

The European Union's Policy in the Field of the Consumer Right to Representation

Mira Malczyńska-Biały

University of Rzeszów, Poland

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Abstract

The purpose of this article is to analyze the European Union's consumer policy in the context of the consumer right to representation. In particular, the discussion focuses on the analysis of individual European Union consumer policy programs and strategies in the context of the abovementioned right. The development of the consumer right to representation is synonymous with enabling consumers to participate in the formulation and implementation of consumer policy. It involves financial, organizational and educational support for consumer organizations in the European Union at national and international levels.

Keywords: consumer policy, right to representation, European Union

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Introduction

The purpose of this article is to analyze the European Union's consumer policy in the context of the development of the consumer right to representation. The article verifies the following research hypotheses: firstly, the classification of the European Union's consumer policy is related to its definition as an element of the EU's economic and public policies; secondly, the concept of the consumer right to representation has been developed in the European Union's consumer policy strategies and programs for a given period of time; thirdly, the development of the consumer right to representation has been influenced by the activities of non-governmental consumer organizations and the development of consumer legislation. A number of sources have been used for the purposes of this article. The author has carried a detailed analysis of the consumer policy programs of the European Union and the European Economic Community on the basis of selected primary and secondary legislation of the European Union, European Union Bulletins, European Union Activity Reports, as well as specific books and academic articles.

A number of political science research methods and techniques were used to implement the research problem. For example, the institutional-legal method was used to analyze the texts of normative acts in the field of consumer protection in the European Union, and elements of the comparative method were used in the analysis of the consumer right to representation in specific periods.

The European Union's consumer policy is a set of legal and organizational activities undertaken by the European Union institutions and international consumer NGOs in accordance with consumer policy programs for a given period of time. They are aimed at protecting the rights of consumers in terms of health, economic interests, redress, information and education, and organization (Malczyńska-Biały 2021a, 15).

E-mail addresses and ORCID digital identifiers of the authors

Mira Malczyńska-Biały • e-mail: mimalczynska@ur.edu.pl • ORCID: 0000-0003-3083-800X

The right to representation in the context of European Union's consumer policy is a practical expression of exercising one of the fundamental rights of consumers—the right to representation and expression (Malczyńska-Biały 2017, 193).

The concept of developing the consumer right to representation is synonymous with enabling consumers to participate in the development and implementation of consumer policy. It involves financial, organizational and educational support for consumer organizations in the EU at national and international levels. The development of consumer organizations acts as a counterbalance to the powerful position of economic operators and helps to promote consumer interests. The existence of consumer organizations enables consumers to express their own views on various issues affecting their interests, including voluntary consumer associations. The voice of an individual consumer does not have the same authority as that of the general public united in an association. Therefore, thanks to the freedom of association of consumers, they are able to express their own position on all kinds of issues concerning their interests within the framework of voluntary consumer associations. In the legislative process, consumer organizations play an opinion-forming role. Through their education and information activities, consumer associations contribute to raising consumer awareness, eliminating irrational and erroneous purchases, and making consumers aware of their rights. A consumer who knows his or her rights and is able to exercise them independently or with the support of an institution specializing in the enforcement of claims is a partner for producers and sellers, forcing them to behave in accordance with models of good market practice and ethical business principles (Śliwińska 2005, 164).

The period after 2002 has been crucial for the development of the consumer right to representation. The implementation period of the objectives included in the previous programs and the concepts of the European Union's consumer policy has changed. It now covers a four-year period, so that the objectives relating to the development of the right to representation are of a long-term nature and could be pursued more comprehensively. Previous European Union programs covered a two-year period (1993–1995, 1996–1998, 1999–2001). The first consumer policy program followed the signing of the Treaty of Nice on 26 February 2001. It included an important change in the representation of the development of consumer policy. The amendment concerned the extension of the competence of the European Economic and Social Committee (Article 2(39) amending Article 257 of the Treaty establishing the European Community). It had an advisory character and was composed of representatives of various economic and social groups, including consumers. In the following years, there was a gradual development of consumer policy, reflected in consumer legislation and the activities of consumer organizations (Malczyńska-Biały 2012, 66–67).

1 The consumer right to representation in the European Economic Community

The concept of the development of the consumer right to representation in the European Economic Community was reflected in consumer policy programs and strategies. Their requirements were not legally binding although they contributed to the development of consumer organizations in the Member States as well as those with an international reach. The 1975 Consumer Protection and Information Policy Program, which was the first program of this type, aimed to strengthen and co-ordinate consumer protection activities in the EEC. In the annex to the program, para. 3 listed five consumer rights. One of them was to ensure the right of consumers to be represented and to be heard.¹

It included a mandate to consult the consumer community when making regulations or decisions affecting consumers. It also enabled them to express their own views, mainly through non-governmental organizations. The basic principles of consumer consultation and representation are set out in paras. 46, 47 of the program. In principle, consumers were always to be consulted in the preparation of decisions affecting them. This could be done, in particular, through consumer protection and information organizations (point 46). The consultative forum for representing consumer interests at

1. See: Council Resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy. OJ C 92, 25.4.1975, p. 1–1.

that time was the Consumer Consultative Committee (CCC), set up on 25 September 1973, with 25 members: fifteen representatives of European consumer organizations and ten experts.²

The subsequent European Economic Community Programme for Consumer Protection and Information Policy of 1981 stressed the need to develop dialogue and consultation between economic operators—i.e., consumer representatives, producers and distributors, in order to facilitate the exercise of their rights. The promotion of consumer interests was one of the priorities for the Community's action highlighted in the strategy. Its implementation was linked to the consideration of consumers as actors with influence on economic and social decisions. It stressed the importance of the dialogue between consumers and producers and public authorities.³

A further development of the measures taken to implement this concept was contained in the Communication from the European Commission to the Council of the European Communities "A New Impetus for Consumer Policy" of 27 June 1985. Within the framework of consumer rights, the freedom to form consumer associations and movements was to be ensured. According to para. 18 of the communication, the Community developed and pursued strategic objectives. One of these objectives was to make certain that consumer interests were taken into account in various Community policies. In order to ensure the necessary level of consumer protection, consumer representatives had to be consulted on regulations relevant to their interests. Only then would their point of view be taken into account. In pursuit of this objective, the commission encouraged dialogue between consumer representatives and other economic operators, in particular producers and distributors.⁴

The development of the consumer right to representation was later on included as one of the objectives of the Three-Year Consumer Policy Action Plan 1990–1992 of the European Economic Community.⁵ One of the consumer rights identified was the right to representation. It was pointed out that in order to reap the economic and social benefits of the Single Market, consumers needed to be actively involved in many activities. Consumer representation at the national and Community policy levels was necessary to counterbalance the influence of producers and suppliers on these policies. The Community's objective was to strike a balance between producer and consumer representation.

The Commission was supposed to seek support for its development wherever it was not fully achieved. The need for a consumer consultative body to enable the development of representation was identified. This would result in a better and more effective system of consumer involvement in various policies and procedures established in the Community. It was recognized that consumer organizations in the Member States differed in their organization, culture and character. Consequently, action was needed to improve their situation according to their different needs.⁶

The consumer right to representation was developed in the Resolution of 13 July 1992 on future priorities for the development of consumer protection policy. The Resolution stated that, in view of the inclusion of consumer protection as one of the Community's policies, it was necessary to pursue the objectives of the three-year action plan implemented between 1990 and 1992. In an annex, the Resolution formulated six priorities for consumer protection policy. One of them was to strengthen consumers' representation by developing dialogue between the various players and encouraging the full development of consumer organizations in the Community.⁷

2. See: "Seventh General Report on the Activities of the European Communities 1973." Brussels, Luxembourg, February 1974, page 169.

3. See: Council Resolution of 19 May 1981 on a second programme of the European Economic Community for a consumer protection and information policy. OJ C 133, 3.6.1981, p. 1–12.

4. See: A New Impetus for Consumer Protection Policy (Communication from the Commission to the Council). COM(85) 314 final. Brussels, 27 June 1985.

5. See: Three Year Action Plan of Consumer Policy in the EEC (1990–1992). COM/90/98 final. Brussels, 3 May 1990.

6. See: "XXIVth General Report on the Activities of the European Communities 1990." European Commission, Publications Office, Brussels, Luxembourg, 1991, page 227.

7. See: Council Resolution of 13 July 1992 on future priorities for the development of consumer protection policy. OJ C 186, 23.7.1992, p. 1–3.

2 The objectives of the European Union's consumer policy on the right to representation

The Treaty of Maastricht⁸ was a landmark in the development of consumer rights and a great improvement in consumer safety. It introduced for the first time a separate Title XI on consumer protection, which included a new clause in its regulations. According to Article 129a, the Community shall contribute to the attainment of a high level of consumer protection through the measures it adopts pursuant to Article 100a in the context of the completion of the internal market and through specific action to support and supplement the policy pursued by the Member States to protect the health, safety and economic interests of consumers and to ensure that they are appropriately informed (Weatherill 2012).

The second Commission three-year consumer policy plan for 1993–1995 referred to the need to strengthen and extend concentration in its priorities of raising the level of consumer protection and making consumers aware of their rights. This objective has been pursued, *inter alia*, on the basis of the work of the Consumers' Consultative Council since 1989.⁹

The Council was a forum for consumer organizations to express their views on consumer information and safety issues, consisting of 16 persons representing European and national consumer organizations, institutions and persons with specific expertise in consumer affairs.¹⁰

Strengthening concentration was identified with ensuring adequate consumer representation. Concentration was to be driven by the growing manufacturing and commercial sectors. The importance of involving consumer organizations at the EU level in the development of protection standards was stressed. In 1993, the members of the Commission responsible for consumer policy launched a consultation, in particular with European representatives of consumer organizations, as a basis for reforming the Consumers' Consultative Council. The main task was to draw up proposals for reform. In the Member States, the national organizations were partners in bringing consumers together and looking after their interests. Therefore, strengthening concentration meant strengthening national consumer organizations. This action was focused on countries where the organizations were weaker in structure because they had only recently developed. On 13 June 1995, The Commission adopted Decision 95/260/EC establishing the Consumers' Consultative Council. It continued the objectives of its predecessor, the Consumers' Consultative Council.¹¹ At the same time, however, it was pointed out that a more effective dialogue with consumers should be held and that consumer requirements should be taken into account in the formulation of Community policies.¹²

The idea of developing the consumer right to representation was expressed in the Commission's Communication on Priorities for Consumer Policy 1996–1998.¹³ Of the nine priorities for action set out in the Communication, one related to strengthening and developing consumer representation. It noted that consumers did not feel the need to be organized into associations or groups. In the European Union, it was estimated that around 4 million citizens were members of consumer organizations. As the most organized groups were to be found in the northern European Member States, the Commission sought to strengthen the consumer movement in the southern Member States, where there had traditionally been little consumer participation in organized structures. This was done by providing financial support to consumer organizations in specific regions.¹⁴

8. See: Treaty on European Union. OJ C 191, 29.7.1992, p. 1–112.

9. See: Consumer Policy—Second Commission Three-Year Action Plan 1993–1995—Placing the single market at the service of European consumers. COM/93/378FINAL.

10. See: Commission Decision of 17 December 1989 setting up a Consumers' Consultative Council. 90/55/EEC. OJ L 38 10.02.1990, p. 40.

11. See: Commission Decision of 13 June 1995 setting up a Consumer Committee. OJ L 162, 13/07/1995, p. 37–40.

12. See: General Report on the Activities of the European Union 1995. European Commission, Secretariat-General, Publications Office of the European Union, Brussels, Luxembourg, 1996.

13. See: Communication from the Commission—Priorities for Consumer Policy 1996–1998. COM/95/519 final.

14. See: *Bulletin of the European Union* 12/1998. Available at <https://op.europa.eu/en/publication-detail/-/publication/34b9710f-5d9f-4a88-8cdc-cb6a5f10d413/language-en>.

In the Consumer Policy Action Plan 1999–2001,¹⁵ the development of the right to representation was linked to the objective of giving consumers in the European Union a more effective role. The role of consumers in the EU has been strengthened through a number of actions, including support for the emergence of effective consumer organizations. It was pointed out that consumer organizations played an important role in promoting consumer interests, as they could focus on an issue in a way that an individual consumer could not. Financial support was therefore needed to enable them to represent consumers effectively and independently of public authorities.¹⁶ One priority was to provide financial support to consumer organizations especially in those Member States whose own resources were limited, and to promote and coordinate consumer participation at the European level in the standardization process.¹⁷

The development of consumer representation was also to promote better mutual understanding between consumers and traders. The Commission supported a more sophisticated dialogue, emphasizing elements of “self-regulation” between consumers and professionals, including the retail sector. The dialogue was organized on the basis of relevant sectors and the identification of cooperation partners on an annual basis. The participants decided on the scope and structure of the cooperation. Initially, the cooperation was informal. Then, as it developed, the Commission established more regular meetings of this specific sector. This dialogue was to become a kind of negotiating and monitoring forum for self-regulation agreements.¹⁸

Since cooperation between consumer organizations was an important element of consumer representation, seminars were organized for such organizations in the EU.¹⁹

The European Union Consumer Policy 2002–2006 articulated the concepts of developing the consumer right to representation in the objectives of proper involvement of consumer organizations in EU activities and effective enforcement of consumer protection legislation. The involvement of consumer organizations in EU activities was to be achieved, *inter alia*, through the promotion and participation of consumer organizations in EU policies. Para. 3.3 of the Consumer Policy Strategy 2002–2006 stated that for consumer protection to be effective, consumers should be given the opportunity to contribute to the development of policies that affect them. This was important in the process of integrating consumer protection into other EU policies.²⁰

The involvement of consumer organizations was considered in a number of areas. Firstly, the need to review the mechanisms for the participation of consumer organizations in European Union policies was identified (point 3.3.1). To this end, requirements for public consultation in the legislative process were developed. The need for further work by consumer organizations within the European Economic and Social Committee was highlighted. Consumer organizations were expected to contribute to wider EU initiatives at all stages of the decision-making process.²¹

The EU Consumer Policy Programme 2002–2006 highlighted the need for consumer participation in consultative bodies and working groups. This would help to ensure the integration of consumer concerns into all European Union policies. To this end, new consultative bodies were to be set up in areas such as transport, energy, telecommunications and fisheries. The Commission would work towards greater transparency in the work of the advisory bodies. In this context, its task was to examine whether consumer organizations were adequately represented across the range of EU policies that affected them (point 3.3.1.2.).

15. See: Communication from the Commission—Consumer policy action plan 1999–2001. COM/98/0696 final.

16. See: Decision No 283/1999/EC of the European Parliament and of the Council of 25 January 1999 establishing a general framework for Community activities in favour of consumers. OJ L 34, 9.2.1999, p. 1–7.

17. See: General Report on the Activities of the European Union 1999. European Commission, Secretariat-General, Publications Office of the European Union, Brussels, Luxembourg, 2000.

18. See: Council Resolution of 28 June 1999 on Community consumer policy 1999 to 2001. OJ C 206, 21.7.1999, p. 1–3.

19. See: General Report on the Activities of the European Union 1999. *Op. cit.*, page 201.

20. See: Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions—Consumer Policy Strategy 2002–2006. COM/2002/0208 final. OJ C 137, 8.6.2002, p. 2–23.

21. See: European Governance A White Paper. COM(2001) 428. Brussels, 25.7.2001.

The 2002–2006 program pointed out that consumer participation in the standardization process was still insufficient given the dominant position of manufacturers (point 3.3.1.3.). The intensification of the participation of consumer organizations in European Union policies between 2002 and 2006 was to be linked to their participation in the work of the EU institutions. To this end, it was planned to consult European and national consumer organizations. In particular, this involved the systematic involvement of consumer groups in the work of the European Economic and Social Committee. The Commission also called on other EU institutions to consider how to increase consumer involvement in policy-making (point 3.3.1.4.). Consultation with consumer organizations was supposed to cover not only consumer regulation but also other issues of concern to them. The need to finance the participation of those involved in advisory committees was pointed out. It was necessary to regulate their payment. A model for raising additional funds could be developed where companies would receive donations to a foundation supporting consumer work. It was noted that there was a need to further develop initiatives to increase the role of consumers in advisory committees. Provision was also to be made for the representation of members from the candidate countries.²²

The development of the consumer right to representation between 2002 and 2006 was also linked to the effective enforcement of consumer protection legislation (point 3.2.). Concrete measures were to be taken in this respect. Firstly, support for consumer organizations was envisaged. Such organizations could make an important contribution to proper enforcement of the legislation by using consumer policy measures in the form of injunctions and by monitoring market processes. Their activities identified unsafe or unacceptably poor quality products and services. In this way, they complemented the enforcement and market surveillance role of public authorities. This was to be achieved through training programs available to consumer organizations on an online learning platform. Those programmes were intended to strengthen the capacity of consumer organizations and individual consumers themselves and contribute to better market surveillance. In addition, the European Commission was supposed to take specific initiatives related to general product safety. It was planned to organize specific training courses for consumer associations on market surveillance in the context of the revised General Product Safety (point 3.2.4.). It was also planned to explore the possibility of further coordinated initiatives with the Member States when the General Product Safety Directive entered into force in the Member States.²³

The subsequent Consumer Policy Programme 2007–2013 also developed consumer rights to representation in the European Union. At the EU level, the institutions involved in the process of drafting consumer legislation, and thus shaping the consumer protection system, cooperated with consultative and advisory bodies. Consumer organizations played an important role in the development of consumer protection standards. Thanks to their lobbying activities, legislation taking account of consumer interests has been adopted since 2002. In addition, their activities were aimed at solving real pan-European consumer problems. To illustrate the concept, better regulation of consumer protection was linked, *inter alia*, to activities in the broad area of support for consumer organizations. Consumer organizations at the EU level needed to have the capacity and ability to contribute to initiatives with a consumer dimension. Accordingly, the Commission was to continue co-financing the operational activities of consumer organizations at the EU level (Ślusarczyk 2018, 61).

The Commission was to support national consumer organizations, in particular those from the new Member States, by providing training in basic management skills, lobbying and modifying consumer law. This training would be organized on a multilateral basis. A strong consumer movement at the national level was an indispensable element both for a strong consumer movement at the EU level and for well-functioning national markets. As part of its monitoring of internal consumer

22. See: Opinion of the European Economic and Social Committee on the “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on consumer policy strategy 2002–2006” (COM(2002) 208 final). OJ C 95, 23.4.2003, p. 1–6.

23. See: Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (Text with EEA relevance). OJ L 11, 15.1.2002, p. 4–17.

protection systems, the Commission drew attention to national policies towards the consumer movement, particularly in those Member States in which the movement was least developed.²⁴

Another level of the development of the concept of the consumer right to representation in the European Union was linked to the consumer policy's objective of putting consumers at the center of other EU policies and regulations. This involved consumer participation in all relevant EU policy groups. In principle, the costs of consumer participation in such groups were to be reimbursed to those concerned. The Commission was also supposed to consider how to involve more actively all the parties concerned with consumer policy in consultations organized under other EU policies. It was planned to appoint a consumer liaison officer in each Commission department active in areas relevant to consumer interests. This would ensure that contacts were maintained with all stakeholders and that those responsible for implementing various policies had sufficient data to monitor the impact of these policies on consumers (Malczyńska-Biały 2021b, 141–143).

For the period 2014–2020, the assumptions of the concept under discussion could be found in the objective to support consumer organizations in the EU. The objective was to be developed through two categories of actions. The first one was to increase the transparency of consumer organizations, and the second one was to strengthen their regional and national capacities.²⁵

Greater transparency in the functioning of consumer organizations was to be achieved by extending financial contributions to the activities of consumer organizations at the European Union level which represented the interests of consumers. Under the regulation in question, grants at the European Union level could be awarded to European consumer organizations that met a number of important conditions. They had to be non-governmental, non-profit-making and independent of industry, commerce, business or other conflicting interests. Their main objectives were to promote and protect the health and safety as well as the economic and legal interests of EU consumers. They were mandated to represent the interests of consumers at the Union level by organizations in at least half of the Member States. These organizations represented consumers and were active at regional or national levels. They operated to provide a formal structure to enable consumer representatives from the European Union and third countries to participate in policy discussions and policy making. They also organized meetings with officials and regulators to promote and defend consumer interests in relations with public authorities and to identify common consumer issues and challenges. Moreover, they promoted the consumer perspective in the context of bilateral relations between the European Union and third countries, contributed to the exchange and dissemination of expertise in consumer issues in the European Union and third countries, and developed recommendations on consumer policy. Grants for the activities of the bodies established at the EU level to coordinate enforcement actions in the field of product safety could be awarded to bodies recognized for this purpose by European Union legislation.²⁶

In addition, support for consumer organizations was expected to consist of capacity building for regional, national and European consumer organizations, in particular through training in different languages and across the EU, and the exchange of best practices and expertise among their staff. This concerned especially consumer organizations in those Member States where such organizations were underdeveloped or where relatively low levels of consumer confidence and awareness had been identified through monitoring of consumer markets and the consumer environment. The need to increase transparency and the exchange of good practices and expertise was also identified, with special emphasis on increased online activities, i.e. the creation of an online portal for consumer organizations providing an interactive space for exchange and cooperation and free access to materials developed during the training (Bazylińska-Nagler 2019, 63–66).

24. See: Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee—EU Consumer Policy strategy 2007–2013—Empowering consumers, enhancing their welfare, effectively protecting them (SEC(2007) 321) (SEC(2007) 322) (SEC(2007) 323). COM/2007/0099 final.

25. See: Regulation (EU) No 254/2014 of the European Parliament and of the Council of 26 February 2014 on a multiannual consumer programme for the years 2014–20 and repealing Decision No 1926/2006/EC. OJ L 84, 20.3.2014, p. 42–56.

26. *Ibid.*

Conclusion

In 1993, when the Treaty on European Union entered into force, consumer policy took on a new dimension and became one of the Community's strategic objectives. Since then, consumer policy aimed at protecting the rights of weaker market players has been developed in programs and strategies. Within this framework, various policies have been shaped as a broad plan of action for a given level of protection over a given period of time. These policies can be observed in the field of the consumer right to representation, which is linked to the principle that at the EU level the institutions involved in the process of creating consumer legislation, and thus shaping the consumer protection system, cooperate with consultative and advisory institutions. Consumer organizations have played an important role in the development of consumer protection standards. Thanks to their lobbying activities, legislation taking account of consumer interests has been adopted. In addition, their activities served to solve real pan-European consumer problems.

The outlook for the development of EU consumer policy in the context of the right to representation is set out in the Consumer Agenda 2020–2025.²⁷

The fourth objective was to respect the right of consumers to be represented and to have their specific needs met. The Commission plans to increase funding for consumer organizations working in the field of broad-based advice, education and information, pointing out that consumer policy aims to protect all consumers in their dealings with professional traders and that consumers, as the weaker party in a transaction, need greater protection in terms of their health and safety as well as economic interests. However, certain groups of consumers may be particularly vulnerable in certain situations. These include social circumstances or specific characteristics of certain groups—e.g., their age or gender. As a result, since 2021 many households in the European Union have experienced increasing financial instability. Since the start of the COVID-19 crisis, six out of ten consumers have encountered financial difficulties that can lead to overindebtedness. This is why the European Commission wants to support initiatives that provide advice at the local level to consumers who, for structural or personal reasons, do not have access to the support and information provided online or in central information centers.²⁸

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27. See: Communication from the Commission to the European Parliament and the Council New Consumer Agenda Strengthening consumer resilience for sustainable recovery. COM/2020/696 final.

28. See: "Obywatele UE chcą większych kompetencji dla UE, na wypadek kryzysu typu COVID-19" [EU citizens want greater competences for the EU in the event of a crisis such as COVID-19]. Press release, last updated 2020-05-26, available at <https://www.europarl.europa.eu/news/pl/press-room/20200525IPR79717/obywatele-ue-chca-wiekszych-kompetencji-dla-ue-na-wypadek-kryzysu-typu-covid-19>.