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Legal Dogmatic Questions about the Impact of the European Union's Digital Legislation on Hungarian Contract Law

Professor **Tekla PAPP**¹

Abstract

The complexity and flexibility of contract law, and its ability to meet various social, economic and technical-technological needs, are indicated by a number of theories (approaches) that offer a new approach to the processing of contracts. Among the predominant theories one might include the following: overview of contracts from a constitutional and human rights approach²; deriving from this the contracts related to private and family life (intimate contracts)³; by connecting the concepts of contract law and property rights, exploring the specific characteristics of existing contracts⁴; filling the term "digital contract type" with content⁵; classification of different kinds of interconnection of contracts (complex contracts).⁶ The author dedicates the study to the topic of whether Hungarian contract law can meet the challenges created by digitalization, which have not yet been identified in all its details, and what are the critical points that require consideration and action as soon as possible. After the summary of the digital legislation of the European Union the author identifies the effects of digitalization in relation to the Hungarian contract law and the special contracts resulting from digitalization. Finally, the author makes de lege lata and de lege ferenda conclusions in light of this topic.

Keywords: EU digital legislation, service contract, complex contract, Hungarian contract law.

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² C. Von Bar: *Contract Law and Human Dignity*. Second Ole Lando Memorial Lecture, 9/2020, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/News_page/2020/Second_Ole_Lando_Memorial_Lecture_September_2020_Christian_von_Bar.pdf (05 June 2020); H. Beale, B. Fauvarque-Casson, J. Rutgers, S. Vogenauer: *Cases, Materials and Text on Contract Law*. Hart Publishing, Oxford, London, New York, New Delhi, Sydney, 2019. 14-17; T. Gutman: Some Preliminary Remarks on a Liberal Theory of Contract. *Law and Contemporary Problems*, 2/2013. 39-55; Regulation 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (52).

³ H. Collins: The Vanishing Freedom to Choose a Contractual Partner. *Law and Contemporary Problems*, 2/2013. 71-88; H. Dagan: *Intimate Contracts and Choice Theory*. Lecture on the conference of the Society of European Contract Law in Madrid 18-19. June 2021 (Family and Person in Contracting in Europe): „Intimate contracts include not only agreements between intimate partners – either spouses or cohabitants – but also voluntary undertakings which involve only the legal rights or obligations that apply to intimate partners absent such an opt out; premarital agreement, marital agreement, separation agreement and cohabitation agreement.” 1., 9.

⁴ J. F. Hoffmann: Contract Law Theory and the Concept of 'Ownership'. *European Review of Contract Law*, 2/2021. 142-156: especially in relation to real estate rents, leases, license agreements and trusts.

⁵ M. Wendland: Sonderprivatrecht für Digitale Güter, Die neue Europäische Digitale Inhalte Richtlinie als Baustein eines Digitalen Vertragsrechts für Europa. *Zeitschrift für Vergleichende Rechtswissenschaft*, 2/2019. 191-230; L. Köhler: Contract-Management Duties as a New Regulatory Device. *Law and Contemporary Problems*, 2/2013. 89-103; Beale at al., *op. cit.* 20; G. Resta: *Personal identity and European contract law*. Lecture on the conference of the Society of European Contract Law in Madrid 18-19. June 2021 (Family and Person in Contracting in Europe).

⁶ M. Amstutz: Contract Collisions: an Evolutionary Perspective on Contractual Network. *Law and Contemporary Problems*, 2/2013. 169-189; Beale at al. *op.cit.* 24.

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1. A brief overview of the relevant digital legislation of the European Union

The rapid rise of the digital economy based on data and the unbroken development of e-commerce also spurred the European Union to legislative activity. In 2015, the European Commission issued a communication entitled "European Digital Single Market Strategy", in which the basic objectives were fixed: the Digital Single Market is a market in which the free movement of goods, people, services and capital is ensured, and where individuals and businesses can carry out their internet activities without hindrance, in full compliance with consumer and data protection rules and under fair competition conditions. Through the implementation of the Digital Single Market, Europe can maintain its leading position in the digital economy, promoting the global growth of European businesses.⁷ The efforts of the digital single market strategy, relevant from the point of view of contract law, were to boost electronic commerce between member states, prevent unjustified territory-based internet content restrictions, improve access to digital content, regulate the role of internet platforms and intermediaries, and strengthen the security of digital services. On the basis of the framework and conditions declared in the Commission's communication, extensive EU codification began; from the point of view of our topic, the most important of these are:

- Regulation (EU) 2017/1128⁸ on cross-border portability of online content services in the internal market;
- Directive (EU) 2019/770⁹ 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services;
- Directive (EU) 2019/771¹⁰ 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;
- Directive (EU) 2019/2161¹¹ amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of union consumer protection rules;
- Regulation (EU) 2019/1150¹² on promoting fairness and transparency for business users of online intermediation services;
- Regulation (EU) 2022/1925¹³ on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act);

⁷ COM/2015/0192 <https://eur-lex.europa.eu/legal-content/HU/ALL/?uri=CELEX:52015DC0192> (19. 05. 2023).

⁸ 14 June 2017.

⁹ 20 May 2019.

¹⁰ 20 May 2019.

¹¹ 27 November 2019.

¹² 20 June 2019.

¹³ 14 September 2022.

- Regulation (EU) 2022/2065¹⁴ 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act);
- Regulation (EU) 2023/988¹⁵ on general product safety, amending Regulation (EU) 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and the Council, and repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC.

In addition, it is important to emphasize that in view of the new technologies, regulations were passed on European data governance¹⁶ and fair data access and data use,¹⁷ a strategy was created in relation to crypto-assets (Digital Finance Package, DFP),¹⁸ recommendations¹⁹ were prepared in relation to artificial intelligence (Artificial Intelligence, AI)²⁰ and a statement published regarding the issue-ability of the digital euro,²¹ and the European Law Institute created specialized materials reflecting on these.²²

2. The EU digital legislation and the general contractual rules of the Hungarian Civil Code

In the following, I will raise questions and identify problems in a short and structured way - in line with the contract life cycle. Although it seems that the digital legislation of the EU does not affect the dynamics of contracts,²³ the provisions of the

¹⁴ 19 October 2022.

¹⁵ 10 May 2023.

¹⁶ 2020/0340 (COD) <https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=CELEX:52020PC0767> (19.05.2023).

¹⁷ 2022/0047 (COD) <https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=CELEX:52022PC0068> (19.05.2023).

¹⁸ https://finance.ec.europa.eu/publications/digital-finance-package_en (19.05.2023).

¹⁹ https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/excellence-trust-artificial-intelligence_en#documents_ <https://digital-strategy.ec.europa.eu/en/policies/european-approach-artificial-intelligence> (19.05.2023).

²⁰ Brussels, 25.4.2018 COM(2018) 237 final COMMUNICATION FROM THE COMMISSION Artificial Intelligence for Europe {SWD(2018) 137 final} [https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=CELEX:52018DC0237R\(01\)](https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=CELEX:52018DC0237R(01)) (20. 05. 2023).

²¹ Common communication of the European Committee and European Central Bank https://edpb.europa.eu/system/files/2023-01/edpb_statement_20221010_digital_euro_hu.pdf (19.05.2023).

²² For example: ELI Principles on the Use of Digital Assets as Security 2022, <https://www.europeanlawinstitute.eu/projects-publications/completed-projects/use-of-digital-assets-as-security/> (19.05.2023); ELI Principles on Blockchain Technology, Smart Contracts and Consumer Protection 2022. https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Principles_on_Blockchain_Technology_Smart_Contracts_and_Consumer_Protection.pdf (19.05.2023).

²³ Directive (EU) 2019/770 Article 3 10. This Directive shall not affect the freedom of Member States to regulate aspects of general contract law, such as rules on the formation, validity, nullity or effects of contracts, including the consequences of the termination of a contract in so far as they are not regulated in this Directive, or the right to damages. Regulation (EU) 2019/1150 4. This Regulation shall be without prejudice to national rules which, in conformity with Union law, prohibit or sanction unilateral conduct or unfair commercial practices, to the extent that the relevant aspects are not covered by this Regulation. This Regulation shall not affect national civil law, in particular contract law, such as the rules on the validity,

Hungarian Civil Code on the conclusion of a contract, the validity and effectiveness of a contract, contract amendment, breach of contract and termination of a contract make it necessary to think about it both in general²⁴ and from a consumer protection point of view.²⁵

For now, it is uncertain how well the Hungarian Civil Code can accommodate its terminology and vocabulary to the new definitions induced by the digital transformation; without any need for completeness, one might immediately consider the following relevant questions:

- can the content of the digital service²⁶ be clearly included among the direct objects²⁷ of the obligation (and thus the contract)?

- can the Hungarian Civil Code accommodate the definition of thing (as an indirect object of the contract)²⁸ to the goods adapted to the digital environment and its characteristics?²⁹

- is the online platform a special service, are the Internet of Things (IoT) and artificial intelligence (MI/AI) a thing, or is the latter becoming more legal entity?

- who or what are the contracting parties: natural persons or artificial intelligence; if they are natural persons, are they capable of acting?³⁰

formation, effects or termination of a contract, in so far as the national civil law rules are in conformity with Union law, and to the extent that the relevant aspects are not covered by this Regulation. Directive (EU) 2019/2161 (57). This Directive should not affect aspects of national contract law that are not regulated by it. Therefore, this Directive should be without prejudice to national contract law regulating for instance the conclusion or the validity of a contract in cases such as lack of consent or unauthorised commercial activity.

²⁴ Gyekiczki Tamás: Személyes adataink sorsa – Gondolatok a digitális tartalmakra és szolgáltatásokra, valamint az áruvásárlásra vonatkozó uniós irányelvek németországi végrehajtásáról. (The fate of our personal data - Thoughts on the implementation of EU directives on digital content and services and the purchase of goods in Germany) *Jogelméleti Szemle*, 4/2022. 41, 43.

²⁵ Miskolczi Bodnár Péter: Fogyasztóvédelmi szabályok a Ptk-ban. (Consumer protection rules in the Hungarian Civil Code) *Magyar Jog*, 11/2018. 593-604; Vékás Lajos: Az uniós fogyasztói szerződési jog megújítása és az új irányelvek átültetése. (The renewal of EU consumer contract law and the transposition of the new directives) *Magyar Jog*, 2/2021. 65-75.

²⁶ The Hungarian implementation: 373/2021. (VI. 30.) Government decree on the detailed rules of the contracts between the consumer and the business for the sale and purchase of goods, as well as the provision of digital content and the provision of digital services § 4. 4; Directive (EU) 2019/770 (21), (24), (26)-(28), (30)-(32), (59); Directive (EU) 2019/771 (17), (23); Regulation (EU) 2022/1925 (14); Tóth András, Szoboszlai Izabella, Szalatkay Judit: Fogyasztóvédelmi jog a digitális gazdaságban. (Consumer protection law in the digital economy) *Versenytikör*, 2/2022. 82.

²⁷ Act V of 2013 on the Hungarian Civil Code (in the following: HCC) Section 6:1 (2) The obligation may involve the provision of a thing, an activity or abstention from an activity, or another conduct.; are 'access', 'sharing' 'other interactions' 'other conducts'?

²⁸ HCC Section 5:14 (1) Physical objects that can be taken into possession can be objects of ownership.

²⁹ The Hungarian implementation: 373/2021 (VI. 30.) Government decree on the detailed rules of the contracts between the consumer and the business for the sale and purchase of goods, as well as the provision of digital content and the provision of digital services § 4. 1, 2 and 7: functionality, 9: integration, 10: interoperability, 12: compatibility, 14: durability; Directive (EU) 2019/770 (19), (24), (29), (32)-(33); Regulation (EU) 2022/1925 (36), (72); Vékás, *op. cit.*, 67-69; R. Schulze, F. Zoll: *European Contract Law*. Baden-Baden, Beck-Hart-Nomos, 2021. 34.

³⁰ She pointed to the unaddressed nature of this issue and its dangers: Barta Judit A kiskorú fogyasztók védelme a digitális szolgáltatások területén. (Protection of minor consumers in the field of digital services)

- in terms of formality, how are contracts realized using online platforms considered: written? (how should the formality of digital declarations be handled)?³¹

- is the consumer's personal data³² a product containing digital elements,³³ and can its service be classified as consideration, and does it mean the monetization of privacy rights?³⁴

- how does personalization of prices based on automated decision-making affect the contract synallagma (balance of service and consideration)?³⁵

- do the crisis measures of the service providers operating the giant online platform represent an extension of the *clausula rebus sic stantibus*?³⁶

How does the freedom of contract³⁷ regarding the establishment of the contract, the choice of the contracting party and the shaping of the content of the contract develop in light of the fact that:

- the gatekeepers³⁸ contract-shaping behavior is regulated depending on the fact that, under specific circumstances, they do not restrict their business users by imposing contract conditions, ensure multi-homing and do not hinder their end users from

Fogyasztóvédelem a harmadik évezredben: komplex kihívások és innovatív jogi megoldások (Consumer protection in the third millennium: complex challenges and innovative legal solutions) (conference lecture 02 June 2023 University of Public Service Budapest).

³¹ In this regard, see: HCC Section 6:7 [Juridical act subject to written form] (1) If a juridical act is required to be made in writing then it shall be valid if at least its material content is put down in writing. (2) Unless otherwise provided in this Act, a juridical act shall qualify as written if it has been signed by the party making it. (3) A juridical act shall also be considered written if it has been presented in a form that allows for the content being properly recalled in and for the person who made the statement and the time when the statement was made being identified.

³² F. C. Morbel: Can EU competition law be used for data protection? *Versenytikör*, 2/2022. 35-47; Rudics Regina Emma: A versenyjog mint az adatvédelem eszköze. (Competition law as a tool for data protection) *Versenytikör*, 2/2022. 59-66; Schulze, Zoll, *op. cit.*, 36.

³³ 373/2021. (VI. 30.) Government decree on the detailed rules of the contracts between the consumer and the business for the sale and purchase of goods, as well as the provision of digital content and the provision of digital services §4 1.

³⁴ See: Szilágyi Ferenc: Digitális szolgáltatás személyes adatok ellenében a Facebook közösségi háló szolgáltatás példáján (Digital service in exchange for personal data on the example of the Facebook social network service) *Polgári Jog*, 1-2/2023. 3-4; Tóth András: Tisztességtelen kereskedelmi gyakorlat tilalma a digitális gazdaságban (Prohibition of unfair commercial practices in the digital economy) *Infokommunikáció és Jog*, 2/2017. 100-101; Gyekiczki, *op.cit.* 36-38; Vékás, *op. cit.*, 69.; Tóth, Szoboszlai, Szalatkay, *op. cit.*, 83.

³⁵ HCC Section 2:43 [*Specific personality rights*] e) violation of the right to keep personal secrets and the right to the protection of personal data; Fazekas Judit: A feltörekvő technológiák, a mesterséges intelligencia és a fogyasztóvédelmi jog (Emerging technologies, artificial intelligence and consumer protection law Emerging technologies, artificial intelligence and consumer protection law) In: Miskolczi-Bodnár Péter, Homicskó Árpád Olivér, Szuchy Róbert (szerk.): *De Iuris Peritorum Meritis 16, 65 Studia in Honorem Gyöngyi Harsányi*. Budapest, Kre Ájtk, 2021. 95.

³⁶ Regulation (EU) 2019/2161 Preamble (45).

³⁷ HCC Section 6:59 [Freedom of contract] (1) The parties shall be free to enter into a contract, and shall be free to choose the other contracting party. (2) The parties shall be free to determine the content of the contract. With their concordant intent, they may depart from the rules of contracts concerning the rights and obligations of the parties, if such derogations are not prohibited by this Act.

³⁸ Cserép Andor Valér: Regulating Digital Giants – The EU's Digital Markets Act. Part One. *MTA Law Working Papers*, 13/2022. 6-7.

accessing digital content outside of their basic platform services;³⁹

- the dark patterns appearing on the online interfaces of online platforms influence the decisions related to legal transactions;⁴⁰

- does the commitment to provide information prior to entering into a contract⁴¹ and its content (considered to be general terms and conditions of the contract) leave sufficient scope for the will of the contracting parties;⁴²

- in relation to the general contract terms,⁴³ can we enforce the burden of proof, the separate information commitment and its expressly acceptance of the Hungarian Civil Code.⁴⁴

Additional questions can also be asked regarding the invalidity of the contract:

- the illegal content⁴⁵ - which refers to information - should be referred to the category of prohibited contract of the Hungarian Civil Code?⁴⁶

- does the use of the dark pattern⁴⁷ realize the deception⁴⁸ of the Hungarian Civil Code as a defect of the contractual will?

- do the gatekeepers' asymmetrical unilateral conditions, which create an imbalance between the rights and obligations of business users, qualify as unfair general

³⁹ Regulation (EU) 2022/1925 Preamble (39) - (41), (49)-(50), (52)-(53).

⁴⁰ Regulation (EU) 2022/2065 Preamble (67).

⁴¹ HCC Section 6:62 [Obligation of cooperation and to provide information] (1) The parties shall be required to cooperate during contract negotiations, upon the conclusion of the contract and during its existence and dissolution, and shall inform each other with respect to any important circumstances concerning the contract; Fazekas, *op.cit.*, 88-89; Schulze, Zoll, *op. cit.*, 34.

⁴² 45/2014. (II. 26.) Government decree on the detailed rules of contracts between the consumer and the business §§ 9-10., Annex 3.; Directive (EU) 2019/770 Preamble (76); Directive (EU) 2019/771 Preamble (62); Directive (EU) 2019/2161 Preamble (39); Regulation (EU) 2022/2065 Preamble (42)-(43), (54), (68), (74).

⁴³ Regulation (EU) 2019/1150 Preamble (14), Article 3, Articles 5-10.; Regulation (EU) 2022/1925 Preamble (62); Regulation (EU) 2022/2065 Preamble (45), (48), (49), (64), (102), Article 14; 45/2014. (II. 26.) Government decree on the detailed rules of contracts between the consumer and the business § 8/A, § 11 (6).

⁴⁴ HCC Section 6:77 [Standard contract terms] (2) The party applying the standard contract terms shall be liable for proving that the contract terms were individually negotiated by the parties. Section 6:78 [Standard contract terms becoming the content of the contract] (2) The other party shall be informed separately of any standard contract term that differs significantly from the laws or from standard contractual practice, unless it complies with the practice established between the parties. The other party shall also be informed separately of any standard contract term that differs from the term applied previously between the parties. (3) The term referred to in paragraph (2) shall become part of the contract if other party, after being informed separately of it, expressly accepted it.

⁴⁵ Regulation (EU) 2022/2065 Preamble (12), Article 3 h).

⁴⁶ HCC Section 6:95 [Prohibited contracts] Contracts violating the law or concluded by circumventing the law shall be null and void unless the law attaches other legal consequences to it. Despite these other legal consequences, the contract shall also be null and void if it is specifically provided by the law, or if purpose of the law is to prohibit the legal effect intended to be reached by the contract.

⁴⁷ Tóth, Szoboszlai, Szalatkay, *op. cit.*, 78.

⁴⁸ HCC Section 6:91 [Misrepresentation and unlawful threats] (1) If someone has been deliberately misled or kept mistaken by the other party, he may contest the contractual juridical act he made due to misrepresentation.

contractual conditions?⁴⁹

From the point of view of the effect of the contract:

- what are the consequences of the necessary suspension of the obligations of the gatekeepers (or other measures) by the European Commission on the content and the effect of digital contracts?⁵⁰

- can the modification of the digital content and the digital service, the removal of illegal content, the adjustment of the algorithmic systems of the online platform and online search program be smoothly inserted into the unilateral contract amendment authorised by the law?⁵¹

In connection with the breach of contract, do the provisions on faultless performance of the Hungarian Civil Code,⁵² which record the expected quality of the contractual service, include all of the EU's objective and subjective criteria for the contractual performance (*Vertragsmäßigkeit, conformity*)⁵³ of the contract?⁵⁴ How will the adoption of the EU's draft directive⁵⁵ aimed at promoting the repair of goods affect accessory warranty rights: will repair take priority over replacement?⁵⁶ Into which of the Hungarian Civil Code's subtypes of flexible contract termination cases resulting from the sufficiently narrow definition (with bilateral juridical declaration: dissolution

⁴⁹ HCC Section 6:102 [Unfair standard contract term] (1) A standard contract term shall be unfair if it unilaterally and unreasonably, and by violating the principle of good faith and fair dealing, sets forth the rights and obligations arising from a contract to the detriment of the party contracting with the person applying that contract term.

⁵⁰ Regulation (EU) 2022/1925 Preamble (66), (75).

⁵¹ Section 6:191 [Amendment of the contract by the parties] (4) The content of the contract may be amended unilaterally by one of the parties if this is provided for in the contract, or if the law authorises the party to do so.

⁵² HCC Section 6:123 [Quality of the service] (1) At the time of performance, the service shall be fit for its designated use, hence *a*) it shall be fit for the purpose specified by the obligee, if the obligee informed the obligor of it prior to the conclusion of the contract; *b*) it shall be fit for purposes for which other services having the same purpose are normally used; *c*) it shall have the quality, or shall provide the performance that is usual for services serving the same purpose and that can be expected by the obligee, also taking into account the public statements made by the obligor, or, if the subject of the service is produced by persons other than the obligor, by the producer of the service and their representatives made with respect to the specific characteristics of the service; *d*) it shall have the characteristics that are typical for the service as set out in the description handed over by the obligor or presented by him as a sample to the obligee; and *e*) it shall comply with the quality requirements set out by law. (2) The service does not need to comply with the public statement referred to in paragraph (2) *c*), if the obligor proves that *a*) he was not aware of that public statement, nor was he required to be aware of it; *b*) this public statement was appropriately corrected by the time of concluding the contract; or *c*) his public statement could not have influenced the obligee's decision to conclude the contract.

⁵³ Schulze, Zoll i.m. 32-33.

⁵⁴ Directive (EU) 2019/770 Preamble (41)-(53), (75), Articles 7-9; Directive (EU) 2019/771 Preamble (26)-(30), (34)-(37), (39), Articles 5-8; 373/2021. (VI. 30.) Government decree on the detailed rules of the contracts between the consumer and the business for the sale and purchase of goods, as well as the provision of digital content and the provision of digital services §§ 5-8, §§ 17-18.

⁵⁵ COM(2023) 155 final 2023/0083(COD).

⁵⁶ For related comments, see: Feedback of the European Law Institute on the European Commission's Proposal for a Directive on Common Rules Promoting the Repair of Goods (COM(2023) 155 final) https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Feedback_Right_to_Repair.pdf (03 June 2023).

contract, rescission contract; with unilateral juridical declaration: termination, cancellation)⁵⁷ can be the contract termination cases of the digital twin guidelines⁵⁸ classified (which also were not clarified by the transposing government decree)⁵⁹? Does opting out of gatekeepers' core platform services actually constitute termination/cancellation, with all its legal consequences?⁶⁰

The questions above, which skim the surface of the problems, clearly illustrate that harmonizing the Hungarian Civil Code with the digital world hides many challenges.

3. The place of new digital contracts in the system of Hungarian contract law

1. The contract law codified in the Hungarian Civil Code does not regulate service contracts, but among the contracts aimed at producing a work there are contracts specifically for the providing of services in the Civil Code.⁶¹ The expression for the „creating a result (hereinafter: work)" that appears in the concept of contract to produce a work⁶² is not the same as the providing of services,⁶³ and thus is not suitable for the inclusion of service contracts.⁶⁴ The activity obligation in the contract to produce a work

⁵⁷ HCC Section 6:212 [Dissolution by agreement of the parties] (1) By their mutual agreement, the parties may dissolve the contract for the future, or rescind it with retroactive effect as from the date of its conclusion. Section 6:213 [Dissolution by unilateral juridical act] (1) The person entitled to unilaterally terminate or cancel the contract by virtue of law or on the basis of the contract may dissolve the contract by a juridical act addressed to the other party.

⁵⁸ Directive (EU) 2019/770 Articles 16-18; Directive (EU) 2019/771 Article 16; see for this problem: C-641/19.

⁵⁹ 373/2021. (VI. 30.) Government decree on the detailed rules of the contracts between the consumer and the business for the sale and purchase of goods, as well as the provision of digital content and the provision of digital services §§ 24-26.

⁶⁰ Regulation (EU) 2022/1925 Preamble (63), Article 6 (13).

⁶¹ Section 6:254 [*Travel contract*] (1) Under a travel contract, the contractor shall organise the journey and the stay at certain stops on the route, as well as provide associated services, and the client shall accept the services and pay the fee. Section 6:256 [*Public service contract*] (1) Under a public service contract, the service provider shall provide services of general economic interest, and the user shall pay the fee.

⁶² Section 6:238 [Contract to produce a work] Under a contract to produce a work, the contractor shall create a result (hereinafter “work”) by performing certain activities, and the client shall accept it and pay the contractor’s fee.

⁶³ However, we cannot identify with such a broad interpretation as that contained in the Hungarian Consumer Protection Act (Act CLv of 1997 on consumer protection § 2 k.): *service contract*: any contract other than the sales contract, according to which the business provides a service or undertakes to provide a service to the consumer, and the consumer pays or undertakes to pay the fee for the service); or a juridical decision: EBD 2016. P.5. in which the permanent lease identified as service.

⁶⁴ For example, it is not really applicable to service providing: HCC Section 6:241 [Place of performing the activities] (1) If the activity has to be performed at a work site designated by the client, the client shall be required to make it available to the contractor in a condition suitable for performing the activities. (2) The contractor may refuse to start carrying out the activities while the work site is unsuitable for performing the activities. If the client fails to provide the work site despite notice from the contractor, the contractor may cancel the contract and claim damages. (3) If the parties agree that the site designated for the performance of the activities will be made suitable for performance by the contractor then the costs thereof shall be borne by the client. Section 6:242 [Client’s right of inspection] (1) The client may at any time

always has a positive meaning: it covers the expression of behavior, however, the providing of services can have a positive content (organization of events, beauty treatment, sports training, etc.) or a negative perception: ensuring access,⁶⁵ availability,⁶⁶ undertaking of commitments due in the future.⁶⁷

Among the draft model laws for the creation of European contract law, the service contract is also included in the DCFR⁶⁸ and CESL,⁶⁹ and this type of contract is regulated by the BGB,⁷⁰ ABGB,⁷¹ Romanian⁷² and Polish Civil Codes.⁷³ also (without specifying the content of the service providing); it is also recognized by English law

inspect the activities and the materials used. (2) The contractor shall not be exempted from the consequences of breach of contract on the grounds that the client did not inspect the contractor's activities, or had inspected them inappropriately. Section 6:243 [Coordination of the performance of activities] If more than one contractor is working simultaneously or one after the other at the same work site, the client shall be required to create the conditions enabling the economical and coordinated performance of the activities. Section 6:244 [Additional work. Supplementary work] (1) The contractor shall also perform tasks that are determined in the contract to produce a work but were not taken into account when the contractor's fee was set, and also those without which the creation of the work suitable for its designated purpose cannot occur (additional work). (2) The contractor shall also perform tasks that were ordered subsequently, in particular those that became necessary due to the amendment of the design, if their performance does not make the work disproportionately more burdensome (supplementary work). Section 6:246 [Statutory lien] To secure the contractor's fee and the costs, the contractor shall be entitled to a lien on the assets of the client's in his possession as a consequence of the contract to produce a work. Section 6:247 [Handover and acceptance of services] (1) The contractor shall hand over the work in a handover and acceptance process, in the course of which the parties shall perform those tests that are usual in the relevant business sector and are necessary to establish whether performance is in conformity with the contract. (2) The contractor performs in time if the handover and acceptance commences within the time determined for performance in the contract. The duration of the handover and acceptance shall be thirty days. For contracts between undertakings and for contracts concluded by contracting authorities as clients with undertakings not qualifying as contracting authorities, the contractor may contest the contract term, as an unfair clause, that departs unilaterally and unreasonably, to the detriment of the contractor and by violating the principle of good faith and fair dealing, from the provision determining the duration of the handover and acceptance. (3) The acceptance of the work shall not be refused if the work's defect or its repair or replacement does not prevent the designated use. (4) If the client does not carry out the handover and acceptance process, the legal effects of the performance shall arise on the basis of the actual taking into possession. (5) If, for the performance of the contract, the contractor is required to transfer the ownership of a thing then the ownership of the thing shall be transferred to the client upon the handover of the work and the payment of the consideration.

⁶⁵ For example, the services of digital platforms: A. Staudinger, M. Artz: *Neues Kaufrecht und Verträge über digitale Produkte*. München, C. H. Beck, 2022. 125.

⁶⁶ For example: HCC Section 6:439 [Insurance contract] (1) Under an insurance contract, the insurer shall provide cover for the risk defined in the contract, and shall provide the service defined in the contract upon the occurrence of the insured event occurring after the commencement of risk-bearing, and the party contracting with the insurer shall pay the insurance premium.

⁶⁷ C. Pechstein: *Schuldrecht BT 2*. Münster, Alpmann und Schmidt Juristische Lehrgänge Verlags GmbH & Co.KG., 2005. 158.: *Verpflichtungsvertrag* (factoring).

⁶⁸ Article IV.C-1:101.

⁶⁹ Article 5.

⁷⁰ § 611.

⁷¹ § 1151.

⁷² Article 1.766.

⁷³ Article 605.

(contract for the supply of a service),⁷⁴ but French and Belgian private law⁷⁵ operates with the concept of business contract (*contrat d'entreprise/louage d'ouvrage*) in the same way as Hungarian contract law. PEL SC⁷⁶ designates the scope of the service contract (construction, processing, warehousing/storage, planning, information provision, management),⁷⁷ which gives a specific mixture of the direct subject of the contract to produce a work in the Hungarian Civil Code and our service category (but interpreted more narrowly than the latter).

Considering that the term "service" is also used in Hungarian contract law transpositions⁷⁸ related to digitalization, and that the relevant EU legislation⁷⁹ clearly categorizes it as such (*Dienstleistung*, services), it would be worthwhile to consider the inclusion of service-type contracts in the Hungarian Civil Code, with reference to contracts for digital services during the regulation.

2. According to the announcement of the European Law Institute,⁸⁰ a contract for the providing of digital content governed by the (then) proposal⁸¹ for a directive on the aspects of certain contracts for the provision of digital content or part of mixed contracts (purchase of a computer game on DVD with a multiplayer app enabling online access), or linked/ancillary contract of another contract (joint purchase of game console and computer game);⁸² giving the same meaning to the latter two terms.

A contractual complex formed by the cumulative conclusion of several separate contracts providing different services by a single platform intermediary is typically regarded as a contract package,⁸³ for example the contracts for the online trade of travel and other leisure opportunities consist of *Bausteinverträge* (train trip with exhibition visit, musical viewing with hotel accommodation, flight with various leisure activities at the place of arrival), which result in a simultaneous economic relationship;⁸⁴ see Directive 2015/2302/EU on package travel and linked travel arrangements. Contracts using the wide-ranging vertical of IoTs (Internet of Things) can also be

⁷⁴ Supply of Goods and Services Act 1982; PEL SC 143, 148.

⁷⁵ Code Civile Article 1779; PEL SC 143, 148.

⁷⁶ Principles of European Law Service Contracts.

⁷⁷ PEL SC Article 1.101 (2), 2007 139; It does not apply service contract provisions to delivery, insurance, warranty, financial service and employment contracts Art. 1.101 (4)-(5).

⁷⁸ 45/2014. (II. 26.) Government decree on the detailed rules of contracts between the consumer and the business § 1 (1a), § 4 8., 17., § 5 a); 373/2021. (VI. 30.) Government decree on the detailed rules of the contracts between the consumer and the business for the sale and purchase of goods, as well as the provision of digital content and the provision of digital services § 1 (1), § 4 4.

⁷⁹ Directive (EU) 2019/770; Directive (EU) 2019/771; Directive (EU) 2019/2161; Regulation (EU) 2019/1150; Regulation (EU) 2022/1925; Regulation (EU) 2022/2065.

⁸⁰ *Statement of the European Law Institute on the European Commission's Proposed Directive on the Supply of Digital Content to Consumers Com (2015) 634 final*. (2016) 3, 14-15. https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Statement_on_DCD.pdf (20 September 2017).

⁸¹ COM(2015) 634 final 2015/0287 (COD).

⁸² Similarly: C-62/19.

⁸³ Directive (EU) 2019/770 Preamble (33)-(34): offered by the same trader to the same consumer within the framework of a single contract.

⁸⁴ F. Maultzsch, M. A. Czarniecki: *Bausteinverträge in der Dogmatik der Schuldverhältnisse. Zeitschrift für Europäisches Privatrecht*, 4/2016. 833, 836.

classified in the same category.⁸⁵

In relation to platform services, the EU regulations also reveal a strong network effect and verticality, directly using the terms "online ecosystem" and "new, complex business models" in relation to the participants of the digital system.⁸⁶

4. Conclusions

In my opinion, the coherent and detailed development of private consumer protection law and the placement of the contract forms born of digitalization will become increasingly important, but I also see it as a kind of reality that the digital service (and the digital content service) contracts create a parallel legal universe compared to the contracts in the traditional contractual legal structure (basically due to their diversity and complexity), if the Hungarian Civil Code does not open in the direction of the service contract type.

Regarding the contract system, it can be outlined for the time being that the group of contracts for supply of digital content and digital service is called a new type of contract⁸⁷ or a special type of contract,⁸⁸ but also mixed,⁸⁹ atypical⁹⁰ and *sui generis*⁹¹ categories;⁹² the classification of these contracts is noticeably uncertain and immature.

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⁸⁵ Szalatkay Judit: IoT versenyjogi szemmel – Az Európai Bizottság ágazati vizsgálata a fogyasztói IoT-szektorban (IoT from a competition law perspective - The European Commission's sectoral investigation into the consumer IoT sector) *Versenytikör*, 1/2022. 40-41.

⁸⁶ Regulation (EU) 2022/1925 Preamble (2), (43)-(45); Regulation (EU) 2022/2065 Preamble (29), (78); Regulation (EU) 2023/988 Preamble (46).

⁸⁷ Beale et al., *op.cit.*, 20.: „new types of contracts”; Wendland, *op.cit.*, 191-230.: „eines neuen, eigenen Vertragstyp”; N. Cohen, C. Wendehorst: *ALI- ELI principles for a Data Economy – Data transactions and Data Rights. ELI Final Draft 2017-2021*. Contracts for Supply or Sharing Data (6 contract types separated) 56-94. https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ALI-ELI_Principles_for_a_Data_Economy_Final_Council_Draft.pdf (10 June 2023).

⁸⁸ Schulze, Zoll, *op. cit.*, 37.

⁸⁹ Staudinger, Artz, *op.cit.*, 123.

⁹⁰ *Ibid*, 123.

⁹¹ Directive (EU) 2019/770 Preamble (12).

⁹² Wendland i.m. 195. és 210.: using the German judicial practice and literature, he comes to the conclusion that the classification of this group of contracts has not yet been decided: „typengemischter (miet-, werk- und dienstvertragliche Elemente) oder atypischer, ... oder Verträge sui generis.”

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