

Use-oriented servitization contracts

Developing consumer protection for consumer lease contracts

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Goods and services

- Traditional focus of consumer law on
 - Goods rather than services
 - Ownership rather than use
- Robust system of consumer sales law
- Underdeveloped system of consumer services law

Growing attention for services?

- For quite some time
 - Package travel and passenger rights
 - Financial services, incl. consumer credit and consumer mortgages
 - Utilities, in particular gas and electricity

- More recent developments
 - Digital content and digital services
 - Platforms, DSA, DMA, Portability Regulation, etc.

- Still little relation with circular economy/sustainable consumption
 - Right2repair: repair services?

Sharing economy

- Shift from ownership towards (shared) use
- Shift from goods towards services

- Development of servitization
 - Services offered next to or instead of goods

 - Peer-to-peer use of goods, often free of charge
 - Ownership of buildings retained by developer, offering maintenance and changes
 - ‘Lease-a-façade’, ‘lease-an-elevator’
 - ***Use-oriented servitization: bundling of goods and services***
 - Use and maintenance contracts, e.g bikes, washing machines, coffee machines

If it walks like a duck, if it talks like a duck...

- Use-oriented servitization = lease
- Use (plus services, e.g. maintenance) of a good belonging to somebody else
- On basis of agreement
- Against payment



Consumer sales versus consumer lease

- Mandatory law
 - Extensive legislation
 - Full harmonisation

 - Extensive consumer protection
 - Mandatory (Art. 25 CRD, Art. 21 SGD)
- Default law
 - Often rudimentary legislation
 - No harmonisation, left to national law

 - Little to no consumer protection rules

Remember the DCFR (2009/2010)?



- Can Book IV.B DCFR provide proper rules for (consumer) lease?
- Includes ‘mandatory’ consumer protection rules (Art. IV.B.–1:103-104)
- Comparison with EU sales law

Payment of price

CRD and SGD:

- Payment of price
 - Implied in Art. 3(1) CRD and 2(1) SGD
 - Time not regulated

Book IV.B DCFR:

- Payment of price (Art. IV.B.–5:101)
 - After expiry of (each) period (Art. IV.B.–5:102)

Delivery

CRD and SGD:

- Delivery by seller (Art. 18 CRD)
- Transfer of property by seller
 - Implied in Art. 2(1) SGD

Book IV.B DCFR:

- Making available by lessor (Art. IV.B.–3:101)
- Acceptance by lessee (Art. IV.B.–5:103)
- Start of lease period (Art. IV.B.–2:101)
- End of lease period (Art. IV.B.–2:102)
 - Lessee to return (Art. IV.B.–5:109)
 - Lessor to take back (Art. IV.B.–3:106)

Conformity

SGD:

- At delivery
 - Subjective criteria (Art. 6)
 - Objective criteria (Art. 7)
- Digital elements: keep in conformity throughout contract/reasonable period
 - Seller must provide updates to keep digital elements in conformity (Art. 7 (3))
 - Consumer must install updates (Art. 7(4))
- Incorrect installation (Art. 8)

Book IV.B DCFR:

- At start
 - Subjective criteria (Art. IV.B.–3:102)
 - Objective criteria (Art. IV.B.–3:103)
- Keep in conformity throughout contract (Art. IV.B.–3:104)
 - Repair, maintenance
 - Not ordinary wear and tear
 - Lessee must tolerate repairs and inspections by lessor (Art. IV.B.–5:108)
- Incorrect installation (Art. IV.B.–3:105)

Obligations during contract period

CRD:

- Passing of risk (Art. 19 CRD)

Book IV.B DCFR:

- Lessee must handle goods in accordance with the contract (Art. IV.B.–5:104)
 - Intervention to avoid danger or damage to goods (Art. IV.B.–5:105)
 - No compensation for lessee’s maintenance and improvements (Art. IV.B.–5:106)
 - Apart from damages for lack of conformity and costs to intervene to avoid danger or damage to the goods
- Lessee must inform lessor (Art. IV.B.–5:107)
 - Of any damage or danger to the goods/third party right or claim requiring lessor’s action
 - Lessor required to keep goods available free from third party right or claim (Art. IV.B.–3:101 (3))

Servitization ≠ (just) lease?

- **IMPORTANT additional services rendered**
 - Maintenance and repair
 - Additional deliveries of products to be used when using ‘main good’
 - Coffee for leased coffee machine
 - Washing powder for leased washing machine
 - Navigation software (incl. updates) for leased car
 - Delivery of replacing ‘main good’ (subscription, apart from lack of conformity)

- **Not problematic for classification as lease**
 - Additional services may be
 - Included in lease provisions (maintenance and repair)
 - Governed by specific rules on services
 - Cf. Book IV.C DCFR (Services)

Concluding remarks

- Shift from ownership to use to be encouraged?
- Then legislative framework to deal with lease contracts needed
 - Including clear consumer protection rules
- Book IV.B DCFR (Lease contracts) is good starting point
- What is the European Commission waiting for?
 - (No major protests from farmers, car industry, Big Pharma, Big Tech or Big Tobacco to be expected)

