

Smart Contracts & Consumer Protection

Sarah Legner

21 July 2023

18th International Association of Consumer Law Conference, Hamburg





Consumer Benefits of Smart Contracts

01

01 Consumer Benefits of Smart Contracts



- **Time and cost savings**
- **Reversal of burden of initiative**



According to a [Capgemini paper](#) titled 'Smart Contracts in Financial Services: Getting from Hype to Reality,' "consumers could potentially expect savings of \$480 to \$960 per loan" and that financial institutions would be able to "cut costs in the range of \$3 billion to \$11 billion annually" by reducing processing costs in the origination process in the US and Europe.

source: <https://crypto.news/a-cost-benefit-analysis-of-using-smart-contracts-in-banking/>

01 Consumer Benefits of Smart Contracts



- **Market related benefits**

- risk-adjusted offers
- changed structures
- New investment opportunities





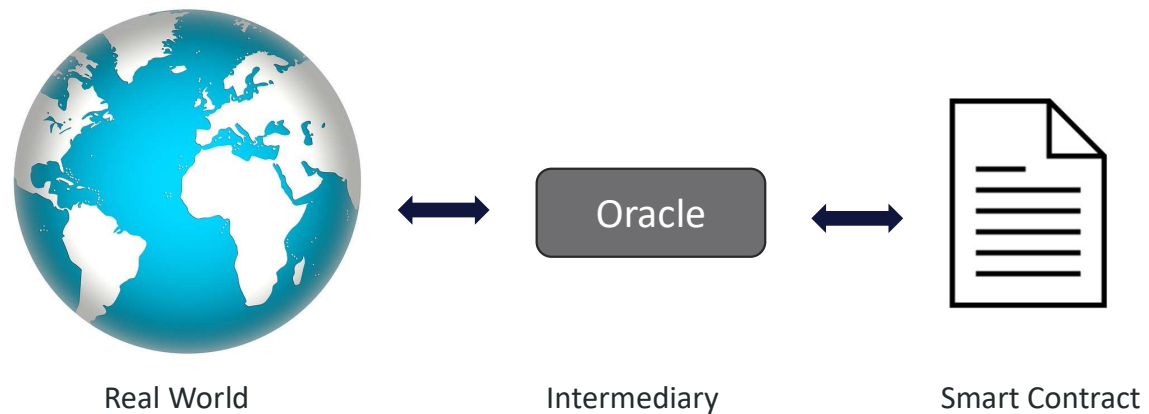
Consumer Risks of Smart Contracts

02

02 Consumer Risks of Smart Contracts



- **Establishing the Code**
- **Connection to the Real World**
- **„Translation“ issues regarding undefined legal concepts**





Smart Contracts and European Consumer Law

03

03 Smart Contracts and European Consumer Law



- How to act in compliance with current European Consumer Law?

Unfair Contract Terms Directive (93/13/EEC)

Article 3

1. A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.

German Supreme Court 22-10-2022 – XII ZR 89/21



03 Smart Contracts and European Consumer Law



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“The possibility of locking the vehicle, which is solely in the power of the lessor, shifts the burden of securing the continued use to the lessee. In any case, this constitutes an **unreasonable disadvantage to the lessee** as a consumer if she can only achieve the continued use of her - separately purchased, leased or rented - e-vehicle in the event of a dispute by asserting a further transfer of use of the battery in court.”



German Supreme Court 22-10-2022 – XII ZR 89/21

03 Smart Contracts and European Consumer Law



- How to act in compliance with current European Consumer Law?

Consumer Rights Directive (2011/83/EU)

Directive on distance marketing of financial services (2002/65/EC)

Article 9

Right of withdrawal

1. Save where the exceptions provided for in Article 16 apply, the consumer shall have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason, and without incurring any costs other than those provided for in Article 13(2) and Article 14.

Article 6

Right of withdrawal

1. The Member States shall ensure that the consumer shall have a period of 14 calendar days to withdraw from the contract without penalty and without giving any reason. However, this period shall be extended to 30 calendar days in distance contracts relating to life insurance covered by Directive 90/619/EEC and personal pension operations.



Implications for European Legislation

04

04 Implications for European Legislation



- **Ban or support of smart contracts?**
- **Re-shaping information duties?**
 - pro: empowering consumers
 - con: risk of information overload
- **Co-regulation?**

Article 6
Information requirements for distance and off-premises contracts

(g) the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy;

THANK YOU!

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