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Comments on the coverage of certain sole traders with consumer protection

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**Abstract:**

By the Act of 31 July 2019 amending certain laws to reduce regulatory burdens, provisions that extend the scope of application of selected consumer protection regulations to entrepreneurs who are natural persons concluding certain contracts were added to the Polish Civil Code and the Act on Consumer Rights. Those provisions were added in a point-like manner (within the scope of unfair contractual terms, warranty for defects in the sold items and the right of withdrawal from an off-premises contract or from a distance contract). From 1 January 2021 the provisions concerning consumers shall apply to a natural person concluding a contract directly related to their economic activity, where the content of such a contract implies that it is not of professional nature for that person, which could result in particular from the subject matter of the economic activity conducted by the said person and made available under the provisions on the Central Register and Information on Economic Activity.

Therefore, a question arises as to the legitimacy of these changes and the consequences of their introduction. The article analyses them in detail, recognizing that a similar result could be achieved through an appropriate interpretation of the definition of a consumer pursuant to Article 221 of the Polish Civil Code. However, taking into consideration the fact that such a position is not universally accepted in the doctrine of Polish civil law, the article also discusses the legal consequences of adopting an alternative view which eliminates from the scope of the notion of a consumer such natural person who performs a legal transaction which, though related to their business activity, is atypical due to its subject matter. In such cases that entity may rely on the protective instruments granted to the consumer only in cases enumerated by the legislator, which leads to a reduction in the level of their protection.

In addition to analysing the conditions for providing sole entrepreneurs with consumer protection, the article also discusses the material scope of the introduced changes in detail, since

the legislative technique used by the legislator causes a number of difficulties concerning the precise determination of the actual scope of the reference provided for in the analysed provisions.

Although the considerations made in the article refer directly to the Polish law, the comparative-law and EU contexts were not omitted. The whole article ends with *de lege ferenda* conclusions addressed to the legislator.