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The Consumer’s Contractual Position in the Context of Digital Transformation: Towards a Reconsideration of the Concept of the Consumer

Szabó Lívia

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Szabó, Lívia*

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I. Introductory remarks

The increasingly prominent digital transformation of the 21th century necessarily raises the question of whether the concept of the consumer in its classical sense (while left unchanged) is capable of adequately reflecting the contractual power relations emerging in the digital age. At first sight, the question may appear straightforward to answer, since both EU law and Hungarian private law essentially provide clear normative definitions—at least as regards the general rules. The legal dilemma becomes more complex, however, when the legal-policy *rationales* underlying consumer protection[1]—in particular, the effective operation of measures designed to redress the imbalance between contracting parties—are also taken into account. If enhanced protection arising from consumers' weaker position is indeed founded on vulnerability, weaker bargaining power and information asymmetry, the question arises whether these 'characteristics' can be attributed exclusively to consumers in the traditional sense.[2] The proliferation of digital content and digital services, together with the emergence of new types of consumer contracts associated with them, makes it appropriate to reconsider this issue.

In the light of digital transformation, not only are the types of contracts and the range of methods of contract formation changing, but so too are contractual performance, the assessment of conformity and, not least, the balance between the contracting parties. Directive (EU) 2019/770[3] (hereinafter also: the 'DCD' or the 'Digital Content Directive') provides an apt example through which to examine the limits of the concept of the consumer and the potential extension of consumer-protection guarantees. By regulating certain aspects of contracts for the supply of digital content and digital services, the Directive seeks to address an entirely new phenomenon within the framework of contract law governing consumer relationships. The definitions of digital content and digital services are themselves novel,[4] which also transforms the circumstances in which questions of conformity and lack of conformity arise in contracts of this kind, while the highly complex nature of digital technologies may justify enhanced consumer-protection measures.[5] The question is whether a non-natural person—in particular, a micro, small or medium-sized enterprise ('SME')—that becomes a party to a contract for the supply of digital content or digital services and intends to use the purchased digital content or service as an end user may be entitled to any of the guarantees afforded to consumers.

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* PhD candidate, Széchenyi István University, Postgraduate Doctoral School of Law and Political Sciences.

[1] Bencsik, András: A fogyasztóvédelem gazdaságelméleti alapjairól [On the Economic-Theoretical Foundations of Consumer Protection], Polgári Szemle, Vol. 13 (2017), 4-6.

[2] Gellén, Klára: A gyengébb fél védelme egyes aszimmetrikus szerződéses kapcsolatokban [Protection of the Weaker Party in Certain Asymmetric Contractual Relationships], Acta Juridica et Politica (2011) 1, 243–255.

[3] 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.

[4] See also Neda Zdraveva, 'Digital Content Contracts and Consumer Protection: Status Quo and Ways Further', International Scientific Conference: EU 2021 – The Future of the EU in and after the Pandemic: Topic 3: EU Civil Law and Procedure: Professional Paper, EU and Comparative Law Issues and Challenges Series, Vol 5 (2021) issue 1.

[5] See also Balogh, Virág: A viselkedési közgazdaságtan eredményei a fogyasztóvédelemben [The Results of Behavioural Economics in Consumer Protection], Jogtudományi Közlöny, (2023), No. 2, 67–77.

The significance of the Digital Content Directive is further enhanced by the fact that, for the first time in the history of European integration, certain aspects of contracts for the supply of digital content and digital services have been harmonised at EU level,[6] thereby filling a regulatory gap in EU law.

A characteristic feature of consumer protection law is that, while the justification for rules protecting consumers is fundamentally rooted in the actual imbalance between the parties, consumer status has traditionally been determined not by the parties' specific contractual position, but by 'personal' criteria predetermined by the legislature. Consumers receive enhanced legal protection because the legislature presumes them to be in a weaker position; nevertheless, the applicability of those guarantees depends primarily on whether the person concerned falls within the statutory definition of a consumer.

The expansion of digitalisation and the emergence of digital technologies are making the limits of classical consumer contracts—and, at the same time, of classical consumer status—increasingly visible. It cannot be overlooked that growing information asymmetry and dependence on large platforms and digital service providers may no longer affect natural persons alone. In certain cases, legal persons may also find themselves in contractual arrangements in which the provision of some of the guarantees originally afforded to natural-person consumers may be justified for them as well.

Against this background, the present study starts from the traditional definitions of consumer status in EU and Hungarian law and from the foundations of the concept of the consumer, with the aim of establishing a sound doctrinal basis for examining the possible extension of consumer protection beyond its traditional personal scope. Particular attention is paid to the most recent developments in Hungarian legislation extending consumer-type legal protection to SMEs. On this basis, the study examines the impact of digital transformation on the concept of the consumer and on consumers' contractual position, and considers the possible functional reconsideration of the concept of the consumer.

II. Subjects in Need of Protection in Contractual Relationships – Consumers

Although consumer protection law came to the spotlight as a product of the 21th century, it is by no means an entirely new phenomenon. Its roots can be traced back to antiquity, since the market rules of the time already attached legal consequences to abuses committed by traders. The need to regulate bad faith conduct by sellers arose centuries ago, although genuinely consumer-centred thinking remained limited for a long period. In the modern sense, the protection of consumer interests emerged in the 1960s and 1970s, when the development of consumer protection law took new directions.[7]

2.1 The Concept of the Consumer in EU Law

A difficulty in defining conceptions of the consumer is that European Union law itself does not clearly establish a single, uniform image of the consumer.[8] This may perhaps be explained by

[6] Ulrich, Ágnes: A digitális tartalom szolgáltatására és digitális szolgáltatások nyújtására irányuló szerződések egyes vonatkozásairól szóló (EU) 2019/770 irányelv elfogadásának körülményei, az irányelv jelentősége és egyes főbb rendelkezései [The Circumstances of the Adoption of Directive (EU) 2019/770 on Certain Aspects Concerning Contracts for the Supply of Digital Content and Digital Services, the Significance of the Directive and Some of Its Main Provisions], Európai Jog, XXII. évf., 2022/5, 2.; see also Szabó, Lívia: A fogyasztói szerződések szerződésszerűsége a digitális transzformáció tükrében – I. rész [Conformity of Consumer Contracts in the Context of Digital Transformation – Part I], Jog–Állam–Politika, 17. évf., 2025/2, 185–206.

[7] Fazekas, Judit: Fogyasztóvédelmi jog [Consumer Protection Law], Complex Kiadó, Budapest, 2007, 19.

[8] Gombos, Katalin: Az uniós fogyasztóvédelmi jog modernizációja [The Modernisation of EU Consumer Protection Law], Jogtudományi Közlöny, 2024/6.

the fact that, from the 1980s onwards, EU consumer law increasingly became an important, yet subordinate, element in the realisation of economic freedoms, giving rise to a market-oriented consumer policy in which the consumer is regarded as the driving force on the demand side of the market.[9]

Article 12 of the Treaty on the Functioning of the European Union ('TFEU') provides—albeit in rather pragmatic terms—that consumer protection requirements must be taken into account in defining and implementing all Union policies.[10] Article 169 TFEU provides a considerably more specific formulation: '*in order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.*'[11]

The issue of definition at EU level is also of interest because the legislature does not formulate an entirely new concept of the consumer; rather, it draws on the earlier case law of the Court of Justice of the European Union[12] and elevates the principles developed therein to the normative level.[13] The concept of the consumer must immediately be distinguished from the notion of the so-called 'benchmark consumer'. The former is based on legislation, whereas the latter is concerned primarily with the intellectual capacities attributed to the consumer.[14] The regulatory approach is therefore based on the principle that consumers meeting a certain 'standard' receive protection, while those who do not attain that standard are not covered by that protection.[15] Although the objective of consumer protection rules is the 'protection of all consumers',[16] it is nevertheless necessary to establish a benchmark by reference to which the characteristics of the average consumer can be defined and which can serve as a point of reference in everyday situations. In keeping with this approach, the consumer is expected to be 'informed', 'observant' and 'circumspect'. Against this background, it is useful to summarise the prevailing concept of the consumer at EU level.

According to the image of the consumer developed in the earlier case law of the CJEU, the European benchmark consumer corresponds to the 'average consumer who is reasonably well-informed and reasonably observant and circumspect'.[17] This denotes a consumer who is capable of exercising his or her rights (for example, entering into a contract or exercising a right of termination), making use of available remedies (for example, repair, replacement or the right to complain), and making informed and appropriate decisions.[18] According to EU regulation, no further personal characteristics or personality-related attributes are required for the definition of the average consumer.[19]

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[9] Sik-Simon, Rita: Fogyasztókép és szabályozás [The Image of the Consumer and Regulation], MTA Law Working Papers, Budapest, 2016/2.

[10] TFEU, art 12.

[11] TFEU, art 169.

[12] Case C-220/98 Estée Lauder Cosmetics GmbH & Co; Case C-210/96 Gut Springenheide.

[13] Sik-Simon (n 9), 9.

[14] Szabó, Péter: A fogyasztó fogalma és a fogyasztói szerződés értékelésének egyes kérdései az Európai Unió Bíróságának néhány újabb döntése tükrében [The Concept of the Consumer and Certain Issues Concerning the Assessment of Consumer Contracts in Light of Some Recent Decisions of the Court of Justice of the European Union], Európai Jog, 2017/1, 1–6.

[15] Osztovits, András: A fogyasztó fogalma az új Ptk.-ban [The Concept of the Consumer in the New Civil Code], Új Ptk. – az új Polgári Törvénykönyv és Kommentár [New Civil Code – The New Civil Code and Commentary], 2013. május 2., I.

[16] Directive 2005/29/EC, recital 18.

[17] Case C-220/98 Estée Lauder Cosmetics GmbH & Co; Case C-210/96 Gut Springenheide; Vanessa Mak, 'Standards of Protection: In Search of the "Average Consumer" of EU Law in the Proposal for a Consumer Rights Directive' (2011) 19(1) European Review of Private Law 25–42.

[18] See also Mak (n 17), 25–42; J Ouyang, '"Embedded Consumer": Towards a Constitutional Reframing of the Legal Image of Consumers in EU Law' (2024) 47 Journal of Consumer Policy 395–423.

[19] Osztovits (n 15), pt I.

Directives occupy a prominent place within consumer-protection regulation at EU level. A particular feature of Directive (EU) 2019/770, examined in this study, is its targeted maximum-harmonisation character, intended to raise the previously fragmented and relatively incoherent regulatory framework to a uniform level. Although the DCD's definition of the consumer does not differ from that of the Hungarian Civil Code (hereinafter: HCC),[20] it is nevertheless worth examining, later in the study, the possibilities for divergence permitted by the Directive.

2.2 The Concept of the Consumer in Hungarian Law and Legal Practice

Following the overview of the EU conceptual framework, it is also worth considering who may be regarded as a consumer in ordinary language. A consumer, for example, is someone who just consumes. A consumer is also someone who uses a service or purchases a product. According to other views, a consumer is a person who enters into a transaction on the market with a commercial undertaking. It is apparent that even in the traditional sense there are numerous approaches; nevertheless, a degree of uniformity is necessary, since already complex cases should not be further complicated by uncertainty as to who is the party in need of protection in potential proceedings.[21]

As already seen in the EU model, the image of the 'reasonable' consumer predominates: a consumer capable of making rational decisions. Hungarian law and legal practice are likewise not entirely uniform as certain differences arise from the specific characteristics of the various fields of law. The following section therefore reviews the consumer definitions currently in force.

Act V of 2013 on the HCC defines a consumer as follows: 'consumer: *a natural person acting outside the scope of his or her profession, independent occupation or business activity'*.[22] It should be emphasised that, unlike the previous regulation,[23] the HCC restricts the concept of the consumer exclusively to natural persons. This raises the legitimate question of whether non-natural persons may qualify as consumers and, if so, to what extent.[24] Alternatively, is it possible and justified to afford non-natural persons any of the guarantees enjoyed by natural-person consumers? The increasing prevalence of digital content and digital services has further enhanced the relevance of this question and, together with other considerations, contributed to the entry into force, from August 2025, of an amendment to the HCC of particular significance from a consumer protection perspective.[25] Under the new rules, the SMEs may, in certain cases and to a certain extent, also benefit from legal protection otherwise afforded to consumers.

It has, however, long been established in the case law that, when determining consumer status, the fundamental question is whether the purpose of the contract falls outside the professional or economic activity of the party concerned.[26] The protection of the 'weaker party' is also apparent at this point, since the legislation seeks to provide guarantees to consumers only where

[20] See also Brigitta Zöchling-Jud, 'Digital Consumer Contract Law and New Technologies – Implementation of the Digital Content Directive in Austria' JIPITEC 12/2021.

[21] Fazekas (n 7), 75.

[22] Act V of 2013 on the Civil Code, s 8:1.

[23] Act IV of 1959 (former Civil Code), s 685(d).

[24] See also Hámori, Antal: A „fogyasztó"-fogalom „dilemmái" különös tekintettel az Fgytv. módosításában és az új Ptk.-javaslatban foglaltakra [The "Dilemmas" of the Concept of the "Consumer", with Particular Regard to the Amendment of the Consumer Protection Act and the Proposal for the New Civil Code], Magyar Jog, 2009/2, 88–97.

[25] Act LXVII of 2025, s 112.

[26] See in particular Osztovits (n 15); Judgment of 20 January 2005, Johann Gruber v Bay Wa AG, C-464/01, ECLI:EU:C:2005:32, paras 36–41 and 45–47; Judgment of 3 September 2015, Horațiu Ovidiu Costea v SC Volksbank România SA, C-110/14, ECLI:EU:C:2015:538, paras 20–30.

they are in fact in a more ‘vulnerable’ position;[27] the question nevertheless remains whether such protection in its entirety must in every case be reserved exclusively for natural persons.
The analysis may be continued with the provisions of the Hungarian Consumer Protection Act[28] (hereinafter: HCPA), which, similarly to the HCC, provides as follows: ‘*consumer means a natural person acting for purposes outside his or her independent occupation and economic activity who purchases, orders, receives, uses or makes use of goods, or is the addressee of commercial communications or offers relating to goods*.’[29] Consumer status is therefore determined primarily by acting for purposes outside one’s independent occupation and economic activity and by the purpose of consumption, that is, where the person acquires the service or product for final use and for private purposes. Particularly noteworthy, however, is the markedly changing regulatory approach of the HCPA in relation to SMEs: as of 1 January 2026, following a further amendment, for the purposes of the rules on conciliation boards, consumer status is no longer limited exclusively to natural persons meeting the above definition.[30] This point therefore warrants further analysis.

2.3 Extension of Consumer Legal Protection – Examination of the Position of SMEs

At EU level, the definition of micro, small and medium-sized enterprises is contained in Recommendation 2003/361/EC,[31] with which the legislation currently in force in Hungary is appropriately aligned.[32] Under that framework, enterprises qualify as SMEs where they employ fewer than 250 persons and have an annual net turnover not exceeding EUR 50 million or an annual balance-sheet total not exceeding EUR 43 million (the principal thresholds).[33]
By comparison with the general concept of the consumer in HCPA, which is based on natural person status, the HCPA lays down a special rule for the purposes of the provisions governing conciliation boards. The assessment of SMEs’ consumer status has undergone a distinctive legislative development. As early as 2012, the legislature made it possible for the SMEs to qualify as consumers for the purposes of the rules on conciliation boards.[34] That provision was, however, removed from the HCPA by Act XX of 2023 with effect from 1 January 2024. According to the explanatory memorandum to the amendment, the reason was that, in practice, it was not possible to distinguish clearly between an undertaking’s income-generating activity and activities pursued for purposes falling outside the scope of its economic activity.[35]
After a relatively short period, however, the legislature again provided for the inclusion of SMEs within the scope of conciliation-board proceedings. Pursuant to Act XCIV of 2025, from 1 January 2026 the SMEs may once again qualify as a consumer for the purposes of the rules governing conciliation boards, this time subject to more precisely defined conditions, namely where the SME uses a public service or, in the context of retail activity, in particular purchases or uses a product, or is the addressee of commercial communications or an offer relating to such

[27] See also Tom Bouwman, ‘Not All Consumers Are the Same: How Is the Differentiation Between Consumers Operationalised in EU Consumer Law?’ (2026) 5(1) European Law Open 102–124.
[28] Act CLV of 1997 on Consumer Protection (Fgytv.).
[29] Act CLV of 1997 on Consumer Protection, s 2, point 10(a).
[30] Act XCIV of 2025, ss 1(1) and 21(1); Act CLV of 1997 on Consumer Protection, s 2, point 10(b).
[31] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.
[32] Act XXXIV of 2004, s 3(1)–(4).
[33] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, Annex, Title I, art 2(1).
[34] Act CLXXXVI of 2012, s 2(2); see also Hajnal, Zsolt: A fogyasztói jogvita fogalmának értelmezési kérdései a békéltető testületi eljárásban [Interpretative Issues Concerning the Concept of a Consumer Dispute in Conciliation Board Proceedings], in: Szikora, Veronika – Árva, Zsuzsanna (szerk.): Jogtudomány a jogfejlődés szolgálatában [Legal Science in the Service of Legal Development], Debreceni Egyetem ÁJK, Debrecen, 2017, 61–73.
[35] Act XX of 2023, s 19(a) and s 23(2); detailed explanatory memorandum to s 19.

a product.[36] According to the explanatory memorandum to the amendment, the purpose of the provision is to ensure access to conciliation-board proceedings for SMEs acting 'in a quasi-consumer capacity, as end users'. The new provision therefore still does not alter the HCPA general concept of the consumer, which is based on natural-person status, but instead links consumer status to specified transactional situations. The regulation thus takes account not only of the organisational status of the legal subject, but also of the nature of the transaction and the actual position occupied by the SME within it. In my view, this may be understood as a possible extension of the concept of the consumer and as a strengthening of the functional approach.

It is therefore apparent that the legislature also recognises and acknowledges that, in certain circumstances, SMEs may find themselves in a vulnerable position similar to that of consumers when dealing with large undertakings possessing complex specialist expertise and technological knowledge.[37] In a dispute of relatively low value, the costs and time involved in ordinary court proceedings may impose a disproportionate burden on SMEs; alternative dispute resolution may therefore offer these types of undertakings a simpler, faster and more cost-effective avenue for enforcing their rights.[38]

The question of consumer-type legal protection for SMEs does not, however, arise solely in the context of conciliation-board proceedings. At the level of substantive law, Section 6:157(3) of the HCC makes it possible to apply to SMEs the provisions contained in the chapter on defective performance, provided that they act outside the scope of their profession, independent occupation or business activity.[39] This regulatory solution illustrates particularly clearly that the legal position of the same undertaking may differ depending on the purpose and function of the particular transaction.

The practical significance of the new approach is also readily illustrated in a digital environment. If, for example, a medium-sized enterprise selling clothing purchases digital content or uses a digital service for its own employees—for instance, cloud storage or antivirus software in connection with computers required for work—the medium-sized enterprise is the end user of the digital content and services in that legal relationship. It is entirely possible that, with regard to the technological characteristics of the digital content and services, the medium-sized enterprise in the example may be at an informational disadvantage similar to that of a consumer and, at the same time, in a vulnerable position.[40] The question remains, however, whether the medium-sized enterprise acquired those digital services and content outside the scope of its independent occupation or business activity. Under the amendment to the HCC, where it acts outside the scope of its business activity, the consumer protection provisions on defective performance apply to it. The HCC, however, does not exhaustively specify the circumstances in which an SME is to be regarded as acting outside the scope of its profession,

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[36] Act XCIV of 2025, s 1(1); detailed explanatory memorandum to s 1.

[37] Detailed explanatory memorandum to s 1 of Act XCIV of 2025; see also Martijn W Hesselink, 'Towards a Sharp Distinction between B2B and B2C? On Consumer, Commercial and General Contract Law after the Consumer Rights Directive' (2010) 18(1) European Review of Private Law; Marco B M Loos and Ilse Samoy, 'The Position of Small and Medium-Sized Enterprises in European Contract Law: An Introduction', in Marco B M Loos and Ilse Samoy (eds), The Position of Small and Medium-Sized Enterprises in European Contract Law (Intersentia, Cambridge 2014).

[38] Budapesti Békéltető Testület: 2026. január 1-jétől a mikro-, kis- és középvállalkozások is kezdeményezhetnek békéltető testületi eljárást [From 1 January 2026, Micro, Small and Medium-Sized Enterprises May Also Initiate Conciliation Board Proceedings] (available at: https://bekeltet.bkik.hu/hirek/2026-januar-1-jetol-mikro-kis-es-kozepvallalkozasok-kezdemenyezhetnek-bekelteto-testuleti)

[39] See also Zalavári, György – Ecovis Zalavári Legal Hungary: A vállalkozás is minősülhet fogyasztónak? [Can a Business Also Qualify as a Consumer?], Jogászvilág, 2025. augusztus 14. (available at: https://jogaszvilag.hu/cegvilag/a-vallalkozas-is-minosulhet-fogyasztonak/)

[40] See also Natali Helberger, Marijn Sax, Joanna Strycharz and Hans-W Micklitz, 'Choice Architectures in the Digital Economy: Towards a New Understanding of Digital Vulnerability' (2022) 45(2) Journal of Consumer Policy 175–200.

independent occupation or business activity; practical application of the law will therefore be particularly important in this regard.[41] Continuing with the example, where the medium-sized enterprise selling clothing purchases computers exclusively for its employees, the relevant rules of the government decree on the mandatory guarantee, in force from 1 March 2026, should also be taken into account. For the purposes of that government decree, the SMEs qualify as a consumer and is subject to the rules on the mandatory guarantee if it acts outside the scope of its profession, independent occupation or business activity and purchases the consumer good in the course of retail activity, irrespective of whether the consumer good is accounted for within the scope of its economic activity.[42]

The fulfilment of the relevant statutory conditions may therefore, even in the case of the SMEs, provide a basis for the application of Section 6:157(3) of the HCC —that is, the consume protection rules on defective performance—for access to conciliation-board proceedings under the HCPA, and for the application of the rules on the mandatory guarantee, albeit under different sets of criteria. The examples demonstrate that there is a need for a higher level of legal protection for SMEs; however, the extension of consumer-type legal protection is currently not fully uniform and instead appears in a fragmented manner, linked to particular legal institutions and transactional situations.

A different assessment is required where the SME acquire a digital product or service for resale or for commercial exploitation for the benefit of its own customers. An example is an undertaking trading in IT goods that purchases antivirus software licences or other digital content not for its own employees but for resale. In such a case, the undertaking no longer appears as an end user or as a potential consumer, but as a participant in the distribution chain.

Following the review of recent developments in national regulation, it is appropriate briefly to refer to a specific area of EU regulation in connection with the possibilities for extending consumer-protection rules to SMEs. The DCD—and its so-called twin instrument, Directive (EU) 2019/771[43]—identifies the consumer as a natural person acting outside his or her professional or economic activity.[44] Importantly, both directives expressly allow Member States to extend the protection provided by the directives to natural or legal persons—including start-ups and SMEs—that do not qualify as consumers within the meaning of the directives.[45]

One of the principal legal-policy *rationales* of consumer legal protection is therefore to compensate for the consumer's more vulnerable contractual position, in particular information asymmetry.[46] Accordingly, there is a need to ensure that persons with only a limited ability to keep pace with the rapidly developing digital world are not placed at a disadvantage when

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[41] See also Kölcsei, Viktória – Tamási, Artúr: Fogyasztóvédelem új szinten: mit hoz a KKV-k számára a jogszabály-módosítás? [Consumer Protection at a New Level: What Does the Legislative Amendment Bring for SMEs?], Jogászvilág, 2026. május 14. (available at: Fogyasztóvédelem új szinten: mit hoz a KKV-k számára a jogszabály-módosítás? | Jogászvilág)

[42] Government Decree No 151/2003 (IX. 22.) on the mandatory guarantee for certain durable consumer goods, s 1(1); '(1a) * *A micro, small or medium-sized enterprise acts outside the scope of its profession, independent occupation or business activity if it purchases the consumer good in the course of retail activity within the meaning of the Act on Trade, irrespective of whether the consumer good is accounted for within the scope of its economic activity*.'

[43] Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC; transposed into Hungarian law by 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 content and digital services.

[44] Directive (EU) 2019/770, art 2(6); Directive (EU) 2019/771, art 2(2).

[45] Directive (EU) 2019/770, recital 16; Directive (EU) 2019/771, recital 21.

[46] Martijn W Hesselink, Justifying Contract in Europe: Political Philosophies of European Contract Law (Oxford University Press 2021), ch 6 'Weaker Party Protection', 272–335; see also Hans-W Micklitz (ed), Many Concepts of Social Justice in European Private Law (Edward Elgar Publishing 2011).

purchasing digital services, content or goods.[47] The position of SMEs has therefore not been entirely overlooked in the regulatory concept adopted by the EU legislature: although these entities do not fall within the concept of the consumer under the directives, the recitals deliberately leave open the possibility of extending consumer legal protection at national level. In my view, the foregoing continues to justify examination of the circumstances in which, while retaining the traditional concept of the consumer unchanged, it may be necessary to extend further to SMEs the protection afforded to consumers. The development of the legislation currently in force also shows that this question need not necessarily be addressed through a general extension of the concept of the consumer, but may instead be answered by applying particular consumer protection rules to SMEs occupying specified contractual positions.

III. Concluding Remarks

It is evident that digitalisation permeates an ever-increasing number of areas of everyday life and is continuously and fundamentally transforming the social, economic and legal environment traditionally developed for analogue relationships. Innovative technological solutions are becoming increasingly visible across individual socio-economic sectors, and hardly any sphere remains unaffected by digitalisation; legislation and the application of law, among others, are therefore also undergoing significant transformation.[48] It is beyond dispute that the law must respond to economic and social change, yet the speed and technological complexity of digital transformation make this task particularly demanding.

The foregoing demonstrates that, from a consumer protection perspective, digital transformation not only makes it necessary to regulate new types of contracts, digital content and digital services, but also casts the determination of the class of persons entitled to protection in a new light. The information and economic asymmetry traditionally existing between consumers and businesses may, in the digital environment, be compounded by an imbalance arising from technological knowledge. This makes it necessary to examine whether the classical concept of the consumer, tied to natural person status, adequately reflects the parties' actual positions in every case.

Likewise, recent developments in Hungarian legislation suggest that what may be required is not necessarily a radical reconsideration of the concept of the consumer, but rather a functional extension of consumer legal protection. As described in this study, the legislature in certain cases also provides SMEs with consumer-type legal protection, while natural person status remains an indispensable cornerstone of the general concept of the consumer. Particularly illustrative is the HCPA regime in force from 1 January 2026, which opens conciliation-board dispute resolution to certain SMEs acting, in the words of the explanatory memorandum, 'in a quasi-consumer capacity, as end users'.[49] A further regulatory development is the amendment to the HCC that entered into force on 22 August 2025 and extends the application of certain

[47] Yasar Alhiniti and Walaa Ahmed Muhammad Ali Al-Masry, 'Consumer Protection and E-Commerce Stores in the Digital Age: A Legal Perspective', in A M A Musleh Al-Sartawi, A I Nour and I Abdeljawad (eds), Business Resilience and Business Innovation for Sustainability, Studies in Systems, Decision and Control, vol 587 (Springer, Cham 2025), 2885–2897.

[48] See also Barta, Judit: Az EU által meghirdetett digitális forradalom hatása a kereskedelmi jog egyes területein: szerződések, fogyasztóvédelem, gazdasági verseny, gazdasági társaságok [The Impact of the Digital Revolution Proclaimed by the EU on Certain Areas of Commercial Law: Contracts, Consumer Protection, Economic Competition and Companies], Miskolci Jogi Szemle: A Miskolci Egyetem Állam- és Jogtudományi Karnak Folyóirata, 2020.

[49] Explanatory memorandum to Act XCIV of 2025, detailed explanatory memorandum to s 1.

rules on defective performance to SMEs acting outside the scope of their profession, independent occupation or business activity.[50]
Overall, it may be concluded that the question of the personal scope of consumer legal protection cannot be regarded as settled even under the law currently in force. The most recent developments in Hungarian legislation point towards a situation in which guarantees afforded to consumers may, in certain legally defined circumstances, also become applicable to legal entities falling outside the classical concept of the consumer, without this necessarily resulting in a fundamental alteration of that concept.

[50] See also Tomori, Erika – Váradi, Noémi: Ptk. módosítás – Hibás teljesítés körében a fogyasztóvédelmi szabályok kiterjesztése [Amendment of the Civil Code – Extension of Consumer Protection Rules in the Context of Defective Performance], Gárdos Mosonyi Tomori Ügyvédi Iroda, 2025. szeptember 12.

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Felelős szerkesztő: Kecskés Gábor

Szerkesztőség: Hoffmann Tamás, Lux Ágnes, Mezei Kitti

Honlap: http://jog.tk.mta.hu/mtalwp

E-mail: mta.law-wp@tk.mta.hu

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