



NEWSLETTER BY JDP | AMENDMENTS TO THE POLISH CIVIL CODE AND THE ACT ON CONSUMER RIGHTS

Dear Sirs/Madams,

as of 1 January 2021 **amendments to the Polish Civil Code** and the **Act on Consumer Rights** enter into force. The new regulations extend the scope of consumer protection to a certain degree to include particular traders, which means that there are **three months left to adapt** contract documents accordingly.

I. NEW CATEGORY OF COUNTERPARTY

The discussed regulations introduce – apart from the consumer and the trader – a category of a new entity, the so-called **quasi-consumer**, i.e.:

*a natural person conducting business activity, concluding a contract **directly related to their business activity**, and the contract is **not of a professional nature** for that person.*

The simple division of transactions into B2B and B2C will cease to exist, since making a purchase “against an invoice” will no longer determine the scope of protection for the buyer.

Two conditions will be crucial for determining the status of the counterparty

- **direct relation with the business activity** – as a rule all contracts concluded within the framework of business activity (i.e. “against an invoice”),
- **professional nature of the contract** – if the subject of the contract is related to the industry or specialisation in which the quasi-consumer operates.

II. PROTECTION AWARDED TO QUASI-CONSUMERS

1. WARRANTY

A quasi-consumer will have wider rights under the sales warranty, which until now were only available to consumers. In particular:

- the possibility for the quasi-consumer to choose the manner of removing a defect (repair/replacement),



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- the quasi-consumer not being obliged to examine the goods and notify the seller of the defect immediately after the issue of the goods.

Warranty protection may be disabled or limited. However, this should be done by way of a contract (or general terms and conditions, or rules and regulations).

2. UNLAWFUL CLAUSES

The provisions on unlawful contractual provisions (unlawful clauses), which have hitherto applied only to the consumer, will also apply to quasi-consumers.

Unlawful contractual provisions:

- contractual provisions which have **not been agreed individually** with the quasi-consumer,
- if they shape the quasi-consumer's rights and obligations in a manner **contrary to good morals and grossly violate their interests**
- this does not apply to provisions setting forth **the main performances of the parties**, including price or remuneration, so long as they are clearly worded.

The effect of the unlawful nature of contractual provisions:

- the ineffectiveness of unlawful contractual provisions against the quasi-consumer,
- being bound by the contract with respect to other provisions.

3. STATUTORY RIGHT TO RESCIND A CONTRACT

A quasi-consumer has a **statutory right** to rescind a contract concluded as a **distance** contract or **off-premises** contract (in particular, purchases made via the internet).

Time limit – 14 days from the day of receipt of the goods, or from the date of concluding the contract. The time limit is extended by 12 months if the quasi-consumer is not informed about their right to rescind the contract.



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4. HOW TO PREPARE FOR NEW PROVISIONS

It is necessary to perform an audit of the contractual documentation (e.g. model contracts, general terms and conditions, etc.) in order to regulate the right of warranty, remove unlawful clauses (or exclude them in the case of quasi-consumers) and include an information obligation regarding the statutory right to rescind the contract.

At the same time, it is a good opportunity to adapt the contract documentation to the latest case law regarding:

- liquidated damages,
- rules for the rescission of contract,
- limitations of liability,
- rules for identifying and reporting defects.

Marcin Chomiuk, PhD

Attorney-at-Law, Partner

marcin.chomiuk@jdp-law.pl



Adam Usiądek

Associate

adam.usiadek@jdp-law.pl



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JDP DRAPAŁA & PARTNERS SP. K.

ul. Bonifraterska 17, 00-203 Warszawa

T +48 22 246 00 30 **F** +48 22 246 00 31 **E** office@jdp-law.pl www.jdp-law.pl

District Court for the capital city of Warsaw, 12th Commercial Division, **KRS** 0000275174 **REGON** (Statistical Number) 140887753

NIP (Tax ID) 7010056483