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Dr Justyna Przedańska

University of Wrocław
ORCID: 0000-0002-3558-3969
e-mail: justyna.przedanska@uwr.edu.pl

Effectiveness of protection of consumer rights in the electricity and gas market in Poland

Skuteczność ochrony praw konsumenta na rynku energii elektrycznej i gazu w Polsce

Abstract

The aim of the paper is evaluation of the effectiveness of protection of consumer rights in the electricity market. According to analyses made in the course of an audit carried out in 2017 by the Supreme Audit Office, rights of electricity consumers have not been fully respected, despite legal regulations and actions taken by power companies and government administration. Therefore, the author notes that it should be in the public interest to monitor, in particular, the terms of consumer agreements made with businesses in the electricity and gas market who use standard contract terms. In addition, the initiative of public authorities in stimulating the development of the consumers' rights movement as an essential component of a civil society should also be increased.

Key words: consumer, consumer rights protection, consumer law, electricity and gas market

JEL: K230, K380

Streszczenie

Celem artykułu jest ocena skuteczności ochrony praw konsumentów na rynku energii elektrycznej. Jak wskazują analizy sporządzone podczas przeprowadzonej w 2017 r. kontroli Najwyższej Izby Kontroli, prawa konsumenta energii elektrycznej nie były i nie są w pełni respektowane pomimo regulacji prawnych oraz działań podejmowanych przez przedsiębiorstwa energetyczne i administrację rządową. Dlatego też autor zauważa, że w interesie publicznym powinno leżeć monitorowanie zwłaszcza treści umów konsumenckich przedsiębiorców z rynku energii elektrycznej i gazu, zawierających kontrakty masowe. Ponadto należałoby również zwiększyć inicjatywę władzy publicznej w pobudzaniu rozwoju ruchu konsumenckiego jako niezbędnego elementu społeczeństwa obywatelskiego.

Słowa kluczowe: konsument, ochrona praw konsumenta, prawo konsumenckie, rynek energii elektrycznej i gazu

Introduction

The national energy market — as a rule — fails to meet consumers' expectations, while the energy sector is consistently considered one of the most difficult for consumers, considering the frequent difficulties they have with effectively pursuing their rights. This also justifies the thesis that the retail gas and energy market has yet to earn the label of well-functioning (BEUC, 2013, pp. 3–9).

As a rule, the weaker position of consumers in the market results from the high degree of complexity of the law. Private individuals are often unable to acquire the professional knowledge possessed by manufacturers and vendors of goods and services, in particular where such goods and services are of a specialized nature (real estate sales or financial market services) or where the sales process takes a peculiar form (e.g. online sales). In consequence, manufacturers and vendors may abuse their specialized knowledge, taking advantage of the lack of such knowledge on the part of the consumer (Żuławska, 1994–1995, pp. 375–384). As a result of this inequality, market and marketing practices that require the support of the modern state and its authorities are frequently implemented. An assumption was therefore made that ensuring the equality of every market participant requires official intervention by the state. Creating legal regulations that ensure fair competition between businesses was the first step towards that goal. The second component of support given to consumers is institutional protection both in class and individual action. The third area of redressing inequalities is preventing the unfair practices of businesses (Nowińska, Szczepanowska-Kozłowska, 2018, commentary to article 1).

In Poland, consumer law is an implementation of article 76 of the Polish Constitution, pursuant to which: 'Public

authorities shall protect consumers, customers, hirers or lessees against activities threatening their health, privacy and safety, as well as against dishonest market practices.' The constitution therefore specifies state authorities as the entities responsible for the implementation of this principle. Consumer law in Member States of the European Union constitutes the implementation of EU regulations. A uniform legal framework for the protection of consumer rights in all members states has been created at the European level. The Treaty of Maastricht formally found consumer protection to be one of the policies of the European Community. Article 169 of the Treaty on the Functioning of the European Union (Journal of Laws of 2004, No. 90, item 864/2) currently serves as the legal basis for the full scope of activities in the area of consumer protection; pursuant to the above provision, in order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests (Stawicka, 2018, pp. 5–7). This protection therefore constitutes part of the EU's strategic objective aimed at improving the quality of life of all of its citizens. EU strategy in this area involves accounting for the interests of consumers in EU legislation and when determining and implementing other EU policies and activities. The need to ensure a high level of consumer protection in EU policies was also stressed in the Charter of Fundamental Rights of the European Union (OJ EU C 303 of 2007, p. 1).

The structure of this work is thus — I begin by presenting an outline and the evolution of the notion of consumer policy, including the legal definition of a consumer, as well as activities aiming at enhancing the status of the issue of consumer safety. I then engage in a subjective analysis of the consumer on the energy and gas market and the protection afforded to the consumer, keeping in mind that the consumer belongs to one of the four primary groups of electric energy market participants: energy producers, trade companies, network operators, and end recipients. Next, I undertake assessment of the effectiveness of protection on the electric energy market based on a 2017 audit conducted by the Supreme Audit Chamber; this audit clearly demonstrates that the rights of electric energy consumers are not fully respected. The article concludes with a review of legislative changes that would seem to exhibit the potential to impact the consumer's position on the retail energy and gas market.

Outline and evolution of the concept

The need for the state to implement a consumer policy is a product of the assumption that free market principles are unable to guarantee the equality of entities operating in that market. This idea appeared in world economics in the 1960s and was pioneered by the United States, the first country to introduce regulations protecting consumer rights into its legal system (Jurczyk, Majewska-Jurczyk, 2015). Acts adopted on that occasion included five basic rights which to this day constitute the basis of legislative solutions in legal systems of individual Member States and in the legislation of the European Unions. They include (Jagielska, Podgórski, Sługocka-Krupa, Fras, 2018): right to safety and protection of health, right to information and education, right to protection of economic interests, right of association and representation and right to effectively seek claims.

The next step aimed at giving special importance to the issue of consumer safety was the adoption of resolution no. 543 of 17 May 1973 on the Consumer Protection Charter by the European Council, and in particular the adoption of the resolution of the Council of European Economic Community of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy. The United Nations also indicated that protecting this group of market participants was necessary by adopting in 1985 a resolution specifying guidelines on consumer protection (Resolution 39/248 of the UN General Assembly of 1985 on Guidelines for Consumer Protection, as well as resolution no. 61 of 1988 of the United Nations Economic and Social Council on Consumer Protection, Europe Agreement establishing an association between the European Communities and their member States and the Republic of Poland of 1992; there are also several directives, recommendations and opinions issued by the European Council and EC authorities of significance to consumer issues, e.g. Council Directive 374/1985 concerning manufacturer's liability). The objectives of these provisions included maintaining an appropriate level of the entire consumer population, improving ethics among manufacturers and vendors, preventing unfair business practices and developing international cooperation in the area of consumer protection (Mazuruk, 2011).

The European Union formally recognised consumer protection as one of its policies in the Treaty of Maastricht, signed on 7 February 1992 (Journal of Laws of 2004 r. No. 90, item 864/30). Later, a 'Plan of action in the area of consumer protection for the years 1999–2014' was adopted as part of the Treaty of Amsterdam (Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts), signed on 2 October 1997; the Plan involved strengthening the position of consumers and ensuring their safety by respecting their economic interest. These documents gave consumer policy an autonomic nature and created the basis for implementing institutional solutions (Maciejewski, Ratcliff, Nass, 2020).

Protection of consumers and their interests is consistent with the general objective of the EU, namely improvement in the quality of life of citizens of the EU and respect for their individual subjective rights. Consumer principles constitute the minimum consumer rights that should be guaranteed in every EU member state. The decalogue of 10 consumer principles, comprising rules implemented by the European Commission and generally considered legal standards in the EU, is as follows (Sozański, 2013, p. 227): 1) Buy what you want, where you want; 2) If a product is faulty, return it; 3) High safety standards for food and other consumer goods;

4) Know what you are eating; 5) Contracts should be fair to consumers; 6) Consumers can change their mind; 7) Making it easier to compare prices; 8) Consumers can not be misled; 9) Protection while on holiday; and 10) Effective redress for cross-border disputes.

The adaptation of Polish consumer protection law to EU standards began in 2000, when the Act on the protection of certain consumer rights and liability for damage caused by dangerous products of 2 March 2000 was adopted (Journal of Laws of 2012, item 1225, as amended). Next, the Act on general product safety was adopted on 12 December 2003 (Journal of Laws of 2016, item 2047, as amended), and in 2007 a new Act on the protection of competition and consumers was adopted (Journal of Laws of 2019, item 369, as amended).

The definition of a consumer was introduced into the national legal system pursuant to the Act on the amendment of the civil code and certain other acts of 14 February 2003 (Journal of Laws No. 49, item 408), which inserted into the general part of the code the definition of a consumer as a natural person who performs a juridical act not directly related to their business or professional activity. This regulation was significantly amended with the entry into force of provisions of the Consumer Rights Act of 30 May 2014 (Journal of Laws of 2020, item 287. The act is a consequence of legislative action of the EU and is the implementation of community directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, OJ 2011 L 306/64), which stipulated that the definition of a consumer has a normative meaning only where the other party to the civil law relationship is a business, namely the natural person, juridical person or organizational unit referred to in Article 331 Civil Code act of 23 April 1964 (Journal of Laws of 2019, item 1145, as amended) who conducts business or professional activity in their own name. Furthermore, the provision stipulates that the act performed by the consumer must not be directly related to their business or professional activity. This means that in order to be considered a consumer, a person who engages in such activity must engage in conduct that is unrelated to their own business or professional activity. However, it bears emphasizing that although the reason why consumers are afforded protection is that their position is generally weaker than that of an enterprise, whether the consumer indeed lacks knowledge as to their rights as a party to a transaction with an enterprise or as to issues related to the subject matter of their contract with the enterprise is of no importance for the question of whether the definition applies to a natural person (Kalus, 2018, p. 100). Even a person who possesses extensive knowledge on the goods or services provided by the enterprise is a consumer within the meaning of the above provision and enjoys suitable protection, provided that they engage in transactions outside the scope of their business or professional activities.

Consumer in the electricity and gas market and their protection

The Energy Act of 10 April 1997 (Journal of Laws of 2020, item 833) introduced the concept of a 'customer', which, according to the definition in article 3(13), includes every person who receives or collects fuel or electricity based on an agreement made with a power company (see Rypina, Wierzbowski, 2018, pp. 16–21). A 2013 amendment to the Act introduced the concept of a 'household customer of gas fuels, electric electricity or heat'. This concept is defined as an end customer who purchases electricity solely for the purposes of using it for the needs of their household. Pursuant to article 3(13a) of the Energy Act, an end customer is a customer who purchases electricity for their own use, with the exception of electricity purchased for the purposes of generation, transmission or distribution. For statistical purposes, a household is a single- or multi-person entity, usually based on family ties, active in the area of consumption the purpose of which is to satisfy the needs of all of its members through the joint management of income generated by all or some of its members. It appears that the concept of a customer drawing electricity in a household and the concept of a consumer on the electricity and gas market have the same meaning.

Participants in the electricity market are divided into four basic groups, which include: electricity producers, trading companies, grid operators and customers (Marczak, 2018, p. 6). The first group includes conventional power plants, which generate energy using non-renewable energy sources (which in Poland include bituminous coal and lignite), and non-conventional power plants that use renewable power sources (which still have a fairly small share in the Polish energy mix and include hydroelectric plants and wind farms). The next group comprises trading companies that deal in electricity which they purchase from generators or wholesale companies and sell to end customers. Generation of and trading electricity constitute fields where competition is allowed, in contrast to grid operations which constitute a natural monopoly in a given area. The last group of electricity market participants is made up of end customers. As a rule, end customers can be divided into two types. The first is households (which purchase electricity for residential purposes), while the second is customers other than households who purchase electricity for the purposes of their business activity, referred to as industrial customers (Marczak, 2018, p. 7). Household customers are more numerous than industrial customers; their numbers in Poland amount approximately to 14.8 million and 1.7 million, respectively. However, industrial customers consume more electricity — industry is responsible for over 75% of domestic electricity consumption, whereas households for only 25%. On 1 July 2007, all customers were granted the right to freely choose their electricity suppliers (the TPA principle). The right is exercised by industrial customers much more frequently than by household customers (UOKiK, 2011, pp. 10–12).

The central public administration authority responsible for matters of protection of competition and consumers is the

President of the Office of Competition and Customer Protection, who acts pursuant to article 29 of the Competition and Customer Protection Act of 16 February 2007. The President of the Office acts only in cases where the collective interest of consumers is infringed upon. Assistance in individual matters is rendered by municipal or district consumer ombudsmen (more information in Maziarz, 2012, pp. 62–69). Due to the natural inequality (advantage) between the position of a power company and the position of its customer, in particular consumers such as households, the President of the Energy Regulatory Office strives to balance the positions of customers through intervention, informational and educational measures. Despite the existence of a system for the protection of rights of electricity customers, these rights are not sufficiently respected by power companies, as confirmed by audits of their operations.

According to a survey carried out by the President of the Office of Competition and Customer Protection in 2011 (UOKiK, 2011, p. 10 et seq.), as many as 37 of 44 standard-form contracts contained improprieties. A total of 101 various deficiencies were identified. In their annual reports, district and municipal consumer ombudsmen indicated that they had provided a large number of consultations in the area of services related to the supply of electricity. Between 2013 and 2016, the number of consultations provided amounted to approximately 53–54 thousand per year. The most frequently encountered issues included irregularities related to entering into sales agreements, excessive bills, improperly issued invoices and energy consumption projections, failure to deliver invoices on time.

An audit carried out in 2002 by the Supreme Audit Office (NIK, 2018a) uncovered numerous irregularities with regards to the provision of commercial and technical services to electricity customers by power companies. It also raised several reservations as to the oversight by the President of the Energy Regulatory exercised over power industries. Audit no. R/17/002, titled 'Organisation of consumer rights protection systems and setting tariff rates' (NIK, 2018b), discovered that between 2011 and 2017 the President of the Energy Regulatory Office failed to perform comprehensive audits to determine whether power companies met quality standards for customer service. Audits of quality standards were limited to carrying out investigations in isolated cases, based on complaints submitted by customers to the Energy Regulatory Office.

Assessment of the effectiveness of protection on the electricity market

As indicated by analyses made during an audit conducted in 2017 by the Supreme Audit Office (NIK, 2018a), rights of electricity consumers were not fully respected despite the existence of legal regulations and actions taken by power companies and government administration. As noted in the report, although power companies carried out regular activities resulting in increased protection of consumer rights during the audited period, government administration did not take meaningful action until 2017. The audit also discovered that the partial liberalisation of the electricity market coincided with the appearance of objectionable commercial practices on the part of some power companies. The report underlines the insufficiency of the consumer protection system, passivity of government administration and lack of cooperation among state authorities, contributing to the dynamic expansion of sophisticated unfair business practices, aimed at generating profit at the expense of the most vulnerable social groups (NIK, 2018a).

Another important issue raised in relation to the assessment of the situation of consumers is the lack of full liberalization of the Polish electricity market. The Polish household electricity market has not been liberalized, and despite the fact that the President of the Energy Regulatory Office published the first market liberalisation plan in 2008, prices of electricity for households remained regulated ten years later. Although — as noted in the audit report from the Supreme Audit Office — consumers have been able to switch their electricity providers since 2007, only approximately 3.5% of them have made the decision to switch, a result of the application of tariffs on electricity prices which effectively reduced the competitiveness of the market. Prices were calculated at the level of primary costs of the sale of electricity and handling of this process and did not entice trading companies to compete for new consumers on a competitive market (Czarnecka, 2015, pp. 66–78). Maintaining the requirement to apply tariffs on electricity prices from all end customers from the 'G' pricing group deprives them of the opportunities and benefits resulting from the liberalisation of the electricity market, such as adjustment of commercial offer to individual needs of consumers or improvement in the quality of services provided (NIK, 2018a). When justifying the need to keep electricity prices for households regulated, the Minister of Energy noted the lack of suitable protection for customers in the 'G' pricing group in the face of excessive fluctuation of electricity prices that would take place in the initial period following their deregulation.

According to research by the Institute for Structural Research (Lewandowski, Sałach, 2017), the percentage of persons affected by energy poverty between 2012 and 2016 was high and amounted to 12.2%, which means that 4.6 million persons in approximately 1.3 million households were unable to maintain a comfortable temperature in their dwellings. The system for the protection of vulnerable customers (NIK, 2018a) designed in 2013 failed to provide adequate protection as it did not address issues related to thermal comfort and energy performance of the dwellings and houses inhabited by such customers. Although the vast majority (2/3) of persons affected by energy poverty were rural dwellers, energy benefit was mostly collected by urban inhabitants, a result of the fact that obtaining an energy benefit was predicated on the prior receipt of a housing benefit, which was granted to persons who resided in apartments or houses with low usable floor areas (NIK, 2018a).

Between 2014 and 2017, funds expended from the special purpose reserve for the protection of vulnerable customers amounted to as little as 11.8%, 15.1%, 13.8% and 11.9% respectively of the amounts planned in article 33(1) of the Act on the amendment of the Energy Law and certain other acts of 26 July 2013. The percentage of municipalities where no energy benefits were paid out at all increased with each passing year. The Minister of Energy contented himself with submitting a request for a special purpose fund to be created in the state budget every year but did not assess the effectiveness and efficiency of the system. The Minister also possessed no data whatsoever on the amount and structure of aid granted. It was only in 2017, on the recommendation of the Economic Committee of the Council of Ministers of 17 January 2017 for the Council of Ministers, titled 'Clean Air', that work began on developing the basic tenets of a comprehensive policy in connection with the existence of high levels of air pollution across vast areas of the country. Energy poverty was supposed to be one of the problem areas of the policy. An audit by the Supreme Audit Office (NIK, 2018a) discovered that both distributors and trading companies failed to adhere to statutory deadlines with regards to enabling customers to switch providers and making final settlements between the previous provider and the switching customer. Between 2014 and 2017, approx. 3% of approved applications were resolved by distribution system operators after the expiry of the statutory 21-day deadline stipulated in article 4j(6) of the Energy Law, which constituted 18.9 thousand cases. In trading companies, on average every tenth settlement invoice was issued in breach of the 42-day deadline (article 4j(6)). One of the reasons for the prolonged process of settlement of accounts between trading companies and consumers was the failure of distributors to provide information about meter readings as of the date of switching providers in a timely manner. Work on the Central Information Exchange System, started in 2013 and long awaited by participants in the energy market, was suspended by the Ministry of Energy in 2016. Suspension of the work for a year and a half resulted not only in having to repeat some of the actions aimed at analysing tender documentation, but also constituted interference with the powers of the President of the Energy Regulatory Office. The highest costs of the suspension of the work were borne by participants in the retail electricity market, including consumers. Incomplete automatisation of the provider switching process or retail market service contributed to the existence of such negative phenomena as double billing of energy customers, prolonged duration of the provider switch process, vendor's failure to make timely settlements with buyers or prolonged backup sales of electricity (NIK, 2018a).

Enabling consumers to switch their electricity providers led to the appearance of new risks — dishonest suppliers and the use of aggressive marketing methods. These risks were ubiquitous and had a negative impact on the situation of consumers, in particular given the lack of coordinated action on part of the Ministry of Energy, Office of Competition and Customer Protection and Energy Regulatory Office. According to the report, the most frequent unfair commercial practices included (NIK, 2018a):

- salespeople posing as representatives of a customer's current electricity provider,
- inducing customers to enter into unfavourable agreements by failing to inform them of disadvantageous clauses in the contracts, e.g. concerning liquidated damages or charges for additional services,
- failure to provide the customer with a copy of the agreement,
- hampering or preventing consumers to withdraw from an agreement made outside of the registered office of the business.

There were also cases of forging signatures or threatening to disconnect electricity. These situations further confirmed information received from 88 consumer ombudsmen, of which as many as 97.5% indicated that unfair business practices were the most significant problem in this area. Although the provider switching process was for many years subject to a high risk of unfair business practices, no preventive action was taken. Warnings and widely known facts about aggressive and unfair practices of sellers, detrimental to the interests of households, met with no reaction.

According to documents analysed by the Supreme Audit Office (NIK, 2018a), the President of the Energy Regulatory Office submitted numerous proposals for legislative changes to the Minister of Energy, including a proposal for a ban on direct door-to-door sales. The Minister of Energy himself did not initiate any legislative processes. Pursuant to article 43(2) of the now repealed tariff regulation of 2017 (Regulation of the Minister of Energy of 22 September 2017 on detailed rules governing the setting and calculation of tariffs and settlements related to thermal energy supply, Journal of Laws, item 1988; currently governed by § 5(1)(3) of the Regulation of the Minister of Climate of 7 April 2020 on detailed rules governing the setting and calculation of tariffs and settlements related to thermal energy supply, Journal of Laws, item 718), the Minister of Energy obligated power companies to automatically apply discounts resulting from their failure to meet quality standards of customer service and quality parameters of electricity. The provision was implemented during the audit of the Supreme Audit Office.

It bears noting that between 2014 and 2017, no electricity provider supplying electricity to households had its concession revoked due to infringing upon the rights of consumers. A single procedure in the matter of revoking a concession was initiated after a decision was issued by the President of the Office of Competition and Customer Protection. No financial penalties were imposed on providers pursuant to article 56(1)(12) of the Energy Act during the same period. The Office of Competition and Customer Protection and the Energy Regulatory Office did not cooperate in order to eliminate dishonest providers from the energy market. Of note is the fact that neither of the above authorities initiated any normative changes to the benefit of consumers. As a result, no sanctions were imposed even on businesses that persistently engaged in practices that infringed upon the collective interests of consumers. The

above fact did not also prevent such businesses from receiving further concessions to trade in energy.

Between 2014 and 2017, the Chief of the Office of Competition and Customer Protection audited standard-form agreements made by power companies with consumers. According to the report of the Supreme Audit Office, these audits resulted in the issuance of two decisions finding that trading companies engaged in practices that infringed upon the collective interests of consumers (NIK, 2018a). Furthermore, the President of the Office of Competition and Customer Protection carried out investigations and issued recommendations to businesses in matters concerning the protection of consumers. During the audited period, 11 prohibited clauses used by three companies were entered into the register of prohibited contractual clauses. However, the President of the Office of Competition and Customer Protection did not verify whether the clauses entered into the register were effectively eliminated and whether they were not replaced with other terms that were slightly modified but still met the prerequisites to be considered a prohibited clause.

In the course of the audit by the Supreme Audit Office (NIK, 2018a) it was also found that both the Office of Competition and Customer Protection and the Energy Regulatory Office provided consumers with free legal assistance. The President of the Office of Competition and Customer Protection commissioned non-governmental organisations and other entities with performing public tasks in the field of promoting and protecting consumer rights. The Energy Regulatory Office operated an enquiry point for consumers of electricity and gas fuels, which carried out tasks related to the provision of information and advice to consumers with regards to their rights, including by means of a helpline available to electricity consumers. Despite making efforts, the Chief of the Energy Regulatory Office failed to solve the problem of incomplete staffing of the enquiry point. The report of the Supreme Audit Office noted that trading companies as a rule complied with their obligation to provide information to end customers and organised an effective system of customer service for electricity consumers (NIK, 2018a). However, this did not increase the legibility of invoices issued by electricity vendors, which could have been of decisive significance for the consumers' decisions to take action aimed at switching electricity providers (more information in Domagała, 2019, pp. 135–148), as the decision to switch providers is affected by the customer's awareness of which items in the invoice will change as a result of the switch and whether such changes will have an actual impact on the amount of their electricity bills, and if so, how significant that impact will be.

In the opinion of P. Suski, provisions of the Consumer Rights Act are of significant importance to the electricity market, but the interpretation of these provisions is in many cases dubious. This in particular applies to the impact of these regulations on the manner of making changes to agreements concerning electricity, the scope of application of amended provisions on contractual and statutory warranty to electricity or procedures governing entering into agreements by telephone (Suski, 2015, p. 54).

Changes to consumer protection

On 1 June 2020, amendments made to the Civil Code were supposed to come into force in several areas. The most significant amendment involves the expansion of the scope of consumer protection in certain juridical acts involving businesses. As stated in the statement of reasons for the amendment, the practical application of the definition of a consumer given in the code means that a natural person who owns a business and enters into an agreement with another enterprise, a professional (who offers the provision of services from the scope of its industry or specialisation) is also treated as a professional entity, even if that agreement is not directly related to the industry or specialisation practiced/represented by that natural person (Statement of reasons for the draft of the Act of 31 July 2019 on the amendment of certain acts for the purpose of lightening regulatory burdens, Journal of Laws, item 1495).

It is generally accepted that the issuance of an invoice for the provision of goods or services 'to a company' is tantamount to a transaction between professional entities. This may lead to a disproportion as regards the ability of the participants in a given legal procedure to exercise their rights and their obligations. A business owner who engages in a legal transaction with another business owner without possessing the requisite knowledge and experience to comprehensively assess the subject matter of that transaction is not currently subject to consumer protection despite being in a similar situation to a consumer (who is by assumption a non-professional entity). The newly adopted solution is therefore aimed at supporting this category of entities by preventing the above-described problem. Proposals have been put forward that consumer protection regulations should apply to natural persons who enter into an agreement directly related to their business or professional activity but not of a professional nature in their respect with another enterprise (NIK, 2018a). Enterprises will therefore be afforded consumer protection with regards to the use of prohibited clauses, statutory warranty for defects and the right to withdraw from an agreement made remotely or outside the registered office of a business.

However, considering the spread of the SARS-CoV-2 virus in Poland, the Act of 31 March 2020 on amending the act on special solutions associated with the prevention, counteraction and combatting of COVID-19, other infectious diseases and crisis situations caused by them, and on amending some other acts (OJ L 2020 item 568 as amended) pushed back the entry into force of drafted legal regulations that impose on some enterprises the obligation to apply provisions concerning unlawful contract terms, statutory warranty, and also those allowing for withdrawal from distance contracts and contracts concluded off the premises of a given enterprise. This is also why the legal solutions presented above, and the entire process of adapting enterprises to the new regulations — including changes to standard contract terms — will be introduced later.

Conclusions

The increasing scope of protection of consumers, who now include a broader range of entities as a result of the amendments to regulations in 2020, is not a panacea and does not result in the state's withdrawal from protecting its citizens from being taken advantage of as a result of inequality in the knowledge and methods of operation of professional entities. Constantly increasing specialisation requires the continued expansion of this protection.

Therefore, it is necessary to continually postulate that the legislator make such changes in the Energy Law that will minimize the prevailing information imbalance, in particular by specifying the rules for concluding contracts with a consumer of electricity and gas, as well as their automatic prolongation or withdrawal from them.

It is also necessary to have knowledge and broad awareness of legal and institutional protection and to be able to react quickly, triggering the process of consumer protection, which can be done through large-scale social campaigns. Ensuring this is particularly important in the electricity and gas market where natural transmission monopolies arise, significantly hampering the actual exercise of protection.

It is obvious that constructing a consumer-friendly market for energy and gas is an exceptionally complex process that demands the legislator's time and attention, as well as engagement among consumers themselves. The subject literature notes that the issue of information asymmetry between energy market enterprises and consumers impacts negatively the legal situation of the consumer as well as the functioning of competition (Czarnecka, 2014, pp. 45–46). It should also be pointed out that the increasingly popular notion of information asymmetry is a perfect description of the weakness of the consumer's position on the electric energy and gas market. Information asymmetry refers to transactional relations in which one party possesses greater knowledge (enjoys unequal informational resources) than the other party of the party (Chrisidu-Budnik, 2020, p. 81), which disturbs the homeostasis or balance between the parties; this, in turn, can generate various sorts of disfunctions and improprieties in the functioning of the electric energy market. Unaware, and thus in possession of less knowledge (which is frequently a purposeful act by the privileged enterprise), consumers have no chance to take a rational decision concerning electric or gas energy being offered to them, which, in turn, leads to a deformation of the very institution of of competition on the market for electric and gas energy.

Bibliografia/References

BEUC (2013). *Consumer rights in electricity and gas markets* (2013), BEUC position paper. https://www.beuc.eu/publications/x2013_083_mst_consumer_rights_in_electricity_and_gas_markets.pdf (15.01.2020).

Chrisidu-Budnik, A. (2020). Asymetria informacji na rynku zamówień publicznych. *Studenckie Prace Prawnicze, Administratywistyczne i Ekonomiczne*, (32). https://doi.org/10.19195/1733-5779.32.6

Czarnecka, M. (2014). Z problematyki ochrony praw konsumenta na rynku energii elektrycznej. Studia Ekonomiczne. *Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach*, (200).

Czarnecka, M. (2015). Automatyczne przedłużanie umów z konsumentami na rynku energii elektrycznej. *Internetowy Kwartalnik Antymonopolowy i Regulacyjny*, *4* (3). https://doi.org/10.7172/ikar

Domagała, P. K. (2019). RODO a proces zmiany sprzedawcy energii elektrycznej i nieprawidłowości z nim związane. *Internetowy Kwartalnik Antymonopolowy i Regulacyjny* (5). https://doi.org/10.7172/ikar

Jagielska, M., Podgórski K., Sługocka-Krupa E., Fras M. (eds.) (2018). *Prawa konsumenta w teorii i praktyce*. Warszawa: C.H.Beck.

Jurczyk, Z., Majewska-Jurczyk, B. (2015). Model ochrony konsumentów w Unii Europejskiej. *Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu*, (380). https://doi.org/10.15611/pn.2015.380.41

Kalus, S. (2018). Komentarz do art. 221 k.c., pkt 6. In: M. Fras, M. Habdas (eds.), *Kodeks cywilny. Komentarz. Część ogólna* (art. 1–125), t. 1. Warszawa: Wolters Kluwer.

Lewandowski, P., Sałach, K. (2017). *Ubóstwo energetyczne w Polsce w 2012–2016. Zmiany w czasie i charakterystyka zjawiska*, https://ibs.org.pl/publications/ubostwo-energetyczne-w-polsce-2012-2016-zmiany-w-czasie-i-charakterystyka-zjawiska/ (18.03.2020).

Maciejewski, M., Ratcliff, Ch., Nass, K. (2020). *Polityka ochrony konsumentów: zasady i instrumenty*, http://www.europarl.europa.eu/factsheets/pl/sheet/46/polityka-ochrony-konsumentow-zasady-i-instrumenty#_ftn1 (15.01.2020).

Marczak, P. (2018). Ceny energii elektrycznej w wybranych państwach Europy. In: *Ceny energii elektrycznej w wybranych państwach Europy*, Warszawa: Kancelaria Senatu. https://doi.org/10.12797/9788376388991

Maziarz, A. (2012). Zadania samorządu terytorialnego w zakresie ochrony praw konsumentów. *Samorząd Terytorialny* (6).

Mazuruk, P. (2011). Ochrona praw konsumenta w Rzeczypospolitej Polskiej w odniesieniu do prawodawstwa Unii Europejskiej. *Studies & Proceedings of Polish Association for Knowledge Management*, (51).

NIK (2018a). Kontrola NIK no. KGP.410.009.00.2017 *Ochrona praw konsumenta energii elektrycznej*, https://www.nik.gov.pl/plik/id,18282,vp,20880.pdf (8.04.2020).

NIK (2018b). Kontrola rozpoznawcza NIK no. R/17/002 *Organizacja systemów ochrony praw konsumenta energii elektrycznej oraz ustanawiania stawek taryfowych*, https://bip.nik.gov.pl/kontrole/R/17/002/KGP/ (10.04.2020).

Nowińska, E., Szczepanowska-Kozłowska, K. (2018). *Ustawa o zwalczaniu nieuczciwej konkurencji*. LEX, https://sip.lex.pl/komentarze-i-publikacje/komentarze/ustawa-o-zwalczaniu-nieuczciwej-konkurencji-komentarz-587750746 (15.01.2020). https://doi.org/10.7172/ikar.5.4.4

Rypina, M., Wierzbowski, M. (2018). Brak zamkniętego katalogu umów w obrocie energią elektryczną. *Przegląd Prawa Handlowego*, (7).

Sozański, J. (2013). Niedostatki unijnej ochrony indywidualnych praw konsumenta w Polsce. *Ius Novum*, (3).

Stawicka, A. (2018). Ochrona praw konsumentów w Polsce i w wybranych krajach. In: *Ochrona praw konsumentów w Polsce i w wybranych krajach*.

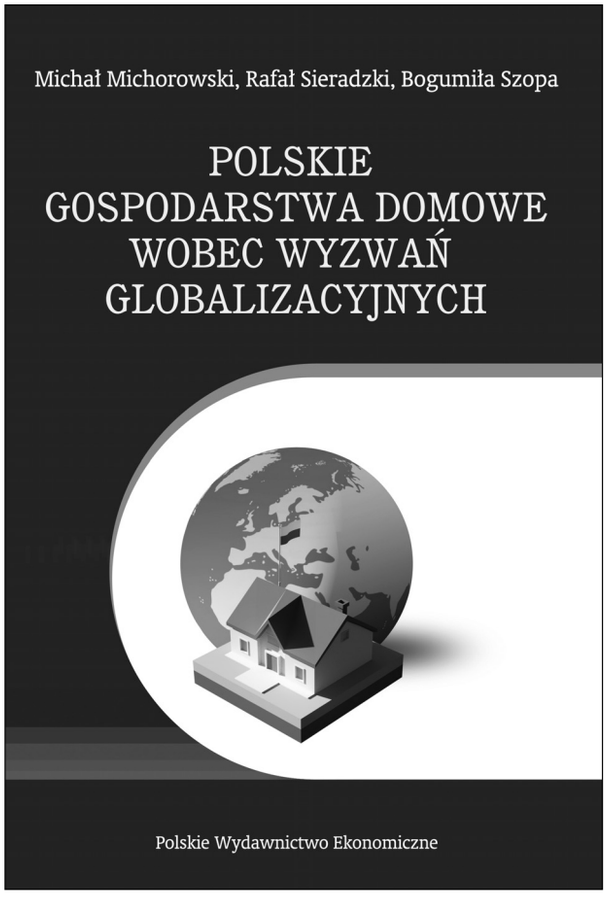
Suski, P. (2015). Ustawa o prawach konsumenta a rynek energii elektrycznej. *Internetowy Kwartalnik Antymonopolowy i Regulacyjny*, (3). https://doi.org/10.7172/ikar
UOKiK (2011). *Raport Pozycja konsumenta na rynku energii elektrycznej*. Warszawa.
Żuławska, C. (1994–1995). O prawach konsumenta w okresie przemian. *Roczniki Nauk Społecznych*, 22–23 (1).

Dr Justyna Przedańska

Assistant Professor, Department of the Public Administration System, Administration and Economics, Institute of Administrative Studies, Faculty of Law, University of Wrocław.

Dr Justyna Przedańska

Adiunkt w Zakładzie Ustroju Administracji Publicznej Instytutu Nauk Administracyjnych na Wydziale Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego.



PWE POLECA

W monografii zdecydowano się na pokazanie wpływu ogólnie korzystnej koniunktury gospodarczej w Polsce w powiązaniu z przekształceniami systemowymi na warunki życia statystycznego gospodarstwa domowego. Wyeksponowano te aspekty sytuacji gospodarstw, które w istotny sposób wiążą się z aktualnymi, istotnymi wyzwaniami, jakie niesie ze sobą współczesny świat, m.in. globalizację. Głównym kryterium wyboru tematów w książce były kwestie nieporuszane wcześniej, ogólnie dotyczące szczebla mikroekonomicznego, a mianowicie:

- bezpieczeństwo ekonomiczne gospodarstw domowych w kontekście programu „Rodzina 500+”,
- oszczędzanie i aktywa finansowe gospodarstw domowych,
- finansowe turbulencje i upadłość konsumencka,
- korzystanie z energii elektrycznej.

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