| Chapter 9 |

The Emergence of Member States' Characteristics in European and National Consumer Law

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ABSTRACT

European legislation often has a significant impact on private laws in the Member States, especially consumer legislation. In the absence of national, strong consumer protection traditions, consumer protection legislation in Central and Eastern European countries has been largely defined by European consumer law. In the chapter, I am looking for answers as to the specificities of these countries, their ability to enforce these in the EU's main legislative trends, and how these countries have contributed to European Union consumer law.

KEYWORDS

EU consumer law, consumer contracts, ADR, warranty, guaranty, dual quality

1. Introduction

Evaluating the European Union's consumer legislation from a Central European perspective seems to be a rather difficult challenge, since there was no consumer protection law in the modern sense before our accession to the EU, and the nearly 30 years since the signing of our Association Treaty[1] make it impossible to discover the original characteristics of the Hungarian consumer protection legislation. In addition, if we want to go back to the roots of legislation, which predates our association, it is difficult to find any surviving characteristics that we could monitor.

In the early days of consumer legislation, the minimum harmonization directive was a means of approximation favored by the Member States, as it gave Member States, which traditionally had a higher level of consumer protection, the possibility to deviate from the minimum objective of the directive to protect consumers. However, the application of the maximum harmonization directives, which have become commonplace since the mid-2000s and still prevail, no longer allow for stricter national

1 Act I of 1994 on the Proclamation of a European Agreement on establishing an association between the Republic of Hungary and the European Communities and their Member States.

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regulations. Behind the change of concept, a strong competitive approach can be detected, which is considered the strongest engine of integration and the functioning of the internal market. This change of approach, the need to remove Member States' regulatory differences as barriers to trade and the repeated revisions of legislation, have completely changed the map of consumer law since we joined.

Consumer policy is one of the European Union's shared legislative powers, so that Member States can only legislate in the framework of empowerments provided for by the EU legislation enacted or in fields of competences left untouched. The Central European legislature's own consumer protection initiatives were also characterized by a detailed, situational, and problem-oriented approach. This approach is exemplified by the yellow checker fee rules in the Act on Consumer Protection, Art. 8, the provisions banning the formation of new consumer groups,[2] the detailed rules on mandatory guarantees for durable goods,[3] or even the provisions on out-of-business premises trading.[4] The Hungarian legislature could declare unlawful forms of business activity and types of contracts that could not be remedied through the public administrative procedure, and which caused massive consumer harm, as it did with consumer groups. Due to the relevant and existing legislative act (the consumer rights directive) of the European Union[5] and thus its lack of competence, the Hungarian legislature could not do the same in relation to the regulation of contracts concluded out of business premises. Finally, the legislator made amendments to the law to make (fraudulent) operations impossible, requiring businesses that offer product demonstrations to operate a customer service,[6] to register the events, to restrict the conclusion of loan agreements at the same place where products are demonstrated [7]and to prohibit the promise of prizes or free benefits.[8]

It is not excessive to say that our current domestic consumer protection law and institutional system is largely due to European Union legislation. We owe the general and specific rules of product safety, the establishment of a market surveillance system, the private law rules of contracts between consumers and businesses, the individual and collectivities law enforcement framework, the framework for public cooperation, passenger rights, and representation of the consumers' interest at both the EU and domestic political level all to the consumer protection objectives of the European Union.

During the research, I tried to identify the special characteristics that were typical of the Hungarian and the Visegrad Four (Hungary, Poland, Slovakia, and the Czech

2 Act CLV of 1997 on consumer protection, Art. 16/B.
3 Government Decree No.151/2003 (IX.22.) on mandatory guarantee of durable consumer items.
4 Act CLXIV of 2005 on commercial activity, Arts. 5/C-D.
5 Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, OJ L 304, 22.11.2011.
6 Act CLXIV of 2005 on commercial activity, Arts. 5/C-D.
7 Act CCXXXVII of 2013 on credit institutions and financial undertakings, Art. 265.
8 Act XLVIII of 2008 on commercial advertising activity, Art. 12.

Republic) consumer protection law, jurisdiction, and the institutional system. In the absence of specific Hungarian traditions, the research focused on the areas where European Union law radically changed the previous prevailing Hungarian concept, where European Union law has given Member States the opportunity to deviate and thus to develop national specificities. The study also covers Central Europe initiated legislative proposals and Hungarian-initiated preliminary rulings that have had an impact on the interpretation of European consumer protection law.

2. The Subjective to be Protected: The Notion of the Consumer

Apart from the Package-Travel Directive[9] and the previous Timeshare Directive,[10] European directives limit the concept of consumer to a specific range of *natural persons*. In addition to this concept, the European Court of Justice consistently insists on excluding non-natural persons from the concept of consumer in its case law.[11]

Following the minimum harmonization principles of the first generation of consumer directives, Member States were allowed to regulate the concept of consumer differently or to maintain their previous rules, extending the personal scope of consumer protection legislation to other categories of persons. At the same time, with the emergence of directives with maximum harmonization clause, and with the acceleration of legal approximation, Member States were under pressure to unify their regulatory frameworks, which forced them to abandon their previous national concepts. For this reason, the definition of the consumer in the Member States and its change illustrates the impact of European Union law on national law, retaining the national character in line with minimal harmonization, and the intervention of uniform rules enforced by maximum harmonization into the private laws of the Member States.

Prior to the revision of consumer law in the 2000s, Member States ensured the protection of consumers in various ways in national law, either on a comprehensive basis or in specific rules transposing certain directives, in compliance with the minimum harmonization obligation. There were many versions of the personal scope of the legislation to be protected, with some Member States specifically identifying final addressees as the subject of consumer protection, while others have extended the concept of consumer to businesspeople or legal entities entering into atypical contracts, and still others have given consumers' protection to employees.[12]

9 Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, OJ L 326, 11.12.2015, Art. 3. para 6.

10 Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis, OJ L 280, 29.10.1994, Art. 2.

11 On the definition of consumer: Hámori, 2009, p.89; Vékás, 2002, pp. 3–13.

12 Schulte-Nölke, Twigg-Flesner and Ebers, 2007, pp. 671–685.

The *final addressee* of the contract was protected in Spain, Greece, Luxembourg and, in a sense, Hungary, by defining the consumer in Act CLV of 1997 on consumer protection and based on related jurisdiction. In Greece, the definition of the final addressee was not included for personal purposes either, and in Spanish and Greek terms, the definition of the final addressee should designate a much broader scope of subjects than the definition of the consumer contained in the directives. We have seen an extension of protection in relation to certain member state regulations where the businesspeople conclude an atypical contract that does not fall within the scope of its normal professional activities. We have found solutions in the case law of France, Latvia, Poland, and Luxembourg. As with to the European Court of Justice's decision in *Cape Snc v. Idealservice Srl és Idealservice MN RE Sas v. OMAI Srl* joint cases[13] (the Court has interpreted the definition of consumers of the directive 93/13/EEC), a number of countries have followed the concept of limiting the notion of the concept of consumer to natural persons, including Cyprus, Germany, Estonia, Finland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Slovenia, and Sweden. The concept of recognizing workers as consumers was applied in Germany.[14]

By restricting them to natural persons, small and medium enterprises and charities such as sports clubs or ecclesiastical parishes are unprotected. Thus, in Austria, Belgium, the Czech Republic, Denmark, France, Greece, Hungary, Slovakia (with a few exceptions), and Spain, there were norms that treated legal persons as consumers, provided that the conclusion of the contract was for private purposes and use.[15]

In view of European trends, domestic consumer protection legislation has also been adapted to the narrowing of consumer protection to natural persons. Although the Hungarian jurisprudence had a well-established and consistent case law for assessing the consumer quality of legal entities, when adopting the Act XLVII of 2008 on unfair commercial practices, the legislation defining the framework of the Hungarian public and private consumer law narrowed the personal scope to natural persons by reference to the maximum harmonization clause of the directive. Thus, the Hungarian legislator has not extended the scope of consumer protection beyond the scope of the persons envisaged by European legislation, either out of necessity or out of a concern for consistency in the legal system. The Act V of 2013 on Civil Code (hereinafter Hungarian Code Civil) also broke with its previous conceptual definition by narrowing the concept of consumer to natural persons. At the same time, Hungarian consumer law is trying to use the consumer protection toolkit system for other, mainly economical purposes, because according to Act CLV of 1997 on consumer protection Para. 2(a), the consumer is also considered to be a nongovernmental organization, church, condominium, or housing association, or a micro-, small-, and

13 Judgment of the CJEU (Third Chamber) of 22 November 2001, Cape Snc v. Idealservice Srl (C-541/99) and Idealservice MN RE Sas v. OMAI Srl (C-542/99), Joined cases C-541/99 and C-542/99, ECLI:EU:C:2001:625.

14 Schulte-Nölke, Twigg-Flesner and Ebers, 2007, pp. 671–685.

15 Ibid. 683.

medium-sized enterprise, which buys, orders, receives, uses goods, or is the recipient of commercial communications or offers relating to the goods.

3. National Models of Consumer ADR

The regulation of alternative dispute resolution (ADR) mechanisms of consumers can be considered an area of consumer protection law in the European Union where national traditions and specificities can be freely enforced, so it is particularly interesting from the perspective of the study to examine how national specificities could be applied under a flexible regulatory framework.

The established ADR systems are easily comparable through their institutional forms, rules on the obligation to cooperate, sectoral systems, the binding force of decisions, and solutions for enforcing compliance. From this we can draw conclusions on the national traditions of out-of-court dispute resolution methods, the awareness of the consumer society and the willingness of the entrepreneurial sector to cooperate voluntarily or to be forced to. National ADR models and regulation are perfect examples of a system that reflects the needs of national consumer societies and meets local specificities or traditions along a sufficiently flexible and broad framework of EU legislation.

However, the right to consumer enforcement was named among consumers' fundamental rights, but in this context, the European Union's binding acts[16] were born relatively late following early recommendations.[17]

Against this backdrop, the European Union passed two innovative legislative initiatives on consumer dispute resolution.[18] Directive 2013/11/EU on alternative dispute

16 Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ L 136, 24.5.2008; Consultation paper on the use of Alternative Dispute Resolution as a means to resolve disputes related to commercial transactions and practices in the European Union (European Commission, January 2011); Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), OJ L 165, 18.6.2013, pp. 63–79.; Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes (Regulation on consumer ODR), OJ L 165, 18.6.2013.

17 Council Resolution of 25 May 2000 on a Community-wide network of national bodies for the extra-judicial settlement of consumer disputes, O.J. C (2000/C 155/01); Commission Recommendation 98/257/EC on the Principles Applicable to the Bodies Responsible for Out-of-Court Settlement of Consumer Disputes, OJ L 115, 17.4.1998.; Commission Recommendation 2001/310/EC on the Principles for Out-of-Court Bodies involved in the Consensual Resolution of Consumer Disputes, OJ L 109, 19.4.2001.

18 Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) 2006/2004 and Directive 2009/22/EC, (Directive on consumer ADR), OJ L 165, 18.6.2013. and Regulation (EU) 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) 2006/2004 and Directive 2009/22/EC, (Regulation on consumer ODR), OJ L 165, 18.6.2013.

resolution for consumer disputes (the ADR directive) aims to tackle three main deficiencies in the provision of extra-judicial redress:[19]

- the absence of quality standards;
- the low levels of consumer awareness regarding ADR programs; ADR national program are more widely established to resolve disputes in the fields of financial services, package travel, and telecommunications. Where ADR is particularly inaccessible, identified gaps include games of chance, food products, nonfood consumer goods, construction, and transport;[20] and
- the availability of ADR entities for the resolution of consumer complaints.

The second legislative text is Regulation 524/2013 on online dispute resolution for consumer disputes (ODR regulation), which sets an online platform (ODR platform) that will operate as a single-entry point for resolving consumer complaints arising out of e-commerce. The ODR platform will link disputing parties with ADR registered entities and is expected to be fully operational by the January 8, 2016.

This ADR directive requires the principles be implemented, like access to ADR entities and procedures, expertise, impartiality, transparency, effectiveness, fairness, liberty, legality, and protection against the expiry of prescription and limitation periods.

These principles follow from the principles set out in the previous recommendations,[21] yet the ADR directive defines them in more detail. The ADR directive requires that the Member States provide the option for the consumer to submit a dispute to ADR. Thus, the ADR directive seems to adopt the point that this could be the better method to settle consumer disputes.

The ODR Regulation can also be considered as a framework regulation in its current form, as it generally lays down the guarantee rules under which national consumer ADR procedures and bodies can be authorized as a mechanism under the ADR directive and does not wish to establish a single and unified European consumer ADR system.

3.1. Consumer Arbitration Boards in Hungary

Following the obligations to harmonize the law resulting from the accessing process to the European Union, on December 15, 1997, the Hungarian Parliament adopted Act CLV of 1997 on consumer protection, which entered into force on January 1, 1998,

19 Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee on Alternative Dispute Resolution for Consumer Disputes in the Single Market, COM/2011/0791 final; Alleweldt et al., 2009, pp. 9, 31 and 49; European Consumer Centre Denmark, 2009, p. 57.

20 Alleweldt et al., 2009, p. 59.

21 Commission Recommendation 98/257/EC on the Principles Applicable to the Bodies Responsible for Out-of-Court Settlement of Consumer Disputes, OJ L 115, 17.4.1998;Commission Recommendation 2001/310/EC on the Principles for Out-of-Court Bodies involved in the Consensual Resolution of Consumer Disputes, OJ L 109, 19.4.2001.

and established the organizational and procedural rules of the consumer ADR, the arbitration boards.[22] The entire procedural statute, selection and formation requirements of the consumer arbitration boards are decided in the Consumer Protection Act. These ADR entities started operating alongside the regional chambers of commerce on January 1, 1999.

In Hungary, consumers can use the traditional consumer arbitration boards to settle their general consumer disputes, while in the case of financial consumer disputes they can turn to the Financial Arbitration Board, which operates under the auspices of the Hungarian National Bank.[23]

Arbitration boards operated by the county chambers of commerce and industry have jurisdiction over all consumer disputes except financial services. The proceedings of the arbitration body shall be free of charge, which may be initiated only at the consumer's request against the business. The consumer must attempt to resolve the dispute on his own before submitting the application and, if this fails, the ADR route will be permitted by law. During the arbitration procedure, the undertaking is obliged to cooperate with the body, which in some cases includes a written reply and the obligation to offer a settlement equal to the consumer's request, or in other cases an obligation to appear in addition to replying. For breaches of the obligation to cooperate, the consumer protection authority initiates proceedings and imposes fines. The arbitration board may impose an obligation on the parties to submit a commitment, which is binding on the parties and enforceable. The agreement is equally binding. The recommendation of the arbitration board is not binding on the parties, but in the event of non-performance of the undertaking, the decision shall be published by the board.

The Hungarian Financial Arbitration Board is an independent body operating alongside the National Bank of Hungary and has jurisdiction over financial consumers disputes. The financial service provider is obliged to cooperate in the proceedings of the Financial Arbitration Board, which can make commitments, agreements, recommendations, and rejections. The commitments and the agreements are binding on the parties, and in absence of agreement and acceptance of the parties the Financial Arbitration Board can also take commitments in cases with a value of less than HUF 1 million. The undertaking is under a duty to cooperate in the procedure.

3.2. Consumer ADR in Poland

In Poland, ADR schemes are existing at national and regional level. The Permanent Consumer Arbitration Courts are linked to the regional Trade Inspectorates.[24] Specific ADR bodies exist in several sectors, like online commerce, air transport, rail, postal and communications services markets, as well as in the financial services for the settlement of food disputes.

22 Fazekas, 2004, p. 61.
23 Act CXXXIX of 2013 on Hungarian Central Bank.
24 Alleweldt et al., 2009, p. 86. European Consumer Centre Germany, ADR bodies in the EU. https://www.evz.de/en/shopping-internet/alternative-dispute-resolution/adr-bodies-in-the-eu.html.

If the dispute does not fall under the jurisdiction of a special ADR body, consumers may contact the Trade Inspection Authority of the trader's provincial seat. The Ultima Ratio: First Electronic Arbitration Court at the Association of Notaries has competence in the fields of energy and water, financial services, and postal and electronic communications.

In general, ADR procedures are free of charge for consumers, while special ADR procedures have variable but small fees for consumers. Traders are not obliged to participate in ADR procedures, only a few ADR bodies can require traders to participate: the Polish Banking Association, the financial ombudsman, and the ombudsman for passenger rights.[25] ADR entities propose solutions that are binding on the parties if they are accepted. The proposals of the Polish Banking Association are binding on the company, while in the case of Ultima Ratio, the proposal is binding on the consumer and the trader.

3.3. Consumer ADR Mechanisms in the Czech Republic

In the Czech Republic, there are specific ADR entities in the communications (Czech Telecommunication Office—CTO), financial services (Financial Arbiter—FA), energy (Energy Regulatory Office—ERO) and insurance sectors (Office of the Ombudsman of the Czech Insurance Association—KO ČAP), most of them are operated by public authorities.[26] If a specific ADR entity is not available in relation to a consumer dispute, the general ADR body, the Czech Trade Inspection Authority or Czech Consumer Association, will be competent. In most cases, dispute resolution procedures are free of charge for consumers and businesses, and the fee should be paid by the consumer alone before the telecommunications ADR body. Businesses are obliged to participate and cooperate in the procedure. Decisions of the telecommunications and financial services ADR bodies are binding on consumers and businesses; in all other cases, the determining entity shall make recommendations to the parties at most, which shall bind them only if they both accept.[27]

3.4. Consumer ADR in Slovakia

In Slovakia, there is a special ADR body in the electronic communications and postal services, financial services, insurance, and energy sectors. In addition, three general ADR bodies deal with disputes between consumers and traders: the Slovak Trade Inspection (public authority), Consumer Protection Society (SOS), Poprad, and OMBUDSPOT, the Association for Protection of Consumers' Rights.[28] Where several ADR bodies are competent, the consumer is free to choose one. Consumers

25 Polish Civil Aviation Authority, About the Passengers' Rights Ombudsman. https://pasazerlotniczy.ulc.gov.pl/en/the-passengers-rights-ombudsman.

26 Ministry of Industry and Trade of the Czech Republic, Alternative Dispute Resolution in the Czech Republic: https://www.mpo.cz/en/consumer-protection/alternative-dispute-resolution-adr/alternative-dispute-resolution-in-the-czech-republic---basic-information--253288/.

27 European Consumer Centre Germany, ADR bodies in the EU.

28 Vačoková, 2020, pp. 266–267.

do not have to pay for ADR procedures, except for Ombudspot's procedure. Traders are obliged to participate in ADR procedures. Agreements of the ADR are binding on the parties if they are accepted, otherwise the ADR body can adopt a reasoned opinion.[29]

3.5. Evaluation of the ADR Regulatory Patchwork in Europe

European Union legislation did not wish to standardize more than 700 forms of ADR, but at the same time set common standards that could create a network of notified and registered consumer ADR mechanisms. The flexible regulatory framework could maintain and developing ADR systems that meet Member States' traditions and specificities. It is also interesting to observe the regulatory methods and detailed procedural rules used by each Member State to increase the effectiveness of the procedure. The effectiveness and success of out-of-court dispute resolution methods depends not only on legislative ingenuity, but also on social and cultural characteristics of the Member States. In view of this, the legislative of the Member States intends to ensure the effectiveness of the procedure through regulatory instruments such as the obligation to cooperate, compulsory participation in the procedure, the possibility of binding decisions and non-binding recommendations, forms of enforcement of decisions, participation by public authorities, economics, and private entities.

4. Member States' Impact on European Consumer Law

Within the scope of the European Union's competence, the European consumer legislation and the case law of the European Court of Justice fundamentally define the conceptual issues of national consumer laws, in particular regarding the Member States that subsequently acceded. In the absence of deep and strong consumer law traditions, the Central and Eastern European Member States have been most adrift of the European regulatory trend, with only a few cases having a demonstrable impact on regulation or interpretation of the law at the European level.

4.1. Prohibition of Discrimination between Member States in the Light of the Dual Quality Issue

In 2021, the Ministry of Innovation and Technology of Hungary compared 120 product pairs (typically household chemical and toilet cosmetics, nonfood products) and found differences in about a third compared to their product pairs from Austria, Germany, and Italy. According to the ministry's communication, in 29 cases the active substance content of the foreign product was higher compared to the product available in Hungarian stores under the same name. In 24 cases, the fact that more information was on the packaging of the foreign product caused the

29 Vačoková, 2020, p. 268.

discrimination of domestic consumers. A total of 41 cases of dual quality have been established.[30]

In recent years, there have been several cases of suspected discrimination against Central and Eastern European Member States based on the nationality of the Member States or their consumers. The problem is best illustrated by whether Hungarian consumers enjoy the benefits of the internal market in the same way as consumers in other countries, whether they benefit from services of the same quality as nationals of other Member States.

To answer this question, we must start from fundamental rules of the European Union. The requirement of equal treatment and the prohibition of any discrimination in European Union law is at the heart of the rule of law of citizens and of the functioning of the internal market. Equal treatment is mentioned countless times in the primary law of the European Union among the union's core values, and as a common value of the Member States, and in all its activities, the Union must respect equality between its citizens and the union's external activities.

During the functioning of the internal market, the Treaty on the Functioning of the European Union (hereinafter TFEU) excludes all discrimination between producers and consumers in respect of agricultural policy in the European Union, and the prohibition of discrimination between citizens in the functioning of the internal market has repeatedly appeared in relation to workers, in the freedom of establishment, in the freedom of services and in relation to the free movement of goods.

The prohibition on the distinction of consumers on a geographical basis is decided by Directive 2006/123/EC on services in the internal market,[31] which prohibits discrimination of the recipient by nationality or national or local residence. The directive, supplemented by the Geo-Blocking Regulation,[32] prohibits discrimination against consumers on a territorial basis. For the purposes of the regulation, it is forbidden to apply different contractual terms to consumers in different Member States and to restrict access to online interfaces. However, on this basis it will still be possible to apply different tariffs, and to exclude certain countries from the orientation of their business activities, due to their different legal requirements. However, these rules did not contain any direct provision for dual-quality goods.

In 2017, following the announcement of the Minister of Agriculture of Hungary, an initiative on the dual quality of goods was launched from Hungary with the support of the Visegrad Four countries. The product comparison test carried out by

30 Communication of the Ministry of Innovation and Technology of Hungary, 2021. https://kormany.hu/hirek/egy-ev-mulva-birsagolhato-lesz-a-magyar-vasarlok-hatranyos-megkulonboztetese; TFEU, Art. 40 (2).

31 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market OJ L 376, 27.12.2006, pp. 36–68.

32 Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment in the internal market and amending Regulations (EC) 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC, OJ L 60I, 2.3.2018, pp. 1–15.

the Hungarian Food Chain Authority formed the basis for the ministry's finding.[33] Thanks to the effective contribution of the Visegrad Four, the regulatory proposal on dual-quality food and goods has remained on the agenda of the Romanian Presidency. As a result, Directive 2019/2161 on the better enforcement and modernization of Union consumer protection rules[34] specifically provided for the issue of dual quality in the context of the amendment of Directive 2005/29 on unfair commercial practices. Preamble 51 to the Directive 2019/2161 EU considers such commercial practices to be misleading practices, like marketing across Member States of goods as being identical when they have a significantly different composition or characteristics, which may mislead consumers and cause them to take a transactional decision that they would not have taken otherwise. Art. 6(2) of Directive 2005/29/EC is replaced by the abovementioned point because of the amendment. To assess and examine all these practices, the Commission has issued guidelines on how EU rules should be applied, setting out evaluation and consideration criteria. The amendment to the Act enters into force on May 28, 2022, the Hungarian Parliament transposed the rule with Act CXXXVI of 2020 before the implementation deadline of November 28, 2021.

4.2. Case Law on the Unfairness of the General Contract Terms in Consumer Contracts

Reviewing the judgments of the European Court of Justice, preliminary ruling proceedings have been initiated in 61 of the 260 cases completed to interpret a provision of Directive 93/13 on unfair terms in consumer contracts[35] by a court of one of the four Visegrad Member States.

However, while the interpretation of the law of the European Court of Justice has greatly shaped domestic jurisprudence and had a significant social and economic impact, domestically initiated cases have added new elements to the case law of the directive in all Member States. The Kásler judgment[36] contained several such findings. On the one hand, in addition to the legal consequences of the invalidity which had been applied consistently until then, in para. 3 of the judgment, the European Court of Justice ruled as such:

> 'In a situation such as that at issue in the main proceedings, in which a contract concluded between a seller or supplier and a consumer cannot continue in existence after an unfair term has been deleted, that provision

33 National Food Chain Safety Office, 2017.

34 Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 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, OJ L 328, 18.12.2019, pp. 7–28.

35 Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts OJ L 95, 21.4.1993, pp. 29–34.

36 Judgment of the CJEU (Fourth Chamber) of 30 April 2014 in Case C-26/13, (request for a preliminary ruling from the Kúria — Hungary) Árpád Kásler and Hajnalka Káslerné Rábai v. OTP Mortgage Bank Zrt., Case C-26/13, OJ C 194, 24.6.2014, pp. 5–6.

> does not preclude a rule of national law enabling the national court to cure the invalidity of that term by substituting for it a supplementary provision of national law.'

In addition, by interpreting the contested provision of Art. 5 of the Directive 93/13, the European Court of Justice has filled a previously inactive rule with content, thus creating the possibility of differentiating the consumer model, especially in contractual relationships. Let us not forget that the provision of the Directive 93/13 imposing a requirement of plain and intelligible language, has not been implemented by several Member States (including Hungary).[37] Point 2 of the Kásler judgment interpreted the requirement of transparency based on the capabilities of a consumer protected by private consumer protection law. On this basis,

> 'The requirement that a contractual term must be drafted in plain intelligible language is to be understood as requiring not only that the relevant term should be grammatically intelligible to the consumer, but also that the contract should set out transparently the specific functioning of the mechanism of conversion for the foreign currency to which the relevant term refers and the relationship between that mechanism and that provided for by other contractual terms relating to the advance of the loan, so that that consumer is in a position to evaluate, on the basis of clear, intelligible criteria, the economic consequences for him which derive from it.'

The impact of the judgment was significant at the Member State and European level. The interpretation of the European Court of Justice paved the way for resolving the foreign currency credit crisis and, unlike prevailing jurisprudence, added another option to the legal consequences of unfairness. The judgment was also a precursor to the differentiation of our vision of the average European consumer model, allowing us to create a consumer policy that better fits the individual needs of the consumer in the future.

5. National Characteristics of Consumer Sales

The rules of Directive 99/44 on certain aspects of the sale of consumer goods and associated guarantees with a minimum harmonization clause are the basis for the non-conforming performance of contracts and the rules of the Member States relating to warranties and guarantees.[38] This detailed and fragmented consumer protection legislation and harmonization based on minimum harmonization clause can be seen

37 Joó and Osztovits, 2012, p. 59.

38 Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7.7.1999, pp. 12–16.

as the cause of the fragmentation that underpins today's current legislative trend, just as it has been explained in the past.[39]

Since the 2000s, the European Union has made efforts to remove barriers to trade resulting from the diversity of Member States' legal systems, while ensuring uniformly high level of protections for consumers throughout the Union. Legislative efforts have yielded results in a number of areas, with commercial practices, out-of-business premises and distance selling contracts, consumer credit law, travel package and out-of-court redress rules offering uniform provisions to consumers and traders in all Member States for their cross-border transactions, with maximum harmonization. At the same time, warranty and guarantee rights governed by Directive 99/44 EC, based on minimum harmonization, are subject to different rules from one Member State to another, with Member States having managed to withstand several very significant attempts at reform over the past 10 years. The rules on consumer sales, warranty and guarantees have therefore proved to be a very good place to display national characteristics. When comparing the law of the Visegrad Four countries, I considered the different specificities of the Member States regarding to the implementation of the Directive 99/44 EC and carried out it based on important issues.

5.1. The Personal and Material Scope of the Regulation

In relation to the definition of the consumer, we are encountering a narrowing down to natural persons in the law of Hungary, the Czech Republic and Slovakia. Polish law defines the concept of consumer more broadly than EU consumer protection directives. As the Act of April 23, 1964 of the Civil Code (hereafter, the Polish Civil Code) Art. 22 states that a natural person who enters into a transaction with an undertaking which is not directly related to his or her economic or professional activity shall be considered a consumer.[40]

The concept of "thing" in the meaning of Art. 2158 of the Act No. 89/2012 Coll. on the Civil Code (hereinafter, the Czech Civil Code) also applies to the subject in the legal sense. Since the Czech Code Civil does not define the nature of the product sold under consumer contracts and does not narrow its functional concept, the goods can be both commuters and real estate.[41]

The text of the Hungarian Civil Code differs from Art. 2(2) of Directive 99/44/EC, since the Hungarian Civil Code applies not only to consumer goods but also to the overall range of services. In the case of Slovak implementation, the term "transposed consumer goods" is understood to mean movable things. which comply with the definition of the consumer goods in Art. 1(2) of Directive 99/44/EC.

39 Twigg-Flesner, 2010, pp. 7–8.
40 Jagielska, 2020, pp. 72–73.
41 Hradek, 2020, p. 7.

5.2. Warranty Claims

There are also differences in the number of claims that can be enforced by the consumer in the Member States. A different level of consumer protection can be achieved through case law and consumer enforcement rules. Generally, by the Czech Civil Code, one may require a replacement and a repair may take place if a replacement of part of the item is necessary in accordance with Art. 2169 Czech Civil Code (this art. contains the rights from defective performance of the contract). For replacement, the consumer may request the same or better quality of the product. If it is not possible to replace it, the consumer may require repair. However, if the seller has tried to repair the defect twice, but it nevertheless occurs again, the buyer may request a replacement. The right of withdrawal may be exercised only if the goods or parts thereof cannot be repaired or replaced, or if the defects reappear or if the product has more than three defects.[42] The right to a price reduction does not constitute a secondary or tertiary claim, but acts as a separate primary right of the buyer within the rules of liability for defective performance.[43]

The regulation of warranty rights pursuant to Art. 6:159 of the Hungarian Civil Code is based on the rules set out in Art. 3 of Directive 1999/44/EC, but the Civil Code also adopts the rule of Art. 306(3) of the old Hungarian Civil Code,[44] according to which the defect could be repaired or repaired by the consumer himself at the expense of the obliged, and the directive regulation is extended by the provisions on the violation of interests in respect of claims that can be enforced in the second row.[45] Against this background, Hungarian law still envisages the enforcement of warranty rights in a so-called two-step system. In this first step, it names the repair or replacement in Art. 6:159(2)(a) of the Hungarian Civil Code, while in point (b) in the second stage, it names the proportional reduction of the consideration, the repair or repair at the expense of the obligor, and the right of withdrawal.[46]

The Polish warranty law has a number of characteristics, grant the buyer the right to withdraw from the contract in the event that the defect appears a second time, unless it is insignificant.

5.3. Time Limits and Guarantees

The Czech legislature does not set an explicit time limit in which the defect must be reported and sets a three-year limitation period for the limitation of rights. Act No. 634/1992 on consumer protection (hereinafter Czech Consumer Protection Act) requires that complaints, including the restoration of conformity, be settled without undue delay, However, the consumer's claim be fulfilled no later than 30 days after

42 Czech Supreme Court Decision No. 33 Cdo 1323/2013.
43 Hradek, 2020, pp. 12–15.
44 Act IV of 1959 on Hungarian Civil Code.
45 In the norm text of the old Civil Code, Art. 306 regulates the warranty rights.
46 Fézer and Hajnal, 2020, pp. 27–29.

the complaint has been lodged, unless the seller and the consumer agree on a longer period.[47]

In the case of a contract between a consumer and a business in paras. 6:163 (1)–(2) of the Hungarian Civil Code, the consumer's warranty claim expires two years from the date of performance (in case of second-hand items, the limitation period cannot be shorter than one year). If the subject of the contract is an immovable property, the warranty claim shall expire within five years from the date of performance. The consumer is obliged to report the defect without delay, no later than two months after its discovery, and the Hungarian legislature has also applied the presumption of six months of defective performance.[48]

According to Art. 556 of the Polish Civil Code, in the case of contracts between undertakings and consumers, it extends the presumption of non-conform performance to one year, unlike in other countries examined. Contrary to Hungarian law, under Polish law, the consumer can enforce his or her claim at any time during the warranty period, regardless of when it was discovered. Polish law also requires the seller to respond to a consumer's complaint for 14 days, which, if it fails, must be deemed to have accepted the consumer's claim. Under Polish law, the guarantee is for two years unless otherwise agreed by the parties in the guaranty statement.[49]

Act No. 141/1950 Coll. Civil Code (hereinafter: Slovak Code Civil) regulates the enforcement of warranty claims in the system decided in the Directive. The company is obliged to examine the complaint within three days, and it must be carried out within a maximum of 30 days after receipt of the claim, in the event of failure to do so, the consumer is entitled to withdraw from the contract or demand the exchange of the item.[50]

Hungarian law operates with commercial and obligatory guaranties, which is not known in any other examined country's law. Art. 6:171(1) of the Hungarian Code Civil mentions the obligation to provide for a performance guarantee may be required by the law. Examples of this requirement can be found in Governmental Decree No. 151/2003 (IX. 22.) on the mandatory guarantee associated to consumer products, in Governmental Decree No. 181/2003 (XI. 5.) on mandatory guarantee in relation to constructions, and in Governmental Decree No. 249/2004 (VIII. 27.) on mandatory guarantee in relation to repair and maintenance services.[51]

5.4. Summarizing Thoughts and the New European Regulatory Framework for Consumer Sales

European consumer sales legislation has given Member States many opportunities to maintain their national characteristics, which was also the primary cause of legal fragmentation. The national legislature could also provide stricter protection

47 Hradek, 2020, pp. 15–18.
48 Fézer and Hajnal, 2020, p. 30.
49 Jagielska, 2020, pp. 74–77.
50 Mészáros, 2020, pp. 136–142.
51 Fézer and Hajnal, 2020, pp. 32–35.

for consumers by means of a main regulation differing from the directive (e.g., by increasing the presumption of defective performance to one year in Polish law, or by the institution of mandatory guarantees in Hungarian law), through deadlines or a system of warranty claims. The most sophisticated differences can be found in the detailed rules for enforcing warranty claims. On this basis, we can conclude that Polish law has protected its consumers with stricter rules in several respects, while Hungarian law has at most only oriented the parties in the field of claims enforcement, and provides a higher level of protection for products and types of contracts provided by the institution of mandatory guarantees.

The spread of e-commerce offers tangible benefits to consumers, such as rapidly evolving new products, lower prices, and greater choice and quality improvements in goods and services, through easier comparability of cross-border trade and supply. Even after changes in our shopping habits, the supply chains, and the digital revolution, the most important interest of consumers remained the conform performance of their contracts. The global economic pressure on the European Union legislature and the Member States has made it inevitable that warranty and guarantee rights, which are a traditional part of Member States' private laws, are also regulated uniformly to maintain the continent's global competitive position and make more effective use of the reserves of the internal market.

On May 6, 2015, the Commission adopted the Digital Single Market Strategy, which consists of three pillars: 1) easier access for consumers and companies to digital products and services across Europe; 2) creating an appropriate and level playing field for the recovery of digital networks and innovative services; and 3) maximizing the growth potential of the digital economy.[52] As part of this legislative plan, Directive 2019/771 of the European Parliament and of the Council of May 20, 2019, on certain aspects concerning contracts for the sale of goods was adopted, which, by repealing previous Directive 99/44 EC, will usher in a significant period in the development of European consumer law.[53]

5.5 Current Changes in the Legal Framework of Consumer Sales

As part of the legislative package adopted, Directive 2019/770 lays down rules applicable to certain requirements concerning contracts for the supply of digital content or the provision of digital services,[54] while Directive 2019/771 establishes rules applicable to certain requirements concerning contracts for the sale of goods. Both

52 Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, A Digital Single Market Strategy for Europe, Brussels, 6.5.2015, COM (2015) 192 final.

53 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 OJ L 136, 22.5.2019, pp. 28–50.

54 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 OJ L 136, 22.5.2019, pp. 1–27.

directives—which shall be applied in the Members States beginning January 1, 2022—have a maximum harmonization clause, which unifies Member States' law on a very high level, through derogating many of the above-mentioned national characteristics. Before the deadline, only Hungary[55] and Czech Republic had transposed the directives. Without giving a detailed list of the different national implementations, the main characteristics of the legislative actions are as follows.

Unlike previous regulatory ideas, Directive 2019/771 provides for general and comprehensive rules on sales contracts between consumers and sellers. As an exception, it names the digital content service as defined in the complementary directive, the contracts for the provision of digital services. As regards the degree of harmonization, it has a mixed solution: it provides, in principle, for full harmonization, but in several areas, it gives Member States the ability to deviate or maintain stricter provisions to protect consumers. These areas include, for example, the general contract law rules, the conclusion, validity, nullity, or legal effect of the contract, and the possibility of maintaining special remedies for defects that have become recognizable within a short time of performance.

It provides separately for the subjective requirements of contracting, in which the functionality, compatibility, interoperability, and other requirements prescribed in the contract appear as new elements. Among the objective requirements of contraction, we can also find, in addition to those terms, the concept of durability, which denotes the ability of the product to maintain its required functions and performance under normal use. Among the objective requirements of conformity, we find the requirements that have become necessary because of digitalization and the emergence of new products.

Perhaps one of the most important innovations of the 2019/771 directive is the burden of proof regulation, which raises the presumption of defective performance from the previous six months to one year, which will clearly have an impact on the internal market to increase the durability of goods.

The 2019/771 directive will bring about a significant change in the system of remedies available in the event of non-conforming performance. As a remedy, it refers to the making of the goods in accordance with the contract (repair and replacement), the proportional reduction of the price and the termination of the contract. The system continues to be a two-step model, but the principle of proportionality is not only based on the choice of needs that can be enforced in the first stage, but can also provide a reference for the transition to second-stage needs. The seller may refuse to make the goods conform if the repair or replacement imposes an impossible or disproportionate cost on the seller, considering all the circumstances of the directive. The directive also extended the reasons for the consumer's transition from first-stage claims, for example, by saying that if the performance error arises again, despite the

55 Government Decree No. 373/2021 (VI. 30.) on detailed rules on detailed rules for contracts between consumers and businesses for the sale of goods, the supply of digital content and the provision of digital services.

seller's attempts to make it conform to the contract. Detailed rules for implementing the repair and exchange of goods are also clarified in the directive.

6. Future Challenges of European Consumer Policy

Due to the changed way of life and technological pressure, our changed shopping habits have created several business models, contracting mechanisms and commercial communication channels that are challenging from the perspective of market surveillance, to which our existing consumer protection law can only be applied in part.

The European Digital Agenda, the New Deal for consumers, clearly aims to make the European Union a global competitive factor, to ensure a high level of protection for the European consumer in changed market conditions and to make European consumer law suitable for this. Slowly changing consumer regulatory frameworks have necessitated the introduction of new regulatory models, the abandonment or reform of older regulatory concepts in almost all areas of private consumer law and public law.

Consumer policy and legislation must clearly face the emergence and challenges of new types of products (Internet of Things, AI), new types of information flow and advertising structures, the failure of the prevailing consumer information regulatory model and the inescapable results of behavioral economics.

7. Conclusion

European Union law has a very strong impact on national law, especially the right to protection. To make the internal market without borders work more efficiently and to increase consumer confidentiality, legislation under the banner of digitalization has been focused on maximum harmonization in regulatory areas, where national resistance has previously stopped all previous unification efforts. All these new legislations, aiming for maximum harmonization, give Member States even less leeway to display their national characteristics and establish or maintain different levels of protection. However, through the examples presented in the study, we can see that, despite maximum harmonization, Member States have many opportunities to adapt the protection mechanisms of European consumer law to the needs of national consumers and to Member States' regulatory traditions through different legislative methods. The European Union's policy and method of regulation are largely defined by one-two dogma items, such as the average consumer's model or regulatory technical solutions, like withdrawing the rights and information model. There is also suspicion that impulses from Eastern and Central European countries can have an impact on European legislation and jurisprudence, as well as changes in the economy and consumer habits.

Through the transposition of European legislation on alternative dispute resolution and warranty and guarantee rights, I have sought to demonstrate the extent to which the Visegrad Four countries have presented national specificities in relation to legislation with different harmonization depths. It was interesting to show how the Hungarian legislature controls certain economic sectors like doorstep selling activities in a maximum harmonized legal framework for the benefit of Hungarian consumers. I have also examined cases where preliminary ruling procedures from this area have radically changed the practice of the Unfair Contract Terms Directive, while also having an impact on the fundamental elements of European legislation on the protection of consumers.

Member States' specificities can be embedded in Member States' consumer law through legislative creativity, and Member States' initiatives can also have an impact on EU consumer legislation. The question is simply whether the European legislature is satisfied with the current state of harmonization or whether it will be forced to take further steps over the next decade to completely reduce the differences in the Member States that cause fragmentation.

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