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European Initiatives in the Czech Business Environment and Consumer Protection

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Abstract

The paper deals with the consumer position in relations with entrepreneurs, particularly on legal protection of consumer against business practices of entrepreneurs. In the opposite view, it should also be clear what level of consumer protection entrepreneurs should expect in the Czech Republic. The main purpose of the paper is to determine whether the legal regulation in EU legislation (in directives and regulations) and national regulation in Czech legislation (public and private) ensure adequate consumer protection against unfair business practices of entrepreneurs in connection with their business in the Czech Republic and what procedures are banned to entrepreneurs in relations with consumers. Selected examples from practice demonstrate how national authorities could intervene in cases of violation of rules adopted for the purpose of consumer protection in the EU legislation and in national legislation and how specifically is decided about these violations in the Czech Republic. In the conclusion of paper, the authors summarize their findings from examined issue of consumer protection against unfair business practices under public and private regulation in the Czech Republic and they also offer drafts de lege ferenda.

Keywords: unfair business practices, consumer protection, unfair competition, entrepreneur, competitor, legal regulation in EU legislation, legal regulation in the Czech Republic

1. Introduction

Consumer protection may be perceived as an element foreign to the business environment, because it runs counter with the basic principle of its function, the principle of individual autonomy. This principle should enable all participants in market relations to form them based on their own free will. However, if freedom of a legal action is supposed to be true freedom, it is then essential that the free possibility of deciding on personal matters is guaranteed in the same measure to all acting entities. The principle of freedom here is combined with the principle of equality, and equality determines freedom.¹ From life's everyday reality however, we clearly see that the principle of freedom of action clashes with factual possibilities, which individual persons have and which are very often also given by the fact of whether they hold the position of entrepreneurs or consumers. For entrepreneurs, one can expect not only material knowledge and experience brought to bear in their business field, but also a higher level of knowledge and experience (e.g. legal, organizational, marketing) arising from the fact that entrepreneurs fluctuate in a competitive environment requiring such knowledge and experience, and motivating every person wanting to succeed in competition to gain such knowledge and experience. On the contrary, consumers are characterized by information deficits, an imbalance of negotiating power and the incommensurability of financial resources, so it is not possible to expect that they would take up an equal position alongside entrepreneurs.² In such cases of clear inequality of initial positions, it is not possible to be satisfied with the fact that both parties will be provided the same identical legal instruments for regulating their position. Such an approach maintains only a semblance of formal equality, but in reality, the inequality of the initial positions also causes inequality of the result.³ The only remedy to this situation is strengthening the weaker party through various legal instruments, which coordinate inequality and provide the weaker party with the necessary protection.

The inequality of the position of entrepreneurs and consumers is not typical only for the Czech market, but even the internal market of the European Union must react to it, if its characteristic in Art. 26 of the Treaty of the Functioning of the European Union is to be fulfilled – the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties – and if it is to open for free marketing of products of all Member States. On a European scale, the objective is balancing of positions of all participants on the market, especially achieving legal certainty, because the differences that concern the function of the market and application of internal state regulations of Member States, e.g. in the area of marketing, advertising or other forms of sales support, cause uncertainty, and uncertainty increases costs to entrepreneurs when using the internal market and evokes mistrust among consumers. If there existed a unified legal framework, if basic legal terms were defined and barriers removed arising from scattered regulations with varying quality of demands on entrepreneurs and

¹ HURDÍK, J. and LAVICKÝ, P. 2010. Systém zásad soukromého práva. Brno: Masarykova univerzita, spisy právnické fakulty, řada teoretická, sv. 367 (System of Principles of Civil Law. Brno: Masaryk University, scientific treatise, theoretical series, vol. 367), p. 89

² The necessity for protecting the consumer from this inequality is derived from case law of the Supreme Court of the CR e.g. in its decision on case no. 33 Cdo 1201/2012 – available at www.nsoud.cz

³ HURDÍK, J. and LAVICKÝ, P. 2010. Systém zásad soukromého práva. Brno: Masarykova univerzita, spisy právnické fakulty, řada teoretická, sv. 367 (System of Principles of Civil Law. Brno: Masaryk University, scientific treatise, theoretical series, vol. 367), p. 120

consumers, a united common level of consumer protection would also be created, which would provide rational balancing of positions of entrepreneurs and consumers alike. European law fulfills this task by means of directives, creating general principles, which Member States are obliged to incorporate into their national legislation. This means that a certain general standard would thus be formed, common for all Member States, whereas it is left to them separately to select a form and the means by which the standard will be achieved. The customs and cultural level of each Member State would thereby be respected.

Over a thousand directives have been adopted in the EU, the aim of which is to balance deficits naturally accompanying the position of the consumer. The limited space of this paper does not allow for going into more detail on them even in their basic features. The authors have therefore selected only one of these directives, Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market,⁴ on which the effects of directives will be demonstrated. Therefore, the aim of this paper is to verify how the Unfair Commercial Practices Directive was implemented into Czech law, and whether implementation has contributed to increasing the level of consumer protection and to higher legal certainty for enterprising. To achieve the stated aim, methods of analysis of the legal regulation in private and public law regulations will be used, along with an analysis of the practice of Czech courts.

2. On legislation regulating consumer protection from unfair commercial practises in EU and Czech law

2.1. Private law aspects

Attention began focusing on consumer protection from unfair commercial practices on the European level in the 1980s, when the Council adopted a Directive relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (84/450/EEC), which was amended in 1997 by Directive 97/55/EC of European Parliament and of the Council amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising. In further development, both directive were repealed and replaced by the new Directive 2006/114/EC of the European Parliament and of the Council concerning misleading and comparative advertising. While the aim of the directive on misleading advertising and its amendment was protection of entrepreneurs and consumers and the general public, the new directive only concerned protection of traders (B2B relations) against misleading advertising and its unfair effects, and determined conditions under which comparative advertising is allowed. By this directive, separation occurred of the regulation of misleading and comparative advertising when enterprising from its effect on consumers, and the directive no longer regulates consumer protection directly.

⁴ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council

A newly adopted directive leads to ensuring a common level of consumer protection, namely Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (hereinafter the “Directive”), which attempts to further specify and deepen the standards of consumer protection, which was achieved in the 1980s. This was to occur by convergence of legal regulations concerning unfair commercial practices damaging the economic interests of consumers. The directive obliges Member States to adopt common standards of consumer protection for the case of fundamental consequences of unfair commercial practices of entrepreneurs (in B2C relations) and indirectly, beside consumers, it thus also protects the economic interests of honest competitors from those not upholding the rules of the directive. In this way, it guarantees economic competition in areas that it coordinates.

The directive regulates unfair commercial practices, which directly influence the decisions of consumers on commercial transactions concerning products (products or services), as determined in its Article 5: Unfair commercial practices shall be prohibited. A commercial practice shall be unfair if: (a) it is contrary to the requirements of professional diligence and (b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers. Commercial practices are unfair mainly if they are a) misleading in the wording of Articles 6 and 7 or b) aggressive in the wording of articles 8 and 9. For ensuring the level of legal certainty, the directive determines commercial practices, which are unfair under any and all circumstances (so-called black list – Annex I of the Directive⁵). The directive obliges Member States to determine effective, reasonable and discouraging penalties for breaching provisions of this Directive, and secure their enforceability.

The directive is based on the concept of the average consumer, who has sufficient information and is reasonably attentive and careful with regard to social, cultural and language factors.⁶ The term average consumer is not a statistical term. To determine the typical reaction of the average consumer in the given case, domestic courts and authorities must start from their own judgment while taking into account the case law of the EU Court of Justice.⁷

⁵ Annex I of the Directive (so-called black list) provides an exhaustive list of commercial practices considered unfair under any and all circumstances. Only these commercial practices can be considered unfair without it being necessary to perform assessment of individual cases under Article 5 to 9. This unified list of unfair commercial practices is valid in all Member States, and can only be changed by revision to this Directive.

⁶ The Directive however contains such provisions whose purpose is to avoid exploitation of consumers, who by their nature are more vulnerable to unfair commercial practices (e.g. children); it is desirable for the impact of such commercial practices to be judged from the viewpoint of the average member of the given group. It is therefore appropriate to include in the list of practices, which are unfair in any and all circumstances, a provision that protects children from direct luring towards making a purchase.

⁷ In terms of the so-called average consumer who may be misled by advertising, the EU Court of Justice ruled in the case C-122/10 (of 12 May 2011), in which it dealt with the question of whether in advertising, it suffices to list only the lowest price (a Swedish travel agency printed in a Swedish newspaper an advertisement for flights from Stockholm to New York for just CZK 7,820; at the far bottom, to the left of the advertisement, a link to Vingreflex.se was found with a telephone number). Leaving out the method of calculating the final price however did not prevent the consumer from making an informative decision about the purchase. The advertisement did contain only basic features; nevertheless, the seller referred to its Website in the remainder. The EU Court of Justice therefore deduced that the fact that only the initial price is listed in the advertisement cannot be considered a misleading omission of information about the character of the flight or its price.

Adoption of the directive preceded issue of Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws⁸, which brought to the EC legal system a system of unified control of the rules of the EC internal market and free movement of goods. Unified control of the internal market of the Community is founded upon information obligations of oversight authorities⁹ on each illegal act inside the Community, and is to ensure protection of consumers from breaches of the law.¹⁰

Though implementation of the directive on unfair commercial practices was performed in the Czech Republic mainly by public regulation – by Act No. 634/1992 Coll., on Consumer Protection¹¹, consumer protection is also aided by regulation of unfair competition anchored in the basic civil code – Act No. 89/2012 Coll., Civil Code (hereinafter "CC"), specifically in the prov. of Sec 2976 et seq.¹²

The regulation of unfair competition stems from the definition of the consumer in Sec 419 CC, according to which the consumer is any person, who concludes an agreement or otherwise negotiates with an entrepreneur outside his commercial activities or outside the actual performance of his occupation. In relation to unfair commercial practices and their use against consumers, the regulation unfair competition then leans on its basic provision – the general clause of unfair competition. If certain behavior of the competitor cumulatively fulfills three basic conditions of the general clause, it can be considered unfair, regardless of whether it also fulfills conditions of certain specific merits, which would indicate that unfair commercial practices have occurred (e.g. misleading advertising, misleading labeling or designation of goods or a service, inadmissible comparative advertising, evoking the danger of confusion, etc.). It is entirely possible to agree with the statement of P. Hajn that upon interpreting and applying the general clause and further provisions on unfair competition, also European directives must be taken into consideration that directly or closely involve economic competition and consumer protection. In terms of the general clause and judicial merits of unfair competition, Directive 2005/29/EC is especially important. Knowledge of the directive enables parties to a competition dispute to develop argumentation for the chosen legal remedy. It could also speed up decisions of unfair competition disputes. That is, if this concerns actions listed in the so-called black list, it is possible to qualify it as unfair under any and all circumstances. It then suffices to prove the existence of merits corresponding to one of the commercial practices listed in the black list, with no need to address other circumstances. For many other contentious issues, it will then

⁸ Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws

⁹ "When a competent authority becomes aware of an intra-Community infringement, or reasonably suspects that such an infringement may occur, it shall notify the competent authorities of other Member States and the Commission, supplying all necessary information, without delay" (see Art. 7 of the Directive)

¹⁰ The most meaningful and well-functioning unified control of the internal market is RASFF = Rapid Alert System for Food and Feed. Through RASFF, information ascertained in one Member State is effectively shared to all oversight authorities in other states, so measures could be adopted across the entire EC, and so the problem (harmfulness of food or feed) could be quickly resolved across the entire EC.

¹¹ An interpretation of implementation is provided in part 2.2.

¹² Adoption of the entire regulation of unfair competition from the Commercial Code (prov. of Sec 44 to 55) into prov. of Sec 2976 to 2989 of the Civil Code occurred, effective 1.1.2014 (upon recodification of private law in the CR; the Commercial Code was repealed). In the concept of unfair competition under Sec 2976 et seq. of the Civil Code, even further unification of Czech legislation with EC directives occurred, e.g. for misleading advertising, by completing the merits of intrusive harassment, etc.

depend on the judge's discretion on whether a certain action strongly or weakly influenced the consumer's ability to make a qualified and economic decision.¹³

As an example of decision-making by Czech courts when applying the general clause of unfair competition and individual specific merits, we hereby list the following cases: In its decision on case no. 23 Cdo 5184/2009 the Supreme Court of the Czech Republic deduces that competition on the market allows for a certain measure of aggressiveness; nevertheless, it is not possible to perform an action that would offer consumers products with the aid of misleading advertising or misleading packaging and labeling of products. The illegal (unfair) procedure of the defendant in the given case was not deduced by the court from how the trademarks read (the plaintiff had the trademark "Májka" for its pastes, and the defendant had the trademark "SELIKO MÁJKRÉM"), because these trademarks could be considered sufficiently dissimilar. The unfair action of the defendant arose from the method of using the defendant's trademark on products that were similar to the plaintiff's products in terms of graphics, shape, color and word arrangement. Not even the average consumer who bases his information on product appearance and label could distinguish the meat creams offered by the defendant from the original products of the plaintiff. The court judged the action to be unfair for its fulfillment of all conditions of the general clause of unfair competition.

In relation to the consumer, misleading advertising is a very frequent unfair practice of businesses. The Municipal Court in Prague in its decision on case no. 9 Ca 66/2003 deduced that for fulfillment of misleading advertising, it suffices to spread information that could cause a misleading impression (the adjudged case involved advertising electrical appliances for an exceptionally low price, when in reality, the goods listed in the advertisement were not available in the store). It therefore is not decisive whether or not the plaintiff has benefit from the promoted sale, or whether or not customers attracted by the advertisement buy a different appliance while visiting the store.

Another unfair action often affecting the consumer is misleading labeling of goods or services. In its decision on case no. 23 Cdo 2960/2012, the Supreme Court of the Czech Republic heard a case of using the defendant's designation of an "execution office". Here, the court deduced that upon maintaining a reasonable level of attention of the average consumer, it is possible to interpret that designation concerns performance of the function of executor authorized by the execution office. Therefore, a different person is not permitted to use a similar designation. The company being sued at the time of conclusion of an agreement concerning consequent contentious proceedings operated under the business name "Exekuční kancelář Praha s.r.o." [Execution Office Prague, Ltd]. The actions of the defendant, which at the time of the hearing appeared under the business name "Vymáhání a odkup pohledávek s.r.o." [Extraction and Purchase of Receivables, Ltd], against the plaintiff – client (consumer) were determined to be unfair.

As is apparent from the aforementioned facts, the viewpoint of the so-called average consumer is fundamental for the court's decision. From the decision of the Supreme Court of the Czech Republic on case no. 32 Odo 229/2006, one may deduce that the average consumer is a natural person having sufficient information and is reasonably attentive and cautious. Though legislation provides protection to the consumer, it is necessary to require of the consumer certain control efforts for ascertaining what goods

¹³ For more, see HAJN, P., ŠVESTKA, J., DVOŘÁK, J., FIALA, J. et al. 2014. Občanský zákoník. Komentář. Sv. VI. Praha: Wolters Kluwer, a. s. (Civil Code. Commentary. Volume VI. Prague: Wolters Kluwer, a. s.), p. 1171–1173

he is actually buying,¹⁴ or verification of conditions under which he may obtain the goods, or an overview of the offer of other competitors.

2.2. Public law aspects

Implementation of the directive on unfair commercial practices was performed in the Czech Republic mainly by Act No. 634/1992 Coll., on Consumer Protection (hereinafter “CPA”), by the prov. of Sec 4, Sec 5, Sec 5a and Appendices no. 1 and 2.¹⁵ Under Sec 4 of the CPA, “the commercial practice is unfair if entrepreneur’s conduct towards the consumer is contrary to the requirements of professional diligence and is capable of significantly influencing that consumer’s decision in such a way that the consumer may make a business decision that he would not otherwise have made. Use of unfair commercial practices when offering or selling products, or when offering or providing services or rights, is prohibited. Especially unfair are misleading and aggressive commercial practices.” Further public regulations affecting the area of unfair commercial practices, but also unfair competition, include e.g. the Act on Advertisement Regulation, the Act on Radio and Television Broadcasting Operation, and the Criminal Code.¹⁶

As opposed to the private regulation of unfair competition, in the Civil Code, legal regulation of unfair commercial practices in the Consumer Protection Act does not relate to all unfair commercial practices in general, but only in relations of “business – consumer” (B2C). In the wording of the provisions of Sec 2(1)(a) of the CPA, a consumer is considered a natural person not acting within his commercial activity or within the actual performance of his occupation. For the resulting level of consumer protection however, its definition is not important, but rather the interpretation of the term average consumer. This term is used when applying private and public regulation, but it is not definitively defined either in Czech or European law, and its content is mainly influenced by secondary legal regulations of the European Union, the case law of the EU Court of Justice and the practice of national courts of individual EU Member States. The interpretation of this term differs in individual Member States, which may et alia also be reflected in the quality of protection of especially vulnerable groups of consumers. Protection of a so-called “vulnerable consumer” is reflected in the CR in the provisions of Sec 4(2) of the CPA. In the wording of this provision, unfairness of commercial practices is assessed, if it is aimed at consumers who, due to mental or physical weakness or to age, are especially vulnerable from the viewpoint of the average member of this group. This however does not affect ordinary exaggeration advertising.

For a certain action to qualify as an unfair commercial practice, the conditions must be cumulatively fulfilled as stated in Sec 4 of the CPA. Use of unfair commercial practices when offering or selling products, and when offering or providing services or rights, is then exclusively prohibited (compare provisions of Sec 4 of the CPA). Meanwhile,

¹⁴ ONDREJOVÁ, D. 2014. Nekalá soutěž v novém občanském zákoníku. Komentář. Praha: C. H. Beck (Unfair Competition in New Civile Code. Commentary. Prague: C. H. Beck), p. 78.

¹⁵ In Sec 4 of the Consumer Protection Act, unfair commercial practices are generally defined, Sec 5 regulates misleading commercial practices, and Sec 5a regulates aggressive commercial practices. Appendix no. 1 is a list of misleading commercial practices (letters a) to f), Appendix no. 2 is a list of aggressive commercial practices (letters a to h) – both appendices can be considered to be a so-called black list of unfair commercial practices (i.e. commercial practices unfair under any and all circumstances), a so-called black list of the directive has now been established.

¹⁶ Act No. 40/1995 Coll., on Advertising Regulation, Act No. 231/2001 Coll., on Radio and Television Broadcasting Operation, Act No. 40/2009 Coll. Criminal Code.

especially misleading and aggressive commercial practices are labeled unfair. In its appendices, the CPA exhaustively defines individual unfair commercial practices (so-called black list – Appendix no. 1 defines misleading commercial practices, Appendix no. 2 defines aggressive commercial practices).

As opposed to breach of private regulations, breach of public regulations is pursued by the relevant authority arising from its official capacity. Of course, this need not mean that every unfair commercial practice will be ascertained by oversight authorities and legally contained in a relevant manner. Oversight of upholding obligations determined by the CPA is rather organizationally scattered. Meanwhile, certain powers of control authorities also overlap. This does not contribute to the expected transparency of the legislation, and reflects back negatively on the level of consumer protection. In terms of public consumer protection from unfair commercial practices, the Czech Trade Inspection Authority (hereinafter “CTIA”) has so-called residual powers, not only in the wording of the CPA, but also in certain other legal regulations. The State Agriculture and Food Inspection Authority (hereinafter “SAFI”) performs oversight over the agricultural, food and tobacco product sectors. Within the framework of their organizational arrangements, these oversight authorities work with public health protection authorities (in terms of risks to human health), with veterinary administration authorities, and with trade, customs and other agencies.¹⁷

The powers of the CTIA in relation to unfair commercial practices do not just arise from the CPA, but are affiliated with a series of other public regulations, mainly Act No. 102/2001 Coll., on General Product Safety, and Act No. 22/1997 Coll., on Technical Requirements for Products. In the wording of the mentioned legislation, mainly bearing liability for putting a safe product on the market are the person who produced the product, the importer of a product from a country outside the EU and further persons in the supplier chain having a demonstrable influence on the product properties. These persons are also liable for declaring conformity of the determined products with technical requirements (this concerns CE labeling save a few exceptions). If this declaration is contrary to the determined requirements, this may concern fulfillment of the merits of a misleading commercial practice, considered *et alia*s the declaration that the product or provided service has been granted approval, confirmation or permission, though this is not the case, or such declaration is not in line with the conditions of approval, confirmation or permission (compare letter c) of Appendix no. 1 of the CPA). Also concurring that the consumer cannot always rely on all labels on a product or its packaging is *et alia*s the comprehensive database of warning information systems on the appearance of dangerous products within EU Member States. This mainly concerns the systems RAPEX (Rapid Alert System for Non-Food), and in case of foods and feed, RASFF (Rapid Alert System for Food and Feed).¹⁸

¹⁷ Besides the CTIA and SAFI, other oversight authorities according to Sec 23 of the CPA include: regional public health offices, the State Veterinary Administration, regional veterinary administrations and the Prague veterinary administration, municipal trade licensing authorities and customs offices.

¹⁸ The RASFF system was created based on Article 50 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, by which general principles and requirements of food law are determined, the European Office for Food Safety is established, and procedures concerning foods safety are determined.

3. Discussion and Conclusions

Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market was implemented in the Czech Republic by a public law regulation – the Consumer Protection Act. Thus, the aim of the Directive to create a common standard for consumer protection was undoubtedly fulfilled, whereby the CPA introduced a unified general ban on such commercial practices that are unfair (especially misleading and aggressive) and do not allow consumers to exercise their economic interests.¹⁹

All consumers are protected; nevertheless, even Czech law is based on the aspect of the average consumer. The CPA stipulates that the same consumers will develop certain activity to protect their interests, while also simplifying the position of entrepreneurs, because it protects them from negligent, reckless or unpredictable behaviour of consumers, and does not force them to approach every consumer individually. Meanwhile however, in the category of vulnerable consumers, the CPA respects the fact that certain especially threatened groups of consumers must be protected more stringently. The benefit of the public regulation is found in the control mechanisms using state enforcement in activities of state authorities, which act out of their official obligation and have punitive authority in the form of the right to issue fines. Public law thus ensures protection of values generally mutual for both the consumer and the entrepreneur, especially legal certainty of trade.

Private regulation protects specific affected persons through unfair competition, because it examines whether features of the general clause of unfair competition have been fulfilled in a specific case. If this is not the case, it does not concern unfair competition, though external features of a certain action do correspond to the definition of unfair commercial practices in the Consumer Protection Act. Meanwhile, it leaves it up to the initiative of damaged persons whether they turn to the court and exercise their rights, or they remain inactive. Thus, the system of public regulation is augmented by regulation of consumer protection in individual cases, in which it is possible to take into account special features of the ascertained situation, and react to specific personality features of the affected persons also on specific circumstances.

Both systems of legal regulation in effect support and complement each other, but both also run into their own limitations. The problem of public regulation is especially the significant number of state control authorities and the fragmentation of their powers. Control mechanisms are not transparent, control authorities in certain cases are only limited and the whole loses its effectiveness.

As opposed to this, private regulation is limited by the willingness of affected persons – of consumers – to exercise their right in judicial proceedings. Appearing here is the efficiency of the judicial system and simplicity of the decision-making practice of courts. The effectiveness of the regulation diminishes if judicial proceedings do not take place

¹⁹ There are certain clear differences between the wording of Art. 5 of Directive 2005/29/EC and the wording of Sec 4 of the CPA. According to Article 5 of the Directive, the term “unfair commercial practice” is understood as such a commercial practice that is contrary to requirements of due professional care (according to the CPA “professional care requirements”) and which materially distorts with or is capable of materially distorting (according to the CPA “capable of materially influencing”) the economic behavior of the average consumer, who is exposed to its effect or to which it is determined (according to the CPA “decision-making of the consumer on a business decision that he would not otherwise have made”). In our opinion however, these differences are inconsequential.

quickly, and the case ceases to be a current concern for the plaintiff, and if identical situations are judged differently.

Both systems however are important for both the entrepreneur and the consumer. Though it would seem that both groups stand on opposite sides and the advantage for one group is at the same time a disadvantage for the other group, we believe that their economic interest is identical to gain benefit from products offered on the market. A unified standard of consumer protection then not only balances the information deficits of consumers and their general position towards entrepreneurs, but it also translates to a benefit for the entrepreneur, because it makes business relations transparent and protects the entrepreneur from unfair competition of those not abiding by the rules. Although legislation, its interpretation and application will further develop, we consider the standards of consumer protection achieved by implementation of the European directive on unfair commercial practices to be satisfactory and beneficial not only for consumers, but also for supporting a favourable business climate.

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