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Selected legal issues of internet sale of goods

Abstract: This paper is preoccupied with the use of internet as a tool of market expansion. This type of sale seems very specific, since there is no direct contact between the client and the product at the time of contract conclusion. This is a reason for some special legal regulation of internet sales, which is the subject of this article. The authors apply, as a research method, the analysis of jurisprudence and doctrinal writings referring to the topic.

Key words: consumer protection, distant sale contracts

JEL code: K 12

1. Introductory remarks

In the contemporary information society the internet is a tool without which it would be difficult to imagine effective market expansion. One of the ways to expand is to sell goods and services through internet, which is often referred to as e-commerce (Barta and Markiewicz 1998: 90). Within the last two decades internet sale has become a widespread means of acquiring various products and services, which has entailed an incredibly dynamic development of e-shopping and consumer-to-consumer auction sites. The increasing popularity of online shopping is a consequence of a number of features which gained consumer recognition, such as for instance: the possibility to purchase goods and services without the need to leave house, possibility of quick and straightforward comparison of prices of the same products by different sellers, which means the choice

of the best bargain, wider range of goods and services, or finally the opportunity to acquire goods which are inaccessible in the place of residence of a given person. In consequence, the number of persons purchasing goods and services online is growing – those people can be referred to as e-consumers.

However, it should be emphasized that internet sale is essentially different from traditional sale transactions. One could say that its major distinctive feature is the lack of direct contact between the client and the purchased product at the time of conclusion of the sale contract. Displaying goods on the internet allows to expose their advantages and hide defects to a fuller extent than it is the case with traditional sales. As a result a consumer might be more likely to buy goods online which he or she would not buy offline – where the consumer has the possibility to evaluate the product directly before the actual conclusion of contract. This problem concerns as well other cases of distant sale. Thus, it seems justified on the part of the legislator to introduce specific legal regulations pertaining to this type of sale, aimed at fuller consumer protection than it is the case in traditional sale transactions. E-commerce, as an instance of distant sale also undergoes such specific regulation.

The goal of the present paper is to discuss the most important selected legal issues concerning internet sale of goods. The object of investigation are mainly these provisions on distant sale (thus pertaining as well to e-commerce) which serve the purpose of enhancing consumer protection. Their analysis allows the present authors to put forward a thesis that the currently binding rules, which endow e-consumers with a wide range of rights absent in traditional sale transactions, provide for a sufficient degree of protection of e-commerce clients.

Another question is the level of e-consumers' awareness of their rights and consistency in enforcement of these rights (including possible actions before the court). Nonetheless, the legislator has provided for certain effective tools which are capable of counterbalancing the basic drawback of internet sales, namely the lack of possibility to physically examine the goods before contract conclusion.

The article makes a contribution to the discussion on contracts under Polish law. It concentrates on theoretical issues, but ones of considerable practical significance.

This paper is a result of academic considerations on one of the classical institution of civil law, to outline that interesting matter. As a voice in the doctrinal dispute it can also be useful for law students.

2. Electronic conclusion of contracts

The object of our investigation shall be the Act of 2 March 2000 on the protection of certain consumer rights and liability for damage inflicted by a danger-

ous product (Journal of Laws No. 22, item 271 as amended), which, along with the Act of 18 July 2002 on the provision of electronic services (Journal of Laws No. 144, item 1204 as amended), makes a part of a wider legislative project covering the introduction of legal regulation concerning the widely conceived e-commerce. This subject has been for a number of years a subject of special interest to the Member States of the European Union, and Poland as a Member of the EU is obliged to adjust the standards of protection to the rules contained in the Community legislation. One of such legislative pieces is the Directive 97/7/EC of the European Parliament and the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144/1997). In the understanding of the Directive the concept of distant contract covers all contracts pertaining to goods or services concluded between a consumer and a supplier within a system of sale or distant service provision, organized by the supplier who, for the purposes of the contract, makes use of only one or a couple of means of distant communication until and including the moment of contract conclusion. Within the scope of the Directive, the notion of 'consumer' relates to every natural person who acts within the transactions covered by the Directive for purposes unrelated to his or her trade, business or profession. The term 'supplier' refers to each natural or juridical person who, within the transactions covered by the Directive, performs his or her trade, business or profession. 'Means of distant communication' in turn are all means which can be availed of without the simultaneous presence of the supplier and consumer for the purposes of contract conclusion, and the operator of the distant communication means is every natural or juridical person, whether public or private, whose trade, business or profession consists in making accessible one or more distant communication means to the suppliers.

The indicated Acts – on the provision of electronic services and on the protection of certain consumer rights – are complementary in character. Sale of goods on the internet is covered by the notion of electronic service provision, both in bilaterally professional relationships and where consumers are involved. To each and every contract concluded via internet norms of the Act on the provision of electronic services are to be applied, whereas provisions of the Act on the protection of certain consumer rights apply to contracts to which a consumer is a party (Litwiński 2004: 237).

The internet is used for broadly understood marketing activities. This phenomenon has also been spotted by the Community legislator, who uses in this context an expression concerning transmission or other dissemination by interested parties of the so-called *commercial communications*, or basically commercial information. Within the scope of the Act on electronic service provision, commercial communication means every information destined directly or indirectly to promote goods, services or image of a business or professional whose right to perform the profession depends on the fulfillment of criteria set

out in separate statutes, to the exclusion of information enabling contact via means of electronic communication with a particular person and information on goods and services which does not serve the commercial purpose desired by the entity which orders its dissemination, in particular without remuneration or other profits from producers, sellers and service providers. As a result, the notion of commercial communication stretches over a very wide range of information, including: direct and indirect advertisement; public and non-public advertisement; direct marketing, which pertains to messages destined to individual addressees (for instance mailing, telemarketing); sales promotion, consisting in granting a free material benefit to the addressee (premium sale, promotion lottery, distribution of samples and gifts, as well as competitions; sponsoring understood as each form of participation of the sponsor in the costs of a given undertaking of another entity, on the condition that the financing participation is undertaken for promotional purposes of the sponsor; *public relations* activities, the goal of which is to promote the business image with the use of means of electronic communication, and proposals of contract conclusion, such as an offer, invitation to tender, invitation to treat, etc. (Gołaczyński et al., 2009).

Commercial communication should include the specification of entity which ordered the transmission, and its electronic addresses. It is forbidden not to provide any specification of such an entity. Precise separation and marking of commercial information translates to the obligation of such external marking of the commercial communication contained in an email, that the receiver should have no doubts that the communication serves promotional purposes. It seems inadmissible to use such markings which could confuse the addressee as to the content of the received message.

Commercial information placed on websites should be visually separate in an apparent way from other information accessible on the website.

As enacted by the legislator, information enabling electronic contact with a given person, his or her email, website address, domain names and information whose purpose is not to achieve a commercial effect, e.g. comparative product and services tests, evaluation, etc., ordered by the service provider, but performed entirely independently, do not make commercial communications. It is also assumed that a hypertext link to a webpage containing particular commercial information, unless its placement has a commercial purpose, shall not be considered commercial communication (Frań 2002).

From the point of view of the present subject matter it should be indicated that the Act defines measures of electronic communication as technical solutions, including teleinformatic equipment and software compatible with the equipment, enabling individual distant communication by means of data transmission between teleinformatic systems, in particular electronic mail. The prerequisite of classifying a service as provided electronically is its individual or-

der by the receiver. The element of individual order on the part of the receiver should be interpreted in the following way: the receiver may demand the provision of service (for example consisting in on-line browsing of a database) from the place and in the time chosen individually by the receiver. This means that the service is provided at the receiver's request, as for instance the use of websites or *video-on-demand* services. In the case of radio transmission, teletext or television, among other things there is no element of choice by the client of the time of online provision of the service. Among such services one cannot as well enumerate voicemail, telefax and telex services, telephone marketing, or teletext services. SMS messages, however, make an electronically provided service.

Provision of electronic services has been defined as rendition of a service provided without the simultaneous presence of both parties (distant), by means of data transmission at an individual request of the client, sent and received with the aid of electronic processing equipment, including digital compression and data storage, which is entirely sent, received and transmitted within a telecommunication network.

Distant contract conclusion interpreted broadly involves contracts concluded via internet by using websites, availing of electronic mail and information systems *Electronic Data Interchange*, which allow to generate statements of intent by the computer without human involvement (Kocot 2000b: 29). Means of distant communication are: printed media, means of telephone communication, as well as radio and television communication (Jagielska 2000: 561).

A characteristic feature of contracts concluded distantly is the use of the electronic form of the statement of intent. The notion of electronic form of a statement of intent (referred to in art. 60, Civil Code) should be interpreted broadly as a set of data which can be created, processed and stored by means of modern technologies (Kryczka 2006: 98ff).

Respective information mentioned in art. 66¹ § 2, Civil Code should be provided to the other party in an unequivocal and understandable manner. This requirement has been formulated similarly to art. 9(2) of the Act on the protection of certain consumer rights, thus, as one might expect, it should be interpreted in the same way. As in the case where the information obligation set out in art. 66¹ § 2, Civil Code has not been complied with, the solution may be found on the grounds of compensatory liability or provisions on the vices of consent (Kryczka 2006: 96).

Pursuant to art. 6(1) of the Act, contracts concluded distantly are contracts concluded with a consumer without simultaneous presence of both parties, with the use of means of distant communication, in particular a printed or electronic addressed or non-addressed order form, serial letter in the printed or electronic form, press advertisement with a printed order form, electronic advertisement, catalogue, telephone, telefax, radio, television, intercom equipment, video

phone, videotext, electronic mail or other means of electronic communication in the understanding of the Act on provision of electronic services, if the other party (but the consumer) is a business whose activity is organized in the abovementioned manner. The catalogue of means of distant communication remains open. In pursuance with art. 6(4) of the Act, the use of means of distant communication in order to place a proposal of contract conclusion cannot take place at the cost of a consumer.

Provisions of the Act do not apply if the means of distant communication are used only for advertisement or informative purposes. The use of a means of distant character at the conclusion of contracts cannot be occasional or single. Within the understanding of art. 6 of the Act a contract concluded by means of telefax is not going to make a distant contract if it is an extraordinary and untypical practice for a given business (Łętowska 2000: 47; Radwański and Olejniczak 2009: 175).

The qualification of a contract as distant is thus decided by four elements. These are the parties to the contract – on the one hand there is a consumer, an addressee of the offer, person ‘consuming’ relevant goods or services, and on the other there is the offeror – a business which has professionally organized its activity in such a form. The third characteristic feature is the conclusion of contract without simultaneous presence of both parties (in the absence of the second party, without direct physical contact), and the fourth one is conclusion of the contract with the use of means of distant communication. However, this does not have to be the sole, exclusive or basic manner of business activity of the professional. The business’s intent to conduct at least a part of its commercial activity in such a way seems sufficient (Kocot 2000a: 47, Łętowska 2000: 47, Litwiński 2004: 242, Podrecki 2005: 715).

For a contract to be qualified as distant four elements seem to be substantial:

- a consumer – an addressee of the offer;
- the offeror – a business which has professionally organized its activity;
- the conclusion of contract without simultaneous presence of both parties;
- the conclusion of the contract with the use of means of distant communication.

Article 6(2) of the Act provides as well on the so-called *animus contrahendi*, which means that the proposal of contract conclusion may assume the shape of: an offer, invitation to tender or submitted offers, invitation to treat. The proposal should also contain unequivocal and clear information on the intent of contract conclusion by the proposing party.

It should be emphasized at the same time that the use of telephone, videophone, electronic mail, intercom or other means of electronic communication in order to put forward the proposal of contract conclusion may take place only with previous consent of the consumer, since the sole initiative of the professional may result in a surprise to the consumer and interfere with his or her

privacy. The violation of the prohibition makes an unlawful conduct of the business which should bear in mind that an intervention of the President of the Office of Competition and Consumer Protection, or municipal ombudsman for consumers, may follow (Kocot 2000b: 29, Podrecki 2005: 721).

In the period before the conclusion of contract, respective information may be delivered to the consumer in any form, with the aid of a means of distant communication, also by means of an internet site used for the purpose of concluding contracts with consumers. The opinion expressed in academic writings seems convincing that the information may also be transferred within a direct contact between the parties (*a minori ad maius* type of reasoning) (Jagielska 2000: 563).

The content of the concluded agreement is freely shaped by the parties. However, the legislator indicates in art. 8 that a contract for continuous or periodic provision can be concluded for a definite or indefinite period of time. A contract concluded for more than one year is deemed on the expiry of that period as a contract for indefinite time. Where the contract period has not been specified, each of the parties may terminate the contract without giving reasons on the expiry of a three month notice period (Radwański and Olejniczak 2010: 178). Moreover, in accordance with art. 11(2) of the Act a contract should specify the place and manner of exercising warranty rights, which do not produce excessive difficulties or costs on the part of the consumer. The period of contract performance can be determined freely by the parties. However, if the parties have not stipulated otherwise, in pursuance of art. 12(1) of the Act a business should perform the distant contract before the expiry of 30 days from the expression of the consumer's statement of intent to conclude the contract.

The Act on the protection of certain consumer rights provides as well for a specific easement for the professional who is unable to carry out the contracted provision because the object of contract is not accessible. Article 12(2) entitles the professional to rescind from contract, and thus weakens the obligation of performance in accordance with the contractual content. The professional should urgently, not later than 30 days from the conclusion of contract, inform the consumer about the exercise of the above right and return the whole price obtained from the consumer (Kołodziej 2005: 31, Podrecki 2005: 729). In the case of impossibility to perform the contract is thus not considered void *ex lege*. If the contractual relationship is to expire, it is necessary on the part of the professional to exercise due diligence and comply with the obligation to inform the consumer – in whatever form – that the contracted object is not accessible. Should the professional fail to comply with this obligation within the prescribed – 30-day – period, he or she is going to be liable for non-performance of the contracted obligation. In academic writings (Kołodziej 2005: 32ff) one can encounter an opinion that in art. 12 of the Act on the protection of certain consumer rights it should be precisely specified what the event might be which causes termination of contract. Also a legal ground should be introduced for

the consumer to claim (statutory) interests from the price (or remuneration) already paid for the period starting from the payment of price or remuneration (but most frequently from the date of contract conclusion). *De lege lata*, the inaccessibility of contractual provision on the part of the professional should in each case result in the expiry of obligation *ex lege* (by *per analogiam* application of art. 475, Civil Code).

An attempt of performance by provision of a surrogate rendition is provided for in art. 12(3) of the Act. Where the business cannot perform the obligation because of even a temporary impossibility to perform the rendition which was contracted by the consumer, the professional may, if such a clause was included in the contract, release him- or herself from the obligation by carrying out a surrogate rendition of equivalent quality and purpose, for the same price of remuneration, notifying the consumer at the same time in writing about the consumer's right not to accept this rendition and to rescind from the contract involving the return of the delivered goods at the cost of the professional. In such case the consumer has the right to rescind from the contract in the mode and on the conditions specified in art. 7. Return of the delivered thing takes place at the cost of the business.

The discussed provisions are minimal in character, since art. 17, in the wording introduced by the Act of 4 February 2011 Private International Law (Journal Laws No. 80, item 432), envisages that one cannot contractually exclude or restrict any of the consumer rights set out in arts. 1–16e of the Act. In scholarly writings a view has been expressed (Lijowska 2004: 137) that provisions of consumer statutes do not exclude the law of conflict autonomy of will of the parties in relation to contracts falling within the scope of consumer protection. It is the case because we do not have to do with a restriction of the freedom of contract as regards the choice of proper law sanction by contract invalidity, but only a conditional restriction of the scope of application of the chosen law.

It should be noted that not all contracts for the provision of services by means of electronic communication are encompassed by the regime of the Act on the protection of certain consumer rights. For various reasons, the legislator has decided in art. 16(1) that the distant contracts regulation shall not be applied to: contracts with the use of selling machines or other devices placed in commercial places (for instance placement of a parking meter or a machine selling until out of goods); pension contracts; contracts concluded with telecom operators with the use of public telephones; contracts pertaining to immovable property – to the exception of lease and auction sales. As a consequence, provisions of the discussed Act do not apply to popular internet auctions (Radwański and Olejniczak 2009: 175, Kocot 2000b: 29, Podrecki 2005: 726) – for instance to the sale of goods on Ebay or Allegro portals.

Moreover, as stipulated in art. 16(2), in certain types of transactions the professional is not obliged to provide 'pre-contractual' information to the consumer. The relevant provisions of arts. 7, 9 and art. 12(1) shall not be applied to: sales

of groceries provided periodically by the seller to the house or place of labour of the consumer, and provisions, in a strictly specified sense, of services within the field of accommodation, transport, entertainment, gastronomy; in the case of entertainment in the open air the business may also restrict the exclusion of the obligation to notify about the impossibility to perform, envisaged in art. 12(2), but only in circumstances indicated in the contract. This may for instance refer to purchase of stay in a guesthouse in the mountains or a ticket for a festival. It should be emphasized that the opinions of academics are rather critical of the discussed solution (Litwiński 2004: 247, Podrecki 2005: 727).

3. Consumer protection

3.1. At the stage preceding contract conclusion

The aim of consumer protection at this stage is to ensure privacy to the consumer, as there is a risk of infringement of his or her personal data and obtaining access to information connected with the contract, as regards the danger of restrictions in this field.

Transfer of non-ordered commercial communication without the consumer consent makes an infringement of the private sphere of life of an individual. Via electronic mail, many types of personal interests can be violated which make for the sphere of private life, such as good name, right to an image, surname, dignity or the right to anonymity. The received message is going to show which of the above interests has been breached. Each time, however, regardless of the content of the message, its transfer without consent can be regarded as disturbing the receiver of the delivered mail (Rączka 2004: 101ff, Jagielska 2000: 563).

In the case of websites, the consumer browses the contents of the internet and decides whether he or she should pay attention to the given site. Where the professional makes proposals of contract conclusion at internet websites the sphere of the consumer's privacy is not infringed as a rule (Wejman 2000: 41, Litwiński 2004: 253, Łętowska 2000: 44). The construction of prior consent, the so-called *opt-in* option is related to the fact which has been already indicated, namely that the use of the particular means of communication may not surprise the consumer and disturb his or her privacy.

One of the pillars of the discussed protective regime is access to information. The range of information, both prior and subsequent has been specified by the legislator in art. 9 of the discussed Act.

From the point of view of consumer rights art. 9(1) seems particularly significant. Pursuant to this provision, the consumer should obtain specific information with the aid of a distant communication means, at latest at the moment when he or she is confronted with the proposal of contract conclusion, hence the name 'prior information'. This information enables proper identification of the professional and concern the provisions of the prospective contract which might be concluded with the consumer. The information includes name and surname (commercial name), habitual residence (registered office) of the professional and the authority which entered the business into the register, as well as reference number of the business's registration. Moreover, the consumer should be informed about essential characteristics of the provision and its object, for instance from the point of view of a disabled or allergic client. The information should also include the price or remuneration, covering all their components, in particular the customs and taxation. The consumer must be informed about the mode of payment of the price or remuneration (cash or other types of payment – check, credit card, bank transfer) as well as the cost, period and manner of delivery. Another crucial information, which is still going to be discussed, is the info on the rescission right within the period of ten days and the indication of respective exceptions. Moreover, the information is to cover the costs deriving from the use of means of distant communication, if they accrue differently from the regular rate. 'Warming up' stands for the period in which the offer or information about the price is to remain binding. The client must also be informed about the minimal period for which the contract for continuous or periodic renditions is to be concluded, the place and mode of exercising warranty rights and the right to terminate the contract concluded for indefinite period on the three-month notice period.

The information should be formulated in a clear unambiguous manner, in a way understandable and legible. These requirements concern both the form and content of the message (Łętowska 2000: 48). The postulation of transparency is related to the clear and unequivocal formulation of information in the graphic sense – legible font, pattern accessibility, and in the intellectual sense, which means that the message needs to be conceivable. One could add that the Polish legislator provides more far reaching requirements for the professional in this respect than the Directive itself (Łętowska 2000: 53ff, Radwański and Olejniczak 2009: 177, Litwiński 2004: 24).

The so-called subsequent information covers the obligation on the part of the professional to confirm to the consumer in writing the important information, at the latest at the moment of performance of the obligation, in order to circumvent the risk of loss of the provided info. The sanction for non-compliance with this obligation is the prolongation of period prescribed for rescission from the contract. Such a requirement has not been included in the Directive. As envisaged in paragraph 4, the discussed obligation does not con-

cern single provisions which are themselves carried out with the use of distant communication means and which are billed by a natural or juridical person who makes accessible at least one means of distant communication as a part of his or her commercial activity. The means is accessible both to the consumer and professional (operator of the means of communication).

It is worth emphasizing that where the professional makes a proposal of concluding a distant contract and, without waiting for the consumer's reply he or she carries out the provision, the professional acts always at his or her own risk. Such is the rule expressed in art. 15 of the Act on the protection of certain consumer rights. One should share the view that, even if the consumer accepted the non-ordered goods in the previous transactions and paid the price, he or she shall not be obliged at each of the following transactions to accept the delivery, and the cost, as well as the risk of loss, damage or diminishment of the goods shall rest in whole on the professional. Moreover, in such circumstances one cannot invoke a commercial usage established between the parties (Jagielska 2000: 564).

3.2. After the conclusion of contract

The lawmaker's urge to ensure proper performance of contract on the part of the professional translates to the consumer's possibility to rescind from contract. Consumer protection comprises as well statutory rules pertaining to the period of performance of the obligation by the professional; regulation of payment of the price and exercise of warranty entitlements, as cancellation of payment by card.

An essential unilateral entitlement of the consumer is the right to rescind from the contract without giving reasons and payment of compensation (the so-called *cool-off period*, *tempus ad deliberandum*). As provided in art. 7(1), the consumer who concluded a distant contract may rescind from it by delivering a respective notice in writing within the period of ten days. It is worth emphasizing that the Directive itself envisages a seven day period (Radwański and Olejniczak 2009: 179).

In order to comply with the prescribed period, it is sufficient to send the notice before its expiry. One can only approve of the views voiced in academic writings (Łaszczuk and Szpara 2001: 54) that the statement concerning termination of contract should reach the professional before the expiry of the period on the expiry of which the right to rescind becomes distinguished. In consequence, the statement on rescission sent before the expiry of the prescribed period which has not reached the professional after its expiration cannot be considered made.

It is necessary to keep the written form of the statement *ad probationem* (for evidence purposes), but it is not indispensable to provide reasons for the rescission from contract. It should be stressed that an email or telephone conversation is not sufficient to comply with this formal requirement. The necessary components of such a statement are the specification of contract, its parties, whether the goods have been collected, and the very statement concerning rescission.

An extremely important principle has been included in paragraph 2 of the discussed provision, pursuant to which it is not admissible to make a reservation that a consumer may rescind from the contract only in exchange for particular compensation (Łętowska 2000: 34). However, one should bear in mind that the prohibition of correlating the right of rescission to any specified compensation envisaged in art. 7(2) remains binding only within the period envisaged in art. 7(1), as well as in art. 10. As a result, there are no restrictions when it comes to the reservation of compensation in case of rescission by the consumer after the expiry of that period.

The ten day period (preclusive in nature) in which the consumer may rescind from the contract on the ground of art. 10(1) of the Act starts on the date of delivery of the contracted goods (i.e. their reception by the receiver at the post office or from a carrier), and where the contract concerns provision of a service – from the date of contract conclusion. As has been already mentioned, in the case of non-compliance by the seller with the obligation to provide proper information, the period in which the consumer is entitled to rescind from the contract amounts to three months and starts on the date of delivery of the contracted goods, and where the contract is for the provision of service, on the date of its conclusion. However, if the consumer, once the period has already started, receives proper confirmation, the period becomes shortened to ten days from the date of delivery of the relevant information (Jagielska 2000: 562, Szczygielska 2003: 414, Łaszczuk and Szpara: 54).

Article 10(3) regulates in an exhaustive manner the instances when the right of rescission is due. However, it must be stressed that it is only a default rule, and the parties may allow for rescission also in situations not envisaged in the provision. Where the parties have not stipulated otherwise, the right to rescind from a distant contract is vested in the consumer: in the case of provision commenced with the consumer's permission before the expiry of period to rescind (the so-called principle *volenti non fit iniuria*); rescission is impossible in relation to audio and video records, as well as records on electronic data storage media after the removal by the consumer of their original package (the so-called cellophane clause) and as regards contracts concerning provisions for which the price depends exclusively on the fluctuation of prices on the financial market. Personalization of the provision and establishment of an untypical choice for a permanent client cause that there is no possibility to rescind from

provisions of the characteristics specified by the consumer in his or her order, or strictly connected with the person of the consumer. The next exclusion concerns provisions which because of their character cannot be returned or whose object is affected by quick decomposition (cheese, sausage in an e-grocery), as well as contracts for press delivery and gambling services (Litwiński 2004: 259, Radwański and Olejniczak 2010: 173, Łętowska 2000: 50).

The exercise of the rescission right leads to a situation in which the contract is considered as not concluded, thus the effects are retrospective. What has been rendered by the parties must be returned unchanged, unless the modification was necessary as a part of ordinary management. This notion has not been elaborated upon by the legislator, hence the need to evaluate the factual situation in a particular case. Ordinary management – according to civil law principles – means management connected with the regular use of goods, which does not lead to their damage (Łętowska 2000: 35). For instance, one can check if an appliance functions properly by inserting batteries. In the judgment of 3 September 2009 (C-489/07), the ECJ indicated that the use of laptop may consist in the installation of software.

The return should take place urgently, but not after the expiry of fourteen days. Should the consumer have made any prior payments (for instance if the price was paid by card or bank transfer) statutory interests are due from the date of early payment. It should be emphasized that one cannot exclude the discussed provision by force of the rules of the e-shop or contractual clauses.

Article 13(1) stipulates that in the case of rescission on the part of consumer the professional is obliged to confirm in writing the return of the provision. Where the rendition of the consumer is to be carried out with the aid of a credit or loan granted by the professional, or where the contract provided for the conclusion of a separate credit contract based on the agreement between the professional and creditor, the rescission from a distant contract shall be effective as well in relation to the credit or loan contract concluded by the consumer.

In order to protect the interests of the client to a fuller extent, art. 11(1) provides that the contract may not impose on the client the obligation to pay the price or remuneration before he or she receives the mutual provision, which prohibition is sanctioned by invalidity of a respective clause (art. 58 § 3, Civil Code).

From the practical point of view, an interesting question is the pursuit of an answer to the question who should cover the costs of delivery. Under Polish law the question of costs of the goods' return has not been unequivocally decided. Scholars generally take the stance that *a contrario* in relation to art. 12(4), sentence 2, of the Act on the protection of certain consumer rights one should conclude that the costs shall be incurred by the consumer. Article 12(3) envisages that the professional has the right to carry out a surrogate rendition,

corresponding to the original one in terms of quality, purpose and price or remuneration, on the sole condition that such possibility has been envisaged in the contract. Pursuant to art. 12(4) the consumer is entitled not to accept such provision and rescind from the contract in the mode provided for in art. 7. This provision stipulates that in such a case the return of the goods takes place at the cost of the professional. It follows that in every other instance of rescission and return of the contracted goods to the professional the costs should be covered by the consumer (szczygielska 2003: 98). The doctrine and judicature of the ECJ indicate that the costs ought to be covered by the seller, and the decisions of the Office of Competition and Consumer Protection, as well as the Directive, suggest that the costs are incurred by the client who terminated the contract.

The protection of consumer as an owner of a payment card (the so-called abusive use of a card) has been regulated in art. 14 of the Act, pursuant to which provision the consumer may demand cancellation, at the cost of the professional, of the payment made by card if the payment card was used improperly in the respective distant contract. This does not lift the obligation to remedy the loss suffered by the consumer on the part of the professional (Litwiński 2004: 266, Radwański and Olejniczak 2009: 179, Kocot 2000: 33, Podrecki 2005: 729).

Table 1. Areas of consumer protection

At the stage preceding the conclusion of contract	After the conclusion of contract
<ul style="list-style-type: none"> – ensuring privacy – obtaining access to information 	<ul style="list-style-type: none"> – possibility to rescind from contract – the period of performance of the obligation by the professional – regulation of payment of the price – warranty entitlements – cancellation of payment by card

Source: authors, scientific description based on references.

4. Concluding remarks

The object of investigation in the present paper was the legislative protection of the weaker party to a distant contract, as an example a contract concluded via internet. Characteristic traits of such contracts are the place and form of conclusion. Consumer's limited possibility to learn about and examine the goods or services purchased online brings about the necessity to introduce special legal regulation, which put the consumer in a more advantaged position than in

the case of traditional sale. In authors, opinion there is sufficient protection given by Polish law.

Commercial communications are a part of services provided electronically. Most frequently, they make for broadly understood advertisement, as well as statements of intent comprising an offer of contract conclusion. The statute imposes on a professional the pre-contractual obligation to provide to the consumer wide, exact, legible and understandable information concerning the content of the prospective contract. Durability of the contractual relationship has become dependent on a written confirmation by the professional of the majority of information provided to the consumer at the latest on the moment of performance. The Act ensures as well to the consumer full freedom to rescind from the contract within the specified period. As can be seen, the legislator differentiates between the tools and principles of protection, depending on the stage of activities connected with the conclusion and performance of contract.

Apart from the indicated mechanisms envisaged in the Act on the protection of certain consumer rights, the postulation to protect entities concluding contracts with the use of the internet is additionally implemented in the provisions of the Act on provision of electronic services. The need to obtain consent for being posted commercial communications following from art. 10 of the discussed statute causes that only the 'ordered' information may be acknowledged as services provided electronically. In consequence, it would not be feasible to equate commercial information and a proposal of contract conclusion.

Apart from the remarks which formed the main body of the present paper, it should be indicated that an individual client may enhance his or her safety in a situation of online contract conclusion. This can be done by selecting well recognized e-shops, verifying the shops' credibility – by checking opinions on the sellers. Where the transaction is of bigger value, it is praiseworthy to choose the option of payment on delivery.

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