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## From Status to Position: Rethinking the Boundaries of Consumer Protection in the Age of Digital Transformation

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# From Status to Position: Rethinking the Boundaries of Consumer Protection in the Age of Digital Transformation

## I. Introductory Remarks

In the twenty-first century, we witness on a daily basis the rapid advance of digital transformation. The digital world, which increasingly permeates and transforms the relationships of everyday life, continuously gives rise to innovative opportunities and creates new market situations. Owing to new technologies and the expanding range of digital tools, fundamental changes can be observed in many areas of everyday life; purchasing habits, too, have changed profoundly compared with the era of classical consumer goods and traditional contractual arrangements.[2] The range of modern technological achievements continues to expand, and increasingly complex expertise is required to understand the operation of a particular item of digital content or digital service and, at the same time, to assess its conformity. Although new technologies can create new opportunities, under an unchanged regulatory framework the possibilities for consumers—already in a weaker and more vulnerable position—to enforce their rights may be impaired.

This study seeks to answer whether the new contractual relationships and shifts in contractual balance created by digital transformation may justify further functional development of the consumer-protection approach. The scope of application of consumer-protection guarantees need not in every case be confined exclusively to natural-person consumers, as several legislative examples demonstrate. Under an amendment to the Hungarian Civil Code (hereinafter: the 'HCC') which entered into force on 22 August 2025, for example, the rules on defective performance must also be applied to micro, small and medium-sized enterprises (hereinafter: 'SMEs') acting outside the scope of their profession or independent occupation.[3] From 1 January 2026, the Consumer Protection Act also opens access to conciliation-board proceedings to SMEs, inter alia, where they act for purposes outside their independent occupation and economic activity and use a public service or, for example, purchase a product in the course of retail activity[4].

Information asymmetry, generally assessed as operating to the detriment of consumers, may, with the emergence of new technologies, be compounded by what may be termed an asymmetry of technological knowledge. [5]Increasingly complex digital content and digital services would require more advanced specialist knowledge on the part of the purchasing party—particularly where it seeks to enforce its rights—and this type of legal protection may therefore be justified not only for natural-person consumers. If technological development is to serve people and

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[2] Pázmándi Kinga: Digitalizáció, technológiai fejlődés, jogi paradigmák [Digitalisation, Technological Development and Legal Paradigms], Gazdaság és Jog, 2018/12., 10–14.
[3] Act LXVII of 2025, Section 112.
[4] Act XCIV of 2025, Section 1(1); detailed explanatory memorandum to Section 1.
[5] Sofia Ranchordás: *Does Sharing Mean Caring? Regulating Innovation in the Sharing Economy*, Tilburg Law School Legal Studies Reserach Paper Series No.06/2015, Minnesota Journal of Law Science & Technology, Vol. 16:1, 2015.
[6] Natali Helberger – Marijn Sax – Joanna Strycharz – Hans-W. Micklitz: 'Choice Architectures in the Digital Economy: Towards a New Understanding of Digital Vulnerability', Journal of Consumer Policy, Vol. 45, 2022, 175–200.

consumers ever more effectively rather than fill them with 'fear' and uncertainty, legal instruments are required.[6]

Although technology, by reason of its continuous development, is in a sense a 'moving target' from a regulatory perspective, it remains necessary to identify the appropriate instruments.[7] It may be said that law does indeed have a significant role in the process of technological development; at the same time, it is indisputable that it must perform this role with a particular degree of regulatory sensitivity.[8] This should be done without obstructing the spread of emerging digital technologies and while maintaining the competitiveness of businesses, yet at the same time protecting, through legal guarantees, the party to (consumer) contracts that occupies the weaker position and, where appropriate, considering a functional extension of the personal scope of consumer legal protection.

The aim of the study is to map the boundaries of the traditional concept of the consumer tied to natural-person status, to identify points of connection with Regulation (EU) 2019/1150[9], to outline the possibilities inherent in a 'type-based' and a 'position-based' approach, and to examine the features of Directive (EU) 2019/770[10] (hereinafter: the 'DCD' or the 'Digital Content Directive') that are relevant from this perspective.

## II. The Changing Boundaries of the Concept of the Consumer in the Context of Digital Transformation

### 2.1 A Functional Approach to the Concept of the Consumer

Before considering the possible modernisation of the concept of the consumer, it is worth devoting a few brief observations to the modernisation discernible in contract law. Continuous development and ever-new demands have, at a first stage, led to a partial transformation—or 'modernisation'—of the process of contract formation.[11] Traditional forms of contracting have been supplemented by new methods, and in the twenty-first century the conclusion of legal transactions by electronic means has become almost commonplace.[12] Examples include distance contracts and, among more recent methods of contracting, smart contracts. An important point, however, is that thus far it has principally been the manner of contract formation that has changed from a technical perspective, without this alone affecting the subject matter of the contract. The practical significance of distance contracts[13] has been greatly increased by the expansion of electronic commerce, enabling both consumers and businesses to enter into contractual arrangements irrespective of geographical distance. Compared with traditional 'offline' purchasing habits, this offers the parties a considerably more time-efficient

[7] Tóth András: A technológia szabályozásának jogi kihívásai [Legal Challenges of Regulating Technology], in: Technológia jog - Új globális technológiák jogi kihívásai, Budapest, 2016.

[8] See also: Gary E. Marchant: 'The Growing Gap Between Emerging Technologies and the Law', in Gary E. Marchant – Braden R. Allenby – Joseph R. Herkert (eds), The Growing Gap Between Emerging Technologies and Legal-Ethical Oversight: The Pacing Problem, Springer, 2011, 19–33.

[9] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services.

[10] Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services.

[11] Stefan Grundmann – Philipp Hacker: 'The Digital Dimension as a Challenge to European Contract Law – The Architecture', in Stefan Grundmann (ed), *European Contract Law in the Digital Age*, Intersentia, Cambridge, 2018, 3–46.

[12] Mateja Durovic – Chris Willett: 'A Legal Framework for Using Smart Contracts in Consumer Contracts: Machines as Servants, Not Masters', The Modern Law Review, Vol. 86, 2023.

[13] Detailed rules are laid down in Government Decree No 45/2014 (II. 26.) on the detailed rules governing contracts between consumers and businesses.

and, in certain cases, cost-efficient solution.[14] Without undertaking an in-depth analysis of this topic, it may be stated that digital content and digital services represented a further wave of modernisation in contract law, since through the DCD previously unregulated issues of contract law were defined at EU level.[15] In these cases, it is no longer merely the method of contract formation that changes: the very subject matter of the performance, the requirements of conformity and the legal consequences attached to defective performance also require specific regulation.

In light of the modernisation of contract law[16], the question arises whether the classical concept of the consumer, in unchanged form, is capable of responding to the new challenges of the digital environment, or whether its functional supplementation, or in certain cases an extension of the personal scope of consumer legal protection, may be justified—particularly in view of the technological development of the twenty-first century.[17] If one proceeds from the premise that one of the fundamental legal-policy rationales of consumer legal protection is to compensate for the weaker, more vulnerable position of the consumer vis-à-vis the other contracting party[18], several further questions arise. In view of digital transformation, reform-like changes affecting an increasing number of fields of law, changes in commercial practices, and the emergence of large platforms, content providers and similar new actors of the digital era, would it be possible, in the case of digital technologies, content and services—and, more broadly, all novel consumer relationships created as a consequence of the digitalisation revolution—to establish a cumulative set of criteria and, on that basis, determine the appropriate definition of the consumer?

A useful illustration for considering the concept of the consumer is *Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services*[19] *('Platform-to-Business Regulation' (hereinafter: the 'P2B Regulation'))*[20], which, in my reading of its normative text, also contains specific safeguards designed to protect business users. The P2B Regulation applies the autonomous category of 'business user'[21], which may include both a natural person acting in a commercial or professional capacity and a legal person, while this category is expressly distinguished from the classical concept of the consumer, which is likewise defined by the Regulation[22]. In this sense, the user ('business user') need not be merely a private individual but may also be an undertaking; indeed, this relationship may be particularly relevant for micro, small and medium-sized enterprises. The essence of the regulatory approach may fundamentally be captured as follows: in order to compensate for the

[14] Fazekas Judit: *Fogyasztóvédelmi jog 2.0* [Consumer Protection Law 2.0], Gondolat Kiadó, Budapest, 2022., 157-158. p.

[15] Karin Sein – Gerald Spindler: 'The New Directive on Contracts for the Supply of Digital Content and Digital Services – Scope of Application and Trader's Obligation to Supply – Part 1', European Review of Contract Law, Vol. 15, No. 3, 2019, 257–279.

[16] See also: Szuchy Róbert: A kötelmi jog kihívásai az új technológiák nyomán – okosszerződések és a blokklánc-technológia [Challenges of the Law of Obligations in the Wake of New Technologies – Smart Contracts and Blockchain Technology], Glossa Iuridica, VI. évf., 2019/1–2., 151–160.

[17] Petra Weingerl: 'The notion of consumer in EU law: between traditional concepts and digital realities', ERA Forum, Vol. 27, 2026, 109–125.

[18] Norbert Reich – Hans-W. Micklitz – Peter Rott – Klaus Tonner: *European Consumer Law*, 2nd ed., Intersentia, Cambridge–Antwerp–Portland, 2014.

[19] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services.

[20] See also in this context: Gellén Klára: A modern üzleti piactér - Az online platform szabályozása az Európai Unióban [The Modern Business Marketplace – Regulation of Online Platforms in the European Union], Gazdaság és Jog, 2020/11-12., 16-19.

[21] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (P2B Regulation), Article 2(1).

[22] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (P2B Regulation), Article 2(4).

informational imbalance between the platform and the business user—particularly in relation to technological knowledge—and for their differing economic and bargaining positions, the business user under the Regulation is, in my view, equipped with instruments of a consumer-protection character.[23] This line of reasoning is supported at several points by the P2B Regulation, with the recitals in particular providing concrete examples. Recital 2 expressly identifies SMEs as business users that may occupy a vulnerable position and that are increasingly dependent on providers of online intermediation services falling within the scope of the P2B Regulation. In view of this growing dependence, the Regulation states that providers of such services often have superior bargaining power, enabling them to behave in a practically unilateral manner.[24] Conduct of this kind may be unfair and may harm the legitimate interests of their business users and, indirectly, those of Union consumers. As an example of potentially unfair practices, the P2B Regulation refers to a service provider unilaterally imposing on business users practices that grossly deviate from good commercial conduct or are contrary to good faith and fair dealing. Fundamentally, the objective of the Regulation is to address appropriately such imbalances and potentially unfair practices arising in the online platform economy and to ensure transparency and effective redress for business users.[25] To achieve this objective, the P2B Regulation establishes a specific set of requirements—mandatory measures—for providers of online intermediation services[26], including, inter alia, requirements that terms and conditions be drafted in plain and intelligible language, that decisions to restrict, suspend or terminate the provision of online intermediation services be accompanied by reasons, and, in particular, that the main parameters determining ranking be disclosed. This 'catalogue' is supplemented by an internal complaint-handling system available to business users and the possibility of out-of-court mediation.

Without purporting to be exhaustive, these legal-protection instruments may, in terms of their function, display certain similarities to the logic of consumer protection; it is important, however, that the business user does not thereby become a consumer. A distinctive feature of the Regulation is that it also uses and recognises the traditional concept of the consumer, yet assesses the position of so-called business users in the online platform economy in a manner[27] that makes a specific form of legal intervention, analogous to consumer protection, necessary. In my view, the legal-policy rationale for this lies primarily in the proposition that the legal relationship between the parties, and thereby the need to provide the guarantees associated with consumer status, should be assessed not strictly by reference to formal personal status—such as whether the party is a natural or legal person—but rather by reference to the position occupied by that person.

[23] Samuel Scandola: Doing Business in a World of Goliaths: Power Imbalances and Economic Dependency in Platform-to-Business Relations, Erasmus Law Review, Vol. 16, No. 3, 2023, 98–113.

[24] See also in this regard: Friso Bostoen – Nicolas Petit: 'Antitrust Rules and Remedies against Platforms' Treacherous Turns', European Law Journal, Vol. 30, No. 4, 2024, 629–652.

[25] European Commission: Study on Evaluation of Regulation (EU) 2019/1150 on Promoting Fairness and Transparency for Business Users of Online Intermediation Services, Final Report, 2023.

[26] See also: Tóth András: Az online platformok európai szabályozása [European Regulation of Online Platforms], In Medias Res, 2022/2., 78-102.

[27] See in this connection: *'(...) such business users, in particular micro, small and medium enterprises (SMEs), are increasingly dependent on those services in order to reach consumers. Given that increasing dependence, providers of those services often have superior bargaining power, which enables them to behave unilaterally in a way that can be unfair and that can harm the legitimate interests of their business users and, indirectly, also of consumers in the Union. For instance, they may unilaterally impose practices on business users which grossly deviate from good commercial conduct, or are contrary to good faith and fair dealing.'* Regulation (EU) 2019/1150, recital 2.

*'... The nature of the relationship between providers of online intermediation services and business users might also lead to situations in which business users often have limited possibilities to seek redress where unilateral actions of the providers of those services lead to a dispute...'* Recital 5.

This distinction, within the logic of consumer protection, may in my view be conceptualised as a contrast between a ‘*type-based concept of the consumer*’ and a ‘*position-based concept of the consumer*’. The type-based approach—which, in my view, broadly corresponds to the prevailing approach today—links consumer status to personal characteristics predetermined by legislation, above all natural-person status and acting outside one’s professional, business or economic activity. As noted in the introduction, certain consumer-protection guarantees have already been extended in the course of legal development to other legal persons, but the underlying concept has not changed. Nor would I regard a radical transformation of the concept of the consumer as the appropriate path; I merely seek to propose an innovation in approach. By contrast with a type-based concept of the consumer, a position-based approach would place greater emphasis on the actual position occupied by the party in the specific legal relationship vis-à-vis the other party, with particular regard to informational and economic asymmetries and, not least, asymmetries relating to technological knowledge. Going a step further, and drawing on a constitutional-law perspective—the Fundamental Law itself recognises and protects consumer interests[28]—a so-called test-based framework might, over time, even become applicable when defining the consumer, naturally in a manner that preserves the fundamental elements of established practice and merely adapts them to the challenges of the age, while also avoiding an excessively expansive interpretation. From this perspective, the legislative reasoning accompanying the 2025 amendment of the HCC[29] is particularly noteworthy; it likewise takes Article M(2) of the Fundamental Law as its starting point. The reasoning links the need to provide legal protection to smaller undertakings to transactions in which they act outside their business activity, and expressly emphasises that strengthening the legal protection of micro, small and medium-sized enterprises may improve their contractual position and reduce the legal disadvantages they face vis-à-vis larger undertakings.
In my view, this also indicates that the legislature’s attention is increasingly directed not solely to the formal status of the legal subject, but also to its actual contractual position within the particular legal relationship. This can be reconciled with the ‘position-based’ approach outlined above.
Within such an approach, it would be conceivable to apply a test-based set of criteria that would not automatically replace the traditional concept of the consumer, but could serve as its functional complement. The assessment could be based on factors such as asymmetry arising from information and technological knowledge, economic or technological dependence on the other party, and significant inequality in bargaining power between the parties. Such an approach could enable the assessment of the need for legal protection to be better aligned with the actual characteristics of digital contractual relationships. Under a test-based conception, the decision could be based, for example, on a ‘*vulnerability test*’, a ‘*contractual-position test*’, or perhaps a ‘*weaker-party test*’.

## III. The Limits of the Traditional Concept of the Consumer in the Light of Directive (EU) 2019/770

On the basis of the foregoing, it may be concluded that legal compensation for the position of the ‘weaker party’ is not a feature confined to consumer relationships in the classical sense. The example of the P2B Regulation demonstrates that the EU legislature may consider it justified to provide specific safeguards to legal subjects acting in a business capacity who do not qualify

[28] Fundamental Law of Hungary, Article M, second sentence: ‘*... Hungary shall act against any abuse of a dominant position and shall protect the rights of consumers.*’
[29] Act LXVII of 2025, Section 112.

as consumers under the statutory definition, but whose actual contractual position may nevertheless justify a higher level of legal protection.
The assessment of this issue is particularly interesting in the age of digital transformation. Understanding the operation, technical characteristics and updates of digital services and digital content, or even the digital infrastructure used by the provider, may require knowledge that not only natural-person consumers but, in certain cases, smaller undertakings may also lack. It is therefore appropriate to continue the analysis in this direction.

### 3.1 Key Features of the Material and Personal Scope of Directive (EU) 2019/770

Under Directive (EU) 2019/770, digital content means '*data which are produced and supplied in digital form*'[30], while a digital service means any service '*that allows the consumer to create, process, store or access data in digital form*'; and '*that allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service*'[31]. Moving beyond the statutory wording, practical examples listed in the recitals to the Directive also assist accurate interpretation. Consumers encounter digital content when, for example, watching a film, listening to music or viewing a video, or when using certain software. Typical examples of digital services may include YouTube, Facebook, certain cloud-based storage services or music-streaming services. Large numbers of consumers use one or more of these forms of digital content and digital services on a daily basis and enjoy their benefits; if problems arise with such products or services, however, it is important that they be aware of the remedies available to them.
In accordance with the foregoing, Directive (EU) 2019/770 applies to any contract under which the trader supplies or undertakes to supply digital content or a digital service to the consumer and the consumer pays or undertakes to pay a price.[32] Of particular interest, the scope of the rules also extends, subject to certain conditions, to cases in which the consumer provides or undertakes to provide personal data to the trader[33].
For the purposes of the present study, however, the principal significance lies not in the operational classification of these forms of digital content and digital services, but in the question of how the technological complexity inherent in such contracts affects the actual position of the contracting parties.[34]
During the preparation of the Digital Content Directive (and its twin directive), several surveys were conducted with a view to determining the extent to which consumer protection and the law of contracts arising in consumer relationships required reform. Of particular relevance in this connection is Flash Eurobarometer 411, which examined EU internet users aged 15–24 and found that 87% of respondents listened to music online, 80% viewed some form of digital content on the internet, while 58% downloaded or played virtual games[35]—each of these activities involving some form of digital service or digital content.
According to 39% of businesses engaged in online sales, differences arising from the mandatory rules of national laws were at the root of a fundamental problem affecting consumers—and businesses alike.[36]

[30] Directive (EU) 2019/770, Article 2(1).
[31] Directive (EU) 2019/770, Article 2(2).
[32] Directive (EU) 2019/770, Article 3(1).
[33] Directive (EU) 2019/770, Article 3(1), second sentence.
[34] For a detailed analysis of the conformity requirements for digital content and digital services, the legal consequences of defective performance, and the issue of updates, see: Szabó Lívia: A fogyasztói szerződések szerződésszerűsége a digitális transzformáció tükrében – II. rész [Conformity of Consumer Contracts in the Context of Digital Transformation – Part II], Jog–Állam–Politika, 17. évf., 2025/3., 105–124.
[35] Flash Eurobarometer 411, 'Cross-border access to digital content', 2015.
[36] Flash Eurobarometer 396: Retailers' attitudes towards cross-border trade and consumer protection, 2015.

The survey results clearly indicated that the legal uncertainty arising from the absence of uniform contract-law rules on digital content and the difficulties consumers faced in enforcing their rights were current problems requiring a prompt solution; it was therefore necessary to define express and clear contractual rights relating to digital services and digital content.[37]
Nor can the phenomenon of consumer distrust be ignored. Owing to the divergent national regulatory regimes prevailing before the directives, consumers were reluctant to purchase digital goods or use digital services cross-border, preferring instead to remain within the offerings of their domestic market.[38] It therefore had to be recognised that consumer confidence could be increased through uniform regulation at EU level[39], and the Digital Content Directive—like its 2019/771 counterpart—is, to that end, a full-harmonisation instrument.
One feature that undoubtedly merits recognition and constitutes a major innovation compared with its twin instrument is that, by adopting the Digital Content Directive, the EU legislature undertook to fill a regulatory gap that had until then existed in EU consumer law. Prior to the DCD, there was no EU legislation providing consumers with legal protection in the event of non-conforming digital content; this intervention was therefore particularly justified.[40]
Having reviewed this regulatory background, it is appropriate to examine how the EU legislature defines the class of persons occupying the position to be protected in contracts for the supply of digital content and digital services.

### 3.2 The Special Position of SMEs – Member State Discretion Afforded by the DCD

Directive (EU) 2019/770 fundamentally does not depart from the traditional concept of the consumer. Under the rules, a consumer is a natural person who, in relation to contracts covered by the Directive, is acting for purposes which are outside that person's trade, business, craft or profession[41]; it is therefore clear that the Directive continues to regard natural-person status as fundamental. Recital 16 of the DCD, however, provides that '*Member States remain free to extend the application of the rules of this Directive to natural or legal persons that are not consumers within the meaning of this Directive, such as non-governmental organisations, start-ups or SMEs*'[42].
To examine how the concept of the consumer operates in Hungarian law, it is necessary at this point to address the domestic transposition of Directive (EU) 2019/770. As regards the implementation of the directive(s) into Hungarian law, a rather distinctive solution was adopted. Contrary to the transposition proposals and prior assumptions, implementation remained (almost) entirely outside the HCC.[43] The Digital Content Directive—and, in the same manner, Directive (EU) 2019/771, amid a mixed reception—was transposed at the level of a government decree, namely *Government Decree No 373/2021 (VI. 30.) on the detailed rules governing contracts between consumers and businesses for the sale of goods and for the supply of digital*

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[37] See also in this regard: Dirk Staudenmayer: The Directives on Digital Contracts: First Steps Towards the Private Law of the Digital Economy, European Review of Private Law, Vol. 28, No. 2, 2020, 219–250.
[38] See also: Katarzyna Wiśniewska – Przemysław Pałka: The Impact of the Digital Content Directive on Online Platforms' Terms of Service, Yearbook of European Law, Vol. 42, 2023, 388–406.
[39] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, Digital contracts for Europe - Unleashing the potential of e-commerce, (available at: https://eur-lex.europa.eu/legal-content/HU/TXT/HTML/?uri=CELEX:52015DC0633&from=EN#footnote11.)
[40] Directive (EU) 2019/770, recitals 6–11; see also: Ebers, Martin: Liability For Artificial Intelligence And EU Consumer Law, Vol. 12 No. 2 (2021): JIPITEC 12 (2), 2021.
[41] Directive (EU) 2019/770, Article 2(6).
[42] Directive (EU) 2019/770, recital 16.
[43] See also: Szilágyi Ferenc: *The Implementation of Directives 2019/770 and 2019/771 in Hungary*, Journal of European Consumer and Market Law, Vol. 10, Issue 6, December, 2021.

*content and digital services* (hereinafter: the ‘Government Decree’).[44] Specific reference is made to the application of the Civil Code[45], although the reference in the Government Decree to ‘joint application’ may generate inconsistencies in relation to certain detailed rules (as an example falling beyond the focus of this study, the presumption relating to defective performance may be mentioned); the definition of the consumer, however, remained unchanged.[46] The Hungarian legislature therefore did not avail itself, when transposing the DCD, of the possibility afforded by recital 16, meaning that for the purposes of the Government Decree consumer status remains, as a general rule, linked to natural-person status[47]. An interesting question is whether a shift in this area may be expected in the future and, moreover, what the reason was for not having made practical use of this possibility of extending protection in this context to date. In my view, contracts for the supply of digital content and digital services may be precisely the types of contract capable of creating complex contractual situations and pronounced shifts in the balance between the parties that could justify enhanced legal protection for a certain category of non-natural persons—in particular SMEs.

It is, however, also worth looking beyond digital content and digital services to the current trajectory of Hungarian private law, since interesting amendments have been made to consumer-protection legislation concerning SMEs.

Although the legislative amendment effective from 22 August 2025 does not alter the classification of natural persons as the fundamental subjects of the concept of the consumer, it nevertheless represents a significant change: under the new subsection (3) of Section 6:157 of the HCC, the provisions of the chapter on defective performance relating to consumers are also applicable to SMEs (‘*The provisions of this Chapter relating to consumers shall also apply to a micro, small or medium-sized enterprise within the meaning of the Act on Small and Medium-sized Enterprises and the Promotion of their Development where it acts outside the scope of its profession, independent occupation or business activity*.[48]’). It should be emphasised that this does not affect the HCC’s definition of the consumer—which remains unchanged—but the amendment may be regarded as a form of functional extension of the personal scope of individual consumer-protection provisions. Also particularly interesting is the highly variable regulatory approach of the Hungarian Consumer Protection Act[49] (hereinafter: the ‘HCPA’) in relation to SMEs. As a result of a further amendment, from 1 January 2026 SMEs may also qualify as quasi-consumers for the purposes of the rules governing conciliation boards where they act outside the scope of their independent profession or occupation and use a public service or, in the context of retail activity, in particular purchase or use a product or are the addressee of commercial communications or an offer relating to such a product.[50]

[44] Ulrich Ágnes: A digitális tartalom szolgáltatására és digitális szolgáltatások nyújtására irányuló szerződések egyes vonatkozásairól szóló (EU) 2019/770 irányelv legfontosabb rendelkezései, valamint az irányelv hazai átültetése [The Most Important Provisions of Directive (EU) 2019/770 on Certain Aspects Concerning Contracts for the Supply of Digital Content and Digital Services and Its Transposition into Hungarian Law] (EJ, 2022/3., 1-10. o.)
[45] Government Decree No 373/2021, Chapter 4, Section 6.
[46] See also: Fazekas Judit: A fogyasztóvédelmi jog digitális transzformációjának újabb eredményei – avagy az áruk, a digitális tartalmak és a digitális szolgáltatások hibás teljesítéséről szóló irányelvek és transzpozíciójuk [Recent Results of the Digital Transformation of Consumer Protection Law – or the Directives on the Defective Performance of Goods, Digital Content and Digital Services and Their Transposition], Jog–Állam–Politika, XIV. évf., 2022, 2. Különszám, 121–130.
[47] Government Decree No 373/2021, Section 4, point 6.
[48] HCC, Section 6:157(3).
[49] Act CLV of 1997 on Consumer Protection (HCPA).
[50] Act XCIV of 2025, Section 1(1); detailed explanatory memorandum to Section 1; Act XCIV of 2025, Section 1(1) and Section 21(1); HCPA, Section 2, point 10(b).

## IV. Concluding Remarks

Overall, it is clear that the underlying legal-policy rationale of consumer protection and the statutory determination of consumer status do not necessarily coincide in every case. Contractual situations may arise in which a contracting party that is not a natural person may also qualify as the 'weaker party' and may therefore require a higher level of legal protection. Alongside the classical concept of the consumer tied to natural-person status, it may be appropriate to consider additional criteria and functionally based frameworks, as well as to draw on analogous practices present in the EU regulatory environment, including, where appropriate, a reinterpretation of the concept of the consumer as '*type-based*' versus '*position-based*'. In the course of my research, I have concluded that it may also be worth considering the application of a test-based approach examining the actual balance of power within the particular contractual relationship, especially informational and economic asymmetry and asymmetry relating to technological knowledge, as well as the degree of vulnerability of the legal subject.[51] This would of course not entail a general extension of the concept of the consumer, but merely consideration of whether, in certain contractual situations—particularly in the age of digital technologies—it may be justified to apply certain consumer-protection-type guarantees to legal subjects who do not normatively qualify as consumers. The P2B Regulation discussed in this study offers a useful illustration of this line of reasoning: although the business user does not become a consumer, the Regulation nevertheless seeks to offset its more vulnerable position by means of guarantees and additional measures that display features analogous to the logic of consumer-protection regulation.

From the perspective examined in this study, Directive (EU) 2019/770 presents a dual picture. On the one hand, it does not depart from the classical concept of the consumer, since it continues to regard as a consumer a natural person who acts for purposes outside that person's trade, business, craft or profession—similarly to the definition of the consumer under the HCC. On the other hand, recital 16 of the DCD expressly allows Member States to extend the protection provided by the Directive to persons who do not qualify as consumers, including start-ups and SMEs. The Hungarian legislature has so far not availed itself of this possibility in the course of transposition; the direction that future regulation will take remains an open question.

Finally, one point is certain: law must keep pace with technological development with increasing intensity and effectiveness, since digital content and digital services are becoming ever more complex, thereby increasing consumers' potential vulnerability. In order to preserve a healthy contractual balance, it is therefore appropriate not only to review periodically the adequacy of individual consumer-protection guarantees, but also to consider whether the personal scope of protection is sufficiently adapted to the changing market and technological environment.

[51] See also in this regard: Vanessa Mak: 'Redefining equality in European contract law: protecting consumer interests in a post-consumer society', European Law Open, Vol. 3, No. 3, 2024, 561–586.

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