


Business Interest versus Consumer Protection. Conflicts within the Safety Assurance System of NonFood Products – Selected Issues

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Abstract: Technological progress and the introduction of more and more new products to the market have intensified the process of changes in EU and national law within the product safety system. Legislative activities aimed at intensifying consumer protection have been observed in this area for several years. The primary role of instruments and legal mechanisms under this system is currently to guarantee consumer protection (protection of health and life) against the risks generated by various new products introduced to the market. In this respect, public law institutions adopted in this system play the leading role. These include market control and surveillance, product monitoring, and a coordinated system of informing about dangerous products.

However, due to the legal structure of the product safety system, it is not always possible for the interests of entrepreneurs and consumers to be protected at an appropriate level. The article analyses the problem of balancing the interests of consumers and entrepreneurs in the internal market, based on the free movement of goods, in the changing socio-economic reality (digital products, digitisation of services, online sales). Based on the legal institutions analysed, the article is a legal and dogmatic reflection on the conflict of values between consumer protection and entrepreneur

protection. The study presents legal instruments, measures and mechanisms of the non-food product safety system from the perspective of the values it protects.

1. Introduction

With its roots in the free movement of goods and enterprise development, the non-food product safety system in the European Union aims at ensuring a high level of protection of consumer interests¹. Since it was established, this institution has strived to safeguard effective competition in the goods market and reconcile the interests of entrepreneurs and consumers, which seem to be mutually exclusive. The first is to maximize product sales revenue under competitive market conditions, whereas the latter is for end users to have access to safe products. The institutions and legal mechanisms (along with the instruments involved in them) which comprise the EU product safety scheme are supposed to implement the legal transparency principle in respect of requirements for entrepreneurs placing products on the market. Consequently, individual groups (types) of products are subject to the same set of requirements. In parallel, these prerequisites are to guarantee a uniform quality of products (at a high level – as presupposed by the EU legislator), which is, in turn, to increase the level of product safety and thus protect consumers. It can be argued, therefore, that the legal mechanism for ensuring the safety of non-food products (conformity assessment and market surveillance) substantially secures the protection of consumer rights (including protection of their health and life) against the dangerous and harmful effects of products. At the same time, it stimulates economic development (and thus protects entrepreneurs) by introducing uniform technical requirements for products and transparent criteria for their verification on the EU market.

However, due to the legal structure of the non-food product safety system, it is not always possible for the interests of entrepreneurs and consumers to be protected to the same extent. This may cause a dilemma about whether to protect the consumer or the interests of the entrepreneur. The formulated problem of the clash of values is a legitimate

¹ Aleksander Cieśliński, ed., *Wspólnotowe prawo gospodarcze* (Warszawa: C.H. Beck, 2013), 273–280.

basis for presenting a range of legal instruments and mechanisms applied within the product safety system in terms of the values protected. This study aims to discern and display the areas within the regulations governing the product safety system where conflicts of interest do or may occur as well as to assess how effectively these regulations protect said interests.

2. The public economic law perspective on the values in the safety assurance system of non-food products

Given the dynamics and globalisation of economic relations (and hence the ever-changing methods in which public authorities try to interfere in their course), it is necessary to consider the values protected by public economic law in the light of the conflicting interests of trading participants, where the reference point is the state's involvement in the relationship between the business and the consumer. Prior to analysing the values protected by the safety assurance system of non-food items regarded as an institution of public economic law, I will make a few introductory remarks on the general values which manifest themselves both in legislation and the views of legal academics and commentators.

It is values that determine the order in the economy. They affect relations between public authorities and entrepreneurs as well as the entire field of economic activity. With public economic law² as a carrier of values, they are also a necessary premise for defining its principles. The dominant view in the literature is that the provisions of public economic law are addressed at public – economic – administration bodies, which are entrusted with the performance of various types of public functions by virtue of these standards. K. Kokocińska notes that the majority of the relevant literature is “analyses which focus on issues concerning the relationship between the state and the economy, and namely based on the paradigm that public administration bodies are the object of standards (...), whereas the provisions of (public economic) law determine the manner and scope in which public authorities encroach upon economic relations (...), assigning them with specific tasks and competences, intended primarily to

² Andrzej Powałowski, “Wprowadzenie do aksjologii prawa gospodarczego publicznego,” *Acta Universitatis Wratislaviensis, Prawo*, no. 3977, t. 329 (2019): 221.

protect the public interest”³. The presented approach stems from the traditional method of interpreting the role of many institutions and legal constructions of a public nature. They are used by the State primarily to create conditions for conducting business activity and to define the mutual relations between the State and the entities carrying out such activity. It is, therefore, a case of normative determination of the system through which the state influences the economy⁴. However, as a result of the transformations and growth of economic relations affected by state interference, state-market relations have been viewed from a new angle⁵, not only in literature but also in legislation. An example of it is the Act of March 6, 2018 – Entrepreneurs’ Law⁶, which fundamentally remodelled the system of principles (values) in the Polish legal order. The principles stipulated therein indicated that the values at its core focused on the protection of entrepreneurs’ rights. Another equally important area under the intense influence of the legislator – both at the national and EU level – is the market position of consumers. The need to reinforce consumer protection in the face of new threats arising in economic relations has been increasingly emphasised, resulting in a change in national and EU regulations⁷.

In the views of legal scholars and commentators, there are numerous examples of values protected by norms that are considered part of public economic law. There are also various attempts to define and correlate them⁸,

³ Katarzyna Kokocińska, “Gwarancyjny charakter zasad prawa – rozważanie na tle ustawy – Prawo przedsiębiorców,” in *Prawo przedsiębiorcy*, ed. Rafał Blicharz (Warszawa: C.H. Beck, 2019), 19–32; Leszek Bielecki, *Koncepcja rzeczy publicznej* (Kielce: Leszek Bielecki, 2013), 85–99.

⁴ Powalowski, “Wprowadzenie do aksjologii,” 222–223.

⁵ Katarzyna Kokocińska, “Funkcjonalność i dysfunkcjonalność przepisów publicznego prawa gospodarczego z perspektywy kryterium wartości (zagadnienia ogólne),” in *Dysfunkcje publicznego prawa gospodarczego*, ed. Marian Zdyb, Emil Kruk and Grzegorz Lubieżuk (Warszawa: C.H. Beck, 2018), 25–38.

⁶ Journal of Laws 2021 no. 162, as amended.

⁷ For more on this issue, see e.g. Małgorzata Ganczar, “Prawo odstąpienia od umowy zawartej na odległość w świetle prawa unijnego,” in *Ochrona konsumentów i ich współczesne wyzwania*, ed. Małgorzata Ganczar and Elżbieta Ślugońska-Krupa (Lublin: KUL, 2014), 367–377 and other studies included in this item.

⁸ Marzena Kordela, “Zasady publicznego prawa gospodarczego. Próba konceptualizacji,” in *Państwo a gospodarka. Zasady-instytucje-procedury. Księga jubileuszowa dedykowana Profesor Bożenie Popowskiej*, ed. Piotr Lissoń, Michał Strzelbicki (Poznań:

which cannot be listed here in detail. However, we may highlight certain common, underlying values which ought to be respected by the virtue of legal principles. Among them, there are universal values for the entire legal order: human welfare, justice, morality, as well as values of particular importance in the area of public law regulation, i.e. legality, efficiency, and purposefulness of public administration. The catalogue of values also includes those legally protected by regulations in the area of public economic law, and resulting from statutory duties of the state. In particular, it includes freedom of economic activity, fair competition, and consumer protection. Together, they form a system of values in this field of law⁹. In essence, the value or set of values that should determine the final legal constructions is an important factor shaping the manner and scope of the state's influence on economic relations. These are the rules determining the permissibility of state interference in economy¹⁰.

The system for ensuring the safety of non-food products is a compromise *sui generis* between the EU legislator and the national legislator in reconciling the interests of consumers and entrepreneurs in respect of product safety. In order to identify the values protected in this system, it is necessary to establish and then examine the foundations of the legal constructions

Wydawnictwo Poznańskie, 2020), 61; more on the principles: Artur Żurawik, "Zasady ogólne prawa publicznego gospodarczego;" Michał Biliński, "Zasady ogólne publicznego prawa gospodarczego," in *System Prawa Administracyjnego. Publiczne prawo gospodarcze*, vol. 8 A, ed. Roman Hauser, Zygmunt Konrad Niewiadomski, Andrzej Wróbel (Warszawa: C.H. Beck, 2018), 459–517.

⁹ Karol Kiczka, "Wartości w publicznym prawie gospodarczym (zagadnienia wybrane)," in *Wartości w prawie administracyjnym*, ed. Jan Zimmermann (Warszawa: Wolters Kluwer business, 2015), 250; Katarzyna Kokocińska, "Wspieranie rozwoju działalności gospodarczej w ujęciu zasad i wartości," *Ruch Prawniczy Ekonomiczny i Społeczny*, no. 4 (2018): 44–45; Marian Zdyb, "Aksjologiczne podstawy ingerencji państwa w sferę gospodarki rynkowej," in *Prawne instrumenty oddziaływania na gospodarkę*, ed. Andrzej Powołowski (Warszawa: C.H. Beck, 2016), 1–5.

¹⁰ Kazimierz Strzyczkowski, "Uwagi o zadaniach nauki o prawnych formach działania administracji gospodarczej," in *Instrumenty i prawne formy działania administracji gospodarczej*, ed. Bożena Popowska and Katarzyna Kokocińska (Poznań: Wydawnictwo Naukowe Uniwersytetu Adama Mickiewicza, 2009), 37–63; Kokocińska, "Funkcjonalność i dysfunkcyjność," 25–35; Bożena Popowska, "Niepomijalność standardów 'dobrej administracji' w publicznym prawie gospodarczym," *Acta Universitatis Wratislaviensis, Prawo*, no. 4001, vol. 331 (2020): 213–216.

adopted. The economic and non-economic objectives formulated at the EU and national level are of key importance as they shape the concept of the current economic order¹¹ (and protected values) in the sphere of product safety. The objectives mentioned above, which stem from the policy adopted and the resulting course of action, are determined by the current social and economic conditions¹².

At the EU level, the basic assumptions, objectives, legal institutions and legal instruments of the product safety system are regulated by Regulation (EC) No. 765/2008 of the European Parliament and of the Council of July 9, 2008 laying down requirements for accreditation and repealing Regulation (EEC) No. 339/ 93¹³ and Regulation 2019/1020 EU of 20 June 2019 on market surveillance and product compliance and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011¹⁴. The values protected under the product safety assurance system are listed in recitals 1 and 2 of Regulation 765/2008 EC and recital 1 of Regulation 2019/1020 EU, where the EU legislator names the following values: health and safety in general, health and safety at work, consumer protection, environment protection, public safety and protection of any other public interest, and free movement of goods. A comprehensive analysis of the normative acts listed above also allows us to conclude that information security (the right to reliable information about products) constitutes an important value as well from the point of view of the interests protected.

In the Polish legal order, the legal framework of the product safety assurance system is created by the Act of 30 August 2002 on the conformity assessment system¹⁵ and the Act of 13 April 2016 on conformity assessment and market surveillance systems¹⁶. It also codifies standards of the rank of

¹¹ Katarzyna Kokocińska, “Wpływ traktatowych rozwiązań Unii Europejskiej na organizację procesów gospodarczych w Polsce (w kontekście zasady społecznej gospodarki rynkowej),” in *Unia Europejska wobec wyzwań przyszłości. Aspekty prawne, finansowe i handlowe*, ed. Ewa Małuszynska, Grzegorz Mazur and Piotr Idczak (Poznań: Wydawnictwo Naukowe Uniwersytetu Ekonomicznego w Poznaniu, 2015), 36–46.

¹² Kokocińska, *Wspieranie rozwoju działalności*, 42.

¹³ OJ L 218, 13 August 2008, consolidated text of 16 July 2021.

¹⁴ OJ L 169/1, 25 June 2019.

¹⁵ Journal of Laws 2021, item 1344, as amended, consolidated text.

¹⁶ Journal of Laws 2022, item 1854, consolidated text.

principles, forming a framework of values for the economic relations covered by these regulations. The wording of Article 2 of the Act on the conformity assessment system indicates such values as health, life, removal of technical barriers to trade and facilitation of international trade. These values are clarified and specified in Article 2 of the Act on conformity assessment and market surveillance systems, which states that the purpose of the Act is to ensure the competitiveness and innovativeness of the economy; eliminating health hazards posed by products and safety, including in the workplace, to protect consumers, property, environment and public safety; removing technical barriers to trade and facilitating trade in goods. The interpretation of the articles implies the paradigm of protecting the interests of entrepreneurs and consumers.

In general, the aim of this system is to ensure a coherent and efficient mechanism for verifying the safety of products entering the EU market, as well as stimulating the development of entrepreneurship and a competitive economy within the EU internal market. This calls for the application of unified, universal criteria for assessing the quality of products placed on the internal market, facilitating the flow of goods. At the same time, the public authority is obliged to protect the weaker party of legal relations, i.e. the consumer. It also ought to create a coherent legal framework ensuring protection of health and life against dangerous products¹⁷.

3. Balance between the interests of entrepreneurs and consumers in the system ensures product safety

Constructed over many years of evolution, the product safety system in a broad sense consists of the following: legal instruments, i.e. basic or other requirements for products, standards and technical specifications for products, rules and standards regarding the competence of conformity assessment bodies, rules for granting accreditation, conformity assessment procedures (modes and rules regarding the CE marking); legal institutions (market surveillance, including control of products from third countries) and administrative structures of supervision (supervisory

¹⁷ For more on this topic, see: Agnieszka Żywicka, "Nadzór nad wyrobami podlegającymi dyrektywom „nowego podejścia” w Polsce – kilka refleksji o koordynacji działań organów nadzoru," *Acta Universitatis Wratislaviensis, Prawo*, no. 3977, vol. 329 (2019): 431–442.

authorities)¹⁸, as well as legal tools (systems for informing about the dangerous properties of products). This complex legal structure is aimed at protecting the interests of entrepreneurs and consumers. In order to determine whether this is in fact the case, it is necessary to review the legal regulations which give rise to this system from the point of view of both consumers and entrepreneurs.

Product conformity assessment procedures and uniform product evaluation criteria as well as mutual recognition of products on the EU internal market meet the expectations of entrepreneurs in terms of implementing the freedom of movement of goods and ensuring freedom to conduct a business (freedom of enterprise). Uniform and transparent procedures ensure rational financing of laboratory tests conducted within conformity assessment, without unnecessary spending on extra tests and examinations. Thus, it is also imperative to protect the financial interests of entrepreneurs. Moreover, these procedures contribute to the competitive market equilibrium. The universal nature of compliance procedures also strengthens the sense of legal security for entrepreneurs (trust in public authorities) with market surveillance conducted by supervisory authorities. The point of reference for inspection are the legal criteria of the products subject to verification. Thus, it can be argued that this system pursues the interests of entrepreneurs. One may have a slightly different impression upon analysing the same legal solutions in terms of the same values, i.e. competitiveness and protection of financial interest, yet from the perspective of consumers. The idea that this protection is not always provided to a satisfactory degree is hard to resist. Various

¹⁸ For more on the assumptions of the conformity assessment system, see: Notice of the EU Commission Blue Guide – Implementation of EU regulations on products 2022, (2022/C 247/01), EU C 247/1 of 29.6.2022; Leon Kieres, Andrzej Borkowski, Karol Kiczka, Tadeusz Kocowski, Maciej Guziński and Marek Szydło, “Instrumenty administracyjnoprawne w systemie oceny zgodności z zasadniczymi wymaganiami,” in *Instrumenty i formy prawne działania administracji gospodarczej*, ed. Bożena Popowska and Katarzyna Kokocińska (Poznań: Wydawnictwo Naukowe Uniwersytetu Adama Mickiewicza, 2009), 228–247; Agnieszka Żywicka, “Instrumenty administracyjnoprawne w systemie zapewniania bezpieczeństwa wyrobów,” in *Prawo administracyjne dziś i jutro*, ed. Jacek Jagielski and Marek Wierzbowski (Warszawa: Wolters Kluwer, 2018), 283–291; Bogdan Fisher, *Prawne aspekty norm technicznych. Normalizacja jako wsparcie legislacji administracyjnej* (Warszawa: Wolters Kluwer, 2017), 234–240.

dilemmas may arise in terms of consumer interests regarding the actual compliance with safety requirements by products subject to conformity assessment procedures. This is particularly relevant in the cases where only the product prototype undergoes examination instead of all the finished goods. Certain modules allow for the manufacturer to run the inspection themselves, without involving an external assessment unit. Furthermore, should a product fail to meet consumer expectations (not to mention endanger them), the consumer may incur extra expenses related to medical treatment or product return, although the reimbursement of costs incurred is possible based on the provisions of the civil law. It can be observed, therefore, that there is a clash between the values supposedly protected by the normative structure of the product compliance assessment system, and namely between consumer health and safety and the protection of product flow, enterprise development, and business profitability.

Strictly speaking, conformity assessment consists in examining the product in terms of the requirements contained in the New Approach directives. These acts are limited to formulating only the essential technical or functional requirements (technical standards) that must be met by products placed on the EU market. Technical standards are quality standards specifying a certain minimum level of compliance with specific product parameters¹⁹. Products manufactured in accordance with harmonised standards are presumed to conform with the relevant essential requirements of the relevant legislation. In some cases, the manufacturer may even use a simplified conformity assessment procedure, which is allowed by the modular conformity assessment system. The use of harmonised or other standards is optional. In fact, this solution increases the freedom of entrepreneurs in the process of production and marketing of goods. The manufacturer always has the right to choose to use technical specifications other than European standards to meet the requirements for products, but they are always obliged to demonstrate that such specifications meet the essential requirements of EU law, most often

¹⁹ The technical specifications of products that meet the essential requirements set out in EU legislation are set out in harmonised standards.

through a process involving an external conformity assessment entity²⁰. Conformity assessment, therefore, boils down to examining only a certain group (and not all) of the features of individual products – only those indicated in harmonised standards. A positive result of the conformity assessment means that the product meets at least the minimum quality level, which does not necessarily mean that it does not have any dangerous features. Conformity assessment examines whether the appropriate level of product quality has been met. It is not an *explicit* safety assessment, although it may indicate this indirectly, since a product of proven quality is supposed to be safe²¹.

From the consumer's perspective, however, reducing safety standards only to "essential" requirements may raise concerns about product safety. Given the complex construction of many products available on the market, this observation is not without grounds. Moreover, a disturbing trend has been observed on the market, where the quality of products has been gradually reduced to the minimum requirements. This can be interpreted as a consequence of applying the procedures of the conformity assessment system. Manufacturers focus primarily on meeting the essential requirements resulting from technical standards, not always paying due attention to other parameters, which are important from the consumer's point of view and not regulated by law, such as product durability and service life. It is natural for producers to strive to reduce production costs and increase sales, e.g. by applying competitive prices. This may, however, adversely affect the quality of the product. The assumptions of the conformity assessment system facilitate this indirectly. On the other hand, the above solutions used in the conformity assessment system imply a wide range of products available on the market and the resulting price competitiveness, which is a very beneficial phenomenon for consumers²².

²⁰ For more information, see Commission Notice Blue Guide, 70–79.

²¹ Agnieszka Żywicka and Marek Wierzbowski, "Prawo do bezpiecznego produktu w porządku prawnym Unii Europejskiej," in *Ustroje – prawa człowieka – bezpieczeństwo – integracja europejska. Księga jubileuszowa z okazji 70-tych urodzin Profesora Jerzego Jaskierni*, vol. I, ed. Ryszard M. Czarny, Łukasz Baratyński, Paweł Ramiączek and Kamil Spryszak (Toruń: Adam Marszałek, 2020), 939–954.

²² For more on this topic, see: Agnieszka Żywicka and Mariusz Paździor, "Ochrona praw konsumenta w dyrektywach harmonizacji technicznej Unii Europejskiej – wybrane

It should also be remembered that tasks in the field of conformity assessment have been privatized. Consequently, they are performed predominantly by private entities (accredited notified bodies)²³, which are *de facto* entrepreneurs conducting business activities in the field of accreditation and, what should be emphasized, competing with each other. This is in line with the principle of freedom of establishment. Transferred to the private sphere, the commercial nature of these tasks can sometimes raise concerns about their reliability. It is up to the entrepreneur (product manufacturer or distributor) to choose a notified body to conduct the conformity assessment²⁴. The manufacturer may have the procedure carried out by a notified body established in any EU country. The reliability of services in the field of conformity assessment is to be guaranteed by administrative and legal regulations that define detailed, rigorous requirements for entities applying for accreditation (the status of a notified body). The privatisation of conformity assessment procedures requires public authorities to ensure an effective and efficient normative market supervision mechanism for products placed on the market and to create appropriate systems for informing about dangerous products, i.e. taking actions that have traditionally belonged to public authorities. It is these institutions within the normative system of product safety, remaining in the sphere of administrative and legal regulation, that are crucial for the proper protection of consumer interests (protection of health, life, and safety).

The market surveillance framework (forms and mechanisms of co-operation between supervisory authorities, including international co-operation, procedures, surveillance measures, rules for placing products on the EU market) has been developed at the EU level in Regulation

zagadnienia,” in *Regionalne systemy ochrony praw człowieka 70 lat po proklamowaniu Powszechnej deklaracji Praw Człowieka: osiągnięcia, bariery, nowe wyzwania i rozwiązania*, vol. 2, ed. Jerzy Jaskiernia and Kamil Spryszak (Toruń: Adam Marszałek, 2019), 440–447.

²³ Agnieszka Żywicka, “Prywatyzacja zadań publicznych w metrologii na przykładzie zadań administracji miar,” *Studia Prawno-Ekonomiczne*, vol. 116, (2020): 138–139, <https://doi.org/10.26485/SPE/2020/116/8>.

²⁴ Agnieszka Żywicka, “Egzemplifikacje prawne wpływu harmonizacji technicznej na rozwój sektora przedsiębiorczości w Unii Europejskiej,” in *Wpływ prawa Unii Europejskiej na gospodarkę i samorząd terytorialny państw członkowskich*, ed. Małgorzata Ganczar, Jarosław Król and Marcin Szewczak (Łódź: Wydawnictwo Afinance, 2016), 62–53.

2019/2020 EU. National authorities have been delegated to organise market surveillance, to control products placed on the market, to organise their activities, ensure coordination among themselves at national level, and to engage in cooperation at EU level, including the designation of a single liaison office. In the Polish legal system, the market surveillance model has been organised in the form of a network structure. Pursuant to Article 58 of the Act on conformity assessment and market surveillance systems, the scheme comprises a specialised industry economic administration: President of the Office of Competition and Consumer Protection, voivodeship inspectors of the Trade Inspection, labour inspectors and district labour inspectors, President of the Office of Rail Transport, President of the Office of Electronic Communications, President of the State Mining Authority, directors of maritime offices, construction supervision authorities, voivodeship road transport inspectors, directors of Regional Offices of Measures and the President of the Central Office of Measures, and customs authorities (National Revenue Administration). At the same time, the entities listed above remain in internal organisational systems. Given the wide range of products subject to conformity assessment, the adopted solution allows for the effective implementation of this supervision from the perspective of consumer protection.

It is noteworthy that consumer information security has become one of the core values protected under the normative safety assurance system of non-food products. A well-informed consumer is capable of avoiding products that do not comply with safety requirements or are simply dangerous. This is valuable in terms of risk prevention, particularly in the current market situation, visibly changed due to the pandemic and the economic crisis. For this reason, product information tools have been introduced to the system, available mostly on the Internet. The increasing influx of products from third countries over the recent years along with the resulting new risks for consumers have only highlighted the relevance of rapid information exchange with regard to products posing a risk and measures taken at both national and European level, as well as making this information available to consumers. The rapid alert system for dangerous non-food products RAPEX and the information and communication system

for market surveillance purposes ICSMS serve this particular purpose²⁵. New fast supply chains (including distance selling) make it necessary to strengthen the reinforce the information security of consumers. It may be indicated as a special value in the catalogue of values protected in the normative system of product safety, which has been noticed by the legislator, who has introduced new mechanisms and legal instruments. In the EU legislation, there is an increasing activity in the creation of various forms of cooperation between EU and national administration bodies in the field of information exchange, the purpose of which is to carry out consistent supervision over products marketed offline and online, as exemplified by the EU Product Compliance Network. These activities are to ensure the effective functioning of market surveillance, and thus guarantee the protection of consumers against dangerous products.

4. Conclusions

The analysis of the general normative assumptions of the safety assurance system of non-food products in the EU, conducted in this article, allows us to conclude that the legal measures and mechanisms adopted in these regulations safeguard the values aimed at protecting entrepreneurs and consumers with the proper intervention of public authorities in economic relations by means of supervision and cooperation of administrative bodies.

The presented legal mechanism is an example of reconciling values important from the point of view of entrepreneurs and consumers in legal institutions. The institution of conformity assessment and minimum harmonisation of requirements for products provides for considerable freedom of action for entrepreneurs. In essence, it protects values that are important from the perspective of entrepreneurs. In order to reconcile the interests of entrepreneurs and consumers, the market surveillance system and control measures as well as the effective cooperation of market surveillance authorities (national and EU) are of key importance, as the actions

²⁵ The RAPEX system was created to ensure a high level of consumer health and safety protection in the area of the Single Market of the European Union. The legal basis for its operation is Directive 2001/95/EC of the European Parliament and of the Council of December 3, 2001 on general product safety, OJ L 11/4 of 3 December 2002.

of the economic administration within the competences granted to them ensure the proper functioning of the surveillance system and the elimination of dangerous products from the market.

References

- Bielecki, Leszek. *Koncepcja rzeczy publicznej*. Kielce: Leszek Bielecki, 2013.
- Cieśliński, Aleksander, ed. *Wspólnotowe prawo gospodarcze*. Warszawa: C.H. Beck, 2013.
- Fisher, Bogdan. *Prawne aspekty norm technicznych. Normalizacja jako wsparcie legislacji administracyjnej*. Warszawa: Wolters Kluwer, 2017.
- Ganczar, Małgorzata. "Prawo odstąpienia od umowy zawartej na odległość w świetle prawa unijnego." In *Ochrona konsumentów i ich współczesne wyzwania*, edited by Małgorzata Ganczar, Elżbieta Sługocka-Krupa, 367–377. Lublin: KUL, 2014.
- Hauser, Roman, Zygmunt K. Niewiadomski, Andrzej Wróbel, ed. *System Prawa Administracyjnego. Publiczne prawo gospodarcze*, vol. 8 A, Warszawa: C.H. Beck, 2018.
- Kiczka, Karol. "Wartości w publicznym prawie gospodarczym (zagadnienia wybrane)." In *Wartości w prawie administracyjnym*, edited by Jan Zimmermann, 250. Warszawa: Wolters Kluwer Business, 2015.
- Kieres, Leon, Andrzej Borkowski, Karol Kiczka, Tadeusz Kocowski, Maciej Guziński and Marek Szydło. "Instrumenty administracyjnoprawne w systemie oceny zgodności z zasadniczymi wymaganiami." In *Instrumenty i formy prawne działania administracji gospodarczej*, edited by Bożena Popowska, and Katarzyna Kokocińska, 228–247. Poznań: Wydawnictwo Naukowe Uniwersytetu Adama Mickiewicza, 2009.
- Kokocińska, Katarzyna. "Wpływ traktatowych rozwiązań Unii Europejskiej na organizację procesów gospodarczych w Polsce (w kontekście zasady społecznej gospodarki rynkowej)." In *Unia Europejska wobec wyzwań przyszłości. Aspekty prawne, finansowe i handlowe*, edited by Ewa Małuszyńska, Grzegorz Mazur and Piotr Idczak, 36–46. Poznań: Wydawnictwo Naukowe Uniwersytetu Ekonomicznego w Poznaniu, 2015.
- Kokocińska, Katarzyna. "Funkcjonalność i dysfunkcjonalność przepisów publicznego prawa gospodarczego z perspektywy kryterium wartości (zagadnienia ogólne)." In *Dysfunkcje publicznego prawa gospodarczego*, edited by Marian Zdyb, Emil Kruk and Grzegorz Lubeńczuk, 25–38. Warszawa: C.H. Beck, 2018.

- Kokocińska, Katarzyna. "Wspieranie rozwoju działalności gospodarczej w ujęciu zasad i wartości." *Ruch Prawniczy Ekonomiczny i Społeczny*, no. 4 (2018): 42, 44–45.
- Kokocińska, Katarzyna. "Gwarancyjny charakter zasad prawa – rozważanie na tle ustawy – Prawo przedsiębiorców." In *Prawo przedsiębiorcy*, edited by Rafał Blicharz, 19–32. Warszawa: C.H. Beck, 2019.
- Kordela, Marzena. "Zasady publicznego prawa gospodarczego. Próba konceptualizacji." In *Państwo a gospodarka. Zasady – instytucje – procedury. Księga jubileuszowa dedykowana Profesor Bożenie Popowskiej*, edited by Piotr Lissoń, Michał Strzelbicki, 61. Poznań: Wydawnictwo Poznańskie, 2020.
- Popowska, Bożena. "Niepomijalność standardów 'dobrej administracji' w publicznym prawie gospodarczym." *Acta Universitatis Wratislaviensis, Prawo*, no. 4001, vol. 331 (2020): 213–216.
- Powałowski, Andrzej. "Wprowadzenie do aksjologii prawa gospodarczego publicznego." *Acta Universitatis Wratislaviensis, Prawo*, no. 3977, vol. 329 (2019): 221.
- Strzyczkowski, Kazimierz. "Uwagi o zadaniach nauki o prawnych formach działania administracji gospodarczej." In *Instrumenty i prawne formy działania administracji gospodarczej*, edited by Bożena Popowska and Katarzyna Kokocińska, 37–63. Poznań: Wydawnictwo Naukowe Uniwersytetu Adama Mickiewicza, 2009.
- Zdyb, Marian. "Aksjologiczne podstawy ingerencji państwa w sferę gospodarki rynkowej." In *Prawne instrumenty oddziaływania na gospodarkę*, edited by Andrzej Powałowski, 1–5. Warszawa: C.H. Beck, 2016.
- Żywicka, Agnieszka. "Egzemplifikacje prawne wpływu harmonizacji technicznej na rozwój sektora przedsiębiorczości w Unii Europejskiej." In *Wpływ prawa Unii Europejskiej na gospodarkę i samorząd terytorialny państw członkowskich*, edited by Małgorzata Ganczar, Jarosław Król and Marcin Szwczak, 62–53. Łódź: Wydawnictwo Afinance, 2016.
- Żywicka, Agnieszka. "Instrumenty administracyjnoprawne w systemie zapewniania bezpieczeństwa wyrobów." In *Prawo administracyjne dziś i jutro*, edited by Jacek Jagielski and Marek Wierzbowski, 283–291. Warszawa: Wolters Kluwer, 2018.
- Żywicka, Agnieszka. "Nadzór nad wyrobami podlegającymi dyrektywom „nowego podejścia” w Polsce – kilka refleksji o koordynacji działań organów nadzoru." *Acta Universitatis Wratislaviensis, Prawo*, no. 3977, vol. 329 (2019): 431–442.
- Żywicka, Agnieszka, Mariusz Paździor. "Ochrona praw konsumenta w dyrektywach harmonizacji technicznej Unii Europejskiej – wybrane zagadnienia." In *Regionalne systemy ochrony praw człowieka 70 lat po proklamowaniu*

Powszechnej deklaracji Praw Człowieka: osiągnięcia, bariery, nowe wyzwania i rozwiązania, vol. 2, edited by Jerzy Jaskiernia and Kamil Spryszak, 440–447. Toruń: Adam Marszałek, 2019.

Żywicka, Agnieszka, Marek Wierzbowski. “Prawo do bezpiecznego produktu w porządku prawnym Unii Europejskiej.” In *Ustroje – prawa człowieka – bezpieczeństwo – integracja europejska. Księga jubileuszowa z okazji 70-tych urodzin Profesora Jerzego Jaskierni*, vol. I, edited by Ryszard M. Czarny, Łukasz Baratyński, Paweł Ramiączek and Kamil Spryszak, 939–954. Toruń: Adam Marszałek, 2020.

Żywicka, Agnieszka. “Prywatyzacja zadań publicznych w metrologii na przykładzie zadań administracji miar.” *Studia Prawno-Ekonomiczne*, vol. 116, (2020): 138–139. <https://doi.org/10.26485/SPE/2020/116/8>.