



## Private International Law of Contractual and Non-Contractual Obligations

Prof. Martin Gebauer  
Ferrara 2015

### § 6 Matters relating to contracts

- I. Structure and legislative history of Article 7 (1)
- II. The need for autonomous interpretation
- III. "Sale of goods" and "provision of services" (Article 7 (1) (b))
  1. Distinction between the types of contract
  2. Place of delivery
  3. Place „in a Member State“

### Article 7 (1) Brussels I *bis* Regulation

A person domiciled in a Member State may be sued **in another Member State**:

- (1) (a) in **matters relating to a contract**, in the courts for the place of performance of the obligation in question;  
[...]

### § 6 Matters relating to contracts

- ECJ: Contract as „the establishment of a legal obligation freely consented to by one person towards another and on which the claimant's action is based“ (e.g. Engler vs. Janus, C-27/02 (2005), No. 51)

### Article 7 (1) Brussels I *bis* Regulation

A person domiciled in a Member State may be sued in another Member State:

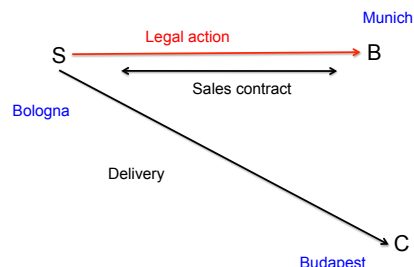
- (1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;  
(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:  
[...]

### Article 7 (1) Brussels I *bis* Regulation

- in the case of the **sale of goods**, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
- in the case of the **provision of services**, the place in a Member State where, under the contract, the services were provided or should have been provided;
- (c) if point (b) does not apply then point (a) applies;  
[...]

## Case 1

The seller (S) is an Italian company with its place of business in Bologna and specialized on the construction of measuring devices. For a couple of years, the company has been selling the machines on a regular basis to the buyer (B), a German company with its place of business in Munich. B asks S to deliver this time directly to B's customer, the Company C in Budapest (Hungary). C complains about the quality of the devices and as a consequence, B does not pay the whole price to S. S plans to bring an action against B and wonders where he could do so.



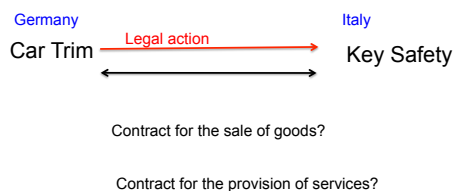
## § 6 Matters relating to contracts

- I. Structure and legislative history of Article 7 (1)
- II. The need for autonomous interpretation
- III. "Sale of goods" and "provision of services" (Article 7 (1) (b))
  1. Distinction between the types of contract
  2. Place of delivery
  3. Place „in a Member State“

## ECJ, Car Trim v. Key Safety, C-381/08 (2010)

16. KeySafety, which is established in Italy, supplies Italian car manufacturers with airbag systems. Between July 2001 and December 2003, KeySafety purchased from Car Trim components used in the manufacture of those systems, in accordance with five supply contracts ('the contracts').

17. KeySafety terminated the contracts with effect from the end of 2003. On the view that those contracts should have run, in part, until summer 2007, Car Trim claimed that the terminations were in breach of contract and brought an action for damages before the Landgericht Chemnitz (Regional Court, Chemnitz).



## ECJ, Car Trim v. Key Safety, C-381/08 (2010)

19. [...] under the contracts, Car Trim was obliged to manufacture airbags of a certain shape, in the traditional manner of a supplier of equipment for the automobile industry, using products purchased from agreed suppliers, so as to be able to supply them to order, according to the needs of KeySafety's production process and in conformity with a large number of requirements relating to the organisation of the work, quality control, packaging, labelling, delivery orders and invoices.

#### Questions to the ECJ for a preliminary ruling

1. Is Article 5(1)(b) of Council Regulation No 44/2001 to be interpreted as meaning that contracts for the supply of goods to be produced or manufactured are, notwithstanding specific requirements on the part of the customer with regard to the provision, fabrication and delivery of the components to be produced, including a guarantee of the quality of production, reliability of delivery and smooth administrative handling of the order, to be classified as a sale of goods (first indent), and not as provision of services (second indent)? What criteria are decisive for the distinction?

#### Questions to the ECJ for a preliminary ruling

2. If a sale of goods is to be presumed: in the case of sales contracts involving carriage of goods, is the place where under the contract the goods sold were delivered or should have been delivered to be determined according to the place of physical transfer to the purchaser, or according to the place at which the goods were handed over to the first carrier for transmission to the purchaser?

#### Article 267 TFEU

- (1) The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:
- (a) the interpretation of the Treaties;
  - (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;
- (2) Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.
- (3) Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.
- [...]

#### ECJ, Car Trim v. Key Safety, C-381/08 (2010)

30. Article 5(1)(b) of Regulation No 44/2001 is silent both as regards the definition of the two types of contract and as regards the distinguishing features of those two types of contract in the context of a sale of goods which at the same time involves the provision of services.

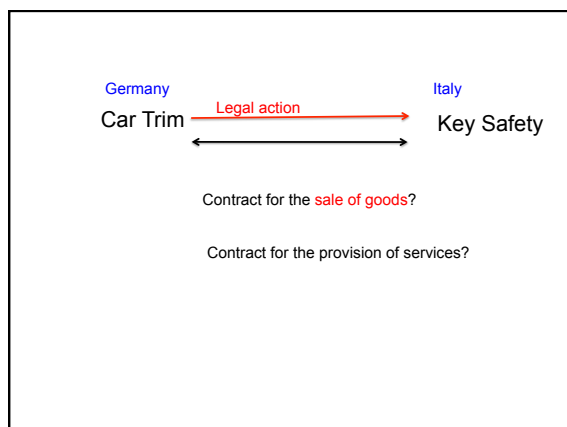
#### Convention on the International Sale of Goods, (CISG)

##### Art. 3 (1) CISG:

Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

#### ECJ, Car Trim v. Key Safety, C-381/08 (2010)

40. Another factor which can be taken into consideration is whether or not those materials were supplied by the purchaser, for the purposes of the interpretation of Article 5(1)(b) of Regulation No 44/2001. Where all the materials from which the goods are manufactured, or most of them, have been supplied by the purchaser, that fact could be an indication that the contract should be classified as a 'contract for the provision of services'. On the other hand, where the material has not been supplied by the purchaser, that fact is a strong indication that the contract should be classified as a 'contract for the sale of goods'.



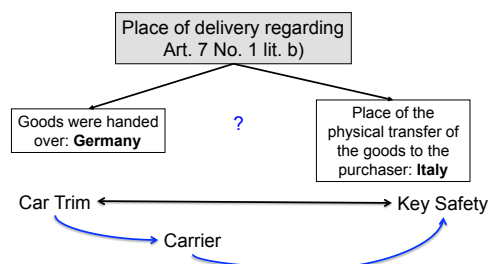
## § 6 Matters relating to contracts

- I. Structure and legislative history of Article 7 (1)
- II. The need for autonomous interpretation
- III. "Sale of goods" and "provision of services" (Article 7 (1) (b))
  1. Distinction between the types of contract
  2. Place of delivery
  3. Place „in a Member State“

### Questions to the ECJ for a preliminary ruling

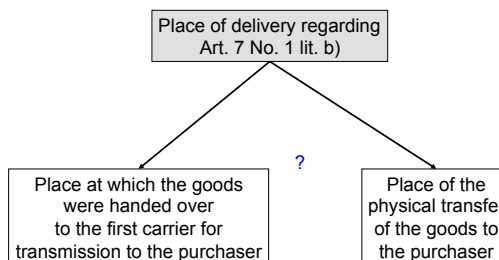
2. If a sale of goods is to be presumed: in the case of sales contracts involving carriage of goods, is the place where under the contract the goods sold were delivered or should have been delivered to be determined according to the place of physical transfer to the purchaser, or according to the place at which the goods were handed over to the first carrier for transmission to the purchaser?

### Autonomous Interpretation of the Place of delivery in the case of sales contracts involving carriage of goods

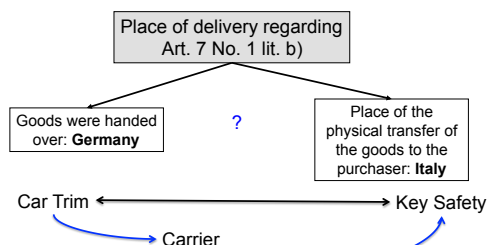


### ECJ, Car Trim v. Key Safety, C-381/08 (2010)

58. The referring court contemplates two places which could serve as the place of delivery for the purposes of fixing an autonomous criterion, to be applicable in the absence of a contractual provision. The first is the place of the physical transfer of the goods to the purchaser and the second is the place at which the goods are handed over to the first carrier for transmission to the purchaser.



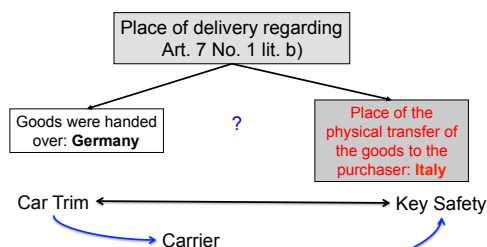
Autonomous Interpretation of the Place of delivery  
in the case of sales contracts involving carriage of goods



ECJ, Car Trim v. Key Safety, C-381/08 (2010)

60. It should be noted that the place where the goods were physically transferred or should have been physically transferred to the purchaser at their final destination is the most consistent with the origins, objectives and scheme of Regulation No 44/2001 as the 'place of delivery' for the purposes of the first indent of Article 5(1)(b) of that regulation.

Autonomous Interpretation of the Place of delivery  
in the case of sales contracts involving carriage of goods

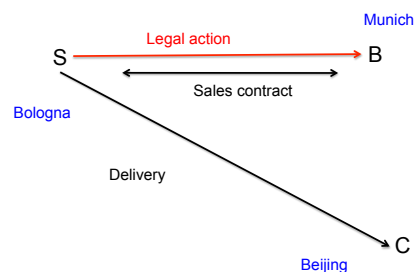


§ 6 Matters relating to contracts

- I. Structure and legislative history of Article 7 (1)
- II. The need for autonomous interpretation
- III. "Sale of goods" and "provision of services" (Article 7 (1) (b))
  1. Distinction between the types of contract
  2. Place of delivery
  3. Place „in a Member State“

Case 2

The seller (S) is an Italian company with its place of business in Bologna and specialized on the construction of measuring devices. For a couple of years, the company has been selling the machines on a regular basis to the buyer (B), a German company with its place of business in Munich. B asks S to deliver this time directly to B's customer, the Company C in Beijing (China). C complains about the quality of the devices and as a consequence, B does not pay the whole price to S. S plans to bring an action against B and wonders where he could do so.



Article 7 (1) Brussels I *bis* Regulation

A person domiciled in a Member State may be sued in another Member State:

- (1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;  
 (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:  
 [...]

Article 7 (1) Brussels I *bis* Regulation

- in the case of the sale of goods, the **place in a Member State** where, under the contract, the goods were delivered or should have been delivered,  
 — in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;  
 (c) if point (b) does not apply then point (a) applies;

Article 7 (1) Brussels I *bis* Regulation

- in the case of the sale of goods, the **place in a Member State** where, under the contract, the goods were delivered or should have been delivered,  
 — in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;  
**(c) if point (b) does not apply then point (a) applies;**

Article 7 (1) Brussels I *bis* Regulation

A person domiciled in a Member State may be sued in another Member State:

- (1) (a) in matters relating to a contract, in the courts for the **place of performance of the obligation in question;**

## „obligation in question“

- Contrary to the cases addressed by point b), under point a) there is no common place of all performances under the contract.
- It is the place of the disputed obligation that is decisive
- de Bloos v. Bouyer, case 14/76 (1976), No. 13: „[...] the obligation to be taken into account is that which corresponds to the contractual right on which the plaintiff's action is based.“

