

Consumerisation of B2B Contracts: An Urgent Need or a Dead End?

Research objective and justification for undertaking the research problem

The modern economy is developing dynamically. This is because businesses offer their goods and services to consumers and conclude contracts with their business partners (B2B contracts). In the commodity economy and traditional contract law, it was assumed that professionals were on an equal footing and did not require the protection guaranteed by law. Recent years have shown that inequalities are growing, and protection may be necessary. The status of a professional does not reflect the actual market situation. The local shop or café owner does not have the same bargaining power as the bank that grants them a loan. The global supply chain structure means that businesses depend on their contractors and cannot operate freely on the market. Further inequalities arise from the architecture of digital markets. The provider of an online platform decides whether a business user will have access to a market for their goods and services. Therefore, it is necessary to propose a protection model that covers B2B contracts.

Recent legislative changes attempt to address these phenomena. The European Union adopted the P2B Regulation protecting business users in relation to online platform operators, the Directive on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, and most recently, in 2024, the Data Act, which contains rules on unfair contractual terms in B2B contracts related to data access and use. The EU Member States, such as Belgium and Poland, in 2020, have also recently adopted legal provisions on protection in B2B contracts. This has led to the consumerisation of B2B contracts.

By addressing these phenomena, the project aims to create a theoretical model of protection in B2B contracts at the level of general contract law. The fundamental research question is whether consumer law, which provides broad protection for the 'weaker party' to the contract, can inspire this model. The assessment will primarily cover provisions on unfair contract terms and rules for interpreting contracts between businesses. For these aspects, consumer law's suitability as a protection model will be assessed.

Research description

The project involves conducting research within the framework of EU law and the laws of Member States, primarily using formal-dogmatic and comparative legal methods. First, the project will develop a justification for protection in B2B contracts. Next, the coverage of certain entrepreneurs by the concept of consumers to grant them protection under consumer law will be analysed. In the next stage of the project, a comparative analysis of provisions on unfair contract terms in B2B contracts will be carried out. While regulating unfair contractual terms, it is necessary to adapt the rules of interpretation of B2B contracts, regarding commercial customs and practices. Finally, these considerations in the field of contract law must be supplemented by an analysis from the perspective of new developments specific to digital markets, including the platform economy, data trading and the use of artificial intelligence in concluding and performing contracts. On this basis, a protection model in B2B contracts will be presented.

Expected research outcome

The project aims to present a theoretical protection model in B2B contracts and determine to what extent it should be based on consumer law. The model is to be adapted to contemporary realities, including the architecture of digital markets and the use of AI in concluding contracts. This theoretical model will consist of three components.

- (1) A coherent theory justifying protection in B2B contracts, which will define its objective and personal scope. It is necessary to determine whether the justification for protection in B2B and B2C contracts is the same. The theory will determine the shape of individual solutions within the proposed model.
- (2) Regulation of unfair contractual terms in B2B contracts that will include the standard of assessment, the importance of the principle of transparency, and sanctions for recognising a term as unfair. Within the research question, this model must be positioned in relation to Directive 93/13/EEC.
- (3) A set of interpretation rules for commercial contracts that will take into account the use of standard contract terms, the impact of digital technologies for concluding contracts, and commercial customs and practices, including those resulting from codes of conduct.