

DOUBLE STANDARDS – PERSPECTIVES FOR CONSUMERS IN THE EUROPEAN UNION AND CONSEQUENCES ON CONSUMER PROTECTION

Şanta Ana-Maria Iulia

Bucharest University of Economic Studies, Bucharest, Romania

E-mail: anamaria_iulia_santa@yahoo.com

Abstract

The consumer focus is an important interdisciplinary trend reflected in several European Union policy sectors, like competition, banking and finance, energy, common market related aspects and data protection. The European Union is a heterogeneous entity, trying to use its heterogeneity as an advantage and as a source of diversity. An interesting research question addressed in the present paper is to analyze to what extent this approach really is applicable at the level of the European Union, which challenges are related to it and if at a certain point diversity becomes fragmentation. The present article has as research objective to illustrate the perspectives for consumers opened by the use of double standards by multinational companies and which consequences on consumer protection are generated by this commercial practice. It is important to analyze the role of harmonization in ensuring a unitary level of consumer protection at the level of the European Union given the context of globalization and to assess to what extent this harmonization is possible, taking into account the diversity of consumer preferences and the differences of purchase power as well as different consumer behavior in several countries. The topic is analyzed from an international perspective, presenting interdisciplinary aspects in a comparative manner and it is illustrated in the latest documents issued by the European Commission as well as in the literature and in the current applicable legislation. Possible solutions are outlined based on the latest developments related to this subject.

Keywords

Double standards, consumer protection, consumer focus, globalization, harmonization.

JEL Classification

D18, D11, F60, K21, L40, M10, M16, M21, P46

Introduction

The consumer focus is a developing trend which is reflected in an interdisciplinary manner in various fields of the business environment and in several policies. Management, marketing, European policies, European law, competition, banking and finance, energy policy, data protection – they all have consumer orientation as a common benchmark. The focus on consumer protection is a feature of European Union strategies and at the same time it is a key issue in the business environment of the United States of America, where it has its roots. The process of globalization and the globalized business environment further strengthened the consumer focus as an important element of business strategies. This

orientation towards the consumer is not only an element of the private business environment, but it is as well an issue on the agenda at the level of European Union policies. The European Union as a political, economic and legal conglomerate is a heterogeneous entity, trying to use its heterogeneity as an advantage and as a source of diversity, as its motto “united in diversity” (https://europa.eu/european-union/about-eu/symbols/motto_de) states it. Given this constellation of heterogeneous legal systems, economies and political systems it is likely that conflicts occur between several Member States of the European Union or between the European Union as an entity and its Member States. The occurrence of such conflict situations is illustrated in the topic of double standards used for products commercialized on the common market of the European Union under the same brand, but with different product quality. The use of this commercial practice becomes a statement regarding consumer discrimination within different Member States of the European Union, leading to segregation of the common market of the European Union and it is therefore very controversial at the present moment. Such a conflict occurred when the Visegrad-group, to which the Czech Republic, Slovakia, Poland and Hungary belong, claimed that the use of double standards by multinational companies is in fact a statement of discrimination of consumers in Eastern Europe and should therefore be forbidden. The European Commission had to react to this important claim and is now searching for solutions to solve this challenging conflict. The present paper analyzes the position of the European Commission towards the use of double standards by multinational companies, the proposed measures and recommendations of the European Commission in order to solve this problematic issue, the answer of the multinational companies using double standards to the recommendations of the European Commission, the perspectives for consumers and the consequences on consumer protection which are related to this discussion. The paper analyzes the role of harmonization in granting unitary consumer protection for all European Union consumers, as well as the limits of this harmonization process. Shared competencies between the European Union and the Member States are the basis of this collaboration. The present paper analyzes as well the changes that occurred over time in the consumer profile and the differences of this consumer profile in the European Union and in the United States of America. Instruments for granting consumer protection, such as class actions, are as well analyzed.

The topic is illustrated in the latest documents issued by European institutions, for instance by the European Commission and is analyzed as well in the specific literature and in the current applicable legislation. Case studies illustrate the topic in a concrete manner. The present paper is in line with previous research, further developing it and presenting a multidisciplinary perspective on the research questions, which combines legal and economic aspects that act together and that define the globalized business environment.

Review of the scientific literature

The European Union as it looks today has developed to a very complex entity, characterized by a wide range of economies, legal systems, consumer preferences, with different purchase power in each Member State, different levels of income, different costs of living (Wirtschaftsdienst, 2007, p. 495), so that heterogeneity is a feature of the European Union. This differences are on the one hand an advantage, as they are a source of variety, but on the other hand they generate fragmentation within the European Union. This fragmentation has a concrete expression in the concept of multi-speed Europe, as it appears in the scientific literature. The concept of multi-speed Europe was first related to the Euro-zone and to the Schengen Agreement (<https://www.euractiv.de/section/europakompakt/news/interview-europa-der-zwei-geschwindigkeiten-bedeutet-mehr-wahlmoeglichkeiten-de/>), but it can be nowadays extrapolated as well to other areas. The challenge which rises with this issue is the fact that harmonization needs more efforts in order to be achieved, as the whole picture

becomes more confusing (Wirtschaftsdienst, 2007, p. 495), like a mosaic. Divergent opinions are in this context difficult to harmonize. What really acts as a bridge in this mosaic structure are the common values that build the basis for the European Union. One such value is consumer protection. Consumer protection acts like a catalyst for innovation, in order to offer a wide range of possibilities to the consumer. Consumer focus builds a bridge between several fields that interact in the business environment, for instance between economics, competition law, consumer protection law, and intellectual property law. This common value of consumer orientation is illustrated in the development of the more economic approach, as presented in the scientific literature. This approach has its roots in the American scientific literature and states that legal issues, for example related to competition, should be evaluated taking into consideration the impact on the consumer (Möller, 2008, p. 38). Moreover, it suggests to use economic methods for these assessments (Albers, 2006). This way consumer welfare becomes a common value of business, economics and the legal field (Möller, 2008, p. 38). An instrument in order to facilitate a harmonized framework for consumer protection could be the class actions, like they appear in the American law system (Tamm, 2009, pages 169–174). The main difference between class actions as they are used in the American system and collective actions as they appear in the European Union related to consumer protection is that the American class actions rely on the opt-out model, while the European class actions rely on an opt-in-model. Due to the legal systems in the European Union, only an opt-in-model could be implemented in the European Union (Tamm, 2009, pp. 169–174). Given the legal tradition in continental law systems, the American class action model cannot be implemented in the European Union as an instrument granting consumer protection, but it needs to be adapted to the legal milieu of the European Union (Meller-Hannich, Höland, 2011, pp. 168–176). In the American system of class actions, the consumer is part of the defined class and has an opt-out possibility. In the European system, this situation does not exist. Consumer organizations deal with collective actions for consumer protection, but the consumer is not part of the litigation process. So in fact it is not a litigation process ending with damage claims, but only a process which aims to stop the consumer harming actions, but without paying compensations to the harmed consumers (Tamm, 2009, pp. 169–174). Moreover, different countries in the European Union have divergent opinions related to aspects of consumer protection and to the instruments for ensuring fair consumer protection. In this context, it is challenging to create a harmonized framework for consumer protection at the level of the European Union.

An important goal of the European Union reflected in the initiatives of the European Commission is to create a unitary level of consumer protection within the European Union, through Regulations and Directives and to ensure the enforcement of the provisions regarding consumer protection in the European Union (Lurger, Augenhofer, 2008, p. 12).

Research topics and research methodology

An interesting research question addressed in the present paper is if diversity as a feature of the heterogeneous European Union is an advantage, as it provides diversity or if it can lead to fragmentation and to segregation of the common market of the European Union. As a concrete situation of market fragmentation, the situation of double standards is analyzed. The present article has as research objective to illustrate the perspectives for consumers that derive from the use of double standards by multinational companies and to present which consequences on consumer protection are generated by this commercial practice. The present paper deals with the role of harmonization in ensuring a unitary level of consumer protection at the level of the European Union given the context of globalization and to what extent this harmonization is possible, taking into account the diversity of consumers within

the European Union and the related consumer preferences, different consumer behavior and the differences of purchase power in the Member States of the European Union.

The present paper analyzes the position of the European Commission towards the use of double standards by multinational companies as well as the position of multinational companies, which are global players, towards this issue. The present paper analyzes as well the changes that occurred over time in the consumer profile and how the consumer profile is defined in the European Union versus the approach in the United States of America. The consumer profile nowadays is the one of an informed and responsible consumer, compared to the naive consumer of the past, that was easy to mislead. Instruments for granting consumer protection, such as class actions, are as well analyzed in a comparative manner, presenting the system used in the European Union versus the American view towards this issue.

The topic is illustrated in the latest documents issued by European institutions, for instance by the European Commission and it is analyzed as well in the specific literature and in the current applicable legislation. Case studies illustrate the topic in a concrete manner. The results of investigations performed in the countries of the Visegrad-group, but as well in some other countries in Eastern Europe are evaluated and interpreted in order to find possible solutions to the debated issue of double standards.

The present paper further develops previous research, presenting the research results from a multidisciplinary, international perspective, combining legal and economic aspects that interact in the business environment in the context of globalization.

The paper uses a comparative, interdisciplinary approach with focus on international aspects, presenting the American perspective versus the European perspective towards class actions as an instrument granting consumer protection.

Qualitative methods are used in the present paper, as the research topic is multidisciplinary. Data and quantitative results of investigations are as well interpreted and evaluated in order to draw conclusions from the performed analysis.

Results and discussion

Double standards – a source of market fragmentation

The issue of use of double standards refers to the fact that multinational companies commercialize products under the same brand in various countries in the European Union, but these products have different ingredients and thus different quality. So in fact the multinational companies use a double quality standard for Western Europe and for Eastern Europe. This commercial practice leads to the fragmentation of the common market of the European Union and to conflicts between the Member States of the European Union. Multinational companies are criticized by the Visegrad-group for the practice of using double standards. The countries in the Visegrad-group are the Czech Republic, Slovakia, Poland and Hungary. This issue was discussed at the Consumer Summit in Bratislava in October 2017 and it is a current issue of debate at the level of the European Union. The Visegrad-group claims that double standards for food products should be prohibited on the common market of the European Union. The reason behind this is that it is not fair that consumers from countries in Eastern Europe receive products of poor quality compared to consumers from countries in Western Europe. This kind of practice is a clear statement of discrimination, according to the Visegrad-group. The problem of use of double standards splits the European Union and creates conflicts. The problem is that the ingredients used in Eastern European countries have a poor quality. The reason behind the use of these ingredients is that the purchase power in these countries is reduced compared to the countries in Western Europe and the multinational companies want to commercialize cheaper products, corresponding to this lower purchase power. Investigations performed in the Czech Republic, in Slovakia and in Hungary, countries belonging to the Visegrad-group

have proven the fact that the quality of products commercialized here was poorer than the quality of the same products in countries from Western Europe (https://www.dcnnews.ro/produse-dublu-standard-un-alt-stat-din-ue-diferen-e-uria-e_559138.html). These countries have informed the European Commission about the results of these investigations and they claimed a change of European Union legislation, so that such a situation should not occur any longer. A product should have exactly the same ingredients on all the markets of the European Union, according to the claim of the Visegrad-group. The claims of the Visegrad-group had an extended impact on several other countries in Eastern Europe and the initiative to support this claims and to fight against the use of double standards spreads in some other countries in Eastern Europe, which are affected by this issue, such as Bulgaria, Croatia, Estonia, Lithuania and Romania.

The results of the performed investigations are summarized in the table below.

Table no. 1. Results of double standards related investigations in Eastern European countries

Country	Investigation results
Czech Republic	→ 1/3 of the investigated products have a poorer quality than the corresponding products in Germany.
Lithuania	→ 60% of the investigated products have poorer quality in Lithuania than in Germany. → 33 products have been tested in Lithuania and in Germany => only 10 had the same quality. The other products presented differences regarding the taste, the colour, the ingredients (ingredients of poorer quality were used in Lithuania compared to Germany, less chemical products and colorants were used in Germany). → for chips: In Germany chips contained sunflower oil, while in Lithuania they contained palmoil, which has a poorer quality compared to sunflower oil (https://www.dcnnews.ro/produse-dublu-standard-un-alt-stat-din-ue-diferen-e-uria-e_559138.html)
Romania	→ An investigation was performed in July 2017. → meat products were tested, such as ham, bacon and cold meat products. → milk products, canned fish, chocolate were as well tested. → 29 products were tested: thereof 9 cheese products, 2 butter products, 1 sour cream, 7 ham products, 3 cold meat products, 1 sausage type, 3 fish products, 2 liver pâté, 1 chocolate product. → double standards were found at 9 products from the categories cold meat products, canned fish (mackerel and herring canned fish), ham, liver pâté, bacon (https://www.dcnnews.ro/produse-dublu-standard-un-alt-stat-din-ue-diferen-e-uria-e_559138.html). => differences in fat content and protein content were found.

Source: Mureşan, 2017

Legal basis

The legal issue related to double standards is the question if this commercial practice is an infringement of European Union Law provisions. The legal basis for assessing this aspect can be found in Regulation (EU) No 1169/2011 of the European Parliament and of the

Council of 25 October 2011 on the provision of food information to consumers, according to which consumers must receive exact and enough information regarding the food product and all the ingredients must be labeled. The problem is that in the case of double standards, the ingredients are labeled and the products are technically safe for the consumers. It is rather an ethical aspect and as well an issue of economic realities to use ingredients of lower quality in some poorer countries, with lower purchase power. Important provisions can be found as well in Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, according to which unfair business-to-consumer commercial practices, like commercializing different products under the same label, are misleading for the consumer and thus prohibited. The use of double standards is thus a practice that is misleading for the consumer and it has negative consequences on the consumer.

Position of the European Commission versus position of multinational companies

The European Commission is willing to help affected Member States of the European Union to fight against discriminative practices like the use of double standards, but without changing the legislation in force. According to the position of the European Commission stated by its President Jean Claude Juncker, all consumers in the European Union must be treated equally. In order to achieve this, strengthened competencies for the national authorities will be put in place.

According to Vera Jourova, Commissioner for Justice, Consumers and Gender Equality, double standards are misleading for the consumer and show a lack of loyalty towards consumers, so they are against European Union Law. There is no need for new legislation in the field, but the legislation in force should be better applied. One possible solution provided would be to enhance the quality of all commercialized products, so that double standards should no longer exist. One other option could be rebranding (<http://www.euractiv.ro/agricultura/comisia-europeana-duble-standarde-produse-alimentare-8900>).

In the field of consumer protection, there are shared competencies between the European Union level, represented by the European Commission and the national level, represented by national authorities from the Member States, as shown in the figure below.

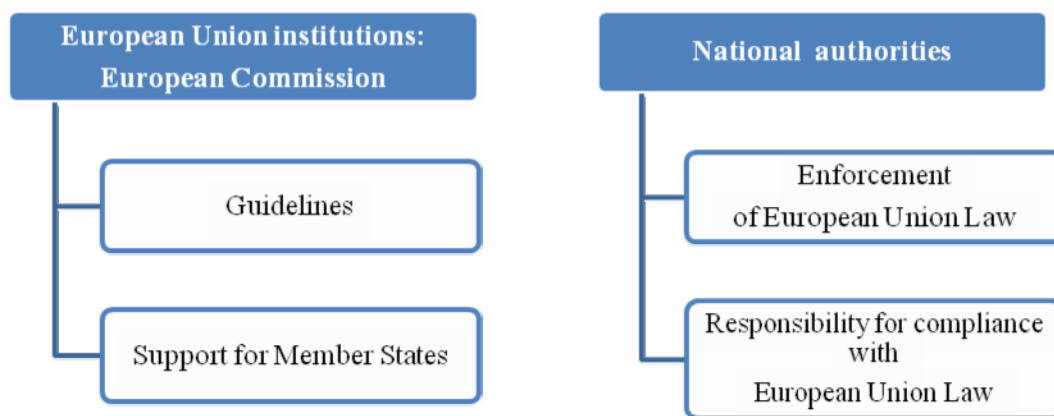


Fig. no. 1. Shared competencies between European Union institutions and national authorities in the field of consumer protection

Source: Neagu, 2017

The reaction of the multinational companies using double standards was the explanation that they adapt their recipes according to consumers' preferences on the local market. Some

companies have nevertheless changed their recipes according to the recommendations of the European Commission, for example the company Hipp for baby food and the company Bahlsen, which now uses butter instead of palm oil for the waffles for the Eastern European market.

Conclusions

Measures taken at European Union level could provide solutions for the arising issue of double standards that splits the market of the European Union. The European Commission prohibits double standards as a form of consumer discrimination. As possible solutions, the European Commission published in September 2017 new rules for food producers. The European Commission as well published guidelines with the relevant legal provisions and it offers support to the Member States of the European Union in order to fight against this commercial practice. Furthermore, as complementary supportive measures, the European Commission offers financing in amount of 1 Million Euro for the elaboration of a new and unitary methodology for assessing the practice of double standards, it offers as well supportive enforcement measures for the Member States of the European Union, it initiates a dialogue with the food producers in order to elaborate a Code of Conduct and it organizes summits on the topic of consumer protection and workshops for the national authorities in this field.

The present article further develops previous research, by providing a multidisciplinary perspective on a very recent and debated topic, of great interest for the consumers in the European Union. Research in this dynamic field will for sure develop and further research will be needed. This contribution is important, as the results can be used as well for further research and studies on consumer protection at European Union level. Extensions of the work provided for the present paper are possible and will be needed in future, as the topic is one of great interest.

References/Bibliography

- Albers, M., 2006. *Der „more economic approach“ bei Verdrängungsmisbräuchen, Zum Stand der Überlegungen der Europäischen Kommission.* (Generaldirektion Wettbewerb der Europäischen Kommission) [online] Available at: <http://ec.europa.eu/competition/antitrust/art82/albers.pdf> [Accessed 12 March 2017].
- Dinu, V., Săvoiu, Gh. and Dabija, D.-C., 2016. *A concepție, a redactată și a publicată un articol științific: o abordare în contextul cercetării economice.* București: Editura ASE.
- Euractiv, 2017. [online] Available at: <https://www.euractiv.de/section/europakompakt/news/interview-europa-der-zwei-geschwindigkeiten-bedeutet-mehr-wahlmoglichkeiten-de/> [Accessed 03 December 2017].
- European Commission, 2017. [online] Available at: ec.europa.eu/newsroom/document.cfm?doc_id=47673 [Accessed 03 December 2017].
- Eurlex, 2018. Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, [online] Available at: <http://data.europa.eu/eli/reg/2011/1169/oj> [Accessed 25 April 2018].
- Eurlex, 2018. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market ('Unfair Commercial Practices Directive') [online] Available at: <http://data.europa.eu/eli/dir/2005/29/oj> [Accessed 25 April 2018].

- European Union, 2018. [online] Available at: <https://europa.eu/european-union/about-eu/symbols/motto_de> [Accessed 17 April 2018].
- Lengauer, A., 2014/2015. *Einführung in das Europarecht – Europäisches Verfassungsrecht*.
- Lurger, B., Augenhöfer, S., 2008. *Österreichisches und Europäisches Konsumentenschutzrecht*, 2. Auflage, Wien, New York, Springer.
- Mediafax, 2017. [online] Available at: <<http://www.mediafax.ro/externe/reconcilierea-cu-grupul-de-la-visegrad-pe-agenda-lui-jean-claude-juncker-liderii-poloniei-ungariei-cehiei-slovaciei-invitati-la-discutii-16754803>> [Accessed 03 December 2017].
- Meller-Hannich, C., Höland, A., 2011. Die Europäische Sammelklage, *Zeitschrift für Gemeinschaftsprivatrecht*, 8(4), pp. 168–176.
- Möller, S., 2008. *Verbraucherbegriff und Verbraucherwohlfahrt im europäischen und amerikanischen Kartellrecht*. Baden-Baden: Nomos-Verlagsgesellschaft.
- Mureșan, D., 2017. *Produse dublu standard. Un alt stat din UE, diferențe urișe*, [online] Available at: <https://www.dcnews.ro/produse-dublu-standard-un-alt-stat-din-ue-diferen-e-uria-e_559138.html> [Accessed 03 December 2017].
- Neagu, B., 2017. *Dublu standard la alimente - Comisia Europeană lasă în seama statelor membre combaterea practicilor neloiale*, [online] Available at: <<http://www.euractiv.ro/agricultura/comisia-europeana-duble-standarde-produse-alimentare-8900>> [Accessed 03 December 2017].
- Tamm, M., 2009. EU-weite Sammelklagen: Ein Schub für das Verbraucherrecht – auch für das Pauschalreiserecht, *ReiseRechts aktuell*, 17(4), pp. 169–174.
- Treaty on the Functioning of the European Union, consolidated version, Official Journal of the European Union. [online] Available at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT>> [Accessed 25 April 2018].
- Wirtschaftsdienst, 2007. Ein Europa der zwei Geschwindigkeiten?. *Wirtschaftsdienst*, 87(8), pp. 495.