integrating actions taken by the aforementioned entities to protect consumers' interests. The agreement is meant to be the basis for:

- establishing and devising the mode of operation for Consumer Council to be composed of – apart from the parties to the agreement – representatives of enterprises and other entities pursuing consumer interest protection,
- exchange of information in terms of consumer complaints and joint preparation of actions against entrepreneurs who infringe on consumers' rights,
- coordinating other actions aimed at protecting widely defined consumer interests.

As a part of the cooperation, 7 working groups were established (financial services, consumer sale, travel services, telecom services, propane, power and heating supply services, land development services, consumer education) where parties to the agreement will consult each other, discuss proposals for new legislative solutions and other projects aimed at protecting consumer interests. Moreover, the parties agreed to exchange information on actions pursued and to work out a co-operation that would enable consumers to successfully pursue their rights in judicial proceedings.

Strengthened co-operation among all organizations dealing with consumer protection and specifying its framework is a vital step towards improving the standards of Polish consumer protection system and manifestly contributes to following one of the major guidelines of the Government's Consumer Policy for years 2002-2003, namely striving for greater consumer awareness and strengthened dialog with organizations representing consumers' interests.

The last of the major objectives of the Government's consumer policy for years 2002-2003 is to efficiently curb dishonest market practices used by entrepreneurs, by introducing a joint judicial and administrative procedure in cases on infringement on collective consumers' interests. This objective should be reached by the amendment to the Law of 15 December 2000 on Competition and Consumer Protection coming into effect (Official Journal no. 122, pos. 1319, of 2001, no. 110, pos. 1189, no. 154, pos. 1800), which grants to the President of the Office for Competition and Consumer Protection the power to issue an order to desist from practices that infringe on collective consumers' interests. Coming into effect of the Law is scheduled for December 2002. Based on observations of market practices and on the analysis of the irregularities that occur, it can be expected that the procedure will greatly contribute to putting out of business entrepreneurs who habitually and with malice aforethought take advantage of their advantage over a consumer who is uninformed and, in many cases, naive as well. Other actions taken by the Office for Competition and Consumer Protection also contribute to getting rid of dishonest entrepreneurs and their behaviors. One of the most significant actions taken is the Office's permanent monitoring of contract forms used by entrepreneurs to ensure their compliance with the Civil Code provisions (abusive clauses) and best practices used on the market, as well as filing, as a consequence of infringements found, civil law proceedings to declare those questioned provisions to be illegal contractual clauses. As a result of the actions taken, the Office's register of such decisions features as many as 27 such items. There's a work in progress on further proceedings. The respondents are mainly banks, credit institutions, travel agencies, dry cleaners and digital television providers as well as other entrepreneurs.

The activity pursued by the Office for Competition and Consumer Protection against entrepreneurs infringing on the Law on Preventing Unfair Competition was also very intense in 2002. The office made calls to desist from a declared act of unfair competition in app. 270 cases, most of which ended in an entrepreneur's voluntary desistance. At the same time, several judicial proceedings are pending, some of which were instituted in previous years and some in 2002. By the end of the current year and in early 2003 next proceedings are expected to be instituted under the Law on Preventing Unfair Competition.

It seems that in order to ensure a full and comprehensive execution of the Government's objectives, an opinion poll should be conducted to ask the public how they perceive the changes that the Government is adopting to protect consumers' interest. The opinion of consumer organizations should also be taken into account, but the feedback that should be considered as the most reliable is that of the direct market players. Unfortunately, most consumers still know little about rights vested in them and about the ways to exercise them. Yet, knowing your rights is necessary to be able to use them. Therefore the Office and non-governmental organizations should continuously focus their actions on spreading knowledge about consumer rights and treat that task as their top priority in further pro-consumer activities.

It is equally important to discipline entrepreneurs who will not hesitate to take advantage of consumers' ignorance and helplessness. It is necessary to strengthen the role of Commercial Inspection and other supervisory bodies and to provide them with funds enabling them to carry out temporary inspections. The Commercial Inspection experience shows that funds currently held allow them to inspect approx. 10% of the market – which is hardly a sufficient instrument to ensure compliance with regulation that were adopted to protect consumers' interests.

Also instituting criminal proceedings against entrepreneurs could be an efficient disciplinary instrument. Unfortunately, public prosecutors in many cases refuse to institute proceedings, claiming that entitlements can be pursued in a civil law proceeding and stressing the need to respect the liberty of contract principle and the binding character of written agreements rather than verbal ones. The civil law nature of dispute does not, however, exclude the possibility of considering the case under the provisions of penal code, e.g. in case of suspected violation of art. 171 of the Banking law, which provides for a penalty of fine or imprisonment not to exceed 3 years for individuals who pursue an activity without a license which consists in collecting cash from individuals, e.g. under the "Argentine system".

It seems that in order to curb the aforementioned phenomena, it is necessary to further strengthen the efficient co-operation between organizations that represent entrepreneurs, in order to popularize the use of best market practice. One of the possible efficient measures is working out so called codes of professional conduct by entrepreneurs themselves in particular lines of business and popularizing self-regulatory mechanisms in the business environment. Such measures would clearly contribute to improve the legal culture among stronger market players, and thus strengthen consumer's position. This objective should become one of major tasks for 2003 in terms of consumer policy to be executed.

It should be emphasized that the activity of arbitration organizations and amicable settlements courts pursued by the Commercial Inspection is vital for the process of fast dispute settlement and we should undoubtedly aim at popularizing the out-of-court settlement of disputes. However, in some cases, judicial settlement is necessary. That is why it is necessary to improve the judiciary as a part of the administration branch that enforces the respect for rights of all citizens.

Unfortunately, funds represent a vital issue in pursuing the guidelines of the Government's Consumer Policy. With the present budget crisis, it is not an easy task, but with the assistance of PHARE grant and twinning agreements with partners from the EU (France, Finland, Germany, Austria), most objectives are successfully reached. Those funds, earmarked mostly for technical equipment and training of individuals who deal with consumer protection, allow us to clearly improve the standards of that protection. Co-operation in that field will be pursued in 2003.

The current status of legislative works described above and new organizational solutions implemented, as well as measures taken by both the Office for Competition and Consumer Protection and other organizations established to protect consumers' rights confirm that the guidelines of the Government's consumer policy for years 2002-2003 are being pursued. Judging the progress of the aforementioned guidelines executed so far, it can be declared that they are pursued as per the time schedule adopted.

It should be emphasized that joint actions of numerous central and local administrative bodies, consumer organizations and entrepreneurs themselves, to a much greater extent than so far, is necessary to reach the objective of the consumer policy and to fully implement its tasks.

Cooperation with organizations representing entrepreneurs' interests in order to popularize best market practices should become a major element of the consumer policy. As an example, let us quote such actions as working out voluntary codes of professional conduct in selected lines of business or sectors of the economy, founding institutions to settle consumer disputes etc. The President of the Office for Competition and Consumer Protection, as a body that coordinates the pro-consumer actions in their entirety, shall initiate and support any actions aimed at working out such methods of dialog and cooperation with entrepreneurs. The EU "Green Book" also suggests pursuing such objectives. It is worth noting that entrepreneurs more and more often declare their understanding and need for such actions, seeing them as a major factor for improving the competitiveness.

More information:

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