

Social Contracts in Europe

EuSoCo Meeting Trento September 25, 2009

supported by

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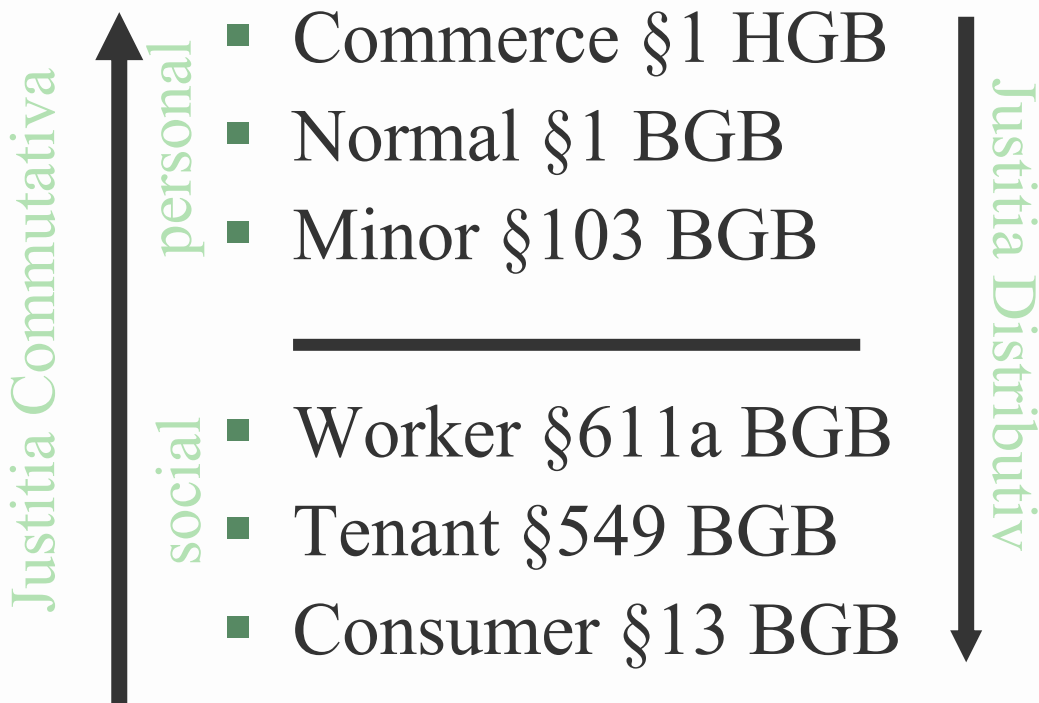
Programme

- 9.00 Welcome
 - Agenda, Protocol, Technical
- 9.15-10.00 Purpose and Goals
 - brainstorming (DCFR, language, publication, proposal, politics, participants)
- 10.15-11.00 Social Contracts
 - What is it? Intro + Discussion
- 11.15–12.00 Issues for Research
 - horizontal or vertical approach, theory and application,
- 12.00–13.00 Lunch Break
- 13.00–14.00 Research Grants
 - Where and How? Website, Communication, Meetings (Sebastien), support?
- 14.00-15.30 Work in Groups
 - European Contract Law
Antoniolli/Nyberg/Perez/Nicolussi
 - Labour Law
Dockes/Kocher/Nogler/Pilgersdorfer
 - Consumer Credit Law
Huls/Howells/Reifner
- 15.45-17.00 Reports and Gen. Discussion
- 17.15-18.15 Workplan
 - Who? When? What? (March 2010 first pub. BOD?, Research Proposal, Coord., next meeting)

From Sales to Service Society

Exchange	➤	Relation
Spot	➤	Duration
Sales	➤	Service
Commodity	➤	Lifetime
Legal Person	➤	Human Being
Equal	➤	Social
Individual	➤	Collective

Inequality/Protection



Formal and Social Justice

■ Opportunities

(commutativa)

- free contracts
- free admission
- compensation
- Equal Credit
Opport.
- Mortgage
Disclosure
- Community
Reinvestment

■ Min. Standards

(distributiva)

- usury laws
- credit monopoly
- price disclosure
- duty to advice
- social
responsibility

Common Elements of Social Contracts

- Time/Duration
 - Long-Term – Relational – incomplete (ec. contract theory)
 - Life-Time (Reifner/Nogler critique Lurger) (sociology)
- Weakness – Social Justice
 - Most Favoured approach (Dockes)
 - Alienation (Nogler) (labour approach)
 - Protective (Howells) (consumer approach)
 - Discrimination – asymmetric information (DCFR, acquis approach)
- (Re-)Productive
 - Labour/tenancy/consumer credit (Reifner/Nogler)
 - + Pension/utilities/societies (Lurger/Perez)
- Trans-Individual
 - Inclusive (Reifner)
 - Collective - self-regulatory - principles (Huls)
 - Public (Lurger)

Defintion of Social Contracts

The concept of *Social¹ Contracts* refers to those individual contractual relations² where foreign³ private capital⁴ is used⁵ productively⁶ by individuals and their families⁷ for their lives¹.

Social Contracts

- affect the well-being⁵ of families⁶ and their lifetime.⁷ They require public as well as collective protection¹ for the productive use of capital from diverging interests of the capital owners who are able to decide on its use³,
- integrate the perception of legal forms on the use of capital for labour and consumption,
- require legal protection in structurally incomplete, asymmetric markets where personal deficits like asymmetric information and inadequate use of market opportunity may aggravate the situation,
- include public rights, ethical and moral values and collective as well as self-regulatory rules and principles into its reciprocity²,
- cover those contractual forms in which the use of foreign capital is made available for labour, housing and credit for consumers,
- build onto the social tradition of labour, tenancy law and consumer credit law.

Collective Contracts

- Association (§23 ff Satzung!) → ■ Kapitalgesellschaften (AktG, GmbHG, eGenG, HGB)
- Society (§705ff) → ■ Personengesellschaft (OHG, KG, Gen)
- Collectivity (§1ff TVG) → ■ Kollektives Arbeitsrecht
Tarifvertrag, Betriebsvereinbarung
- Community (§741 ff) → ■ Erben-, Wohneigentümer (WEG); Familie

Collective Contracts

■ Social Contracts

- *Torts*
- *Undue Enrichment*
- *Other's Affair*
- *Property*
- *Collectiv Agr.*

■ Individual Contracts

- *consensual c.*
- tacit contracts

-
- Good Faith
 - Unconscionability
 - Good Morals

- implied contracts
- contracts of adhesion

Collective Elements

Administrative Law (ordre public)

Collective agreements

Self regulation, arbitration, declarations, commercial ethics

Good Faith, customs, reasonable man, unconsc. usury

Labour Contracts

CC Contracts

Tenant Contracts

Spot and Term Contracts

- Spot Contracts (*emptio vendita*)
 - Kaufvertrag (433)
 - Verbrauchsgüter kauf durch EU-Richtlinie
 - Tausch
 - Werkvertrag (631)
 - Wertpapiere 781ff
 - Unerlaubte Handlung 823 ff
 - Ungerechtfertigte Bereicherung 812 ff
- Long Term Contracts (*locatio conductio*)
 - Sachmiete (*rei*, Miete 535)
 - Wohnungsmieter
 - Geldmiete (*irregularis*, Darlehen 488)
 - Verbraucher 491,13
 - Bürgschaft 765
 - Dienstmiete (*operarum* Arbeitsvertrag 611)
 - Arbeitnehmer 611a etc
 - Altersvorsorge; Society 705, 23; Bank Account; Utilities

Price Control

	Labour 611a ff, (611)	Tenancy 549 ff, (535)	Consumer Credit 491 ff,(488)
Price	Tarifvertrag , (§1 TVG) Betriebsvere inbarung §102 V BtrVG	Vergleichsmiete 558 Mietenspiegel 578c,d; 558a II	Doppeltes des Üblichen Marktzinses §138 Abs.1 (Rspr.)
Continuity	ALG	Sozialamt	Stundungsrecht
Welfare	ALG	Soz. Wohnungsbau	Sozialhilfe
Public Access	Arbeitsamt	Wohnungsamt	Sparkassen

Early Termination

	Labour 611a ff, (611)	Tenancy 549 ff, (535)	Consumer Credit 491 ff,(488)
Term	Befr. Arbeitsvertra g (eingeschrän kt)	Befr. MV (eingeschränkt)	Tilgungsdarlehen (nicht eingeschränkt)
Legal	Vereinbart Willenserklärung + Zugang (103ff, 130)		
Form	623, 126 (schriftl)	568,126 (schriftl)	Keine Form
Terms	622 (1 Mo)	573c (3 Mo)	§498 (2 Mo)
Reasons	§1 KSchG (sozial) Person, Verhalten, Gewinn	§573 (berechtigtes Interesse) Eigenbedarf Verhalten, Gewinn	Zwei Raten, 10% §498
No Protection	< 10 AN< 6 Mo.	Untermiete/Eigenbe d Zweifamhaus 573a	Überschreitungsz ins
Special Protection	Mütter, Schwerbehin d. AzuBis, BtrRäte;102B VG	Soziale Härte 574 f Vollstreckungsaufs chub	Verbraucherinsol venz Vollstreckungssc hutz
Limits	§626	§543 Abs.1 Nachzahlung	Kündigung zur Unzeit
Family	???	Übernahme/Unter miete	Pfändungsschutz, Unterhalt

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Reason

Definition

Collective

Forms



European

Social Mishaps: Illness Divorce

Unemployment Death

	Labour 611a ff, (611)	Tenancy 549 ff, (535)	Consumer Credit 491 ff,(488)
Termination	Mindestfehlzeit	Soziale Härte	-
Continuity	Lohnfortzahlung	Soziale Härte	Restschuldversicherung
Life Conditions	Gesundheitsschutz am Arbeitsplatz	Gesundheitsadäquanz der Wohnung	-

Forms of Contract Law

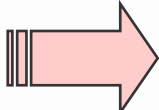
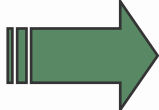

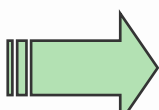

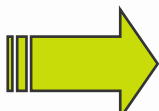
(EU\MS)

- **EU-Contract**
- **Decree** which effects and claims immediate recognition
- **Directive** needs transposition, binding after grace period
- **Decision** which binds those to whom it is addressed to (for e.g. to Article 85 para 3 EEC Treaty)
- **Recommendation** an expression of non-binding opinion
- *Constitution*
- *Statutes/Code Gesetz*
- *Frame Law/ Rahmengesetz*
- *Legal Act/ Verwaltungsakt*
- *Self-Regulation /Tarifvertrag, Kodex*

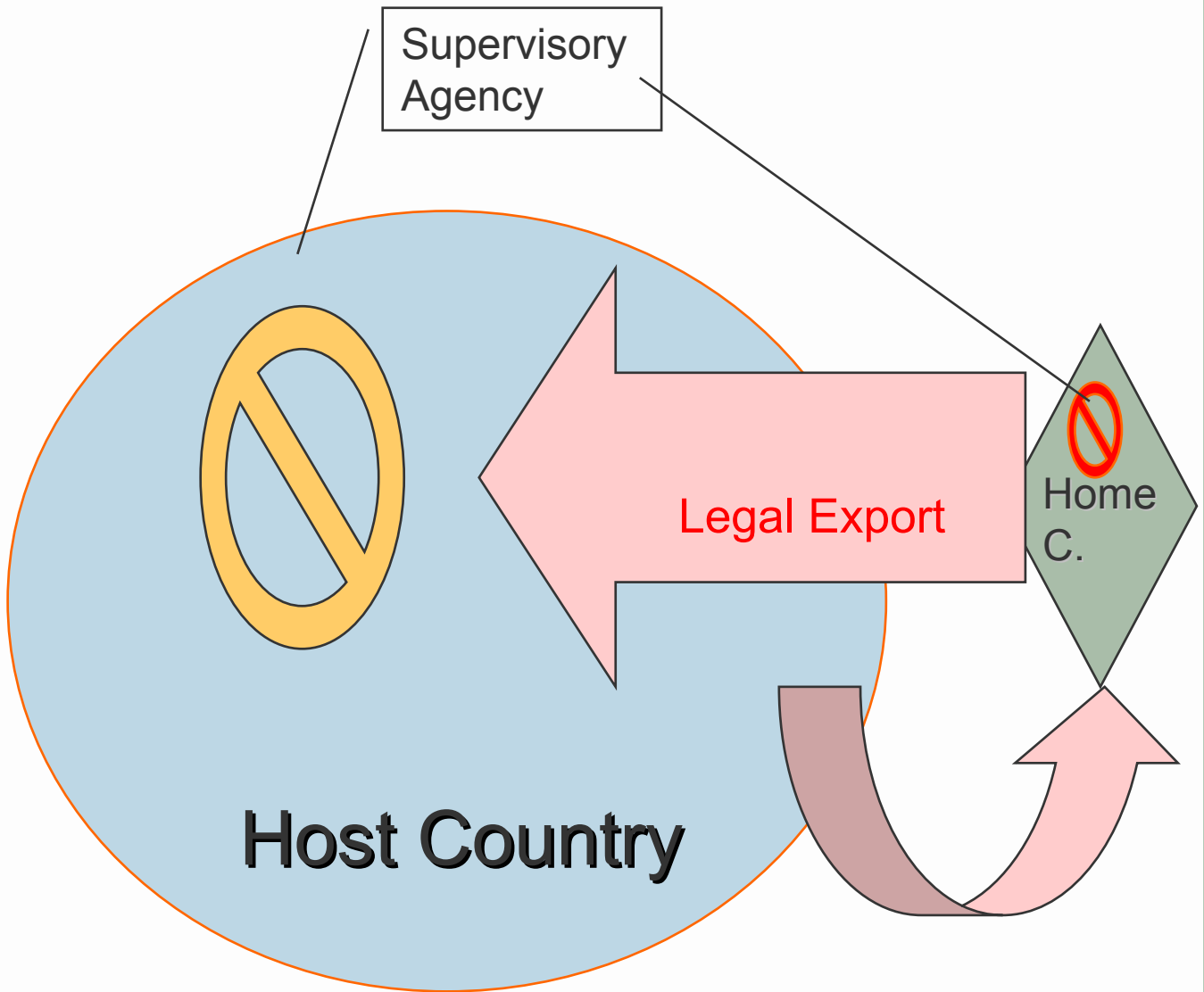
EU-Consumer Credit Regulation

- *Mortgage Loan* AmBIEG C 42, 1985
(Proposal)
- Consumer Credit Directives (1987-98, 2008)
 - 87/102/EU; APR (Formula) 90/88/EU; APR(365,25 days) 98/7/EG; **2008/48/EC**
- *General Consumer Directives*
 - *Doorstep* 85/577/EEC; *Standard Contract Terms* 93/13/EEC (1993)
 - *Electronic Signature* 99/93/EC (2000)
 - *Electronic Commerce* (2000/31/EC)
 - *Distant Selling of FS* (2002/65/EC)
- Mortgage Recommendation (2001)
- Greenbook (2009)

Concepts for a European Contract Law

- Culture  Harmonisation
- Principles  Civil Code
- Solutions  Case Law
- Economics  Efficiency
- Competition  home country control
- Instrument:  mutual recogn.

Threat: Home Country Control



„Common Core“ and „DCFR“

- Contracts, Torts
- Sales Law
- Formation, Vices, Damages
- Unexpected Circumstances
- Personality Rights
- Environmental Liability
- Personal Injury
- Competition
- Strict Liability
- Contract Liability
- Complex Liability
- Information
- Property Rights and Information