

# Contracts between Consumers and Non-Traders Concluded through Sharing Economy Platforms:

## Do We Need to Change the Paradigm?

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# Contracts between Consumers and Non-Traders Concluded through Sharing Economy Platforms



Platform operator



User



Consumer



Supplier



Non-trader

# Main questions

- ▶ Any new rules for C2C transactions?
- ▶ Is there rationale for more consumer protection in these transactions?
- ▶ If yes, who should carry the burden of potential new rules?

# Reasons for potential new rules

- ➔ ▶ Change of consumer society
- ➔ ▶ C2C transactions occur online with strangers
- ➔ ▶ These transactions may be part of the online-choice-architecture created by a platform operator

# Reasons against new rules

- ➔ There is no rationale since it is C2C transaction.
- ➔ There are general civil law rules which provide basic but sufficient protection.
- ➔ New rules would be too heavy for the market participants (both platform operators and suppliers).
- ➔ There is no real consumer harm in peer-to-peer markets.

# Approach

- ▶ Defining the border line between B2C and C2C transactions > notion of a trader
- ▶ Consumer right to information
- ▶ Consumer right to withdrawal

# Notion of a trader in EU law

CRD, Art. 2(2)

'Trader' means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive;

# Notion of a trader in EU case law

- ▶ “The referring court will, in particular, have to verify whether the sale on the online platform was carried out in an organised manner, whether that sale was intended to generate profit, whether the seller had technical information and expertise relating to the products which she offered for sale which the consumer did not necessarily have, with the result that she was placed in a more advantageous position than the consumer, whether the seller had a legal status which enabled her to engage in commercial activities and to what extent the online sale was connected to the seller’s commercial or professional activity, whether the seller was subject to VAT, whether the seller, acting on behalf of a particular trader or on her own behalf or through another person acting in her name and on her behalf, received remuneration or an incentive; whether the seller purchased new or second-hand goods in order to resell them, thus making that a regular, frequent and/or simultaneous activity in comparison with her usual commercial or business activity, whether the goods for sale were all of the same type or of the same value, and, in particular, whether the offer was concentrated on a small number of goods.” (C-105/17, par. 38)



# Notion of a trader in EU case law (C-105/17)

- ▶ List of non-exhaustive criteria:
  - i. > features of a sale,
  - ii. > status of a seller,
  - iii. > knowledge and technical information possessed by a seller,
  - iv. > features of the goods.

# Notion of a trader in Serbian case law

- ▶ > Rather formal understanding
- ▶ > Too much weight on the fact whether the goods were new or used
- ▶ > Potential problem with natural persons providing accommodation services through Airbnb-type of platforms

# Right to information

- ▶ More information in C2C transactions?
- ▶ Current EU rules relevant for C2C transactions are information-based (CRD, Art. 6a).
- ▶ The alternative for information rights?

# EU rules on ratings and reviews

- ▶ Again information-based rules
- ▶ No positive duties for traders
- ▶ UCPD:
  - Art. 7(6)
  - Annex I (black list)

# Right to withdrawal

- ▶ If introduced as a mandatory rule in C2C transactions concluded online, it would have presented a direct burden for the suppliers.
- ▶ Possible alternative?
- ▶ Promoting right to resell goods?

# Conclusion



Thank you for your attention!