

UNIDROIT 1987
Study LIX - Doc. 35
(Original: German)

U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A DRAFT

CONVENTION ON INTERNATIONAL FINANCIAL LEASING

Comments by the Government of the Federal Republic
of Germany on the text of the preliminary draft
uniform rules on international financial leasing
as this emerged from the second session of
governmental experts

Rome, February 1987

Re the preamble

In the third paragraph ("CONSCIOUS ...") the second alternative wording ("need to be adapted") is preferred. It corresponds better to the legal qualification of financial leasing under German law.

Re Article 1

Paragraph 2 (a) should be amended as follows:

"in specifying the equipment and in selecting the supplier the lessor relies primarily on the skill and judgment of the lessee".

Re Article 7

Paragraph 1 (c) should, on account of its uncertain content, be deleted. The word "merely" in paragraph 1 (a) already predicates the requisite condition for the lessor's possible liability in its capacity of owner or importer of a dangerous product.

With respect to paragraph 2, Alternative II is to be preferred.

Re Article 10

In respect of paragraph 3, basically Alternative II is to be preferred. However, various aspects of its drafting still appear to be in need of improvement:

1. Its opening words ("Where the supplier fails ...") do not make it sufficiently clear whether the lessee's rights specified below in subparagraphs (a) and (b) can only be exercised where the lessee has already rejected the leased equipment.

2. The right to terminate the leasing agreement granted under (b) should, in view of the serious impact this will have on the lessor's interests, be in all cases made subject to the lessee having first allowed the lessor a reasonable opportunity to make a tender of conforming equipment but without success.

3. After paragraph 3 a new additional paragraph 4 should be inserted, worded along the following lines:

"Once a month has elapsed after the delivery of the equipment, the lessee can only enforce the rights which it is granted against the lessor under paragraphs 1-3 for non-conformity of the equipment where it has previously without success endeavoured to enforce its rights under Article 9 against the supplier."

As a suggestion for bringing out the subsidiary nature of the lessor's liability arising out of the tender of non-conforming equipment, this would have the merit of better corresponding to the balance of interest and involvement of the parties concerned as this results inter alia from Article 7. On the other hand, where the non-conformity is already apparent on delivery or becomes apparent shortly thereafter, then the lessee must be entitled to exercise immediately its rights against the lessor.