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Unfair commercial practices in the Eastern and Central European Member States of the EU

1. Introduction

In 2005 the 2005/29/EC Directive on the unfair commercial practices (hereafter: UCPD) was born. The Member States had to do the implementation till the 12th of June 2007, and use the new rules after the 12th of December 2007. This paper will show the rules before and after the implementation and the institutions which are in connection with the practices. In the end there will be cases and data from the practices of the unfair commercial practices. The scope of the paper is the group of the Eastern and the Central European Member States of the European Union, so: the Czech Republic, Poland, Hungary, Romania, the Slovak Republic and the Republic of Slovenia.

2. Before the implementation of the UCPD

Before implementing the UCPD, majority of the countries had two rules to protect consumers and competitors against commercial unfairness.

In the Czech and the Slovak Republic these were the Commercial Codes (Czech Republic: No. 513/1991, Slovak Republic: No. 513/1991) and the Acts on Consumer Protection (Czech Republic: No. 634/1992, Slovak Republic: No. 634/1992) .

In the Republic of Slovenia there were the Consumer Protection Act (No. 98/04) and the Code of Obligations (No. 83/2001). Hungary had the Competition Act of 1996 (Act LVII of 1996) and the Act on Consumer Protection of 1997 (Act CLV of 1997).

Poland and Romania were exceptions because Poland had only the Act on Combating Unfair Competition of 1993 (amended in 2003, No. 153), but Romania had four – true, one of them wasn't act -: Law No. 12/1990 regarding the protection against unlawful commercial activities; the Government Ordinance No. 21/1992 on the consumers' protection; Law No. 193/2000 on unfair terms in contracts between traders and consumers;¹ and the Law No. 296/2004, the Consumption Code.²

2.1. Relating provisions and their subjects

Naturally, not just the laws - mentioned above - dealt with commercial unfairness, there were others, connected indirectly with this unfairness. The fifth chapter of the Czech Commercial Code referred to the economic competition, like the participation in the economic competition, the unfair competition and the protection against unfair competition. The Czech Act on Consumer Protection dealt with the unfair competitive conducts and their administrative sanctions. The Act on regulating of advertising (No. 40/1995) and the Act on radio and television broadcasting (No. 231/2001) had provisions too.³

In Hungary the Civil Code (Act IV of 1959) contained basic provisions on contract, general contractual conditions, false completion, guaranty and warranty. The Act on Consumer Protection included provisions in connection with the rights and interests of the consumers, like the protection of life, health and safety.

The Competition Act contained provisions on unfair competition conducts. The Advertising Act (Act LVIII of 1997) contained general provisions on – for example - comparative advertising.⁴

¹ Professor Dr Cees van Dam - Erika Budaite BA in Law (coordinators): *Unfair Commercial Practices* – General report, British Institute of International and Comparative Law, London, 2005 p. 16.

² *Consumer protection* In: Doing business in Romania, 7th Edition – 2008 p. 163.

<http://www.musat.ro/pdf/capitoleeng2009/13.Consumer%20Protection.pdf> [2011.02.27.]

³ JUDr. Mag. iur. Michal Malacka, Ph. D.: *Czech Republic*. In: *Unfair Commercial Practices – National reports* (Professor Dr Cees van Dam - Erika Budaite BA in Law (coordinators)), British Institute of International and Comparative Law, London, 2006 p. 34., 35.

⁴ Zsuzsanna Kajdine Suhajda – Szabolcs Lendvai: *Hungary*. In: *Unfair Commercial Practices – National reports* (Professor Dr Cees van Dam - Erika Budaite BA in Law (coordinators)), British Institute of International and Comparative Law, London, 2006 p. 76.

In Poland the Act on the Protection of Competition and Consumers of 2003 protected the interests of traders and consumers and contained a list in which there were examples of practices which infringed the collective interests of consumers.

There was the Act on certain consumers' rights and the liability for damage caused by an unsafe product of 2000 which has implemented the Unfair Contract Terms Directive (93/13/EEC). The Act on Combating Unfair Competition regulated acts on unfair competition, and the misleading and aggressive conducts of the traders.⁵

Because they were in an unit till 1993, the rules of the Commercial Code of the Slovak Republic were the same as in the Czech Republic.⁶

In the Republic of Slovenia the Competition Act (No.18/93) main aim was to ensure fairness between competitors, so the consumers were protected only in an indirect way. The Consumer Protection Act (No. 98/04) contained specific protection in respect of certain unfair commercial practices, misleading and false advertising.

Article 12 of the Code of Obligations provided that when determining the standard of behaviour and actions which businesses are required to comply with, their commercial dealings, business customs and practices shall be taken into account.

There were acts in connection with specific areas, like the Energy Act (No. 26/2005) which provided specific consumer protection in the energy sector or the Electronic Communications Act (No. 43/04) which contained rules governing the use of electronic communication in business – consumer transactions.⁷

In Romania the Ordinance No. 58/2000 amended the Government Ordinance No. 21/1992 on the consumers' protection. In the latter one some definitions were amended, like the consumer, the product, the seller, etc.. and some sections were amended and completed, like the obligations of the economic agents, and the obligation in connection with information.⁸

⁵ Dr. Magdalena Sengayen: *Poland*. In: Unfair Commercial Practices – National reports (Professor Dr Cees van Dam - Erika Budaite BA in Law (coordinators)), British Institute of International and Comparative Law, London, 2006 p. 174. – 176.

⁶ JUDr. Mag. iur. Michal Malacka, Ph. D.: *Slovak Republic*. In: Unfair Commercial Practices – National reports (Professor Dr Cees van Dam - Erika Budaite BA in Law (coordinators)), British Institute of International and Comparative Law, London, 2006 p. 196.

⁷ Ana Stanič: *Slovenia*. In: Unfair Commercial Practices – National reports (Professor Dr Cees van Dam - Erika Budaite BA in Law (coordinators)), British Institute of International and Comparative Law, London, 2006 p. 226., 227.

⁸ Ordinance nr.58/2000 to modify and complete the Government Ordinance nr. 21/1992 on consumer protection <http://www.aneir-cpce.ro/chapter5/laws/1582000.htm> [2011.03.26.]

2.2. Definitions of the consumer

At present, the UCPD determines the consumer as „any natural person who, in commercial practices covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession”.⁹

In the Czech Republic consumers were both individuals and corporations who buy goods and exploit services (Act on Consumer Protection) or who conclude or fulfil a contract (Civil Code, No. 40/1964) and don't perform these activities within or towards business.

In the Slovak Republic the definition of the consumer was essentially the same as in the Czech Republic.

In Hungary – according to the Competition Act – the definition of the consumer was: a person who buys, orders, receives or uses goods – for purposes other than the business or professional activity he engages in – or to whose benefit a service is provided, furthermore, who is the target person of any information or offer on goods or services.

In the Republic of Slovenia the definition of the consumer was very similar to the one in the UCPD: a natural person who is purchasing or using goods or services for purposes which are outside his professional or business activity.

In Poland the Civil Code said that the consumer is who concludes a legal act which is not directly related to his/her economic or professional activity.¹⁰

In Romania the definition of the consumer from the Government Ordinance No. 21/1992 on the consumers' protection was: „physical person who buys, gets, uses or consumes, products or services outside his trade or profession.”¹¹

2.3. General clauses

The Czech Republic, the Slovak Republic, Hungary and Poland – according to the states of 2006 - had general provisions which were used to commercial practices between businesses (B2B = businesses to businesses relation) and between businesses and consumers (B2C =

⁹ Directive 2005/29/EC of the European Parliament and of the Council (UCPD) Chapter 1 Article 2 (a) <http://www.google.hu/url?sa=t&source=web&cd=1&ved=0CBcQFjAA&url=http%3A%2F%2Feur-lex.europa.eu%2FLEXUriServ%2FLEXUriServ.do%3Furi%3DOJ%3AL%3A2005%3A149%3A0022%3A0039%3AEN%3APDF&rct=j&q=Directive%202005%2F29%2FEC%20of%20the%20European%20Parliament%20and%20of%20the%20Council&ei=H2ZyTYvKPIz2sgbo7JmEDg&usg=AFQjCNFHU90jXrssJxmRvXXpkJaIJCc9Ig&cad=rja> [2011.03.06.]

¹⁰ Ld van Dam - Budaite i. m. p. 33. – 36.

¹¹ See Ordinance nr.58/2000 (8. footnote) Article 2

businesses to consumers, like in the UCPD) too. In the Republic of Slovenia there were a clause to protect consumers, and another one to protect competitors.¹²

The general clauses in the Czech and the Slovak Republic have referred to the bonos mores of the competition, in Hungary to the business integrity, in Poland to the principle of good faith and in the Republic of Slovenia to good business practices.¹³

The Czech clause was in the Commercial Code and it was applicable if: 1. the conduct was committed in an economic competition 2. violated bonos mores (which meant the lack of morality) 3. it was capable of harming other competitors and consumers.¹⁴

Because they were in an unit till 1993, the clause of the Slovak Republic was the same as in the Czech Republic.¹⁵

The Hungarian clause was in the Competition Act which has extraterritorial effect which means that the rules - so the clause too - are applicable in the case when the effect of a company's marketing conduct – which has been done abroad – can prevail in Hungary.

The Constitution of the Republic of Poland of 1997 contained Article 76 which said that “public authorities protect consumers, users and tenants from activities jeopardizing their health, privacy and safety and from unfair commercial practices”. Article 81 said furthermore that the 76 one only be ensured within the limits set by acts of the Parliament, but the Article 76 can't constitute a basis for abstract control of the acts of the Parliament and it can't be a direct legal basis for liability of public authorities or set guidelines concerning their legislative and administrative activities.¹⁶

As it was mentioned above, in the Republic of Slovenia there were a clause to protect consumers, and another one to protect competitors, so there wasn't a general clause on unfair commercial practices, but the Article 13 of the Competition Act defined unfair competition as “an act which is contrary to good business practices and causes or is likely to cause damage to other participants in the market”. The third paragraph of the Article 13 contained a list of commercial practices which in all circumstances are regarded as constituting unfair competition, including:

- 1.) advertising or offer of goods and products which is misleading
- 2.) advertising or offering of goods and services which denigrates another company on an ethnic, racial, political or religious basis

¹² Ld van Dam – Budaite i. m p. 27.

¹³ Ld van Dam – Budaite i. m. p. 28.

¹⁴ Ld Malacka i. m. p. 36.

¹⁵ Ld Malacka *Slovak Republic* i. m. p. 198.

¹⁶ Ld Sengayen i. m. p. 173., 174.

- 3.) provision of information which damages or could cause damage to the reputation or business of another company.¹⁷

3. Implementation

3.1. Possible problems

In 2005 – according to a report of the British Institute of International and Comparative Law – it seems that the Member States will fight with some problems in connection with the implementation.

The Czech Republic the main problem was that there were numerous norms which dealt with – directly or indirectly – the unfairness in competition, so the challenge was to harmonize them with the new rules from the UCPD.

The problem was the same in the Slovak Republic. Furthermore, it seemed hard to transpose new institutions which haven't existed before, like the aggressive practices.

Mainly the problem was the same in the Republic of Slovenia, there were numerous laws, regulations and decrees. Another challenge was to ensure a coherent system of sanctions and it would be more difficult if the legislator wouldn't create a new act, but choose an other way to implement. In fact, a new act was born in 2007. An implementation problem would be that the Directive provides that only the information required in Community law is considered as material and that laws of Member States must be harmonised. But the Slovenian law prescribed more stringent information requirements in respect of certain goods (for example, electrical goods) or sectors of the economy, it would seem that these laws would also have to be amended even though they were introduced specifically to protect the health and safety of consumers.

In Hungary the problem was the definition of the consumer, because the average consumer was determined as who acts circumspectly and reasonably in a generally expected manner. As it was mentioned above the definition of the consumer is different in the UCPD.

The definition of the consumer was the problem too in Poland, because the definition was broader than the one in the UCPD. Another problem was that the justice system didn't seem to be able to deal swiftly with the cases in connection with the consumers.¹⁸

¹⁷ Ld Stanič i. m. p. 227.

¹⁸ Ld van Dam - Budaite i. m. p. 73. – 75.

3.2. Implementation techniques

In 2005 these countries had two types of plans to implement the UCPD. The Czech Republic, Hungary, Poland, the Slovak Republic wanted to implement into a general code, like the Civil or the Commercial Code or to the Act on Consumer Protection. The Republic of Slovenia had another plan: to enact a specific act.¹⁹

Later, there were six methods for the Member States to implement the UCPD:

- 1.) A new act has been born
- 2.) The legislator has amended the consumer protection act
- 3.) The legislator has amended the law on the unfair competition
- 4.) The amendment of the particular acts which regulate the market practices
- 5.) Implementation among the rules of the civil law and the rules of the consumer protection
- 6.) A new act has been born and – at the same time – the amendment of the act on the advertisements.²⁰

Hungary, Poland, the Republic of Slovenia, Romania have chosen the first, the Czech and the Slovak Republic has chosen the second alternative.

4. The present regulations

The Member States had to implement the rules from the UCPD without changes, so the texts of the implementing laws (hereafter: UCP laws) don't differ from the text of the directive.

So, the following sections will show only the specialities of the UCP laws.

4.1. The UCP laws – the Czech Republic

In the Czech Republic in 2008 the No. 36/2008 Coll. Act amended the No. 634/1992 Coll. Act on Consumer Protection (hereafter: CPA) and implemented the UCPD to it.

The new legislation contains the followings:²¹

- 1) new definitions of unfair, misleading and aggressive commercial practices

¹⁹ Ld van Dam - Budaite i. m. p. 77.

²⁰ *Gömöri Zoltán: A tisztességtelen kereskedelmi gyakorlatokról szóló Irányelv átültetése a tagállamokban és hazánkban p. 12.*

<http://www.gvh.hu/domain2/files/modules/module25/949712D46A1107D4.pdf> [2009.10.25.]

²¹ Petr Frischmann, Zeiner & Zeiner v.o.s.: *Czech Republic Developments 2007/2008*
<http://www.oasisadvocates.org/czech2008.htm> [2011.02.28.]

Although in the UCPD the consumer is a natural person, in the CPA it is: „an individual or a legal entity that purchases products or uses services for purposes other than conducting a business with such products or services.”²²

The definition of the trader isn't in the CPA, and definition of the product differs from the definition in the UCPD. In the CPA it is: “an object or another value intended for being offered to consumers, that may constitute the subject of a legal relationship”; in the UCPD it is: “any goods or service including immovable property, rights and obligations.”²³

- 2) restrictions concerning consumer discrimination: the CPA says that „a seller shall not discriminate against any consumer in any way in the selling of products or in the provision of services.”²⁴
- 3) general ban of trading goods marked as goods for humanitarian purposes: „The offering for the purpose of sale, the sale, and the export out of the Czech Republic of products which are intended for humanitarian purposes and are marked with the inscription “humanita” under a special legal regulation, shall be prohibited.”²⁵
- 4) general ban of misuse of ecological marks

There are two lists in the end of the CPA, the list of the misleading and the list of the aggressive practices. But, in the CPA there isn't one practice: „claiming that a code of conduct has an endorsement from a public or other body which it does not have.”²⁶

4.2. The UCP laws – Poland

In Poland the Act of 23 August 2007 on combating unfair commercial practices (hereafter: PUCP Act) implemented the UCPD.

²² UCPD Chapter 1 Article 2 (a)

No. 634/1992 Coll. Act on Consumer Protection (CPA) Part One Section 2 a)

http://www.google.hu/url?sa=t&source=web&cd=12&ved=0CCAQFjABOAO&url=http%3A%2F%2Fwww.coi.cz%2Ffiles%2Fdocuments%2Fact-on-consumer-protection-cz.doc&rct=j&q=Act%20No.%2036%2F2008%20Coll.%20Czech&ei=NGNqTYeuDJDsOYUExY0L&usg=AFQjCNELfYjNRC5bdF3Es9p_61v7yuLFbw&cad=rja [2011.02.28.]

²³ CPA Part One Section 2 f)

UCPD Chapter 1 Article 2 (c)

²⁴ CPA Part Two Section 6

²⁵ CPA Part Two Section 7b

²⁶ UCPD Annex I 3.

The PUCP Act doesn't contain the definition of the consumer, just refers to the definition of the consumer from the Civil Code. The Act contains plus definitions – considering the UCPD -, like the average consumer, or the Argentine system.

The previous one: „a consumer who is adequately informed, attentive and careful; the assessment is made with account taken of social, cultural, linguistic factors and the belonging of the particular consumer to a specific consumer group, which shall be understood as a consumer group that can be unambiguously identified and is particularly receptive to the influence of a commercial practice or the product to which the commercial practice applies, due to its specific characteristics, such as age, physical or mental disability.”

The latter one: „commercial activity which consists in managing assets generated within a group with the participation of consumers and established in order to finance the purchase of a product for the group's members.”²⁷ Operating an Argentine system is also an unfair commercial practice.²⁸

It is interesting that while the black list of misleading and aggressive practices is in the end of the UCPD, in the PUCP Act the part of the black list on misleading practices is after the sections on misleading practices, and the part of the black list on aggressive practices is after the sections on aggressive practices.

Chapter 3 is a plus chapter - considering the UCPD - and it is about the civil liability. The consumer who has suffered from an unfair commercial practice has five options:

- 1) request that the practice be discontinued
- 2) request that the effects of the practice be removed
- 3) request that a statement of appropriate content and appropriate form be made
- 4) request that the damage be redressed
- 5) request that an adequate amount of money be adjudicated for a specific social cause related to supporting the Polish culture, national heritage or consumer protection.

According to the rules the trader is loaded by the burden of proof, the trader must prove that the given commercial practice hadn't constituted a misleading unfair commercial practice.²⁹

²⁷ Act of 23 August 2007 on combating unfair commercial practices (PUCP Act) Chapter 1 Article 2 2), 8), 10) <http://www.uokik.gov.pl/download.php?plik=7636> [2011.01.31.]

²⁸ PUCP Act Chapter 2 Article 10

²⁹ PUCP Act Chapter 3 Article 12, 13

Chapter 4 contains criminal provisions. According to these a person who uses aggressive practice is penalized with fine. But, there are four situations when this person is penalized with imprisonment:

- 1) using the Argentine system: from three months to five years.
- 2) the same penalty is used to people using unfair commercial practices that consist in establishing a group of consumers referred to the Argentine system
- 3) if the value of the assets collected to finance the purchases within an Argentine system is great, the perpetrator of the act specified in section 1) above shall be subject to imprisonment from 6 months to 8 years
- 4) the penalties above shall also apply to people committing the acts specified therein by acting in the name or on behalf of the trader carrying out the commercial activity (the 1) or the 2))³⁰

4.3. The UCP laws – Hungary

The Hungarian legislator implemented the UCPD with the Act XLVII on the prohibition of the unfair commercial practices against the consumers of 2008 (2008. évi XLVII. törvény a fogyasztókkal szembeni tisztességtelen kereskedelmi gyakorlat tilalmáról) (hereafter: Hungarian UCP Act). While in the UCPD the misleading actions, the misleading omissions and the aggressive actions are separated, in the Hungarian UCP Act these actions are in the same chapter. The Hungarian UCP Act has a chapter on the liability for the violation of the prohibition of the unfair commercial practices. After this chapter there is another one on the proceeding authorities, and another one on the common rules of the proceeding. There are specific rules for the consumer protection authority and specific rules for Hungarian Competition Authority (Gazdasági Versenyhivatal) (hereafter: HCA) and specific rules for The Hungarian Financial Supervisory Authority (Pénzügyi Szervezetek Állami Felügyelete) (hereafter: HFSA) too. Finally, there are rules of the cooperation with the consumer protection authorities of the member states of the European Economic Area.

While in the UCPD the list of the misleading practices and the list of the aggressive practices are separated, in the Hungarian UCP Act the practices are in the same list.

³⁰ PUCP Act Chapter 4 Article 15, 16

4.4. The UCP laws – Romania

The legislator in Romania implemented the UCPD with the Law 363/2007 on unfair commercial practices (Lege nr. 363/2007 privind combaterea practicilor incorecte ale comercianților în relația cu consumatorii și armonizarea reglementărilor cu legislația europeană privind protecția consumatorilor) (hereafter: RUCP Act).

The RUCP Act is very similar to the UCPD, it contains the black list as it is in the UCPD, so the misleading and the aggressive practices are in the same list, but they are separated. It is different from the UCPD that in the RUCP Act the misleading actions and omissions are in the same section, not separated.³¹

There is a chapter which deals with the competence of the National Authority for Consumer Protection, the sanctions, and the modified rules of the consumer protection law.³²

4.5. The UCP laws – the Slovak Republic

In the Slovak Republic the Act No. 250/2007 (Act 250 of 9 May 2007) (hereafter: Consumer Protection Act) amended the Consumer Protection Act and implemented the rules of UCPD to it. Similar to the law of the Czech Republic, although in the UCPD the consumer is a natural person, in the Consumer Protection Act it is: „a natural person or legal person purchasing products or using services in order to satisfy his own personal needs or the needs of his family members.”³³

Both the definition of the trader and the definition of the product is wider than the definitions in the UCPD. The trader in the UCPD is:

„any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader.”³⁴

³¹ Law 363/2007 on unfair commercial practices (RUCP Act) Sectiunea 1, Anexa Nr. 1
http://www.eccromania.ro/assets/comatosepages/1531/508/Lege_nr._363_din_2007_privind_practicile_comerciale_incorecte.pdf?1295017906 [2011.03.20.]

³² RUCP Act Capitolul III

³³ Act No. 250/2007 (Act 250 of 9 May 2007) (Consumer Protection Act) 2.§ a)
http://www.google.hu/url?sa=t&source=web&cd=1&ved=0CB0QFjAA&url=http%3A%2F%2Fwww.rpr.sk%2Fchillout5_items%2F%2F3%2F8%2F6%2F2%2F23862_41c0f4.doc&rct=j&q=Coll.%20of%20Laws%2C%20on%20Consumer%20Protection%20and%20on%20Change%20of%20Act%20of%20the%20Slovak%20National%20Council%20No.%20372%2F1990%20Coll.%2C%20on%20Minor%20Offences%2C%20as%20amended.&ei=LVRqTf-IJNCUOviV2cAL&usq=AFQjCNGs--MIGNIjfnXNYL27RRF11YV7EQ&cad=rja
 [2011.02.27.]

³⁴ UCPD Chapter 1 Article 2 (b)

In the Consumer Protection Act the „trader” means three categories:

- 1) an entrepreneur offering or selling products to the consumer or providing services to the consumer;
- 2) a natural person selling plant and animal products to the consumer, which originate from his own minor agricultural activities, or non-wood forest products
- 3) a natural person selling his own used products, with the exception of food³⁵

The product in the UCPD is: „any goods or service including immovable property, rights and obligations.”³⁶ In the Consumer Protection Act the product is:

„a new, used or modified movable item produced, extracted or otherwise obtained, regardless of its stage of processing, which is intended to be offered to the consumer or which can be assumed to be used by the consumer; it can be supplied for consideration or not;

a product is also a movable item comprising part or accessories of another movable or immovable item, electricity, gas, water or heat intended for the consumer.”³⁷

The 21§ about the preliminary measures says that the supervisory authority can issue an order to stop unfair commercial practices. Also says: „written objections may be filed against the preliminary measure within three days. The objections do not have a dilatory effect.”³⁸

The misleading actions and the misleading omissions are in the same chapter, not separated, like in the UCPD. The misleading and the aggressive practices are in the same list, but they are separated.³⁹

4.6. The UCP laws - The Republic of Slovenia

In the Republic of Slovenia the UCPD was implemented by the Consumer Protection Against Unfair Commercial Practices Act (Law 2826/2007) (2826. Zakon o varstvu potrošnikov pred nepoštenimi poslovnimi praksami) in June 2007. Similar to the PUCP Act, in the Slovenian Act the part of the black list on misleading practices is after the sections on misleading practices, and the part of the black list on aggressive practices is after the sections on aggressive practices too.⁴⁰

³⁵ Consumer Protection Act 2§ b)

³⁶ UCPD Chapter 1 Article 2 (c)

³⁷ Consumer Protection Act 2§ f)

³⁸ Consumer Protection Act 21§ (1), (2)

³⁹ Consumer Protection Act 8§, Annex 1

⁴⁰ Consumer Protection Against Unfair Commercial Practices Act 2. Poglavlje 7. člen, 10. člen

5. Connecting rules

Although there are many sections which are in connection with the unfair commercial practices, this chapter deals mainly with the acts on consumer credit - implementing the 2008/48/EC Directive. Beside these there are some other rules – in connection with consumers and their protection.

5.1. Acts on consumer credit

The 2008/48/EC Directive – just like the UCPD – also wanted maximum harmonization. In the Czech Republic the No. 145/2010 Act implemented the 2008/48/EC Directive on credit agreements for consumers. The main changes – considering the earlier rules – were:

- 1) a detailed list of the informations which must be shared by the creditors with the consumers
- 2) creditors must assess the creditworthiness of the applicants⁴¹
- 3) the consumer can rescind the agreement within fourteen calendar days
- 4) the Czech Commercial Inspectorate and the Czech National Bank are responsible for the enforcement of the rules of the Act.⁴²

Member states had to implement the 2008/48/EC Directive before the 11th of June 2010, but Poland – and Belgium, France, Luxembourg, the Netherlands, Spain, Sweden – has missed this deadline. The Commission has requested them to take action to comply with the obligation in two months.⁴³

In Hungary the Act CLXII of 2009 on the credit offering to the consumer implemented the Directive. It contains three annexes.

http://ec.europa.eu/consumers/cons_int/safe_shop/fair_bus_pract/transpos_laws_sl.pdf [2011.03. 22.]

⁴¹ *Consumer Credit Act brings more protection for consumers*
<http://www.creditbureau.cz/site/en/News/News/Pages/Consumer-Credit-Act-brings-more-protection-for-consumers.aspx> [2011.03.12.]

⁴² *Legal update*
http://www.weinholdlegal.com/upload/actuality/file/1099-Legal_Update_ANG_7_2010_print.pdf
 [2011.03.22.]

⁴³ *Consumers: Commission urges Belgium, France, Luxembourg, the Netherlands, Poland, Spain and Sweden to transpose the Consumer Credit Directive*
http://www.google.hu/url?sa=t&source=web&cd=2&ved=0CCMQFjAB&url=http%3A%2F%2Feuropa.eu%2Frapid%2FpressReleasesAction.do%3Freference%3DIP%2F10%2F1590%26format%3DDOC%26aged%3D1%26language%3DEN%26guiLanguage%3Den&rct=j&q=poland%20consumer%20credit%20law%20implementing%202008%2F48%2FEC&ei=jV7Tf3lHcX3sgaSv_TeBw&usq=AFQjCNHjGkkJB2kREIzcTuEJWhT71W_2Bw&cad=rja [2011.03.12.]

The first is about the data which are indispensable parts of the general prospectus before concluding the agreement.

The second one is about the credit framework contractual prospectus which connects with the payment bill.

The third annex contains two lists:

- 1) data of the general prospectus about the mortgage loans
- 2) data of the personal prospectus about the mortgage loan⁴⁴

The new Romanian law (Government Emergency Ordinance No. 50 of 2010, hereafter: the Ordinance) came into force on the 21st of June 2010. There are two main differences between the Ordinance and the 2008/48/EC Directive:

- 1) the Ordinance applies to credit agreements secured by mortgages, which form isn't in the Directive
- 2) the Ordinance contains a rule which is applied to credit agreements with fluctuating interest, which hadn't been adopted by the Directive.⁴⁵

In the Slovak Republic the Act No. 129/2010 Coll. (on Consumer Credits and Other Credits and Loans for Consumers and on amendments and supplements to certain laws) fully implemented the 2008/48/EC Directive. It came into force on the 11th of June 2010.⁴⁶ In the Republic of Slovenia the Consumer Credit Act (No. 77/2004 and 111/2007) contains the main principles of credit agreements.⁴⁷

5.2. Other rules

In the Czech Republic there will be a new Civil Code. While the present Civil Code reflects the socialist law, the recodificators want to break with this tradition. The Code will be supplemented by two other laws: the Act on International Private Law and the Act on

⁴⁴ Act CLXII of 2009 on the credit offering to the consumer Annex 1., 2., 3.
http://79.120.192.62/cgi_bin/njt_doc.exe?docid=124724.177675 [2011.03.22.]

⁴⁵ *New legislation on consumer credit agreements in Romania*
<http://www.law-now.com/law-now/2010/conscreditromaug10.htm?cmckreg=true> [2011.03.23.]

⁴⁶ *Slovak Republic – Tax and Legal Update*
<http://www.google.hu/url?sa=t&source=web&cd=9&ved=0CGEQFjAI&url=http%3A%2F%2Fwww.evca.eu%2FWorkArea%2Flinkit.aspx%3FLinkIdentifier%3Did%26ItemID%3D5930&rct=j&q=polish%20consumer%20credit%20act&ei=Xg6JTFuWGY3JswaZ3d2kDA&usq=AFQjCNHSRiWvoVNqCGZWqy8ik6srebIAIA&cad=rja>
[2011.03.22.]

⁴⁷ *The Position of Slovenia on OECD decisions, recommendations and other instruments in force* p. 79.
http://www.svrez.gov.si/fileadmin/svez.gov.si/pageuploads/docs/OECD/OECD_SI_Initial__memorandum_July2008.pdf [2011.03.25.]

Business Corporations. It will become effective in 2014.⁴⁸ Act No. 152/2010 Coll. amended the Commercial Code (Act No. 513/1991 Coll.). One of its rules expanded exclusive Czech court jurisdiction, so now the court can decide all unfair competition disputes.⁴⁹

In Poland there is the Act on competition and consumer protection of 2007. It contains the conditions for the development and protection of competition and the principles to protect the interests of undertakings and consumers – in the public interest.⁵⁰

In Hungary there are the same laws which was mentioned in the „Relating provisions and their subjects” subsection, except the Advertising Act of 1997, because it was repealed with a new act in 2008.

In Romania in 2007 a Government Decision (No. 748/2007) was born on the organization and operation of the National Authority for Consumers’ Protection.⁵¹ In 2010 the Emergency Ordinance No. 75 amended the Law No. 21/1996 on competition, so the aim and the task of the latter one were strengthened: to protect the competition and the normal competitive environment and promote the interests if the consumers.⁵² Just like the Czech Republic, the Slovak Republic wants to create a new Civil Code. It will help the unity of the civil law and the protection of the consumers, because now the Consumer Protection Act of 2007 is misleading:

- 1) its name: as it covers only a certain proportion of the target issue, which is evident by this title
- 2) this act combines rules of different character (civil, administrative, and procedural character, etc.)
- 3) definition of the „consumer”: as it was mentioned in the „Definitions of the consumer” subsection, it means not just natural – as in the UCPD – but legal people too (with legal conditions). Furthermore, the definition of the consumer is in the Consumer Protection Act and the Civil Code too.⁵³ In the Republic of Slovenia the

⁴⁸ Dr Olga Slehoferova: *Revision of the Czech Republic Civil Code*
<http://www.hg.org/article.asp?id=21077> [2011.02.11.]

⁴⁹ See *Legal update* (42. footnote)

⁵⁰ Act on competition and consumer protection of 2007 Title I General provisions Article 1 1.
[http://www.google.hu/url?sa=t&source=web&cd=1&ved=0CBcQFjAA&url=http%3A%2F%2Fwww.uokik.gov.pl%2Fdownload.php%3Fplik%3D7624&rct=j&q=poland%20Act%20of%2016%20February%202007%20on%20competition%20and%20consumer%20protection%20\(Journal%20of%20Laws%20of%202007%2C%20No.%2050%2C%20item%20331\)&ei=1Xp7Tdb8EcfAswadULHpBw&usg=AFQjCNG7shhHPp_r9w6JildEvHcxJ_Krjw&cad=rja](http://www.google.hu/url?sa=t&source=web&cd=1&ved=0CBcQFjAA&url=http%3A%2F%2Fwww.uokik.gov.pl%2Fdownload.php%3Fplik%3D7624&rct=j&q=poland%20Act%20of%2016%20February%202007%20on%20competition%20and%20consumer%20protection%20(Journal%20of%20Laws%20of%202007%2C%20No.%2050%2C%20item%20331)&ei=1Xp7Tdb8EcfAswadULHpBw&usg=AFQjCNG7shhHPp_r9w6JildEvHcxJ_Krjw&cad=rja) [2011.03.12.]

⁵¹ See *Consumer protection* (2. footnote) p. 164.

⁵² The International Comparative Legal Guide to – Competition Litigation 2011:
 Remus Ene – Gabriela Ivancu: *Romania* (Chapter 25) p. 140. – 145.; p. 140.
 Global Legal Group Ltd; London; 2011

⁵³ Monika Jurčová: *The Influence of Harmonisation on Civil Law in the Slovak Republic*

Consumer Protection Act is the main law in the consumer protection area. It was mentioned in the „Relating provisions and their subjects” subsection.

6. Institutions

6.1. The Czech Republic

In the Czech Republic there are several institutions which are responsible for the enforcement of the rules from the UCPD.

The two main are: the Czech National Bank (Česká národní banka), the Czech Trade Inspection Authority (Česká obchodní inspekce). Beside these, there are the Czech Proof House for Arms and Ammunition (Český úřad pro zkoušení zbraní a střeliva), the State Institute for Drug Control (Státní ústav pro kontrolu léčiv), the Czech Agriculture and Food Inspection Authority (Státní zemědělská a potravinářská inspekce), the State Veterinary Administration (Svaz vinařů České republiky).

Of course, there are organisations to protect the interests of the consumers, like the Consumer Protection Department which is the part of the Czech National Bank, or the SOS Consumers Protection Association.⁵⁴

The main task of the Czech National Bank to maintain price stability, so it sets monetary policy, issues banknotes and coins and manages the circulation of currency, the payment system and settlement between banks. It also performs supervision of the banking sector, the capital market, the insurance industry, pension funds, credit unions and electronic money institutions, as well as foreign exchange supervision.⁵⁵

According to the CPA the following fines can be imposed:

- 1) CZK 3,000,000 for violating the general ban of trading goods marked as goods for humanitarian purposes
- 2) CZK 5,000,000 for violating the general ban of unfair commercial practices
- 3) CZK 50,000,000 for misleading, aggressive practices and consumer discrimination.⁵⁶

Juridica International XIV/2008 p. 166. – 172., 169.

http://www.juridicainternational.eu/public/pdf/ji_2008_1_166.pdf [2011.03.25.]

⁵⁴ *The Czech Republic* p. 6.

http://ec.europa.eu/consumers/overview/country_profile/CZ_web_country_profile.pdf [2010.10.21.]

⁵⁵ *About the CNB*

http://www.cnb.cz/en/about_cnb/ [2011.03.07.]

⁵⁶ CPA Part Three Section 24 (9)

The Czech Trade Inspection Authority oversees and inspects legal entities, corporations, as well as individual people who sell or supply products or goods to local markets, provide services or are engaged in similar business activities on local markets, entities or institutions offering consumer loans or run so-called sale fairs and market places, unless these entities are supervised by other inspection authority.⁵⁷

6.2. Poland

In Poland the President of the Office of Competition and Consumer Protection (Urząd Ochrony Konkurencji i Konsumentów) is responsible for implementing the consumer protection policy.

The Office is also responsible for initiating administrative proceedings concerning infringements of the collective consumer interests. On the other hand, a consumer can turn to a local consumer ombudsman with his/her individual claim.

The present Polish Act on competition and consumer protection orders that the unfair commercial practices infringe the collective consumer interests.

Proceedings concerning infringements of collective consumer interests are instituted ex officio. However, anyone can submit a written notification constituting a basis for intervention.

The President of the Office can decide that the practice infringes the collective consumer interests and impose a fine of up to 10% of the income of the trader from the preceding year. If a trader fails to execute the decision, the President of the Office is able to impose a fine of up to 10 000 euro per each day of the delay.

The President of the Office also must monitor the standard contract terms which are used by the traders in transactions with consumers.

The Office also initiates legislative changes aimed at providing weaker market participants with the most comprehensive protection and the Office cooperates with municipal and district consumer ombudsmen and non-governmental consumer organisations too.⁵⁸

⁵⁷ *Who we are – competency*

<http://www.coi.cz/en/about-cti/who-we-are-competency-1.html> [2011.03.07.]

⁵⁸ *Consumer protection in Poland*

http://www.uokik.gov.pl/consumer_protection_in_poland.php [2011.03.07.]

6.3. Hungary

In case of violation of this prohibition the National Consumer Protection Authority (Nemzeti Fogyasztóvédelmi Hatóság) (hereafter: NCPA) acts.

The NCPA is not the only authority entitled to process, the HCA acts if the commercial practice is able to influence the economic competition substantively. The HFSA acts if the commercial practice is bearing on the activity of the company, when the HFSA controls – according to the act about the HFSA – this activity.⁵⁹

The NCPA, the HCA and the HFSA – because they have to cooperate – have reached an agreement, which they must confirm yearly and publish this agreement on their homepages.⁶⁰

In favour of that the consumer doesn't suffer from because of she/he didn't recourse to the authority which has competence, the HCA, the HFSA and the NCPA fixed that they must transfer the petition to the authority which are authorized to judge.⁶¹

6.4. Romania

In Romania the National Authority for Consumer Protection (Autoritatea Nationala pentru Protectia Consumatorilor) is responsible for the rules from the UCPD.

The Authority is responsible for enforcement of rules on general product safety and the economic interests of the consumers, including certain financial services (consumer credit, distance contracts for financial services, cross-border payments in euro).

In detail, the tasks of the Authority:

- 1.) to supervise the legal provisions of the consumer protection
- 2.) to ascertain the infringements and to adopt the legal measures for limiting the consequences of manufacturing, import, trade or free delivery or performance of some products or services that don't meet the legal stipulations
- 3.) to coordinate the rapid exchange of information with the national or international competent bodies

⁵⁹ Hungarian UCP Act 10.§ (1) – (3)

http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=A0800047.TV
[2011.03.20.]

⁶⁰ Hungarian UCP Act 12.§ (1), (3)

⁶¹ Hungarian UCP Act 20.§ (1)

- 4.) to inform the decision bodies and the operators involved in the certification system of the quality of products and services
- 5.) to receive and solve complains from consumers, consumer associations or, by case, to transmit them to other competent bodies
- 6.) to perform analyses and tests in accredited laboratories
- 7.) to develop consumers information, consulting and education activities; to inform permanently the consumers about the products and services which present risks for their health and safety or which could affect their economic interests
- 8.) to provide specialized consultancy in consumers protection field for legal people⁶²

6.5. The Slovak Republic

In the Slovak Republic there are several institutions which deal with the consumer protection, so with the unfair commercial practices too. For example, there is the Slovak Trade Inspection (Slovenská obchodná inšpekcia) which inspects the products being sold and services being provided to consumers with the some exceptions. The Slovak Health Care Authority (Úrad verejného zdravotníctva Slovenskej republiky) deals with matters of consumer protection especially by monitoring the factors that influence health. The Telecommunications Regulatory Authority of the Slovak Republic (Telekomunikačný úrad Slovenskej republiky) protects the interests of the end users with respect to the price and quality of services.⁶³

6.6. The Republic of Slovenia

In the Republic of Slovenia the The Market Inspectorate of Republic of Slovenia (Tržni inšpektorat RS) is responsible for the enforcement of the rules from the UCPD. It ensures that consumer rights are fully respected by surveillance of legal entities and by management of consumer complaints, as specified by national legislation from this area. The Market Inspectorate can take several measures, such as administrative decisions, which forbid sales or advertising of a product or service. From 2005 it is able to impose fine for legal entities if their action (or omission) is considered a criminal offence.⁶⁴

⁶² Romania p. 4., 5.

http://ec.europa.eu/consumers/overview/country_profile/RO_web_country_profile.pdf [2010. 10. 21.]

⁶³ Slovakia p. 6., 8.

http://ec.europa.eu/consumers/overview/country_profile/SK_web_country_profile.pdf [2010.10.21.]

⁶⁴ Slovenia p. 8.

7. Practice

7.1. The Czech Republic

At the Czech National Bank the Consumer Protection Department was established in September 2008. It receives and investigates the complaints of the consumers. According to the data, complaints usually pertain to the breaches of the prohibition of unfair commercial practices, discrimination against consumers and requirements for proper informations about prices. From September 2008 to December 2008 the Department received 142 complaints. From them it investigated 95 complaints. The 16% of these 95 cases has dealt with aggressive practices.⁶⁵ In 2009 the Department received 313 complaints. The subjects were the same as in 2008.⁶⁶

7.2. Poland

In December 2008 the President established that an advertising campaign of the PKO Bank Polski was misleading, because it hasn't contained necessary references and deceived consumers about important deadline.⁶⁷ In August 2010 the President of the Office of Competition and Consumer Protection diagnosed that the Canal+ Cyfrowy has breached the rules on unfair commercial practices when it hasn't guaranteed the correct access of the informations - after these data had been amended - to the consumers. The President imposed 3,6 billion PLN as a fine.⁶⁸

7.3. Hungary

In the practice of the NCPA in 2009 more than the eighty per cent of the petitions applied to the misleading commercial practices, more than seventy per cent of the petitions – which

http://ec.europa.eu/consumers/overview/country_profile/SL_web_country_profile.pdf [2010.10.21.]

⁶⁵ *Annual Report 2008* p. 37.

http://www.cnb.cz/miranda2/export/sites/www.cnb.cz/en/about_cnb/performance/annual_reports/download/vz_2008_en.pdf [2011.03.07.]

⁶⁶ *Annual Report 2009* p. 36.

http://www.cnb.cz/miranda2/export/sites/www.cnb.cz/en/about_cnb/performance/annual_reports/download/vz_2009_en.pdf [2011.03.07.]

⁶⁷ *"Max Lokata" mislead consumers*

http://www.uokik.gov.pl/news.php?news_id=1074 [2011.03.27.]

⁶⁸ *Canal+ Cyfrowy in breach of the law*

http://www.uokik.gov.pl/news.php?news_id=2208 [2011.03.26.]

indicated the fulfilment either of the points of the black list – were aggrieved at the fulfilment of the bait advertising. According to the judgements of the cases in the event of more than sixty per cent of the cases was the statement of misleading activity, and in the event of near twenty per cent of the cases was the statement of the black list violation of law. The most frequent misleadings were the followings: false statements in connection with the price of the goods and the entity of the special cash discount, false statements in connection with the significant parameters of the goods, and practices which are adapted for confusion with the goods of other company.⁶⁹ In 2010 there were – by the documents which have been published yet – twenty – five decrees in connection with the unfair commercial practices. In eleven cases there was the imposition of the consumer protection fine, and in thirteen cases there were the imposition of the consumer protection fine and order too, and in one case there was order.⁷⁰

7.4. Romania

Between 2005 and 2009 most of the complaints have applied to the quality of products and services, delivery and unfair commercial practices. In connection with the latter ones the consumers have complained about misleading informations and the lack of essential informations.⁷¹

7.5. The Republic of Slovenia

On the 11th of November 2010 the NCPA and the Market Inspectorate of Republic of Slovenia signed an agreement on supporting their partnership. The aims of this agreement:

- 1) to create a safe and consumer – central market of goods
- 2) to run effective system of consumer protection and market – protection in both countries

Some plans:

- 1) to broaden the international connections

⁶⁹ *A tisztességtelen kereskedelmi gyakorlat tilalmának megsértése miatt, kérelemre indult eljárásokról* 5. pont. http://www.nfh.hu/data/cms29761/ucp_09.pdf [2010.08.24.]

⁷⁰ *Decrees of the NCPA*

The decrees can be found on this homepage:

<http://www.nfh.hu/informaciok/hatarozat/hatarozatok>

⁷¹ The European Consumer Centres' Network – *Fifth Anniversary Report 2005 – 2009* p. 79.

http://ec.europa.eu/consumers/ecc/docs/5th_anniversary_report_2005-2009_en.pdf [2011.03.27.]

- 2) to apply prevention instead of reprisal
- 3) to develop the informative activity
- 4) to motivate the companies to the law abiding behaviour
- 5) positive list⁷²

8. Summary

Before the implementation of the UCPD, the provisions in connection with the consumers and the competitors were very varied.

Of course, the varegation was in all Member States, the UCPD was born to create the unity. From its many changes the separation of the B2C and B2B relations was one from the most important ones. As we see, it meant no challenge only for the Republic of Slovenia.

It is interesting too, that before the implementation how many definitions were to determine the consumer and they were very different from the definition of the UCPD. This is true in the case of Hungary, in this paper there was only the definition from the Competition Act, but the Consumer Protection Act, the Civil Code and the Advertising Act of 1997 had definitions too.

After the implementation – ideally – the same rules were born – because of the maximal harmonization – but we can find differences, problems. With the specialities the national rules mirror the national features of the consumer protection sytems of the Member States, although the aim of the UCPD was the unity – true, not the sameness.

The data from practice show the domination of the misleading practices.

This topic can be examined from several views, this paper showed some of them.

⁷² Szlovén-magyar együttműködési megállapodás
http://www.nfh.hu/informaciok/egyutt/hirek_101116__3.html [2011.03.27.]

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