

Consumers in the cloud

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Abstract (English)

Cloud computing means the storing, processing and use of data accessed over the internet on remotely located computers. Streaming media from the cloud, accessing social media, storing pictures or having a back-up of important data in the cloud have become common consumer products. Cloud computing poses various challenges to traditional concepts in consumer law. What information should the consumer receive? What remedies are offered in case of problems? Are the terms and conditions of the contract fair? Which law applies? Those legal questions can appear in everyday situations when consumers use cloud storage or access films and music online.

This thesis assesses whether the EU consumer contract law framework is already appropriate to regulate business-to-consumer cloud computing contracts. The thesis describes the legal framework applicable to cloud products and identifies legal gaps or loopholes which might affect consumer trust in cloud computing. The assessment follows the “life cycle” of the contract starting from the pre-contractual information obligations, the conclusion of the contract and subsequently presenting different legal issues in the application of EU law to cloud computing linked to private contracts between cloud providers and consumers.

Consumer problems in the cloud revolve around unclear information; service availability; data integrity and data loss; contractual complexity and unbalanced terms and conditions; purportedly free products and payment with personal data; limitations of liability; remedies; territorial links; and privacy issues.

Among its findings, the thesis argues that recent legal changes improved the clarity of EU rules by defining and distinguishing the concepts of digital content and digital service. The remedies for digital content and services were streamlined but the distinction between those two types of products remains complex, especially if products are supplied over a period of time.

EU law can now also better respond to the monetisation of products based on personal data and catches products where the consumer provides personal data in exchange. However, a very broad scope of application might lead to uncertainty as to whether the contract was concluded since there is no clear exchange of a product against a price.

Pre-contractual information obligations are now comprehensively harmonised at EU level, but the form used by providers to transmit this information tends to be unclear and technical. Recent changes to the right of withdrawal make a distinction between digital content and digital services, creating two different regimes. While this solution provides a good balance of rights and obligations between the consumer and the provider, it appears too complex for everyday application.

Until recently a framework for conformity with the contract of cloud products was clearly missing and recent changes are a major step for EU consumer law. However, some legislative choices are questionable. Determining objective criteria of a digital product will be complicated, as products are often new and complex. Moreover, the exception from the mandatory nature of EU rules included in the Digital Contracts Directive undermines the system of protection.

The protection against unfair contract terms remains of prime importance in cloud computing characterised by high volume of small value but complex contracts. The assessment of the terms and conditions of cloud providers still revealed some issues. On a positive note, contract clauses related to jurisdiction and applicable law have evolved significantly. On the other hand, sweeping liability

exclusions still widely persist despite their very doubtful nature from the perspective of contractual fairness.

In the area of private international law, the thesis demonstrates that the current model of limited mandatory rules responds well to a gradual harmonisation of consumer laws in the area of cloud computing.

As regards privacy, EU privacy rules not only strengthen individuals' fundamental rights in the digital world ensuring that they have good control over their own personal data, but also help businesses by providing one set of rules across the digital single market. The data protection framework supports cloud development by removing national barriers and divergences and by creating the free flow of personal data within the EU.

Overall, this thesis argues that despite some remaining gaps, EU law already responds to the challenges of cloud computing and regulates it in an appropriate way. Recent legislative changes were introduced with a clear focus on cloud computing and its issues. Nevertheless, in an attempt to address particular characteristics of cloud products, EU law created rather complex solutions which do not seem appropriate for application in everyday situations but require a rather complex assessment.

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