

THE DUTY TO INFORM AS A PRINCIPLE IN PRIVATE LAW

A tájékoztatási kötelezettség mint alapelv a magánjogban

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This paper argues that the duty to inform functions as a fundamental principle in private law. It exists in obligations, mainly in contracts, within its legal environment, serving as an inherent and accompanying obligation alongside primary duties. Although legal norms rarely articulate this role explicitly, the duty to inform takes part as a building block in the shaping of legal relationships. The paper explores the key elements of this duty, their interactions, its practical operation, and the consequences of its violation. Through the means of judicial practice, and its legal regulation across national private laws and comparative private law, the study highlights the significance of consciously applying the duty to inform.

Keywords: *duty to inform, information, information asymmetry, private law principles*

A tanulmány azt kívánja alátámasztani, hogy a tájékoztatási kötelezettség egy meghatározó alapelve a magánjognak. A kötelezettségekben, főként a szerződésekben jelen lévő kísérőkötelezettség a főkötelezettségek mellett. Építőelemként vesz részt életviszonyok alakulásában, bár ilyen szerepet jogi norma közvetlenül ritkán fejez ki. A tanulmány áttekinti a tájékoztatási kötelezettség legfőbb összetevőit kölcsönhatásukban, a működését, megsértése következményeit a bírói gyakorlat alapján, a szabályozását a nemzeti magánjogokban és az összehasonlító magánjogban. Így hívja fel a figyelmet a tájékoztatási kötelezettség tudatos alkalmazásának fontosságára.

Kulcsszavak: *tájékoztatási kötelezettség, információ, információs aszimmetria, polgári jogi alapelvek*

1. The Nature of the Duty to Inform in Private Relations

1.1. An Accompanying Phenomenon

In personal interactions, the duty to inform is rarely expressed explicitly. Instead, it is typically an implied obligation, something self-evident, a natural expectation, and a logical necessity. This is an accompanying obligation functioning as a principle, during

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the performance of a given duty. It appears across a wide range of social interactions. Its content is constantly evolving and, on rare occasions, may take centre stage. Anyone can find themselves on the receiving end of this duty, though we generally prefer to expect information rather than feel obliged to provide it. Although few rules directly addressed to the duty to inform, yet its impacts are highly significant.

The topic of the duty to inform helps to refine the concept of contracts and deepens the understanding of obligations, the definition of adequate performance, and the avoidance of contractual breach. This paper focuses on its role in private law, particularly within the law of contractual obligations. It examines both Hungarian and international perspectives that may support the proper implementation of the obligation to provide information, within and beyond Hungary's borders. Self-serving or entirely subjective information-sharing – such as gossip or defamation – shall be excluded from the discussion.¹ Likewise, the concept of data as property falls outside the scope of this paper. The scope is broadened by incorporating guidance found in areas of private law beyond the realm of contractual obligations. The scope is broadened by incorporating insights from areas of private law beyond contractual obligations. The study also draws on case law from legal fields that have evolved from, or are closely connected to, private law – such as consumer protection and procedural laws – further affirming the importance of the duty to provide information. The paper explores the nature of this duty within private legal relationships, identifies its key components based on principles found in legal sources and practice, outlines the main consequences of its breach, and reviews its regulation within contract law.

1.2. The General Meaning of the Duty to Inform

The possession, absence, and flow of information exert a significant influence on our behaviour and decision-making. This influence depends on both the situation and the broader context. Conflicting interests – partly shaped by our awareness – determine whether we allow, facilitate, or obstruct the flow of information. These dynamics lead to changes and create substantial disparities within society and communities. Such disparities also test the boundaries of social coexistence. Societal norms governing the management of information are constantly evolving, as are the expectations surrounding the provision of information. But are these expectations sufficiently known? And is our own management of information sufficiently conscious? Information-sharing is an integral part of human communication and, at the same time, a fundamental aspect of our behaviour. Alongside its inherent subjectivity, providing or withholding information can become an expectation or even an obligation—just as receiving and evaluating information can. We communicate in countless ways: through speech and writing, through tone and expressions shaped by context, and even through actions. For example, handing over an object, which might convey implicit statements about its condition and the purpose of the exchange. The

¹ Slander aria in ROSSINI: *The Barber of Seville* is a humorous and dramatic description of the behaviour and consequences of subjective information which starts to spread.

act of providing or concealing information, along with the manner, in which it is expressed, raises ethical and moral questions, shaped by the tensions between individual and collective interests.

The duty to inform is based on an imbalance in certain relationships, when one party possesses more or better information than the other or simply has access to information that the other lacks. This obligation works as a tool to manage such informational asymmetry and to prevent the consequences that may result from it. Its aim is to establish mutual understanding and ensure that parties involved share a common interpretation of relevant content. Since it has not fixed – and indeed, no necessary – definition, it is useful to complement its general description with a few synonyms. “Information” may refer to data, knowledge, awareness, assumption, comprehension, interpretation. The act of informing may take many forms: to make known, to communicate, to notify, to acquaint, to warn, to enlighten, to instruct, to tell, to reveal, to disclose or to suggest, to object, to deny or to approve. Or, adversely, to silent, to conceal, to deny, to question. To broaden the perspective of the relationships under consideration, we may also look at the reverse direction: to inquire, to request or receive information, to know or find out, to become informed, to learn, to receive instructions, to assume.

The duty to inform is a widely accepted and practiced element of social coexistence, though not without its limitations.

1.3. The Meaning of the Duty to Inform in Law

In characterizing contractual services, György Bíró distinguishes between primary and secondary obligations, and adds a third category: ancillary duties. Ancillary obligations support the main services and may evolve into significant, contract-shaping secondary duties. In the absence of specific regulation, they are governed by the general rules of conduct under civil law. Bíró identifies the duty to inform as an example of such an ancillary obligation.² Such a duty is implicitly undertaken even with the conclusion of a contract. Thus, duty to inform is guided by the principle of good faith and may operate alongside other principles, such as cooperation and proportionality. It is widely present in real-life situations and permeates all types of legal relationships. It may form part of proper contractual performance or the fulfilment of obligations in family law. In some cases, it may even take centre stage under the provisions of law, where the failure to comply results either specified or general legal consequences.

The scope of this obligation is often difficult to determine, as it frequently shifts depending on the context. For example, the primary obligor of certain contractual services may become a beneficiary of information where a buyer of goods, intending to resell them, must inform the seller about specific packaging requirements. Based on this information, the seller must then notify the buyer of any modification to the

² BÍRÓ György: *A kötelmi jog és a szerződésen közös szabályai*. Novotni Kiadó, Miskolc, 2010, 266. See also: Ingeborg SCHWENZER – Edgardo MUÑOZ: *Global Sales and Contract Law*. Oxford University Press, 2022, 356.

planned method of delivery. To fully understand its operation, the duty to inform must observe its operation from a broad perspective. This is why we also encounter the duty of courts and administrative authorities to inform clients. In such cases, the duty to inform imposed on courts or authorities and shaped by the specificities of procedural law, serves as a necessary element for the proper functioning of private law.

Just as in everyday life, contract law does not provide a formal definition of the duty to inform, nor does it necessarily express it in a direct form. Nevertheless, it serves as both a foundation for and means of realising other principles of law applicable to the law of obligations. The duty to inform evolves in tandem with social and economic processes – in its form, content and consequences. It must be examined within a broader system and placed in context. Its source may lie in a legal obligation or even in a societal expectation. Its legal basis may stem from a general, abstract provision of contract law, a specific norm applicable to a particular type of contract, or from a general principle of private law or of contract law – such as *culpa in contrahendo*.³

In private law, the duty to inform does not merely exist – it functions, and it does so within a network of relationships. It requires continuous situational assessment by both the provider and the recipient of the information. Various factors influence its operation, including the potential impact of the information on decision-making. In the context of obligations, for example, it affects the mutual intent of the parties and the achievement of the contractual purpose. To ensure security, the law intervenes in individual autonomy and treats the handling of information as a duty and expectation, both in general terms and in specific matters. Failure to comply with this duty may, for instance, impair proper performance in consumer contracts.

Although it does not explicitly appear as such, the duty to inform, by virtue of its all-encompassing nature, establishes itself as an independent principle of law. This is supported by references in both legislation and judicial practice. In contemporary legal systems, it primarily arises in contractual relationships, this is the case in the Hungarian Civil Code (Law of V of 2013 on the Hungarian Civil Code – HCC)⁴, particularly in Section 6:62. §. Where lawmakers identify specific interests that require particular protection, they tend to regulate the duty to inform in detail, defining the obligor, the general and often unspecified subject, the content of the obligation, and the sanctions for non-compliance. Examples include data processing in data protection law, or the obligation to inform in consumer law.

The widespread consequences of asymmetrical situations related to information have prompted scholarly inquiry – particularly from economic, social science, and

³ NOCHTA Tibor, A tájékoztatási kötelezettség megsértése, mint szerződésszegés. In: *Tájékoztatási kötelezettség a polgári és a kereskedelmi jogban*. (szerk: Boóc Adám – Miszkecz Bodnár Péter) Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, Budapest, 2024, 102.

⁴ The principle appears to carry comparatively less weight in the regulation of other life situations, such as the contact between a non-custodial parent and their child, HCC Section 4:182. §.

private law perspectives – into how information develops, how it relates to other information, and how it fits into its broader context.⁵

2. The Key Components of the Duty to Inform

2.1. On the Components

The most important components of the duty to inform are (1) the act of “supplementing”, or more broadly, providing information, (2) the “persons concerned”, which includes both the person lacking the information – whether the other party to the legal relationship or a third party – and the holder of the information, (3) the “knowledge” or information itself, and (4) the requirement that these elements operate in a cooperative manner. When discussing each element, their close interconnections will become more apparent.

The characteristics and interdependence of these components are illustrated by the wording of the French Code Civil: “*The party who knows information which is of decisive importance for the consent of the other, must inform him of it where the latter legitimately does not know the information or relies on the contracting party.*”⁶

2.2. To Supplement, to Provide

Behaviour is the key mechanism for addressing informational asymmetry, the conduct, that moves the missing data and serves to foster a unified context between the parties involved. In doing so, it also promotes security and balance within legal relationships. In private relationships, formal requirements are rarely imposed, whereas in cases that warrant special legal protection, the fulfilment is subject to detailed regulation in terms of both form and process.

A ruling from Hungarian case law states as follows: “*The duty to inform incumbent upon parties serves as a means to eliminate informational imbalances. Its improper fulfilment – whether based on special legal provisions of a specific regulation*

⁵ MENYHÁRD Attila: A technológiai fejlődés hatása az alapjogok érvényesülésére. *Közjegyzők Közlönye* 2022/3., 5–22., referring to Shoshana ZUBOFF: *Age of surveillance Capitalism*. Profile Books, London, 2019, 8. See also: Markets with Asymmetric Information. *The Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel 2001, Advanced information*. NobelPrize.org. Nobel Prize Outreach 2025. Mon. 14 Apr 2025. <https://www.nobelprize.org/prizes/economic-sciences/2001/advanced-information/> 14 April 2025.

⁶ John CARTWRIGHT – Bénédicte FAUVARQUE-COSSON – Simon WHITTAKERI. *The Law of Contract, the General Regime of Obligations, and Proof of Obligations. The new provisions of the Code Civil Created by Ordonnance n° 2016-131 of 10 February 2016 translated into English* https://www.justice.gouv.fr/sites/default/files/migrations/textes/art_p_ix/THE-LAW-OF-CONTRACT-2-5-16.pdf, 11 April 2025. See also: Philip LAWRENSON: *Duties to warn, advise and provide information: a comparative study of the obligations of contractors and design professions in French and English law*, <https://www.ibanet.org/obligations-contractors-design-professionals-french-english-french-law>, 14 April 2025.

applicable with priority to the legal relationship, or on the general rules of the Civil Code – constitutes an unregulated, unnamed case of breach of contract. Since all breaches of contract are unlawful, they give rise to liability for damages.”⁷

Withholding information for the sake of gaining advantage or serving any other interests raises several legal questions. The English legal system demonstrates a different approach to information obligations compared to continental legal systems, placing expectations on the entitled party with regard to risk-bearing, including the acquisition of information. The matter typically arises only after a breach of contract, as prior to that, it falls within the realm of party autonomy.⁸ The principle of “*caveat emptor*” – or “*buyer beware*” – which is gradually fading from English commercial practice, traditionally views any obligation of full disclosure or mandatory information alignment as an infringement of the parties’ autonomy. It therefore rejects the notion that a party should be required to disclose information that may be detrimental to their own interests. English law relies on commercial responses and supports the idea that trade should protect buyers from the seller’s immunity by establishing minimum standards and quality guarantees, thereby ensuring transactional security. At the same time, it expects the buyer to exercise reasonable judgement and provides additional protection where necessary.⁹ In legal disputes concerning investment transactions in developing countries, a common issue is how non-performance relates to undisclosed information, either data the harmed investor failed to provide, or a lack of information they were aware of.¹⁰ The question of whether full disclosure is required remains unresolved. However, the CISG Advisory Council relating to the Vienna Sales Convention¹¹, in its Opinion No. 22 takes a clear stance. In point 12 of the Opinion, it addresses the negative consequences of non-disclosure, particularly in relation to the inadequacy of buyer specifications as follows: “*However, the seller cannot rely on Article 42(2)(b) CISG if the seller in addition to having knowledge of the IP right or claim pursuant to Article 42(1) CISG knew or could not have been unaware that the buyer’s specifications would result in an encumbrance of the goods and did not inform the buyer about this.*”¹²

⁷ The reasoning of the decision issued by the Hungarian Supreme Court (Kúria) under number Kúria Pfv. 20371/2021/5. Nr.

⁸ MISKOLCZI Bodnár Péter: Változtatás és hagyományörzés a tájékoztatási kötelezettség tekintetében. In: *Tájékoztatási kötelezettség a polgári és a kereskedelmi jogban*. (szerk: Boóc Ádám – Miskolczi Bodnár Péter) Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, Budapest, 2024, 11.

⁹ W. Durrell II NIELSEN, Caveat Emptor in Sales of Real Property-Time for a Reappraisal. *Arizona Law Review* 10, 1968, 484–491.

¹⁰ Pierre LALIVE – Ahmed EL-KOSHERI – Igo SEIDL-HOHENVELDERN: Klöckner v. Cameroon Decision of the Ad Hoc Committee. *ICSID Review – Foreign Investment Law Journal* 1, 1986, 89–144.

¹¹ The United Nations Convention on Contracts for the International Sale of Goods, Vienna, 1980 (CISG or Vienna Sales Convention).

¹² CISG-AC Opinion No. 22, The seller’s liability for goods infringing intellectual property rights under Article 42 CISG, Rapporteur: Dr. David Tebel, rothorn legal, Frankfurt am

The distortion of information, whether through concealment or other means, manipulates the recipient's will, which, in contractual or obligational relationships may undermine the formation or validity of the contract or of the relevant declaration.¹³ Information disclosure becomes a central element of private law proposals aimed at addressing these situations.

2.3. Persons Concerned

Practically anyone can be involved, as their position in relation to others is constantly shifting. In real life, the roles of the obligor and the entitled party frequently interchange, and cooperation must be the response to this dynamic.

2.3.1. Persons Concerned on the Entitled Side: The Other Party in the Obligation or an Interested Third Party

We shape our own lives, and therefore we have the right to access the information necessary to do so, even when that information is held by a counterpart in a legal relationship or a fellow member of a community. The scope of entitled parties is broader than it may initially appear, as losses suffered by individuals in their capacity as community members can also affect third parties who are not directly involved.

The traditional private law approach places expectations on the entitled party, which can also be interpreted in conventional everyday contexts. Protection may be granted to the beneficiary of missing information if they could not reasonably have been aware of it, or if they had grounds to rely on the other party's conduct or statements. However, the entitled party must not remain passive – they are under a duty to seek information.¹⁴ In one case, the court found that a carrier had failed to adequately assess a transport obstruction and subsequently provided misleading information to the customer, who was then justified in claiming the additional costs incurred.¹⁵

In contrast to the classical approach, the law of the modern informational society presumes the vulnerability of the entitled party and seeks to provide protection by imposing detailed expectations on the party subject to the duty to inform.

Main, Germany. Adopted unanimously by the CISG Advisory Council following its 30th meeting, in Rio de Janeiro, on 7–9 August 2022, point 12.

¹³ LESZKOVEN László, Veszélyes szerződések, avagy tényleg nincs új a nap alatt? *Gazdaság és Jog* 2023/7–8., 4.

¹⁴ A good example is presented by Grosschmid Béni: "Before acquiring real estate, first make inquiries and ascertain in whose hands the possession lies, and, if you find it in the hands of another, and cannot be convinced that this person holds possession from your seller or by proper title, refrain from proceeding with the transaction." GROSSCHMID Béni: *Fejezetek kötelmi jogunk köréből*. Grill Károly Könyvkiadóvállalata, Budapest, 1932, First Volume, 458. See also CISG-AC Opinion No. 22,12.

¹⁵ A decision issued by the Szeged Court of Appeal (Szegedi Ítéltábla) under the number of Szegedi Ítéltábla Gf.III.30.028/2018/6. szám.

2.3.2. *Persons Concerned on the Obligor Side: The Holder of Information, the Obligors of the Duty*

In relation to the entitled parties, the obligor is in possession of the information. This may be due to their qualifications, experience, or simply a practical everyday circumstance [CISG Article 35 (3), Article 40 and Article 42 on the knowledge of obligor]. Where multiple individuals hold the information, the obligation weighs more heavily on the one who is in a better position to fulfil the duty.

Let us consider the case that fundamentally shaped English contract law on damages and view it through the lens of the duty to inform. *Hadley v Baxendale* (Court of Exchequer, England and Wales, 1854) is widely known for establishing the principle of foreseeability in assessing damages.¹⁶ However, it is also important to recognise the role of communication between the parties. Specifically, what the aggrieved party had conveyed in advance to the breaching party regarding the extent of the potential loss resulting from a breach. What was disclosed? What was withheld? And what were the consequences? In the end, the aggrieved party was required to bear their own loss.

The obligation is limited by the availability of information. A buyer lacking technical or professional expertise is not required to specify the cause of a defect.¹⁷ Reasonable expectations also impose constraints: the obligor must provide information to the extent deemed necessary for performance under the given circumstances, according to general understanding, and in proportion to the interests and expectations involved.¹⁸ However, reasonableness may also impose an additional burden, particularly in cases where the information holder possesses greater expertise or is in a more advantageous position than the other party.¹⁹

Fulfilling the duty to inform may sometimes harm the obligor's own interests, and it may also come into conflict with confidentiality obligations. These challenges must be addressed through cooperation and guided by principles such as proportionality. In certain specific situations, separate regulations provide guidance for the proper fulfilment of this duty [Law LXXVIII of 2017 on the professional activities of attorneys-at-law, Article 9 (3) on certain conditions of exemption from confidentiality].

¹⁶ *Hadley & Anor v Baxendale & Ors* [1854] EWHC J70. The replacement of the broken mill component occurred after the agreed deadline, and the lost profit became the subject of the lawsuit.

¹⁷ CISG-AC Opinion No. 2, Examination of the Goods and Notice of Non-Conformity, Articles 38 and 39, 7 June 2004. Rapporteur: Professor Eric E. Bergsten, Emeritus, Pace University School of Law, New York, paragraph 5.14 about changes in German jurisdiction.

¹⁸ TransLex-Principles, Principle No. IV.6.9 - Duty to notify / to cooperate, see [https://www.trans-lex.org/principles/of-transnational-law-\(lex-mercatoria\)](https://www.trans-lex.org/principles/of-transnational-law-(lex-mercatoria)), 11 April 2025

¹⁹ German machinery case on the annex of general terms, withhold by the seller: Bundesgerichtshof (German Supreme Court) Date of the decision 31 October 2001 Case no./docket no. VIII ZR 60/01, Case name Machinery case, CISG-online 617.

2.4. The Information

Information may arise from contractual or non-contractual commitments, facts, or conduct, and it may take various forms. Certain characteristics of the information – such as its absence, necessity, and accessibility – help define the scope and details of the duty to inform. Information, whether in the form of notice, data, knowledge, assumption, explanations, or disclosures, derives its meaning and legal relevance from the specific context in which it appears. Information may relate to the formation of the entitled party's will, for example, information related to an undetectable defect in the purchased goods. Or, it may concern the fulfilment of the entitled party's obligations, such as the buyer's expectations concerning packaging, or the security requirements imposed by an insurer in a home insurance contract.²⁰

In the context of the duty to inform in private law, the primary characteristic is the asymmetry between the parties: the absence of information on the part of the entitled party, and its simultaneous presence on the part of the obliged party. A key condition for the existence of the obligation is that the entitled party did not and could not reasonably have known the information. This lack of knowledge may also stem from the justified trust placed in the holder of the information, which may exempt the entitled party from the consequences of consequent omission.²¹

Another essential feature is the necessity of the information. The information must be necessary because the entitled party is in a decision-making position or has a duty to act, and possessing the relevant information is required for that. Let us continue reading the previously cited passage from the French Code Civil: "*Information is of decisive importance if it has a direct and necessary relationship with the content of the contract or the status of the parties.*"²² Necessary information may include, for example, whether the use of a garden area is exclusive to a flat or it is shared among the co-owners, an important consideration in the context of a property purchase.²³

Necessity also encompasses the suitability of the information, meaning it must be appropriate and sufficiently detailed to serve the intended purpose of the disclosure. Courts have elaborated on this requirement: the duty to inform imposed on an

²⁰ Edited Hungarian court decision of the Hungarian Supreme Court (Legfelsőbb Bíróság) published under the number of BH 2003.10.411, decision number: Legf. Bír. Pfv.VIII.20.301/2000. sz.

²¹ CISG Article 35 (2) b) on the confidence in the information provided by the seller, Article 8 (1) on the knowledge of the entitled: "could not be unaware".

²² French Civil Code, Article 1112-1, see footnote 6. A recent decision taken by the French Cour de Cassation in the case of Pourvoi n° 23-17.948, further elaborated on the referenced provision, stating that the information must be directly related to the content of the obligation or to the characteristics of the parties. <https://www.courdecassation.fr/decision/68242dc1eaabb276d1616de9>, 28 June 2025.

²³ Edited Hungarian court decision of the Hungarian Supreme Court (Legfelsőbb Bíróság) published under the number of BH+ 2002.7.331, decision number: Legf. Bír. Pfv. V. 22 177/2001. szám. The case concerned erroneous information provided by the seller in the preliminary agreement, which related to an element that was significant to the buyer.

administrative body includes the obligation to actively assist the client, such as by providing guidance on the suitability of the chosen procedure and ensuring compliance with legal deadlines. Courts have rejected the fulfilment of the duty to inform when the consumer could only infer the substance of an essential term or its impact on their payment obligations.²⁴ Moreover, the necessity of the information must also be perceptible and known to the obligor.²⁵ Information is considered necessary if it is capable of improving the position of the entitled party.²⁶

Beyond the two conditions mentioned above, the duty to inform arises only if the information is not accessible from another source. Such sources may include the parties' contract, public records, or statutory provisions. For example, a seller is not obliged to provide information about the use or development potential of a property, as these matters are governed by local legislation. If the entitled party fails to seek out this information, they cannot shift the consequences of that omission onto the counterparty.²⁷

2.5. Functioning of Duty to Inform: Mutuality, Cooperation and Good Faith

The information which is to be disclosed is neither constant nor uniform. Its accuracy and value are continually evolving. Just as the parties' positions relative to each other may shift. In the context of carriage, within the legal relationship between the consignor and the carrier, the former is obliged to provide information regarding handling of the consignment during transport, including details about packaging. Conversely, the carrier must inform the consignor of any defects in the packaging that could impede the transportation process [HCC. 6:259. § (1) and (3)].

Judicial practice concerning the nature of the duty to inform and the characterization of information confirms that both the recipient and the entitled party must continuously assess the given situation, considering not only their own interests but also those of the other party when defining the tasks of acquiring and providing

²⁴ Decision of the Hungarian Supreme Court (Kúria) under the number of Kúria Pfv.20416/2021/5. szám. Decision of the Hungarian Supreme Court under the number of Kúria Gfv.30274/2019/6. szám.

²⁵ TransLex-Principle IV:6.9. (a).

²⁶ MISKOLCZI Bodnár Péter: A tájékoztatási kötelezettség megsértése, mint szerződésszegés. In: *Tájékoztatási kötelezettség a polgári és a kereskedelmi jogban*. (szerk.: Boóc Ádám – Miskolczi Bodnár Péter) Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, Budapest, 2024, 100.

²⁷ Edited court decision of the Hungarian Supreme Court (Legfelsőbb Bíróság), published under the number BH+ 2004.11.504, number of the decision: Legf. Bír. Pfv. VIII.20.633/2002. szám. Edited court decision of the Hungarian Supreme Court (Legfelsőbb Bíróság), published under the number BH 2000.11.501, number of the court decision: Legf. Bír. Gfv.X.32.654/1999. szám. Edited court decision of the Hungarian Supreme Court (Kúria), published under the number BH+2013.3.101, number of the court decision: Kúria Pfv. VI. 20.360/2012. szám. Edited court decision of the Capital Court of Appeal (Fővárosi Ítéltábla), published under the number ÍH 2016.19, number of the court decision: Fővárosi Ítéltábla 3.Pf.21.013/2013/4. szám.

information. The duty to inform constitutes an ongoing obligation for the obligor, meaning that in a contractual relationship, it applies to all contracting parties. This continuity extends across all phases of the contract, including pre-contractual negotiations, contract formation, performance, duration and termination.²⁸ The relationship between the stakeholders in the duty to inform is characterized by mutuality and duty to cooperate.

Its fulfilment must not be counterproductive. In other words, one must not act in a manner that prevents the entitled party from distinguishing between essential and non-essential information or leads them to make less rational decisions than they would have without the information.

In certain cases, the duty to inform is a crucial part of the performance of an obligation, particularly in contracts, where it relates to the determination of conformity. In such situations, it is essential that the conditions for providing information are clarified in advance. These conditions can be prescribed by legislation but initially it is the parties themselves who must agree on them. In commercial practice, model contracts often include provisions related to this duty, such as the specific terms of performance set out in the ICC Incoterms®. In the absence of pre-negotiated or established regulations, notification duties may arise from the parties' general obligation to act in accordance with the principle of good faith and other principles of private law.

How far does the duty to inform extend? It clearly covers facilitating the other party's performance. It must also encompass assisting in the realization of the purpose of the primary obligation, such as the objective of a contract, including the parties' contractual expectations. To facilitate the other party's performance may remain only an expectation, but it cannot be regarded as an obligation that replaces the opposing party's own duty to collect information. However, incidental benefits that do not directly arise from the contract are not subject to the duty to inform.

To illustrate how the duty to inform operates, let us recall a few insights from legal practice. In one case, the parties included a municipality that managed its assets through a dedicated company. The general manager of this asset managing company defined and performed his tasks based on the specific and short-term interests of the company, making decisions alone, including on taking out loans. For an extended period, no strict oversight was exercised over him, nor was there any consistent demand for information. Later, when newly elected municipal representatives requested information about the company's operations, the CEO's response lacked detail and made no mention of the ongoing loan process. The information provided was no different from what had previously been customary. The court established a heightened standard of diligence applied to the manager and found that the managing director had neglected his duties by failing to cooperate with municipal leaders and by withholding relevant information. In another case, the court held that a contractor dealing with a layperson client had a general contractual obligation to disclose

²⁸ Decision of the Hungarian Supreme Court (Kúria) under the number Kúria Pfv.20707/2022/4. szám. See also the special attention paid to the precontractual phase in the French Code Civile, Article 1112-1.

impediments to performance, even if such a duty was not expressly stipulated in the contract. Yet another case concerned the strict accounting rules associated to the EU founding and the broader financial framework of financial governance in Hungary. The court found that the beneficiary of EU support is subject to an elevated duty to cooperate and inform, exceeding the general standard. This includes the obligation to report circumstances related to the support and any changes to thereto. A further case involved construction work affecting underground pipelines, where the court addressed the cooperation required between the various owners, the pipeline managers, and the party carrying out the excavation. The court concluded that the problems could have been avoided through proper fulfilment of duty to inform.²⁹

What happens if the parties fail to consider or agree upon the need for cooperation and for providing information? This is the subject of the Sensitive Russian Component case: “... both parties had failed to take steps necessary to duly perform their obligations under the contract. In particular they had failed to set forth in the contract the exact procedure and methods of inspection of the goods ... both were found co-responsible for the loss suffered on account of their own omissions and inadequate acts under the rules of CISG 77 (Mitigation), 74 (Damages), UPICC Art 7.4.7. (Harm due in part to aggrieved party) and Article 404 (1) of the Civil Code of the Russian Federation).”³⁰

3. Consequences of Breach of Duty to Inform

In practice, it is often difficult to assess whether the duty to inform has been breached, as the issue is heavily influenced by subjective elements. One frequently encounters naïve explanation such as, “I didn’t know that you didn’t know that I didn’t know”, or the underestimation of the importance or significance of certain information. The situation is further complicated by the retrospective evaluation of attitudes and conduct in cases where the information provided was inaccurate, incomplete, or misleading. Let us now examine the consequences once a breach of the duty to inform has been established.

A breach of the duty to inform modifies the primary obligation, as performance may become non-conform or fail altogether. The extent of this alteration may vary. In itself the violation of the duty to inform does not necessarily carry severe consequences, but it can reach a level constituting a fundamental breach of contract.

²⁹ Edited court decision of the Hungarian Supreme Court (Legfelsőbb Bíróság), published under the number BH 2005.289, the number of the court decision: Legf. Bír. Mfv. I. 10.264/2004. szám. Edited court decision of the Hungarian Supreme Court (Legfelsőbb Bíróság), published under the number BH 1996.434, number of the court decision: Legf. Bír. Gfv. X. 31.798/1995. szám. Decision of the Hungarian Supreme Court (Kúria), published under the number Kúria Pfv.20893/2016/4. szám. Decision of the Hungarian Supreme Court (Kúria), published under the number Kúria Pfv.21490/2013/9. szám.

³⁰ Arbitral Award No. 97/2002 of International Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation, 06-06-2003, <https://www.unilex.info/cisg/case/1043>, 14 April 2025.

The absence of proper information may even impair performance itself.³¹ Within the realm of contractual relationships, the validity or even the very existence of the obligation undertaken may become questionable if misinformation fundamentally affects it.³²

In certain cases, the obligation may be modified in such a way that it requires the parties to adapt to the new circumstances, bringing the issue of renegotiation into play. For instance, it turns out that the information relevant to performance did not reach the contracting party and the contract is otherwise still salvageable, the parties may agree to modify its terms. The duty to inform also becomes relevant in contracts concluded between remote parties, especially in connection with delays in the receipt of the offer or its acceptance (CISG Article 21, HCC Section 6:68.).

The consequences of breach of the duty to inform correspond to the severity of the violation, as measured by the caused harm and the possibilities to cure them. This applies both to the determination and allocation of liability, as well as to potential grounds for exemption. Where the breached duty to inform forms part of a contractual obligation, the range of consequences aligns with the general legal consequences of contractual breach, supplemented by specific remedies applicable to the particular type of contract. Available remedies may include demanding performance, potentially combined with a reduction of consideration and damages or withdrawal. Damages, though inherently limited, offer support to the party suffering the breach of the duty, however, their effectiveness may be diminished by factors such as burden of proof, the difficulty of quantifying the damage, and the availability of exemptions. One may agree with Péter Miskolczi Bodnár, who distinguishes between various functional forms of the duty to inform, namely: information that promotes performance; information related to the performance process; information concerning difficulties or problems; and finally, information serving other functions.³³ These categories also contribute to the assessment of liability for damages.

A direct consequence of failing to fulfil the duty to inform is that the counterparty may be released from liability if their own failure to perform results from the lack of information. As stated in Article 80 of the CISG: *“A party may not rely on the failure of the other party to perform, to the extent that such failure was caused by the first party’s own act or omission.”*^{34 35} Exemption in contractual relationships applies not

³¹ Edited court decision of the Hungarian Supreme Court (Legfelsőbb Bíróság), published under the number BH 1974.2.7, court decision number: Legf. Bír. Gf. III. 30 654/1973. Nr.. The seller is liable for damages resulting from the breach of the duty to inform, even if the product they provided is otherwise conform to the contract.

³² See the case mentioned in footnote 23.

³³ MISKOLCZI Bodnár Péter: A tájékoztatás szűk és szélesebb értelemben, in: *Tájékoztatási kötelezettség a polgári és a kereskedelmi jogban*. (szerk.: Boóc Ádám – Miskolczi Bodnár Péter) Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, Budapest, 2024, 111.

³⁴ Similar provision can be found in HCC, 1:4. § (2): No one can rely on his own fault for gain.

³⁵ Propane case: The seller failed to provide data for the payment which arose a fundamental breach. Case 176: CISG 8(1); 9(1); 41; 54 Austria: Supreme Court; 10 Ob 518/95 2 February 1995.

only to liability for damages resulting from the breach of the duty but also to other remedies, such as repair, or replacement.

Failure to fulfil the duty to inform may also result directly in the loss of rights or the forfeiture of legal protection. In the case of an assignment, if the assignor creditor fails to notify the debtor, the assignee loses the legal support necessary for enforcing the claim, as the debtor is entitled to perform only to the assignor (HCC. 6:194). Similarly, in transportation, failure to provide instructions regarding missing information that becomes apparent during transit may also lead to the forfeiture of rights, as the carrier is entitled to terminate the contract. Another specific legal consequence is provided in the Hungarian Civil Code for breach of the duty to inform owed for the benefit of a surety: a settlement concluded in bankruptcy or liquidation proceedings initiated against the principal debtor does not affect the surety's obligation, unless the creditor informed the surety of the terms of the settlement prior to its conclusion. If such information is not provided, the surety's liability is reduced to the amount specified in the settlement [HCC Section 6:417 (4)].³⁶

4. Regulation of the Duty to Inform in contract law

The duty to inform generally does not appear explicitly as an independent principle of private law. Its regulation varies across national and international legal norms. Among national approaches, two extremes can be identified: the absence of regulation with limited application, and the detailed regulation. The former approach is taken by English law, which relies on this duty in cases where a contracting party, guided by reasonableness, can protect their counterpart from harm by issuing a warning. Although not codified in written rules, the duty gains significance through judicial evaluation of the consequences of its breach. The Polish and Slovak civil codes address the duty to inform only implicitly, under broader general principles, without providing express legal provisions. Of course, case-specific provisions may govern it in individual situations. In contrast, the French Civil Code has opted for detailed regulation: it explicitly sets out the conditions of the duty to inform within contract law, addressing the pre-contractual phase separately.³⁷

The comparative private law instruments also reflect a spectrum of approaches to the duty to inform. CISG only mentions it on a case-by-case basis, in functioning. The UNIDROIT Principles of International Commercial Contracts 2016 (UPICC) addresses it under implied obligations, considering it self-evident, "*stemming from the nature and purpose of the contract*" [UPICC 2016, Article 5.1.2 (a)]. The TransLex-Principles, one of the most comprehensive compilations of modern *lex mercatoria*, provide detailed guidance on the duty to inform, particularly in relation to contract performance. They treat it alongside the duty to cooperate and explicitly link its

³⁶ See the commentary to the Section 6:417 (4) of the Hungarian Civil Code: *Polgári Jog I–IV. – új Ptk. – Kommentár a gyakorlat számára*. Frissítve: 2024. január 1, Hatodik kiadás. Budapest, 2024, ORAC Kiadó Kft., Budapest. Online version.

³⁷ See Philip LAWRENSON: in footnote 6.

fulfilment to the overarching principle of good faiths. A particularly notable feature of the norm is its emphasis on the concept of knowledge, which provide valuable insights of the obligation: “*on whose knowledge the other party is discernibly dependent*” and “*provided that such information can reasonably be expected from that party*”.³⁸

The recodified Hungarian private law has modified the previous approach, which did not explicitly name the duty to inform but applied it within the framework of the civil law principle of good faith, complemented by the principle of mutual cooperation. The duty to inform has now been explicitly named and paired with the duty to cooperate. However, it has been removed from the general principles of civil law and placed among the principles of contract law, in Book Six – Obligations, Part Two – General Rules on Contracts, Title IV – The Contract. Principles of contract law, Section 6:62 – Obligation of cooperation and to provide information. According to the codifiers’ commentary, the duty to inform most frequently finds its full expression in the realm of contracts. While this is evidently true, it is also worthwhile to examine the finer details. Specific rules tailored to case-specific provisions of the HCC remain in place, not only within the contract law. The purpose of regulating the duty to inform is to support the formation and performance of obligations. Across the Hungarian Civil Code, provisions invoking the duty to inform serve the broader aim of ensuring the safe management and organization of human relationships and social co-existence. For example, in the context of natural persons’ legal capacity, the knowledge and the information on a person’s limited ability to acquire rights helps others navigate legal interactions. The transparency of legal persons promotes general legal security and, in particular, creditor protection. In family law, the duty to inform functions as a tool for maintaining contact between relatives when harmony has broken down. In property law, it contributes to the proper functioning of security interests, such as pledge. Within the law of obligations, it complements the detailed rules governing specific contract types. The clearest examples of the duty to inform arise in obligations where the entitled party voluntarily, or by force of necessity, places trust in the other party, entrusting them with something of value, whether a right, an asset, or even a person. A prime example of this is the legal mandate: the attorney is obliged to keep the client informed about the case before accepting the assignment, throughout the course of the representation and, if necessary, after the termination of the representation.

There are branches of law that have long since diverged from civil law, in which the duty to provide information holds particular significance. For example, in labour law, the employer is obliged to keep the employee informed about the conditions of their employment.

Similarly, in consumer protection law, businesses have specific duties toward consumers, where not only transparency but also efficiency is also a stated requirement. The relatively young field of data protection law treats transparency and the provision of information about personal data as a fundamental principle. In AI law and in legal

³⁸ TransLex-Principles No. IV.6.9 – Duty to notify / to cooperate.

responses to technological developments more broadly, the requirements of fairness and explainability are at the forefront, particularly in safeguarding private autonomy.

Procedural law has adopted and further developed the duty to inform, building on its foundation in private law. Its purpose is to ensure that parties to proceedings receive adequate information in a verifiable manner. Both courts and administrative authorities are required to inform parties of their procedural rights and the means of effectively exercising those rights.

5. Conclusions on the Duty to inform

The duty to inform is an immanent phenomenon of contract law, and more broadly, of the entire law of obligations. Just as information itself is a natural component of every situation in life. While everyone has the right to receive information, this right is not without limits. Alongside this right, we are also obliged to seek information ourselves. One can easily shift from being obligee to obligor of the duty, as these roles are fluid and constantly evolving. The party obligated to provide information may be exempt for various reasons, such as confidentiality. In this way, the duty to inform imposes limitations on certain freedoms, including the right of privacy and freedom of contract. A zone of tension emerges where conflicting interests collide, where the holder of information may be tempted to withhold it, potentially leading the entitled party to make disadvantageous decisions. There are multiple ways to fulfil the duty to inform, and the appropriate method depends on the specific context. This is shaped by societal norms and expectations, and especially by the principles of good faith and fairness, fundamental elements of social coexistence.

In the law of obligations, the duty to inform has emerged in response to technological and social development and gradually received more detailed articulation. In general, private law addresses it by incorporating it into other well-known principles. Most notably it aligns with the principles of good faith and cooperation. The French Code Civil has recently introduced a uniquely detailed system of criteria to define the duty to inform. In Hungarian codified private law, the duty was first expressly formulated in the new Civil Code, where it was paired with the duty to cooperate and was placed among the general rules of contract law. However, upon closer examination, the duty to inform, though modestly expressed, also plays a significant role in other legal relationships. Human considerations guide its application in maintaining contact between child and a separated parent, creditor protection justifies its presence in relation to legal entities, and the requirements of peaceful coexistence bring it into play in questions of possession.

Missing information and, whether its absence was recognizable, raises significant questions in the context of duty to inform. In certain situations, the legislator has deemed it important to provide protection to those presumed to require information to exercise their rights. A clear example is found in procedural laws, where courts are obligated to inform the parties of their rights and procedural options. Similarly, labour law imposes a duty on employers to inform employees about the conditions of their employment. However, there are also counterproductive examples of legal

compliance. Businesses sometimes attempt to fulfil consumer protection obligations through fine print and excessively lengthy, confusing texts, so undermining the very purpose of the duty to inform. In the context of technological advancement, particularly with regard to artificial intelligence, one may observe that regulatory frameworks remain underdeveloped.

The duty to inform is an independent legal principle, even if it is not generally expressed as such. A review of traditional legal development reveals that it supports the fulfilment of other obligations, enhances the effectiveness of other legal principles, and gains particular significance in the law's response to technological advancement. For its proper functioning, the duty to inform requires good faith as its foundational environment and cannot exist without the obligation to cooperate. Conversely, these latter two principles also rely on the duty to inform for their own operation and effectiveness. These are interconnected principles, mutually reinforcing elements that form an integral part of the fulfilling legal obligations and actively support that realization.

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