

I. Scientific objectives of the project

The market for digital goods (smart products, digital content or digital services) nowadays constitutes a significant economic sector. The omnipresence of such goods poses challenges to legislators due to their specific nature as legal goods. For example, the sale of a smart products no longer creates a typical contract with a one-off performance. Instead, it establishes a long-term contractual relationship due to the seller's obligation to update the digital content. Simultaneously, the performance of a contract involving digital assets most often involves several independent parties. These circumstances require an appropriate balance of risks for sellers, consumers and digital infrastructure providers. The consumer market itself is undergoing significant changes, part of which is a decline in the importance of the sales contract as a model legal relationship, with an increase in the significance of service contracts. An important feature of the market for digital content is also that, in the light of the recent sociological research, consumers regard these goods as substitutes for their tangible counterparts (for example, books or software stored on tangible media) and expect the same freedom in the sphere of their use. This creates further tensions due to the fact that the copyright protection of digital goods remains in practice much broader than that of their material copies. Furthermore, the category of digital assets is extremely diverse internally and the contracts for their supply are legally heterogeneous.

The purpose of this project is therefore to examine how the nature of digital goods affects the current legal regime of breach of contract and, in particular, whether current rules of the European Union law take sufficient account of the peculiarities of the digital goods market as well as the societal expectations directed at the way this market operates and, if not, how the law can be amended to make them more suitable to this market.

The core of the research consists in the extensive comparative study of the EU law on consumer contracts for the supply of digital content, digital services and goods with digital elements (mainly: directives 2019/770 and 2019/771) and the UK law (mainly Consumer Rights Act 2015; however – with a complementary reference to the rules of common law and equity) as regards the practical effects of their application. Both the above-mentioned legal regimes vastly differ as to the: 1) model of regulation of mixed contracts on supply of digital goods; 2) catalogue and consequences of invocation of legal remedies for non-conformity of a good with a contract.

II. Applied research methods:

- 1) formal-dogmatic method (analysis of the relevant acts of the law of the EU, UK as well as the particular Member States of the EU),
- 2) historical legal method (to be applied mostly as regards the rules of Roman Law and Ius Commune concerning the functions of a right to terminate a contract as well as of subsequent settlement of the parties),
- 3) comparative legal method (with a functional approach, the solutions for the problems analysed in the project provided for in the EU and UK law would be critically analysed in order to evaluate the relevant rules of the EU law),
- 4) economic analysis of law (it has to be examined whether an application of the current EU law on digital goods enables the economic functions of the regime of breach of contract to be fulfilled),
- 5) behavioural analysis (behaviourally informed regulative interventions, so-called “nudges”, can contribute to achieving the certain objectives of legal regulations, also as regards consumer law; therefore, analysis of impact of legal rules relevant for the project on behaviour of the market participants would constitute a useful tool to evaluate the EU law and to put forward the proposals de lege ferenda.

III. Significance of the project

Due to the fact that at the level of the European doctrine an attempt of such a comparative research has not yet been made, comparison of the solutions applied in the EU and UK's legal systems would bring a significant value to the current state of art. Implementation of the project would also allow to present a fresh insight regarding the basic concepts of the EU “digital law” as well as to put forward the proposals of its possible future amendments.