



SARA Law Research Center

International Journal of Legal and Social Order, <https://www.ccdsara.ro/ijlso>

ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188

N^o. 1 (2024), pp. 1-7

CONSUMER PROTECTION AND PUBLIC HEALTH

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Received 03.02.2024; accepted 04.04.2024

<https://doi.org/10.55516/ijlso.v4i1.179>

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Abstract

One of the objectives of the European Union is to ensure a high level of protection for its citizens, an objective that cannot be achieved without guaranteeing the protection of the health, safety and economic interests of consumers. In the context of these concerns, the European legislator has integrated consumer protection into all relevant policy areas of European Union legislation. The central aim of this policy is the protection of citizens' health, although the main responsibility in this direction rests with the Member States. Looking beyond the borders of the member states and even of the European Union, the Covid-19 pandemic has proven that health is a priority and goes beyond the area of interest, which is limited to the borders of a state or a union of states, but has gained global relevance.

Key words: *normative framework, traders, principles, consumer protection instruments, Union legislator.*

INTRODUCTION

The single market of the European Union¹ can function adequately only under the conditions in which consumer protection is guaranteed at its level, through an effective regulatory framework. In this context, vulnerable consumers are targeted, in the sense of an additional protection for them in their relationship with traders. Union legal norms that guarantee consumer protection have become essential objectives of the European Union's policy, based on both the regulations of the Treaty on the Functioning of the European Union and the provisions of the Charter of Fundamental Rights of the European Union. The concern of the

¹ L.C.Spătaru-Negură, "European Union Law - a new legal typology", Hamangiu Publishing House, Bucharest, 2016, p.112

European legislator is based on the principles and instruments with which consumer protection guarantees its operation.

I. LEGAL BASIS OF CONSUMER PROTECTION AND PUBLIC HEALTH POLICY

1. 1. The consumer protection policy is regulated in:

article 4 paragraph (2) letter (f) and articles 12, 114 and 169 of the Treaty on the Functioning of the European Union (TFEU), - article 38 of the Charter of Fundamental Rights of the European Union . The European Union designed an action program in the field, based on the "New Consumer Agenda", which was adopted on November 13, 2020. The Agenda presented the vision of the EU policy for consumer protection, for the period 2020-2025, aiming to respond their immediate needs, with special reference to the COVID-19 pandemic, with the subtitle "Strengthening consumer resilience for a sustainable recovery".

The agenda includes the following segments as priority action areas:

(1) the green transition; this area highlights the possibilities offered by the green transition in the sense that sustainable products and lifestyles are accessible to everyone, regardless of geographical position or income;

(2) digital transformation; the extremely current digital space, it is proposed to be a safer space for consumers, from the following perspectives: consumer rights to be protected, fair conditions of competition in order to provide Europeans with an innovative context for the services offered to them;

(3) the effective assurance of compliance with the rules and remedial measures; compliance with the rules and remedial measures were aimed at combating the impact of the COVID-19 pandemic on consumer rights. Although ensuring the rights of consumers falls under the responsibility of the member states, respectively their national authorities, the EU has defined its coordination and support role in this field through the Regulation on cooperation in the field of consumer protection². The regulation establishes a cooperation framework that allows national authorities from all countries in the European Economic Area to jointly address cases of breach of consumer protection rules when the trader and the consumer are established in different countries. The national authorities form, according to the regulation, a network of public authorities that are mandated to enforce the legislation, also called "CPC Network". The said authorities have competence in actions to combat illegal practices and in identifying dishonest traders.

² Regulation (EU) 2017/2394 on cooperation between national authorities responsible for ensuring compliance with consumer protection legislation and repealing Regulation (EC) no. 2006/2004 (CPC Regulation)

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(4) responding to the specific needs of consumers³; this field of action is mainly aimed at vulnerable consumers who need additional guarantees;

(5) consumer protection in a global context, implies the concern of the European Union for the protection of consumers against unfair practices used by operators outside the EU. In this sense, the institutions of the Union are oriented towards market surveillance, aiming for closer cooperation with the authorities of the EU's partner countries.

2. 2. The legal basis of public health policy is represented by: - article 168 (public health protection), - article 114 (single market) and - article 153 (social policy) of the Treaty on the Functioning of the European Union (TFEU). The primary responsibility for the organization and provision of health and healthcare services rests with the Member States. EU policy in this area only complements national policies.

EU policies and actions in the field of public health have in mind the following strategic objectives: - protecting and improving the health of EU citizens; - supporting the modernization and digitization of health systems and infrastructures; - improving the resilience of health systems in Europe; - the preparation of EU countries to better prevent and combat possible future pandemics.

The EU health strategy is implemented by: EU institutions, member countries, local and regional authorities and other interest groups. Representatives of the European Commission together with representatives of national authorities are the ones who discuss strategic health issues in high-level working groups.

In this context of concerns, the General Directorate for Health and Food Safety (DG SANTE) of the European Commission was established within the Commission, whose role is to support the efforts of the member states in this field. The means used in this direction are: - the formulation of legislative proposals, which fall mainly within the competence of the Commission, in its capacity as legislative promoter; - financial support; - coordination and facilitation of the exchange of best practices between EU countries and health experts; - organization of health promotion activities⁴.

According to the aforementioned legal grounds, on which the public health policy is based, numerous legislative acts have been adopted in the field: (a) patients' rights in cross-border medical care; (b) pharmaceutical products and medical devices (pharmacovigilance), counterfeit drugs, clinical tests; (c) sanitary security and infectious diseases; (d) digital health and medical assistance services

³ E.N. Vălcu, Brief considerations regarding the specific concept of "consumer. Contracting party involved in a commercial legal relationship, International Journal of Legal and Social Order, vol.3, no.1(2023), Section Law, DOI: <https://doi.org/10.55516/ijlso.v3i1.159>, pp.536-545

⁴ J. Goicovici, The law of relations between professionals and consumers. University Course, Hamangiu Publishing House, 2022, p.43

- tobacco; - organs, blood, tissues and cells. Also, public health is the subject of some Council recommendations addressed to the member states.

II. ACHIEVEMENTS BASED ON LEGISLATIVE DEVELOPMENT AND IMPLEMENTATION OF LEGISLATIVE MEASURES RELATING TO PUBLIC HEALTH PROTECTION POLICY

● Provisions relating to health policy in the EU have developed as a result of the free movement of people and goods in the internal market, which has required the coordination of public health, and the crisis caused by the diseases faced by the population of the EU, and not only, required that the protection of public health become one of the central points of the current political agenda⁵ of the EU institutions. Following these concerns, the European Medicines Agency (EMA) was established at the EU level in 1993 and the European Center for Disease Prevention and Control (ECDC).

Political actions regarding public health have taken shape in areas such as the environment and food, establishing for this purpose the European Chemicals Agency (ECHA) in 2006, within REACH for the evaluation and registration of chemical substances and the European Food Safety Agency (EFSA) in 2002.

In 2020, the COVID-19 pandemic exacerbated the cross-border health crisis, which required considerable efforts, both from the EU and the Member States.

● However, the legislation in the field, namely that regarding medicines, was introduced in 1965, in order to achieve high standards in research and the pharmaceutical industry, the harmonization of national procedures for granting licenses for medicines and the introduction of rules regarding advertising, labeling and distribution⁶. In 1978, the first research programs in the field of medicine and public health were initiated, with thematic approaches such as health problems related to age, the environment, lifestyle, and risks caused by radiation. Emphasis was also placed on the analysis of the human genome, and especially of the main diseases. Public health was thus the object of mutual assistance agreements in the case of catastrophes and extremely serious diseases, for example, "mad cow disease". Major health problems caused by drug addiction, cancer, and AIDS/HIV have been recognized, leading to the facilitation of the free movement of patients

⁵ For example, the crisis caused by bovine spongiform encephalopathy ("mad cow disease") at the end of the last century, see Christian Kurrer / Nicoleta Lipcaneanu <https://www.europarl.europa.eu/factsheets/ro/sheet/49/public-health04.2023>

⁶ See for more details, Christian Kurrer / Nicoleta Lipcaneanu <https://www.europarl.europa.eu/factsheets/ro/sheet/49/public-health04.2023>

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and medical personnel in the EU, an extremely important segment of the freedom of movement of citizens in the EU, but also of a form of cooperation and assistance between member states.

The Treaty of Maastricht, from 1992 (the year of signing), introduces, even if limited, public health into the founding treaty, so that through the Treaty of Amsterdam from 1997, it strengthens the provisions regarding health, stating that the field is the main competence of member states, with the European Union playing a prominent role.

The Commission, in 1993, publishes a communication in the field of public health, mainly focused on aspects related to health promotion, prevention and combating of cancer, rare diseases, medicines.

All these approaches of the Union led to other, later, more applied programs, for example: - public health program (2003-2008),

- the second program in the field of health (2009-2013), - the third program in the field of health (2014-2020),

- the current EU health program (2021-2027).

● The latest developments in the field of consumer health protection policy aim at:

- Consolidation of the inter-institutional framework, namely the Parliament, as a legislator, alongside the Council, through the procedure of adopting legislative acts through the co-decision procedure, in the medical field; we also mention in this context the way in which the Commission launches legislative initiatives, a way that has been adapted with standardized consultation procedures between services, the establishment of new rules regarding comitology and dialogue with civil society and experts⁷. The implementation of health programs has also been strengthened by entrusting them in 2005 to the Executive Agency for Health and Consumers (EAHC).

- The need to strengthen the ability to react quickly. The ability to react rapidly has been proven in the case of the COVID-19 pandemic, so in 2021 (September) the Commission is establishing a new European Health Emergency Preparedness and Response Authority (HERA).

- The need for better coordination of health promotion and disease prevention. This line of action addresses the underlying causes of poor health, namely personal lifestyle, economic and environmental factors (pesticide pollution, heavy metals, endocrine disruptors). Coordination is related to other

⁷ See for more details, Christian Kurrer / Nicoleta Lipcaneanu <https://www.europarl.europa.eu/factsheets/ro/sheet/49/public-health04.2023>

policy areas of the Union: environment, transport, agriculture and economic development.

CONCLUSION

There are many aspects related to the protection of health as a policy in the framework of consumer protection, not presented here, having limited space for debate for such a complex field. Each action of the institutions of the Union (involved in this process, legislatively, with direct implications for consumers) and of the Member States, regarding the protection of health, can be the subject of a separate theme. But we cannot overlook:

- The "From farm to consumer"⁸ strategy, intended to contribute to the production of both sustainable food and healthier food products;

- The "Zero Pollution"⁹ action plan, aimed at creating cleaner and healthier living spaces;

- The "EU for health" program (2021-2027)¹⁰, intended to contribute to addressing health issues from different points of view;

- Addressing health problems caused or exacerbated by climate change¹¹, given the statistical increase in the number of deaths caused by excessive heat, natural disasters, the change in modes of infection for water-borne diseases and diseases transmitted by insects, snails or other cold-blooded animals¹²;

The EU joint action on mental health and wellbeing¹³ ran from 2013-2018 and created a European framework for action on mental health and well-being¹⁴ etc. These are just a few aspects.

The European Parliament concerned itself with the establishment of a coherent policy in the field of public health specified, on the occasion of a proposal for a regulation, the need to support¹⁵ much closer cooperation in the field of health in order to create a European Health Union.

The European Green Deal package is an example of this, having a direct or indirect impact on health, for example the clean and circular economy strategy, the zero pollution target, the food chain sustainability target and the

⁸ https://food.ec.europa.eu/horizontal-topics/farm-fork-strategy_en

⁹ https://environment.ec.europa.eu/strategy/zero-pollution-action-plan_ro

¹⁰ European Parliament and of the Council on the establishment of a Union action program in the field of health for the period 2021-2027 and repealing Regulation (EU) no. 282/2014 ("EU health program") COM/2020/405 final

¹¹ <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>

¹² See, Christian Kurrer / Nicoleta Lipcaneanu

https://www.europarl.europa.eu/factsheets/ro/sheet/49/public-health04_2023

¹³ The 2023 Communication on Mental Health, dated 7 June 2023

¹⁴ <https://mentalhealthandwellbeing.eu/>

¹⁵ THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the evaluation of medical technologies and amending Directive 2011/24/EU COM/2018/051 final - 2018/018 (COD)

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climate neutrality target¹⁶. In summary, the package assumes the following directions of action: to reach zero net emissions of greenhouse gases by 2050, to decouple economic growth from the use of resources, to leave no person and no place behind¹⁷. It should be noted that in 2023, the Commission (ENVI) established a new permanent Subcommittee for Public Health (SANT), which will strengthen the role of Parliament in exercising control over EU policies in the field of health and in promoting their development.

BIBLIOGRAFIE

1. J. Goicovici, The law of relations between professionals and consumers. University Course, Hamangiu Publishing House, 2022;
2. Christian Kurrer/ Nicoleta Lipcaneanu <https://www.europarl.europa.eu/factsheets/ro/sheet/49/public-health>;
3. L.C. Spataru-Negură, European Union Law – a new legal typology”, Hamangiu Publishing House, Bucharest, 2016;
4. E.N. Vâlcu, Brief considerations regarding the specific concept of "consumer. Contracting party involved in a commercial legal relationship, International Journal of Legal and Social Order, vol.3, no.1 (2023), Section Law, DOI: <https://doi.org/10.55516/ijlso.v3i1.159>;
5. Regulation (EU) 2017/2394 of the Parliament and of the Council on cooperation between national authorities responsible for ensuring compliance with consumer protection legislation and repealing Regulation (EC) no. 2006/2004 (CPC Regulation);
6. Proposal for a Regulation of the Parliament and the Council on the evaluation of medical technologies and amending Directive 2011/24/EU;
7. Proposal for a Regulation of the European Parliament and of the Council on the establishment of a Union action program in the field of health for the period 2021-2027 and repealing Regulation (EU) no. 282/2014 ("EU health program") COM/2020/405 final;
8. The 2023 communication on mental health, dated 7 June 2023;
9. <https://mentalhealthandwellbeing.eu/>;
10. <https://mentalhealthandwellbeing.eu/>;
11. https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_ro.



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¹⁶ See, Christian Kurrer / Nicoleta Lipcaneanu <https://www.europarl.europa.eu/factsheets/ro/sheet/49/public-health04.2023>

¹⁷ https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_ro

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