

EU Consumer Law Acquis Compendium

Legislation

Poland (PL) Nr. 1 EN



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Full name and/or number of the statute (in original language):

Ustawa z dnia 2 marca 2000r. O ochronie niektórych praw konsumentów oraz o odpowiedzialności za szkodę wyrządzoną przez produkt niebezpieczny

Translation of the name:

Act of 2 March 2000 on the protection of certain consumer rights and on liability for damage caused by dangerous products

Reference in Official Journal (if appropriate):

Official Gazette of 31 March 2000

Date of coming into force:

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Subsequent amendments:

Text einfügen

Text:

ACT

of 2 March 2000

on the protection of certain consumer rights and on liability for damage caused by dangerous products.

(Official Gazette of 31 March 2000)

Section 1

Contracts concluded outside business premises



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Article 1

1. A contractor proposing to a consumer that a contract be concluded outside the company's business premises shall produce, prior to the conclusion of such a contract, a document confirming the conduct of business activity, as well as identification. In the case of contracts concluded on behalf of a contractor, the person concluding the contract shall also produce a document proving his or her power of attorney.

2. Business premises shall mean a place intended for serving the public and identified as such in accordance with the statutory provisions governing business activity.

3. The provisions of this Section shall also apply to contracts concluded as a result of the collection, organised outside business premises, of consumers' bids during visits by the contractor or by persons acting on its behalf to the consumer's place of work, home or private residence.

[*tezy z piśmiennictwa* = arguments expounded in the literature]

Article 2

1. ⁽¹⁾ A consumer who has concluded a contract outside business premises can withdraw from the contract without giving any reason, by submitting an appropriate written declaration within ten days of concluding the contract. To comply with that deadline it shall suffice to have sent off the declaration before said period expires.

2. It shall not be permissible to stipulate that the consumer may withdraw from the contract provided he pays a certain amount in compensation.

3. ⁽²⁾ In the event of withdrawal, the contract shall be deemed not to have been concluded, and the consumer shall be released from all obligations. Whatever the parties may have rendered to each other shall be returned unchanged except where a change was essential within the bounds of usual managerial constraints. Such return shall take place without delay, no later than within fourteen days. Where a consumer has made a prepayment, interest at the statutory rate shall be payable as from the date on which prepayment was made.

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[*tezy z piśmiennictwa* = arguments expounded in the literature]

[*komentarze* = commentaries]

Article 3

1. Anyone concluding a contract with a consumer outside the company's business premises shall, prior to its conclusion, inform the consumer in writing about the latter's right to withdraw from the contract within the period stated in Article 2(1), and provide a specimen declaration of withdrawal stating forename and surname (corporate name) and home (corporate) address; the consumer must also be given written confirmation of conclusion of the contract, stating the date of the contract, its nature, the goods or services in question and price.

2. At the contractor's request, the consumer shall acknowledge in writing that he has been informed about his right of withdrawal and that he has received a specimen declaration of withdrawal from the contract.

[*tezy z piśmiennictwa* = arguments expounded in the literature]

Article 4

If a consumer has not been informed in writing about his right of withdrawal, the period referred to in Article 2(1) shall not commence. In such a case, the consumer shall be entitled to withdraw from the contract within 10 days of being informed about the right of withdrawal. However, a consumer may not withdraw from a contract for that reason after three months have elapsed since its coming into effect.

[*tezy z piśmiennictwa* = arguments expounded in the literature]

Article 5

The provisions concerning contracts concluded with consumers outside a company's business premises shall not apply to:

- 1) contracts of a continuous or periodic nature concluded on the basis of a sales offer, announcements, advertisements, price lists or other information addressed to the general public or individuals, where the consumer was able previously to become acquainted with the content of the offer received or information in the absence of the other party to the contract, and where that offer or information, as well as the contract, re-

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served for the consumer the right to withdraw from the contract within a period of ten days from its conclusion;

- 2) sales of foodstuffs delivered periodically by the seller to the consumer's home,
- 3) commonly concluded contracts concerning minor everyday items, where the value of the object of the contract does not exceed 10 euros,
- 4) contracts relating to construction work,
- 5) contracts relating to real estate, with the exception of repair services,
- 6) contracts relating to insurance, including membership of open pension funds, and reinsurance,
- 7) contracts relating to securities or trust fund and investment fund participation units (investment services).

Section 2

Distance contracts

Article 6

1. ⁽³⁾ Contracts concluded with a consumer without the simultaneous presence of both parties, using means of distance communication, in particular unaddressed or addressed printed or electronic order forms, printed or electronic standard letter, press advertising with printed order form, electronic advertising, catalogue, telephone, fax, radio, television, automatic calling machine, videophone, videotex, electronic mail or other electronic means of communication within the meaning of the Act of 18 July 2002 on the provision of electronic services (Official Gazette No 144, item 1204), shall be deemed to be distance contracts, provided that the party entering into the contract with the consumer is a contractor who has organised his business activity in this way.

2. A proposal to conclude a contract, whether such a proposal takes the form of an offer, an invitation to submit bids or orders or to enter into negotiations, must indicate in an unambiguous and clearly understandable manner the intention of the proposer actually to conclude a contract.

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3. ⁽⁴⁾ A telephone, videophone, fax, email, automatic calling machine or any other electronic means of communication may be used for the purpose of proposing the conclusion of a contract only with the prior consent of the consumer.

[tezy z piśmiennictwa = arguments expounded in the literature]

Article 7

1. ⁽⁵⁾ A consumer who has concluded a distance contract shall be entitled to withdraw from it, without giving any reason, by submitting an appropriate written declaration within a period of ten days, as laid down in Article 10(1). To comply with this deadline it shall suffice to have sent off the declaration before said period has expired.

2. It shall not be permissible to stipulate that the consumer may withdraw from the contract provided he pays a certain amount in compensation.

3. ⁽⁶⁾ In the event of withdrawal, the contract shall be deemed not to have been concluded, and the consumer shall be released from all obligations. Whatever the parties may have rendered to each other shall be returned unchanged except where a change was essential within the bounds of usual managerial constraints. Such return shall take place without delay, no later than within fourteen days. Where a consumer has made a prepayment, interest at the statutory rate shall be payable as from the date on which prepayment was made.

[tezy z piśmiennictwa = arguments expounded in the literature]

[komentarze = commentaries]

Article 8

1. A contract relating to the continuous or periodic provision of goods or services may be concluded for a specified or an unspecified period of time.

2. A contract concluded for a period exceeding one year shall be deemed after that period has elapsed to have been concluded for an indefinite period.

3. If the duration of a contract is indefinite, either party may terminate it, without giving reasons, by serving one month's notice, unless the parties have stipulated a shorter period of notice for termination.

Article 9

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1. Before use is made of any means of distance communication, and at the latest at the time of the proposal to conclude a contract being submitted, the consumer shall be apprised of the following:

- 1) forename and surname (corporate name), home (corporate) address of the contractor, and the body which registered his business activity, as well as the number under which the contractor was registered,
- 2) essential characteristics of the goods or services in question and their intended purpose or subject matter,
- 3) price or fee including all components thereof, in particular customs duties and taxes,
- 4) payment conditions for price or fee,
- 5) costs, time and method of delivery,
- 6) right of withdrawal from the contract within a period of ten days of its conclusion, with indication of the exceptions referred to in Article 10(3),
- 7) costs of using means of distance communication if they are calculated other than at the normal tariff,
- 8) period during which the offer or information on price or fee remains binding,
- 9) minimum period for which a contract for the continuous or periodic provision of services can be concluded,
- 10) place and procedure for submitting complaints,
- 11) right of termination of contract as referred to in Article 8(3).

2. The information referred to in paragraph 1 must be formulated unambiguously, and in an understandable and easy-to-read manner.

3. The contractor shall be obliged to provide the consumer with written confirmation of the information referred to in paragraph 1, at the latest at the time when the provision of goods or services commences.

4. The obligation laid down in paragraph 3 shall not apply to once-only instances of provision carried out using means of distance communication and invoiced by a natural or legal person who within the framework of his enterprise makes available at least one means of distance communication to which the consumer and the contractor have access (communication facility operator), with the exception, however, of the information referred to paragraph 1, point 1.

[*tezy z piśmiennictwa* = arguments expounded in the literature]



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Article 10

1. The ten day period during which the consumer may withdraw from the contract shall commence on the day on which the merchandise is handed over, or in the case of a contract relating to the provision of services, from the day on which it is concluded.
2. In the event of the information referred to in Article 9(1) not being confirmed, the period during which the consumer may withdraw from the contract shall be three months, starting from the day on which the merchandise is handed over, or in the case of a contract relating to the provision of services, from the day on which it is concluded. However, if the consumer receives confirmation after this period has started, the period shall be shortened to ten days from that date.
3. Unless the parties to the contract have agreed otherwise, the consumer shall not be entitled to withdraw from a distance contract in the following cases:
 - 1) if the provision of goods or services has started, with the consumer's consent, before the period referred to in Article 7(1) has elapsed,
 - 2) if in the case of audio, video or software recordings, the consumer has removed the original packaging,
 - 3) contracts relating to the provision of goods or services for which the price or fee depends solely on price fluctuations on the financial markets,
 - 4) provision of goods or services with characteristics specified by the consumer in his order or directly connected with his person,
 - 5) provision of goods or services which by their nature cannot be returned or are subject to rapid deterioration,
 - 6) supply of newspapers or magazines,
 - 7) ⁽⁷⁾ services in the field of games of chance or betting.

[*tezy z piśmiennictwa* = arguments expounded in the literature]

Article 11

1. The contract shall not impose on the consumer any obligation to pay the price or fee before the goods or services have been received.
2. The contract shall stipulate the place and procedure for lodging complaints, without these causing excessive difficulties or costs for the consumer.

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Article 12

1. Unless the parties have agreed otherwise, the contractor shall execute a distance contract no later than thirty days after the consumer has declared his willingness to conclude the contract.
2. If the contractor is unable to provide the goods or services because they are not available, he shall inform the consumer without delay, and no later than thirty days after the conclusion of the contract, and refund in full any money paid by the latter.
3. In the event of the contractor being unable to fulfil his obligation on account of the temporary impossibility of providing goods or services having the characteristics ordered by the consumer, the contractor may, if such a stipulation is included in the contract, discharge this obligation by providing replacement goods or services of equivalent quality and intended purpose, and for the same price or fee, while at the same time informing the consumer in writing about his right not to accept the goods or services in question and to withdraw from the contract and return merchandise at the contractor's expense.
4. In the case referred to in paragraph 3, the consumer shall be entitled to withdraw from the contract in the manner and under the conditions stipulated in Article 7. In such a case, return of merchandise shall be for the account of the contractor.

[*tezy z piśmiennictwa* = arguments expounded in the literature]

Article 13

1. In the event of the consumer withdrawing from the contract, the contractor shall be obliged to acknowledge the return of goods in writing.
2. If the price of goods or services provided to the consumer is covered by credit or loans granted by the contractor or if the contract provides for the use of credit granted on the basis of an agreement between a lender and the contractor, withdrawal from the distance contract shall also be effective in respect of the credit or loan agreement concluded by the consumer.

[*tezy z piśmiennictwa* = arguments expounded in the literature]

Article 14

The consumer may request the invalidation, at the contractor's expense, of any payment made by credit card in the event of such credit card having been used improperly in the

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execution of the distance contract. This shall not remove the obligation to indemnify the consumer for any damage he may have suffered.

[*tezy z piśmiennictwa* = arguments expounded in the literature]

Article 15

The provision of goods or services not ordered by the consumer shall be at the contractor's risk and shall not impose any obligations whatsoever on the consumer.

[*tezy z piśmiennictwa* = arguments expounded in the literature]

Article 16

1. The provisions governing distance contracts shall not apply to contracts:
 - 1) involving the use of vending machines,
 - 2) involving the use of other automatic machines on commercial premises,
 - 3) relating to capital investments,
 - 4) relating to insurance, including membership of open pension funds and reinsurance,
 - 5) connected with banking operations and such activities performed by cooperative savings and loans institutions,
 - 6) relating to pensions,
 - 7) concerning financial futures operations and options,
 - 8) concluded with telecommunications operators using public pay phones,
 - 9) concerning real estate, except for rental,
 - 10) relating to auction sales.
2. ⁽⁸⁾ The provisions of Articles 7, 9 and 12(1) shall not apply to:
 - 1) sales of foodstuffs supplied periodically by the seller to the consumer's home or workplace,
 - 2) the provision, over a strictly defined period of time, of accommodation, transport, leisure, or catering services; in the case of outdoor leisure events, the contractor may also stipulate an exemption from the obligation, referred to in Article 12(2), to inform the consumer about impossibility of performance, though only under the circumstances stipulated in the contract.

[*komentarze* = comments]

Article 17



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The consumer rights set out in Articles 1 to 16 may not be contractually excluded or restricted, including where foreign law is selected as being applicable.

[*tezy z piśmiennictwa* = arguments expounded in the literature]

Section 3

Amendments to existing provisions

Article 18

In the Act of 23 April 1964. – Civil code (Official Gazette No 16, item 93, No 27, 1971, item 252, No 19, 1976, item 122, No 11, 1982, item 81, No 19, 1982, item 147, and No 30, 1982, item 210, No 45, 1984, item 242, No 22, 1985, item 99, No 3, 1989, item 11, No 34, 1990, item 198, No 55, 1990, item 321, and No 79, 1990, item 464, No 107, 1991, item 464, and No 115, 1991, item 496, No 17, 1993, item 78, No 27, 1994, item 96, No 85, 1994, item 388, and No 105, 1994, item 509, No 83, 1995, item 417, No 114, 1996, item 542, No 139, 1996, item 646, and No 149, 1996, item 703, No 43, 1997, item 272, No 115, 1997, item 741, No 117, 1997, item 751, and No 157, 1997, item 1040, No 106, 1998, item 668, and No 117, 1998, item 758, and No 52, 1999, item 532), the following amendments shall be made:

1) Article 384 shall read as follows:

"Article 384. § 1. A standard form of contract laid down by one of the parties, particularly general terms and conditions of contract, specimen contracts, and rules and regulations, shall be binding for the other party provided they were presented to that party at the conclusion of the contract.

§ 2. Where the use of a standard form is usually accepted in these types of relationships, it shall also be binding in cases where the other party could easily have become acquainted with its content. This shall not apply, however, to contracts concluded with the participation of consumers, with the exception of commonly concluded contracts concerning minor everyday items.

§ 3. Consumer shall mean any person who enters into a contract with a contractor for a purpose not directly related to business activity.";

2) after Article 384, Article 384¹ shall be added, reading as follows:



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"Article 384¹.

A standard form issued within the duration of a contractual relationship of a continuous nature shall be binding for the other party, provided the requirements set out in Article 384 have been observed, and said party has not terminated the contract at the nearest termination date.";

3) Article 385 shall read as follows:

"Article 385.

§ 1 Should the content of the contract contradict the standard form, the parties shall be bound by the contract.

§ 2. The standard form of contract must be formulated in an unambiguous and clearly understandable manner. Any and all ambiguous stipulations shall be interpreted to the benefit of the consumer.";

4) Article 385¹ and Article 385² shall read as follows:

"Article 385¹.

§ 1. Any and all stipulations of a contract concluded with a consumer which have not been agreed upon individually shall not be binding on him if, contrary to good practice, they frame his rights and obligations in a way that flagrantly prejudices his interests (inadmissible contractual stipulations). This does not apply to the stipulations laying down the principal performance obligations of the parties, including price or fee, provided these were formulated unambiguously.

§ 2. Where, in accordance with § 1, a contractual stipulation is not binding on the consumer, the parties shall be bound by the remaining scope of the contract.

§ 3. Contractual stipulations over whose content the consumer has had no real influence shall be deemed not to have been agreed upon individually. This relates in particular to contractual stipulations taken from the standard form of contract proposed to the consumer by the other contracting party.

§ 4. The burden of proof that a particular stipulation has been agreed upon individually rests upon the party claiming this to be the case.

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Article 385². The conformity of a contractual stipulation with good practice shall be assessed according to the situation prevailing at the time of the contract's conclusion, taking into account its content and the circumstances surrounding its conclusion, and having regard to other contracts connected with the contract which include the stipulation under assessment.";

5) after Article 385², Articles 385³ and 385⁴ shall be added, reading as follows:

"Article 385³.

In case of doubt, those contractual stipulations shall be deemed to be inadmissible which, in particular:

- 1) exclude or restrict liability vis-à-vis the consumer in respect of personal injury,
- 2) exclude or significantly restrict liability vis-à-vis the consumer in respect of non-fulfilment or inadequate fulfilment of an obligation,
- 3) exclude or significantly restrict the deduction of the consumer's claims from claims of the other party,
- 4) provide for stipulations with which the consumer had no possibility of becoming acquainted prior to the conclusion of the contract,
- 5) allow the other contracting party to cede rights and transfer obligations under the contract without the consumer's consent,
- 6) make the conclusion of the contract contingent upon a commitment on the part of the consumer to enter into further contracts of a similar type in future,
- 7) make the conclusion, content or execution of the contract contingent upon the conclusion of another contract not directly connected with the contract containing stipulations under assessment,
- 8) make performance contingent upon circumstances dependent solely on the will of the party entering into the contract with the consumer,
- 9) entitle the party entering into the contract with the consumer to make a binding interpretation of the contract,

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- 10) entitle the party entering into the contract with the consumer to amend the contract unilaterally without a valid reason specified in the contract,
 - 11) grant only the party entering into the contract with the consumer the right to ascertain conformity of performance with the contract,
 - 12) exclude the obligation to return to the consumer payments effected for complete or partial non-performance if the consumer withdraws from conclusion or execution of the contract,
 - 13) provide for forfeiture of the right to demand the return of payments made by the consumer prior to the provision of goods or services by the other contracting party where the parties terminate, dissolve or withdraw from the contract,
 - 14) deprive only the consumer of the right to dissolve, withdraw from or terminate the contract,
 - 15) reserve for the party entering into the contract with the consumer the right to terminate a contract concluded for an indefinite period, without demonstrating cause and without observing the period of notice of termination,
 - 16) impose upon the consumer alone an obligation to pay a fixed sum in the event of withdrawal from conclusion or execution of the contract,
 - 17) impose upon a consumer who fails to meet an obligation or withdraws from the contract a flagrantly exorbitant penalty or compensation amount,
 - 18) stipulate that a contract concluded for a fixed duration shall be extended unless the consumer objects, where the period allowed for lodging such objection is unreasonably short,
 - 19) reserve exclusively for the party entering into the contract with the consumer the right to amend fundamental aspects of contract performance unilaterally without demonstrating cause,
 - 20) reserve for the party entering into the contract with the consumer the right to determine or increase prices or fee amounts after con-



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clusion of the contract without granting the consumer the right to withdraw from the contract,

- 21) make the liability of the party entering into the contract with the consumer contingent upon the fulfilment of obligations by persons through whose agency that party concludes the contract or with whose help it meets its obligations, or making said liability dependent upon the fulfilment by the consumer of excessively burdensome formalities,
- 22) provide for a requirement that the consumer fulfil an obligation despite non-fulfilment or inadequate fulfilment of an obligation by the other contracting party,
- 23) exclude the jurisdiction of the Polish courts or stipulate that any litigation be brought before a Polish or foreign court of arbitration or other body, or before a court which by law is not locally competent.

Article 385⁴.

- § 1. Contracts between contractors using different standard forms of contract shall not contain mutually contradictory provisions.
- § 2. A contract shall not be concluded if the party concerned states without delay after receiving an offer that it does not intend to conclude the contract under the conditions provided for in § 1.";

6) after Title VI, book three, Title VI¹ shall be added, reading as follows:

"Title VI¹. Liability for damage caused by a dangerous product.

Article 449¹.

- § 1. Anyone who within the scope of his business activity manufactures a dangerous product (producer) shall be liable for any and all damage caused by that product.
- § 2. Product shall mean a movable object, even if it has been connected to another object. Animals and electrical power shall also be deemed to be products.
- § 3. A product shall be deemed to be dangerous if it does not ensure the level of safety that is to be expected when the product is put to its normal use. Whether a product is safe depends on the circumstances prevailing at the time of its being placed on the market, in



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particular the manner of its presentation on the market and the information provided to the consumer concerning the product's properties. A product may not be deemed not to ensure safety solely because a similar, improved product is subsequently placed on the market.

Article 449². A producer shall be liable for damage to property only if the object destroyed or damaged is an object usually intended for personal use and was primarily used as such by the person suffering the damage.

Article 449³.

§ 1. A producer shall not be liable for damage caused by a product if he did not place that product on the market or if its placement on the market took place outside the scope of his business activity.

§ 2. A producer shall also not be liable if the dangerous properties of the product come to light after its placement on the market, unless they stemmed from reasons previously inherent in the product. Nor shall he be liable if the dangerous properties of the product could not have been foreseen given the state of the art at the time of the product being placed on the market, or if the properties in question resulted from observance of statutory provisions.

Article 449⁴

It shall be assumed that a dangerous product which causes damage was manufactured and placed on the market within the scope of the producer's business activity.

Article 449⁵.

§ 1. Manufacturers of material, raw materials or component parts of a product are liable in the same way as the producer, unless the sole cause of damage was faulty design or instructions given by the producer.

§ 2. Anyone who professes to be the producer of a product, by affixing his name, trademark or other distinguishing mark to it, shall bear producer liability. Similarly, liability shall be incurred by anyone who places a product of foreign origin on the domestic market within the scope of his business activity (importer).



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- § 3. The producer and the persons referred to in the above paragraphs shall be liable jointly and severally.
- § 4. Where the identity of the producer or the person stipulated in § 2 is not clear, liability shall be borne by whoever sold the dangerous product within the scope of his business activity, unless within a month of damage becoming known he notifies to the party suffering the damage the name and address of the producer or of the person stipulated in § 2, or in the case of an imported product the name and address of the importer.
- § 5. Where the seller of the product is unable to state the producer or the persons referred to in § 4, he shall be discharged from liability by stating the person from whom he purchased the product himself.

Article 449⁶.

Where liability for damage caused by a dangerous product is also borne by a third party, that party and the persons referred to in the preceding Articles shall be liable jointly and severally. The provisions set out in Article 441 § 2 and 3 shall apply accordingly.

Article 449⁷.

- § 1. Compensation for damage to property shall not encompass damage to the product itself or benefits which the party suffering the damage might have gained in connection with its use.
- § 2. Compensation on the basis of Article 449¹ shall not apply where damage to property does not exceed the equivalent of 500 euros.

Article 449⁸.

Any claim for redress in respect of damage caused by a dangerous product shall lapse upon expiry of a period of three years from the date on which the party suffering damage ascertained the damage and the person responsible for its redress. At all events, however, any claim shall lapse upon expiry of a period of ten years from the product being placed on the market.

Article 449⁹.

Liability for damage caused by a dangerous product cannot be excluded or limited.



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Article 449¹⁰.

Provisions governing liability for damage caused by a dangerous product shall not exclude damage liability on the basis of general principles, liability for damage resulting from non-fulfilment or inadequate fulfilment of obligations, or liability under a warranty for defects or a quality guarantee.

Article 449¹¹.

Liability as defined by the provisions of this Title may not be excluded or restricted by way of a contract, even if foreign law has been selected as being applicable.";

7) after Article 555, Article 555¹ shall be added, reading as follows:

"Article 555¹.

The Council of Ministers shall specify, by way of a decree, detailed conditions for the conclusion and execution of sales contracts between contractors and consumers, having regard to the protection of consumers' interests in the face of contractors' activities running counter to good practice."

Article 19

In the Act of 17 November 1964 - Code of civil procedure (Official Gazette N 43, item 296, No 15, 1965, item 113, No 27, 1974, item 157 and No 39, 1974, item 231, No 45, 1975, item 234, No 11, 1982, item 82, and No 30, 1982, item 210, No 5, 1983, item 33, No 45, 1984, items 241 and 242, No 20, 1985, item 86, No 21, 1987, item 123, No 41, 1988, item 324, No 4, 1989, item 21, and No 33, 1989, item 175, No 14, 1990, item 88, No 34, 1990, item 198, No 53, 1990, item 306, No 55, 1990, item 318, and No 79, 1990, item 464, No 7, 1991, item 24, No 22, 1991, item 92, and No 115, 1991, item 496, No 12, 1993, item 53, No 105, 1994, item 509, No 83, 1995, item 417, No 24, 1996, item 110, No 43, 1996, item 189, No 73, 1996, item 350, and No 149, 1996, item 703, No 43, 1997, item 270, No 54, 1997, item 348, No 75, 1997, item 471, No 102, 1997, item 643, No 117, 1997, item 752, No 121, 1997, items 769 and 770, No 133, 1997, item 882, No 139, 1997, item 934, No 140, 1997, item 940, and No 141, 1997, item 944, No 106, 1998, item 668, and No 117, 1998, item 757, No 52, 1999, item 532, No 22, 2000, item 269), the following amendment shall be made:



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- 1) in Article 111 § 1, point 6, the full stop shall be replaced by a semi-colon and point 7 shall be added, reading as follows:
"7) the party applying for recognition of the inadmissibility of contractual stipulations.";
- 2) in Article 479¹ § 2, point 3, the full stop shall be replaced by a comma and point 4 shall be added, reading as follows:
"4) vis-à-vis contractors for recognition of the inadmissibility of contractual stipulations.";
- 3) after Section 2, Part IV, Title VII, Book I, part one, a Section 3 shall be added, reading as follows:

"Section 3

Proceedings in legal actions seeking recognition of the inadmissibility of stipulations in a standard form of contract

Article 479³⁶.

Legal actions seeking recognition of the inadmissibility of stipulations in a standard form of contract shall fall under the jurisdiction of the Warsaw Regional Court (*Sąd Okręgowy*) – the antimonopoly court.

Article 479³⁷.

In legal actions examined in accordance with the provisions of this Section, Articles 479¹² and 479¹³ shall not apply.

Article 479³⁸.

Complaints in legal actions examined under the provisions of this Section may be lodged by anyone who, in accordance with an offer made by the defendant, could have concluded with the latter a contract containing the stipulation whose inadmissibility the action seeks to have recognised. Complaints may also be lodged by a social organisation whose tasks as laid down in the articles of association include defending the interests of consumers, by the district (municipal) consumer ombudsman or by the Chairman of the Office for Competition and Consumer Protection.

Article 479³⁹.



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A request for recognition of the inadmissibility of a stipulation set out in a standard form of contract can also be lodged where the defendant has waived its application, provided six months have not elapsed since such waiver.

Article 479⁴⁰.

Should the defendant waive application of a stipulation in a standard form of contract after the complaint regarding that stipulation has been lodged, this shall have no effect on the course of proceedings.

Article 479⁴¹.

In legal actions seeking the recognition of the inadmissibility of stipulations in a standard form of contract, the court shall not deliver a judgment based solely on the recognition of the complaint. Nor shall an amicable settlement be admissible.

Article 479⁴².

§ 1. In the event of a complaint being upheld, the court shall set out when pronouncing its judgment the content of the standard contract stipulations whose inadmissibility has been recognised and shall prohibit their use.

§ 2. An appeal against a judgment in the second instance may be lodged before the Supreme Court.

Article 479⁴³.

The final judgment shall be effective in relation to third parties as from the entry in the register referred to in 479⁴⁵ § 2 of the standard contract stipulation whose inadmissibility has been recognised.

Article 479⁴⁴.

§ 1. The court shall order publication of the final judgment in the Court and Economic Monitor (*Monitor Sądowy i Gospodarczy*).

§ 2. The cost of the judgment's publication referred to in § 1 shall be added to the costs of the proceedings.

Article 479⁴⁵.

§ 1. A copy of the final judgment upholding a complaint shall be sent by the court to the Chairman of the Office for Competition and Consumer Protection.

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§ 2. On the basis of the judgments referred to in § 1, the Chairman of the Office for Competition and Consumer Protection shall keep a register of standard contract stipulations whose inadmissibility has been recognised.

§ 3. The register referred to in § 2 shall be open to the public.

§ 4. The Council of Ministers shall specify, by way of a decree, the form of the register of standard contract stipulations whose inadmissibility has been recognised."

[tezy z piśmiennictwa = arguments expounded in the literature]

Article 20

In the Act of 20 May 1971 – Petty offences code (Official Gazette No 12, item 114, No 24, 1981, item 124, No 16, 1982, item 125, No 6, 1983, item 35, and No 44, 1983, item 203, No 54, 1984, item 275, No 14, 1985, item 60, and No 23, 1985, item 100, No 39, 1986, item 193, No 20, 1988, item 135, and No 41, 1988, item 324, No 34, 1989, item 180, No 51, 1990, item 297, No 72, 1990, item 422, and No 86, 1990, item 504, No 75, 1991, item 332, and No 91, 1991, item 408, No 24, 1992, item 101, No 123, 1994, item 600, No 6, 1995, item 29, No 60, 1995, item 310, and No 95, 1995, item 475, No 54, 1997, item 349, No 60, 1997, item 369, No 85, 1997, item 539, No 98, 1997, item 602, No 104, 1997, item 661, No 106, 1997, item 667, No 111, 1997, item 724, No 123, 1997, item 779, No 133, 1997, item 884, and No 141, 1997, item 942, No 113, 1998, item 717, and No 83, 1999, item 931, and No 101, 1999, item 1178), Articles 138a and 138b shall be added to Article 138 and shall read as follows:

"Article 138a.

§ 1. Any person who, when concluding a contract outside a company's business premises, does not present to the consumer a document certifying the conduct of business activity and an identity document shall be liable to a fine.

§ 2. Any person who, when concluding a contract on behalf of a third party outside a company's business premises, does not additionally present a document certifying his power of attorney shall also be liable to such a fine.

Article 138b.



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- § 1. Anyone who, by including inadmissible stipulations in a contract, fails to comply with a court decision obliging him to desist from using, or to recall a recommendation to apply, general contract conditions or a standard form of contract shall be liable to a fine.
- § 2. If the court decision referred to in the first paragraph relates to a contractor who is not a natural person, the liability provided for in § 1 shall be borne by the person managing the company or the person empowered to conclude contracts with consumers."

Article 21

The provisions set out in Articles 1 to 17 and in Article 18, points 1 to 5, shall apply to contracts which, as at the day of this Act's entry into effect, have been concluded but not yet executed.

[*orzeczenia sądów* = court decisions]

[*tezy z piśmiennictwa* = arguments expounded in the literature]

Article 22

The provisions of the Civil Code relating to liability for damage caused by dangerous products shall not apply where products were placed on the domestic market prior to the date of this Act's entry into effect.

Article 23

Until such time as the decree referred to in Article 18, point 7, has been issued, that issued under Article 384 of the Civil Code shall remain in force, though for no longer than two years.

Article 24

This Act shall come into effect three months after the date of its publication.

[*orzeczenia sądów* = court decisions]