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THE CHOSEN ASPECTS OF EUROPEAN UNION AND CZECH FOOD LAW

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Purpose. To analyse and compare the European and Czech food law in connection with Regulation (EU) No. 1169/2011 of the European Parliament and of the Council and to provide possible scenario of future development.

Methodology. I have applied the comparative analysis of relevant European and Czech food legislation and analysis of the subject in broader context of national statistics and principles of consumer protection and awareness. **Results.** I have obtained the information and data about the subject of research which allow the evaluation of possible future scenario particularly considering the Transatlantic Trade and Investment Partnership. **Originality.** For the first time, I have carried out the research integrating current data from national statistics and European and Czech food legislation. **Practical value.** I have provided research with results and data usable for consumers, decision-making bodies and controlling authorities of food business. References 19.

Key words: European Union food law, Czech food law, Regulation (EU) No. 1169/2011, Transatlantic Trade and Investment Partnership, online food shopping, consumer protection

ОБРАНІ АСПЕКТИ ЄВРОПЕЙСЬКОГО СОЮЗУ ЧЕСЬКОГО ХАРЧОВОГО ПРАВА

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Метою статті є аналіз і зіставлення європейського і чеського харчового законодавства згідно з Постановою (EU) № 1169/2011 Європейського парламенту і Ради для дослідження можливих сценаріїв майбутнього розвитку. Застосовано порівняльний аналіз відповідного європейського та чеського законодавства та аналіз з цього питання системи обігу продуктів харчування в широкому контексті національної статистики та принципів захисту прав споживачів і обізнаності. Отримано інформацію і дані про предмет дослідження, які дозволяють оцінити можливості майбутнього сценарію Трансатлантичного партнерства торгівлі та інвестицій в прикладному аспекті. Вперше проведено дослідження на основі інтеграції поточних даних національної європейської статистики та чеського харчового законодавства. Представлені результати дослідження і дані можуть бути використані споживачами, органами прийняття рішень і контролюючими органами харчового бізнесу.

Ключові слова: Європейський Союз, харчове законодавство, чеське харчове законодавство, Регламент (ЄС), Трансатлантичне партнерство торгівлі та інвестицій, інтернет магазин їжі, захист прав споживачів.

PROBLEM STATEMENT Consumer protection is the current topic of European Union policy and it is also the integral part of the Czech national food legislation. Lately there has been intense political effort for the improvement of relating legislation due to the development of online food shopping and expansion of adverse reactions to food, including hypersensitivity, food allergy and food intolerance in European population. The Regulation (EU) No. 1169/2011 of the European Parliament and of the Council enumerates the mandatory data which shall be given to the consumer in order to make informed choice.

Although the protection of consumer, health and environment in the European Union is at very advanced level new consumer protection and consumer awareness challenges emerge with negotiations on Transatlantic Trade and Investment Partnership. Thus there also arise calls for expert and scientific discussion among the public and private organizations and governments across regions in order to develop these essential part of policy.

EXPERIMENTAL PART AND RESULTS OBTAINED Historically, the consumer protection emerged in modern form after the World War II. Until that time the trade and business relations were based on personal contact of involved parties and production process was focused on production of high-quality and durable products. Rapid increase of production and trade connected with growing influence of marketing

and advertisement in the United States of America in post-war years caused the change of trade relation between producer/wholesaler/retailer and consumer. This relation has been becoming more and more impersonal and the number of intermediate links in the supply chain has been growing ever since. At that time a society-wide change of consumer behaviour known as shift to consumerism took place. The essential idea of consumerism is that the individual consumption is directly connected with personal happiness. The need for some goods or services is not deciding factor, but the consumer's desire is. The corporate policy of planned obsolescence was first pointed at that time.

With these changes in the 1960's in the US and in the 1970's in Europe the social demand for institutional and legal-based consumer protection occurred and afterwards became an integral part of the policies of the majority of democratic states. Since the 1990's, with starting globalization process, we have been seeing strong unification in consumer behaviour in developed economies and significant bolstering of consumer importance for economy and society. In the Czech Republic consumer protection began to develop after its constitution and also after joining the EU in 2004. New dimensions of consumer protection were involved after the adoption of new Civil code in 2014 (Horová, 2004, Horová, 2006).

Since the turn of the century, a new and more impersonal way of shopping has been developing – the

online shopping. Hand in hand with this process, new questions about consumer protection have been arising. In the Czech Republic, a significant shift in the internet use was reported. According the Czech Statistical Office (ČSÚ) reports there were only 10 % people above 16 years using the internet in comparison with 74 % people in the same category in the year 2014 (ČSÚ, 2015a). The analysis by CSO from the year 2013 estimated the share of internet shops takings on the aggregate retail market averaged 4,2 % (ČSÚ, 2013). There is long-lasting trend of strong growth of takings of shops selling goods via the internet or mail order service (ČSÚ, 2015b, ČSÚ, 2014). In general, the takings of retail market are comprised of takings for food from 80 %. However, online shopping in this niche is still in the beginnings (e.g. www.rohlik.cz, www.nakupjednadve.cz, www.potravinodomu.cz). Online food shopping in the Czech Republic is more in the interest of capital city citizens. It is also affected by many logistic and marketing obstacles. Consumers want to check the quality and freshness of food out before finishing the purchase, which is quite complicated by the online shopping. Despite that fact the online food shopping is starting to develop in the Czech Republic, the Czech Statistical Office doesn't monitor the share of online food shops on the aggregate volume of takings of the online shops. It's assumed to be in the single units of percents.

Consumer protection is in the Czech national law anchored in Act No. 89/2012 Coll. Civil Code and Act No. 634/1992 Coll. Consumer Protection Act. General principles and requirements of food law are provided by Regulation (EC) No. 178/2002 of the European Parliament and of the Council, which also establishes European Food Safety Authority (EFSA) and lays down the procedures in matters of food safety. In Czech national legislation, the basic food law is Act No. 110/1997 Coll. on Foodstuffs and Tobacco Products.

There are two basic principles in the legislation of Czech Civil code – the principle of the autonomy of the will (especially contractual freedom) and the principle of protection of the weaker party. These principles could become the idiomatic bone of contention in the diversity of life situations. In the case of consumer contracts the consumer protection comes into play on top of that. Consumer protection is of mandatory character and consumer contracts are described in provisions of § 1810 to § 1867 of Civil code. There is the regular citizen of an average intellect against an entrepreneur who knows very well the market and legal conditions. One of them could be in the position of the weaker party.

Nowadays the Consumer Protection Act is being amended. The amendment should come into force in the beginning of the year 2016. It will probably bring the relations among producers, wholesalers, retailers and consumers closer to the American milieu. One of the significant changes will be the out-of-court settlement system – the conciliation. The general subject of out-of-court settlement system (ADR entity) will be the Czech Trade Inspection Authority, which will be the mediator forcing the parties to the civil

agreement. This agreement should serve as a footing for potential judicial proceedings (MIT, 2015).

The strengthening of the protection of the weaker party in general could also be seen in the amendment to the Act No. 120/2001 Coll. on Court Executors and Execution or in the new Act on Consumer Credit, which proceeds from Act no. 145/2010 Coll. on Consumer Credit.

In the end of the year 2014 the Regulation (EU) No. 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers entered into force. This regulation significantly strengthened the position of consumer because it widened the spectrum of information which shall be provided by producer/wholesaler/retailer (food business operator in general) to consumer in order to make informed choice. Consumer awareness is one of the main objectives of the European food law.

Mandatory information shall be provided to the consumer before finishing the purchase. It shall be clear and understandable and it shall provide and pursue a high level of protection of consumers' health and interests by providing a basis for final consumers to make informed choices and to make safe use of food, with particular regard to health, economic, environmental, social and ethical considerations (Chapter II, Article 3 of Regulation (EU) No. 1169/2011).

The term master data is often used in this context. Master data are exchanged among subjects of the supply chain vertical supplier/producer/wholesaler/retailer (B2B data) and to consumer (B2C data). These are e.g. weight and size of product, logistic data GTIN and mandatory information according to the Regulation (EU) No. 1169/2011 of the European Parliament and of the Council.

Chapter IV Section 1 Article 9 of the Regulation (EU) No. 1169/2011 enumerates these main mandatory data:

- the name of food;
- the list of ingredients;
- the ingredients causing allergies or intolerances;
- the quantity of certain ingredients or categories of ingredients;
- the net quantity of the food;
- the date of minimum durability or the „use by“ date;
- any special storage conditions and/or conditions of use;
- the name or business name and address of the food business operator;
- the country of origin or place of provenance;
- instructions for use in appropriate cases;
- the actual alcoholic strength by volume in the case of beverages containing more than 1,2 % by volume of alcohol;
- a nutrition declaration.

According to the Article 10 and the Appendix III of the Regulation (EU) No. 1169/2011, further mandatory information for specific types or categories of food (e.g. foods containing sweeteners, beverages with high

caffeine content or frozen meat) shall be provided. The logical consequences of this extended information obligation should be, besides the protection of consumers, also the protection of legitimate interests of food business operators and the support of high quality food production.

For suppliers and producers emerged the need for electronic exchange of high volume of master data at national and international level with this European regulation entering into force. These information shall be thereafter given to the consumer irrespective of the form of shopping (online or personal purchasing of packaged/unpackaged food). Systems for structure, mediation and association of data elements are developed by cooperation of corporate and non-profit sectors. The most important part is played by GS1, global non-profit organization, which participates in providing and application of global standards in supply chain. GS1 develops data models – set of electronic tools for structure B2C data and provides the range of recommendations needed for the implementation of the European regulation (<http://www.gs1cz.org>). The support to the affected entities in the process of realisation is given by the institutions of European Union as well. The European Commission provides the information on this issue via DG SANTE, it sets up the system of questions and answers to the Regulation (EU) No. 1169/2011 and it also provides a wide range of methodical documents. The EU also gradually adopts legal acts to the particular articles of the regulation.

The negotiations between the EU and the USA on Transatlantic Trade and Investment Partnership, which would mean the liberalization of common trade and investment activities, provoke many questions. The biggest bilateral agreement in history, which would create the biggest barrier-free market in the world, would also influence significantly the international trade with impact on consumer.

First of all, the current level of the protection of the consumer appears to be very high in both regions. Higher competition of entrepreneurs and cooperation of governments on common regulations could also bring benefits for consumers and contribute to their more intensive protection.

It is supposed that the EU has more improved public control system and legal regulation of consumer protection. The USA have, on the other hand, very strict system of private legal liability, which ensures high standard of consumer and health protection. The

differences of regulatory principles of consumer protection on both sides could lead to the lowering of consumer protection level in the EU according to the critics of TTIP. (Woolcock, Holzer, Kusmu, 2015)

The main difference between these two approaches is in the risk management. The basis of the European regulation is the precautionary principle, which allows the fast reaction to the potential danger to human health and environment. Rapid Alert System for Food and Feed enables fast information flow among members of the EU and EFTA, the European Commission and European Food Safety Authority. (www.bezpecnostpotravin.cz). In the USA the risk management is based on the scientific approach and it is comprised of the range of expert and quantitative methods including scientific experiments and models. (Stirling, 2007). However, scientific methods always provide results with some degree of uncertainty. Therefore the failure of the scientific approach was pointed with the spread of BSE in the USA. There could be also chemical substances with long-term impacts on consumer which could not be precisely evaluated by scientific methods. (Diels, Thorun, 2014)

CONCLUSIONS. Many studies refer to the high standards of consumer, health and environmental protection in both regions. (Bergkamp, Kogan, 2013) Nevertheless the European Union will be further strengthening the consumer protection via adopting legal acts to the particular articles of the Regulation (EU) No. 1169/2011, providing new relating methodical documents and controlling qualitative and hygienic standards of food and provision of food information to consumers. Extended need for electronic exchange of master data at national and international level is expected from the end of 2016 when nutrition declaration will become mandatory in food business practice.

Broad expert and scientific discussion and involvement of the public and non-governmental organizations across regions are essential for intergovernmental negotiations on TTIP. There are principal issues in both regions, e.g. biotechnology development and the use of genetically modified organisms (GMOs) which could become the idiomatic apple of discord. Moreover, the expansion of adverse reaction to food and growing interest in alternative agricultural practices in European population could bring social demand for provision of new range of information to consumers.

ИЗБРАННЫЕ АСПЕКТЫ ЕВРОПЕЙСКОГО СОЮЗА ЧЕШСКОГО ПИЩЕВОГО ПРАВА

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Целью статьи является анализ и сопоставление европейского и чешского пищевого законодательства согласно с Постановлением (EU) 1169/2011 Европейского парламента для исследования возможных сценариев будущего развития. Применены сравнительный анализ соответствующего европейского и чешского законодательства и анализ по этому вопросу системы обращения продуктов питания в широком контексте национальной статистики и принципов защиты прав потребителей и осведомленности. Получена информация и данные о предмете исследования, которые позволяют оценить возможности будущего сценария в прикладном аспекте Трансатлантического партнерства торговли и инвестиций. Впервые проведено исследование на основе

интеграции текущих данных национальной европейской статистики и чешского законодательства. Представленные результаты исследования и данные используются для потребителей, органов принятия решений и контролирующих органов пищевого бизнеса.

Ключевые слова: Европейский Союз, пищевое законодательство, чешское пищевое законодательство, Регламент, Трансатлантическое партнерство торговли и инвестиций, интернет магазин, защита прав потребителей.

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