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## **New Law of Ukraine of 10 June 2023 No. 3153-IX “On Consumer Protection”: Inadequate Approach to the Implementation of Directive 2019/771**

### **Abstract**

This article analyses the implementation of the provisions of Directive 2019/771 to the Law of Ukraine No. 3153-IX dated 10 June 2023 “On Consumer Protection”, which shall enter into force on 7 July 2024 or after the end of martial law in Ukraine. The analysis allows for the conclusion that the Ukrainian legislator’s approach to the implementation of the provisions of Directive 2019/771 is inadequate and that further improvement of the consumer protection legislation is required.

It is summarised that Ukraine should strive to create a consumer protection system compatible with the principles, approaches and practices of the EU. This requires revision of the current legislation in this area. This article proposes to improve consumer protection legislation by implementing the provisions of Directive 2019/771 and Law 3153-IX into the Civil Code of Ukraine, to ensure consistency and efficiency of legal regulation, and to eliminate duplication of consumer protection provisions in all other legal acts. Such approach will facilitate the harmonisation of Ukrainian legislation with the EU standards.

**Keywords:** consumer protection, Directive 2019/771, consumer protection system, harmonization of legislation with EU law.

### **Zusammenfassung**

Dieser Artikel analysiert die Umsetzung der Bestimmungen der Richtlinie 2019/771 zum Gesetz der Ukraine Nr. 3153-IX vom 10. Juni 2023, über den Verbraucherschutz, das am 7. Juli 2024 oder nach dem Ende des Kriegsrechts in der Ukraine in Kraft treten soll. Die Analyse lässt den Schluss zu, dass der Ansatz des ukrainischen Gesetzgebers bei der Umsetzung der Bestimmungen der Richtlinie 2019/771 unzureichend ist und eine weitere Verbesserung der Verbraucherschutzvorschriften erforderlich ist.

Zusammenfassend wird festgestellt, dass die Ukraine sich bemühen sollte, ein Verbraucherschutzsystem zu schaffen, das mit den Grundsätzen, Ansätzen und

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Praktiken der EU vereinbar ist. Dies erfordert eine Überarbeitung der geltenden Rechtsvorschriften in diesem Bereich. In diesem Artikel wird vorgeschlagen, die Verbraucherschutzvorschriften zu verbessern, indem die Bestimmungen der Richtlinie 2019/771 und des Gesetzes 3153-IX in das Zivilgesetzbuch der Ukraine umgesetzt werden, um die Kohärenz und Effizienz der Rechtsvorschriften zu gewährleisten und die Doppelung von Verbraucherschutzbestimmungen in allen anderen Rechtsakten zu beseitigen. Ein solcher Ansatz wird die Harmonisierung der ukrainischen Gesetzgebung mit den EU-Standards erleichtern.

**Schlüsselwörter:** Verbraucherschutz, Richtlinie 2019/771, Verbraucherschutzsystem, Harmonisierung der Rechtsvorschriften mit dem EU-Recht.

## I. Introduction

The significant growth of e-commerce has shaped the global scenario in recent years and required better regulation of the digital market at the level of the European Union (EU) and increased protection of consumer rights in this area.

With the adoption of Directive 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects relating contracts for the sale of goods (hereinafter Directive 2019/771)<sup>1</sup> EU Member States have been required to take measures to implement Directive 2019/771 into national law to increase consumer protection and improve the functioning of the internal market by enshrining compliance standards and remedies in contracts for the sale of goods (including digital content or digital services which are incorporated in or inter-connected with the good).

At the same time, transposition of EU law into national law is undertaken not only by EU Member States, but also by states that aspire to become fully-fledged members of the European Union. Ukraine, which received EU candidate status in 2022 and has been adapting its legislation to EU law for more than a decade, is no exception to this list.

Ensuring a high level of consumer protection and compatibility of Ukraine's consumer protection system with the EU is not a new problem. Numerous scholars' works have been devoted to this issue, which investigated it from the perspective of studying legislative instruments regulating EU sales contracts,<sup>2</sup> organisation of the EU consumer protection system and using this experience to improve Ukrainian consumer protection legislation and mechanisms for its implementation,<sup>3</sup> consumer protection in Ukraine and in European Union<sup>4</sup> and concluding electronic contracts

1 OJ L 136, 22.5.2019, p. 28.

2 *H. Poperechna/L. Savanets*, Legal regulation for sale of goods and supply digital content in EU – analysis of novelties of new EU directive, *Scientific Bulletin of Uzhhorod National University: Series: Law* 78|2023, pp. 413-418. DOI: 10.24144/2307-3322.2023.78.2.67.

3 *V.O. Khyzhnyak*, EU standards on consumer protection: lessons for Ukraine, *Scientific Bulletin of Kherson State University: series: Economic Sciences* 27|2017, Part 1. C. 99-102.

4 *I. Utekhin*, Consumer Protection in Ukraine and the European Union: Current Status and Prospects, *Bulletin of E.O. Diodorenko LSUIA* 2|2023, C.216-228. DOI: 10.33766/2524-0323.102.216-228.

within the EU,<sup>5</sup> the necessity of effective state policy implementation in the context of European integration of Ukraine.<sup>6</sup> At the same time, scholars have paid much less attention to analysing the implementation of the Directive 2019/771 into Ukrainian legislation, application of which is extremely relevant in the context of globalisation and development of cross-border e-commerce. The purpose of present article is thus to analyse the provisions of Ukrainian Law dated 10 June 2023, No. 3153-IX “On Consumer Protection” and implementation of the Directive 2019/771 therein. Before elaborating on the topic of this research, it is worthwhile to focus on two important issues: the peculiarities of adaptation of EU legislation to the national law of Ukraine (II.) and the current Ukrainian legislation in the field of consumer protection (III.).

## II. Ukraine and adaptation of the EU legislation in national law

As early as 1993, one of the main directions of Ukraine’s foreign policy was defined as “expanding participation in European regional cooperation”.<sup>7</sup> Subsequently, the state policy of Ukraine on the adaptation of legislation to EU laws was formed as an integral part of Ukrainian legal reform, since the goal was to achieve compliance of Ukrainian legal system with the *acquis communautaire*, taking into account the criteria set by the EU for states that intend to join it.<sup>8</sup>

Already in the Law of Ukraine dated 1 July 2010 No. 2411-VI “On the Principles of Domestic and Foreign Policy”, the main principles of foreign policy included “ensuring Ukraine’s integration into the European political, economic, and legal area with a view to gaining EU membership” (Article 11).<sup>9</sup>

About the need to improve Ukrainian consumer protection system in accordance with EU standards was also mentioned in the concept of state policy in the field of consumer protection, which aimed to introduce a systematic approach towards solving problems in the area of consumer protection.<sup>10</sup>

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- 5 R.A. Prystai/I.M. Yavorska, Consumer protection in the conclusion of electronic contracts within the European Union. Scientific Bulletin of Uzhhorod National University: Series: Law. B. 74. Part.2. 2022, pp. 255-261. DOI: 10.24144/2307-3322.2022.74.77.
  - 6 A.I. Lyga, Legal basis of state policy in the field of consumer protection, Legal scientific electronic journal 8|2023, p. 191-196. DOI: 10.32782/2524-0374/2023-8/44.
  - 7 On the main directions of the Ukrainian foreign policy: Resolution of the Verkhovna Rada of Ukraine as of 2.7.1993, No. 3360-XII. <https://zakon.rada.gov.ua/laws/show/3360-12#Text>.
  - 8 The Program of Ukraine's integration into the European Union: Presidential Decree of 14.9.2000 No. 1072/2000. <https://zakon.rada.gov.ua/laws/show/n0001100-00#Text>. On National Program of Adaptation Ukrainian legislation to the legislation of the European Union: Law of Ukraine of 18.3.2004 No.1629-IV. <https://zakon.rada.gov.ua/laws/show/1629-15#Text>.
  - 9 On the Principles of Domestic and Foreign Policy: Law of Ukraine of 1.7.2010 No. 2411-VI. <https://zakon.rada.gov.ua/laws/show/2411-17#Text>.
  - 10 Concept of the state policy in the field of consumer rights protection: Order of the Cabinet of Ministers of Ukraine dated 5.6.2003 No. 777-p. <https://zakon.rada.gov.ua/laws/show/777-2013-%D1%80#Text>.

The ratification by the Verkhovna Rada of Ukraine the Association Agreement between Ukraine, on the one hand, and the EU, the European Atomic Energy Community and their Member States, on the other hand, in September 2014 obliged Ukraine to take measures to align its legislation with EU law.

In the context of our topic, it is precisely in Chapter 20 “Consumer Protection” of Section V “Economic and Sectoral Cooperation” Ukraine has committed itself to ensuring a high level of consumer protection and achieving compatibility between the consumer protection systems of Ukraine and the EU,<sup>11</sup> gradually adjusting its legislation to EU law. Therefore, one of the priority areas identified in the concept of state policy in the field of consumer protection for the period up to 2020 was once again harmonisation of the consumer protection system in Ukraine with EU principles, approaches and practices, as well as full adaptation of national consumer protection laws to EU legislation in accordance with Ukraine’s obligations.<sup>12</sup>

At the time of becoming an EU candidate, Ukraine’s consumer protection legislation was only partially harmonised with the consumer *acquis*, and therefore further steps and reforms were needed.

Already in the Report concerning the results of initial assessment of the implementation of EU *acquis*, it is noted that a significant part of EU consumer protection legislation has already been fully implemented in Ukrainian legislation.<sup>13</sup>

### III. Ukrainian legislation on consumer protection and implementation of Directive 2019/771

Historically, consumer protection in Ukraine has not been based on a comprehensive codification of regulations. The formation of consumer protection legislation in Ukraine began with the adoption of Law No. 1023-XII “On Consumer Protection” (hereinafter Law No. 1023-XII),<sup>14</sup> which was adopted by the Verkhovna Rada of the Ukrainian SSR on 12 May 1991, before Ukraine’s independence. In the preamble of Law No. 1023-XII, it was stated that this particular law “regulates relations between consumers of goods, works and services and producers and sellers of goods, contractors and service providers various forms of ownership, as well as establishes consumer rights and defines the mechanism for their protection”. Thereafter, consumer protection legislation was formed through the adoption of separate laws and regulations in the areas of trade, works and services.<sup>15</sup> Today, consumer rights are protected

11 The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, of 27.6.2014. [https://zakon.rada.gov.ua/laws/show/984\\_011#Text](https://zakon.rada.gov.ua/laws/show/984_011#Text).

12 On Approval of the state policy concept in the field of consumer rights protection for the period up to 2020: Order of the Cabinet of Ministers of Ukraine dated 29.3.2017 No. 217-p. <https://zakon.rada.gov.ua/laws/show/217-2017-%D1%80#Text>.

13 Report on the results of initial implementation assessment of the EU *acquis* [https://eu-ua.kmu.gov.ua/wp-content/uploads/Zvit\\_UA.pdf](https://eu-ua.kmu.gov.ua/wp-content/uploads/Zvit_UA.pdf).

14 On Consumer Protection: Law of Ukraine of 12.5.1991 No. 1023-XII. <https://zakon.rada.gov.ua/laws/show/1023-12#Text>.

15 *Utekhin*, fn. 3.

on the basis of Law No. 1023-XII, the Civil Code of Ukraine (hereinafter “Civil Code”), the Commercial Code of Ukraine (hereinafter “Commercial Code”), as well as other laws of Ukraine (for example, Laws of Ukraine No. 1953-IX “On Financial Services and Financial Companies” of 14.12.2021, No. 2633-IV “On Heat Supply” of 2.6.2005, No. 2479-VI of 9.7.2010 No. 2479-VI “On State Regulation of Public Utilities”, the Law of Ukraine No. 675-VIII “On E-Commerce” of 3.9.2015, etc.).

The Civil Code, which is the main act of civil legislation in Ukraine, contains provisions that “contracts involving an individual consumer shall take into account the requirements of the legislation on consumer protection” (Article 627(2)), and “the legislation on consumer protection shall be applied to the relations under the retail sale and purchase agreement with the participation of an individual buyer, not regulated by this Code” (Article 698(3)).<sup>16</sup> In this context, it should be assumed that the legislator, when using the term “consumer protection legislation”, most likely meant Law No. 1023-XII. After all, the final and transitional provisions of the new Law of Ukraine No. 3153-IX “On Consumer Protection” dated 10 June 2023 (hereinafter “Law No. 3153-IX”), which enters into force on 7 July 2024 or after the end of martial law in Ukraine, whichever is earlier, Part 2 of Article 627 Civil Code is set out in a new version and instead of the concept of “consumer protection legislation” it is indicated “the Law of Ukraine ‘On Consumer Protection’”, and Part 3 of Article 698 is generally excluded. Therefore, it follows that Law No. 1023-XII only specifies, modifies or stipulates the mandatory position of civil law’s general provisions in favour of consumers.

A similar position is contained in a decision of the Cassation Civil Court within the Supreme Court, which states that “[...] the legislator has established the priority of Civil Code of Ukraine in regulating the retail sale and purchase agreement; in absence of regulation at the level of the Civil Code, the legislation on consumer protection applies”.<sup>17</sup>

Speaking of Law No. 3153-IX, it is worth noting that this law significantly amended Ukrainian consumer protection legislation, adapted the provisions of various directives, including Directive 2019/771, filling in the existing gaps, and took steps towards convergence with EU consumer protection legislation. Although many amendments have been introduced, Law No. 1023-XII still does not comply with the European consumer protection system, is outdated and contains many gaps, as the rules are not adapted to modern realities or do not work properly, which leads to numerous violations of consumer rights. Thus, to replace Law No. 1023-XII, Ukraine adopted a new Law No. 3153-IX, and the provisions of the Civil Code (Articles 69-709) and the Commercial Code (Articles 20, 39) and other laws continue to apply.

The peculiarity of this arrangement is that the Commercial Code of Ukraine regulates consumer protection issues involving legal entities and individuals who are business entities, while the Civil Code of Ukraine and Law of Ukraine No. 1023-XII (and then, after the entry into force of Law No. 3153-IX) concerns individuals.

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16 Civil Code of Ukraine No. 435-IV dated 16.1.2003. No. 435-IV. <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

17 Resolution of the Cassation Civil Court within the Supreme Court of Ukraine dated 10.10.2018 in case No. 362/2159/15-c. URL: <https://reyestr.court.gov.ua/Review/77037278>.

Many Ukrainian scholars have welcomed the adoption of the new Law No. 3153-IX, as it is intended to resolve significant gaps in national law. Thus, for example, the legal analysis of consumer protection in the digital sphere of the draft Law No. 3153-IX allowed K. Taldonova to conclude that the adoption of this law will allow achieving compliance between the consumer protection systems of Ukraine and the EU, ensuring a unified interpretation of legal norms; increasing the level of consumer protection by expanding their rights; reducing abuse by establishing a minimum warranty period and clear requirements for the marking of prices for goods; increasing the level of protection in the field of e-commerce and provide a mechanism for pre-trial (alternative) settlement of consumer disputes, etc.<sup>18</sup>

While positively assessing the desire of Ukrainian legislator to implement the provisions of Directive 2019/771 into national law, the inadequate approach to this process must be highlighted, since these amendments were introduced not to the Civil Code of Ukraine, but to Law of Ukraine No. 3153-IX. Such implementation may lead to legal uncertainty and difficulties in applying the new rules in practice, as the Civil Code of Ukraine and Law of Ukraine No. 3153-IX are correlated as general and special laws. As a result, a situation may arise where Law of Ukraine No. 3153-IX does not contain a special provision and it will be necessary to apply the provisions of Civil Code of Ukraine, which may also be absent. In addition, certain provisions on consumer protection are still contained in the Commercial Code. Thus, as a conclusion from the above, when implementing the provisions of Directive 2019/771 into national legislation, the legislator did not comply with the principle that the protection provided to consumers should be broader than the protection provided to consumers in certain legal relations.

Agreeing with the opinion of M. Tomala and F. Zoll, it should be concluded that the Ukrainian legislator, by adopting Law No. 3153-IX, chose a potentially easier way to implement Directive 2019/771, since there is no need to make radical changes to all private law regulations, but only to this legal act.<sup>19</sup>

However, a comparison of the Directive 2019/771 and Law No. 3153-IX made it possible to identify certain problematic aspects of such implementation. It is worth dwelling on them in more detail.

Firstly, Law No. 3153-IX updated the list of terms, which include the concepts used in Directive 2019/771, in particular: “contract”, “distance contract”, “durability of goods”, “commercial guarantee”, “product”, “product functionality”, “seller”, “digital content compatibility”, “digital service”.

Although some of the terminology in Article 1 Law. No. 3153-IX is aligned with the requirements of Directive 2019/771, most of the terms used in the EU are ignored and are not aligned with other Ukrainian laws. For example, the Civil Code continues to use the term “agreement concluded through information and communication systems”, the Law of Ukraine “On Electronic Commerce” uses the terms “electronic

18 K. Taldonova, Legal analysis of consumer protection in the digital sphere, Scientific notes. Series: Law 14|2023, pp. 250-255. DOI:10.36550/2522-9230-2023-14-250-255.

19 M. Tomala/F. Zoll, The problem of consistency between Ukrainian private law and the provisions of Directive 2019/771 on consumer rights in case of nonconformity of goods transferred under a sale and purchase agreement. Actual problems of jurisprudence 4|2023, pp. 149-57. DOI:10.35774/app2022.04.14.

transaction”, “electronic agreement”<sup>20</sup> Taking into account the fact that the Civil Code sets forth general provisions on agreements (Section II “General Provisions on Agreements” Chapter 52 “Concept and Terms of Agreement” (Articles 626-637), Chapter 53 “Conclusion, Amendment and Termination of Agreement” (Articles 638-654)) and general provisions on contractual obligations (Section III “Certain Types of Obligations”), including sale and purchase agreements (Chapter 54) and retail sale and purchase agreements (§ 2 of Chapter 54), it would be more logical to enshrine most of these concepts in the Civil Code.

Secondly, while Directive 2019/771 refers to the conformity of goods (Article 5), subjective and objective conformity requirements (Articles 6 and 7), and incorrect installation of goods (Article 8) when assessing whether the seller fulfils the principal obligation to sell goods to the buyer, Law No. 3153-IX and the Civil Code continue to use the concepts of “defect” “defect of goods”, “goods with defect”, “goods of proper quality”, “goods of inadequate quality” (for example, Article 678 Civil Code refers to goods of inadequate quality, Article 679 Civil Code refers to defects of goods for which the seller is responsible, Article 708 Civil Code refers to goods of inadequate quality).

In addition, the concepts of “conformity of goods” and “non-conformity of goods” are also used in the United Nations Convention on the Contracts for the International Sale of Goods dated 11 April 1980 (Articles 35, 36, 39, 40), which Ukraine joined in 1989 and which entered into force for the Ukraine on 1 February 1991.

Thirdly, the most important changes introduced by Law No. 3153-IX, relate to legal and commercial guarantees in sales contracts with consumers. In particular, the provisions on guarantee obligations have been amended and consumer protection in terms of guarantees and after-sales service has been strengthened compared to the current legislation, along with the seller’s liability for any non-conformity existing at the time of delivery of goods and becoming apparent within one year from that moment, as well as liability for any defect in digital content or digital service detected by the consumer within two years from the date of delivery of such goods, if the digital content is to be delivered repeatedly or the digital service is to be provided repeatedly, and if the digital content is to be delivered or the digital service is to be provided for a period exceeding two years.

At the same time, the guarantee has always been regulated by the Civil Code as part of the general laws of obligations, which applies in principle regardless of the contract type. In particular, Articles 675-676e Civil Code regulate the issue of guarantees when entering into a sale and purchase agreement.

Fourthly, Law No. 3153-IX contains a section on unfair business practices, which contains a more general provision on the prohibition of unfair business practices (Articles 24-29). However, again, it is difficult to understand the legislator’s logic, since unfair commercial activity is a manifestation of unfair competition carried out by commercial entities and this issue in Ukraine is regulated by the Law of Ukraine “On Unfair Competition”, which defines the legal framework for protecting

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20 On electronic commerce: Law of Ukraine of 3.9.2015 No. 675-VIII. <https://zakon.rada.gov.ua/laws/show/675-19#Text>.

business entities and consumers from unfair competition.<sup>21</sup> In addition, certain aspects of restricting monopoly and protecting business entities and consumers from unfair competition are regulated by the Commercial Code.<sup>22</sup>

Fifthly, Law No. 3153-IX updated the provisions on consumer rights in case of purchase of defective goods, enshrining the right to perform one of the following actions: warranty repair of goods and warranty replacement of goods with the same or similar goods. However, there is a double interpretation of this provision: firstly, repair and replacement may be considered as one of the options that a consumer may choose; secondly, replacement may be considered impossible without prior repair.

At the same time, Article 678 Civil Code contains a list of other consumer actions, such as proportionate reduction of the price, free elimination of goods defects within a reasonable time, reimbursement of expenses for elimination of goods defects, as well as withdrawal from the contract with a demand for a refund of the amount paid for the goods, and demand for the goods replacement. And part 2 of the Article 20 Commercial Code defines other ways of protecting their rights and legitimate interests, including those of consumers: recognition the presence or absence of rights; recognition the acts of state authorities and local self-government bodies, acts of other entities that contravene the law, infringe the rights and legitimate interests of a business entity or consumers; invalidation of business transactions on the grounds provided by law; restoration of the situation that existed before violation of the rights and legitimate interests of business entities; cessation of actions that violate the right or create a threat of its violation; award of an obligation in kind; compensation for damages; application of penalties; application of operational and economic sanctions; application of administrative and economic sanctions; establishment, modification and termination of economic relations.

Article 30 of Law No. 3153-IX raises debate, where the subjects of the consumer protection system include the central executive body responsible for formulating state policy in the field of consumer protection, the competent authority and other state bodies that protect consumer rights in the relevant areas.

Analysing the definition of the term “competent authority”, it can be concluded that the legislator borrowed this term from private international law, which uses this concept to define the relevant authorities for relations in international agreements (Articles 8, 78, 79 of the Law of Ukraine “On Private International Law”).

At the same time, if the central executive body responsible for formulating the state policy in the field of consumer protection is the Ministry of Economy of Ukraine,<sup>23</sup> the question arises as which state authorities are the competent authority and which state authorities are other state authorities that carry out consumer protection in the relevant areas. For example, the Law of Ukraine “On Housing and Municipal Services” states that “the protection of consumer rights in housing and communal services is carried out by the authorised central executive body that implements the

21 On protection against unfair competition: Law of Ukraine of 7.6.1996 No. 236/96-BP. <https://zakon.rada.gov.ua/laws/show/236/96-%D0%B2%D1%80#Text>.

22 Commercial Code of Ukraine dated 16.1.2003 No. 436-IV. <https://zakon.rada.gov.ua/laws/show/436-15#Text>.

23 Issues of the Ministry of Economy: Resolution of the Cabinet of Ministers of Ukraine dated 20.8.2014 No. 459. <https://zakon.rada.gov.ua/laws/show/459-2014-%D0%BF#Text>.

state policy of state supervision (control) over compliance with the legislation on consumer protection” (Article 16),<sup>24</sup> namely the State Service of Ukraine for Food Safety and Consumer Protection, which implements the state policy on state control over compliance with consumer protection legislation and advertising in this area and monitors compliance with consumer protection legislation, advertising compliance in the part of consumer protection.<sup>25</sup> This leads to the question whether the State Service of Ukraine on Food Safety and Consumer Protection is the competent authority or there is another body that protects consumer rights in the relevant areas. A similar situation arises with regard to the classification of other entities, for example, the Antimonopoly Committee of Ukraine (which protects economic competition on the basis of consumer rights priority),<sup>26</sup> the National Commission for State Regulation of Energy and Utilities (protects the rights of consumers of goods (services) in the market that is in a state of natural monopoly and at the related markets in the areas of electricity, heat supply, centralised water supply and sewerage, processing and disposal of household waste, and in the oil and gas sector)<sup>27</sup> or the National Bank of Ukraine (protects the rights of consumers in financial services).<sup>28</sup>

It is worth paying attention to the implementation by Ukrainian legislator of those non-binding provisions of Directive 2019/771 where countries may exercise their discretionary powers, in particular Articles 3 (7), 10(6), 11(2), 12 and 17(4) of the Directive: Unfortunately, Ukraine has not exercised its discretionary powers to the maximum extent.

For example, when choosing the period of recognition of the non-conformity from the moment of delivery of the goods, during which any non-conformity will be presumed to have existed at the moment of delivery of the goods, unless otherwise proven or where this presumption is incompatible with the nature of the goods or the nature of the non-conformity, the Ukrainian legislator, among the options of a one-year or two-year period, chose the shorter period (Article 6), while most EU Member States chose a two-year period.

#### IV. Improving consumer protection legislation in Ukraine

Although Law No. 3153-IX has not yet entered into force, Ukrainian consumer protection legislation still requires significant improvements.

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24 On housing and communal services: Law of Ukraine of 9.11.2017 No. 2189-VIII. <https://zakon.rada.gov.ua/laws/show/2189-19#Text>.

25 On Approval of the Regulation on the State Service of Ukraine on Food Safety and Consumer Protection: Resolution of the Cabinet of Ministers of Ukraine dated 2.9.2015 No. 667. <https://zakon.rada.gov.ua/laws/show/667-2015-%D0%BF#Text>.

26 On the Antimonopoly Committee of Ukraine: Law of Ukraine dated 26.11.1993 No. 3659-XII. <https://zakon.rada.gov.ua/laws/show/3659-12#Text>.

27 On Approval of the Regulation on the National Commission for State Regulation of Energy and Municipal Services: Decree of the President of Ukraine of 10.9.2014 No. 715/2014. <https://zakon.rada.gov.ua/laws/show/715/2014#Text>.

28 On the National Bank of Ukraine: Law of Ukraine dated 20.5.1999 No. 679-XIV. <https://zakon.rada.gov.ua/laws/show/679-14#Text>.

Unfortunately, the fragmentation of Ukrainian legislation complicates not only the process of adaptation, but also the creation of a single, coherent consumer protection system,<sup>29</sup> the more its compatibility with the EU consumer protection system.

Analysing the twenty-year experience of application of the Civil Code of Ukraine and the Commercial Code of Ukraine, O. Kot and A. Hryniak conclude that there exist systemic contradictions and artificially created dualism of private law.<sup>30</sup> Kuznetsova and others, comparing the provisions of the Commercial Code of Ukraine with certain provisions of the Civil Code of Ukraine and other laws and regulations, proved that most of the provisions of the Commercial Code of Ukraine are referential or formulaic, and therefore have minimal regulatory impact and mostly duplicate the provisions enshrined in other legal acts.<sup>31</sup>

Agreeing with the opinion of M. Tomala and F. Zoll that if the provisions of the Commercial Code of Ukraine are excluded from national legislation, Ukraine would have the opportunity to create a holistic consistency of private law provisions, which may result in the unification of Ukrainian civil law,<sup>32</sup> I believe that Ukraine should strive to create a consumer protection system that is compatible with the EU's.

Considering that the rules governing relations involving consumers are not an independent section of private law, but include some exceptions to the general principles of private law, these rules are based on deeply rooted fundamental principles and cannot exist outside of them,<sup>33</sup> I believe that the current consumer protection legislation should be revised by implementing most of the provisions of Directive 2019/771 and Law 3153-IX into the Civil Code of Ukraine to ensure consistency and more effective legal regulation, as well as to eliminate duplication of consumer protection provisions in all other legal acts.

Regarding the Commercial Code of Ukraine, the Verkhovna Rada of Ukraine is currently considering draft law No. 6013 dated 9.9.2021, which provides for the liquidation of the Commercial Code of Ukraine and is being prepared for the second reading,<sup>34</sup> it is necessary to eliminate duplication of provisions on consumer protection in the Commercial Code of Ukraine.

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- 29 O.B. Moroz, Problems of Adaptation of Ukrainian Legislation to the Legislation of the European Union, *Almanac of International Law*. 23|2020, pp. 21-28. DOI: 10.32841/ILA.2020.23.03.
- 30 O.O. Kot/A.B. Hryniak, Commercial Code of Ukraine: to cancel, hry to leave, *New Ukrainian Law* 1|2023, pp. 11-19. DOI: 10.51989/NUL.2023.1.1.
- 31 N. Kuznetsova et al., Pleniuk Abolition of the Commercial Code of Ukraine: potential consequences and necessary pre-requisites, *Journal of the National Academy of Legal Sciences of Ukraine* 27|2020, p. 100-131.
- 32 Tomala/Zoll, fn. 19.
- 33 Principles, Definitions and Model Rules of European Private Law. Available online under [https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/EUROPEAN\\_PRIVATE\\_LAW/EN\\_EPL\\_20100107\\_Principles\\_definitions\\_and\\_model\\_rules\\_of\\_European\\_private\\_law\\_-\\_Draft\\_Common\\_Frame\\_of\\_Reference\\_DCFR\\_.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EUROPEAN_PRIVATE_LAW/EN_EPL_20100107_Principles_definitions_and_model_rules_of_European_private_law_-_Draft_Common_Frame_of_Reference_DCFR_.pdf).
- 34 On Peculiarities of Regulation Business Activities of Certain Types of Legal Entities and Their Associations in the Transition Period: Draft Law of Ukraine dated 9.9.2021 No. 6013. [https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=72707](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72707).

## V. Conclusions

The analysis of the implementation of Directive 2019/771 to Law of Ukraine No. 3153-IX shows an inadequate approach of the Ukrainian legislator to this process and indicates the need for further improvement of consumer protection legislation.

Ukraine should strive to create a consumer protection system that is compatible with the EU system, which requires a review of the current legislation in this area.

This can be accomplished by implementing the provisions of Directive 2019/771 and Law 3153-IX into the Civil Code of Ukraine, which will ensure consistency and efficiency of legal regulation, eliminate duplication of consumer protection provisions in all other legal acts, and contribute to the harmonisation of Ukrainian legislation with European standards.