

Conformity in contracts: The role of technical standards

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Agenda

Part 1: Technical standards' influence on the conformity assessment

- Denmark, Germany, and England

Part II: : How technical standards can help interpret conformity in contracts where conformity is unclear

- **Use case:** B2B data contracts

PART I:

TECHNICAL STANDARDS' INFLUENCE ON THE CONFORMITY ASSESSMENT

What is conformity?



Have I gotten what I was promised in the contract?

Differences in terminology



= Defects



= Breach of terms



What is conformity?



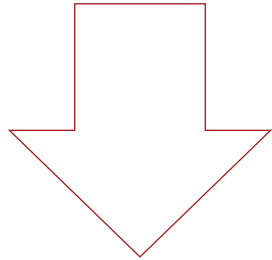
Have I gotten what I was promised in the contract?

What is conformity?



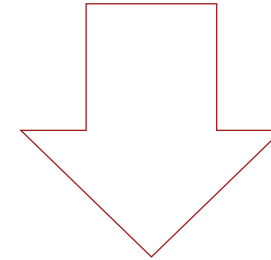
What is conformity?

Subjective requirements



Parties' explicit agreement

Objective requirements



Implied terms

What is conformity?

Subjective requirements



BGB § 434(2)
BGB § 633(2)
BGB § 536(1)



Danish Act on the Sale of Goods § 75b, no. 1 and 2



Sale of Goods Act sec. 13(1)
Supply of Goods and Services Act sec. 8(1)

Freely determined
by the parties

Focus on nature and
purpose

What is conformity?

Objective requirements



BGB § 434(3)
BGB § 633(2)
BGB § 536(1)



Danish Act on the Sale of Goods § 75c, no. 1 and 4



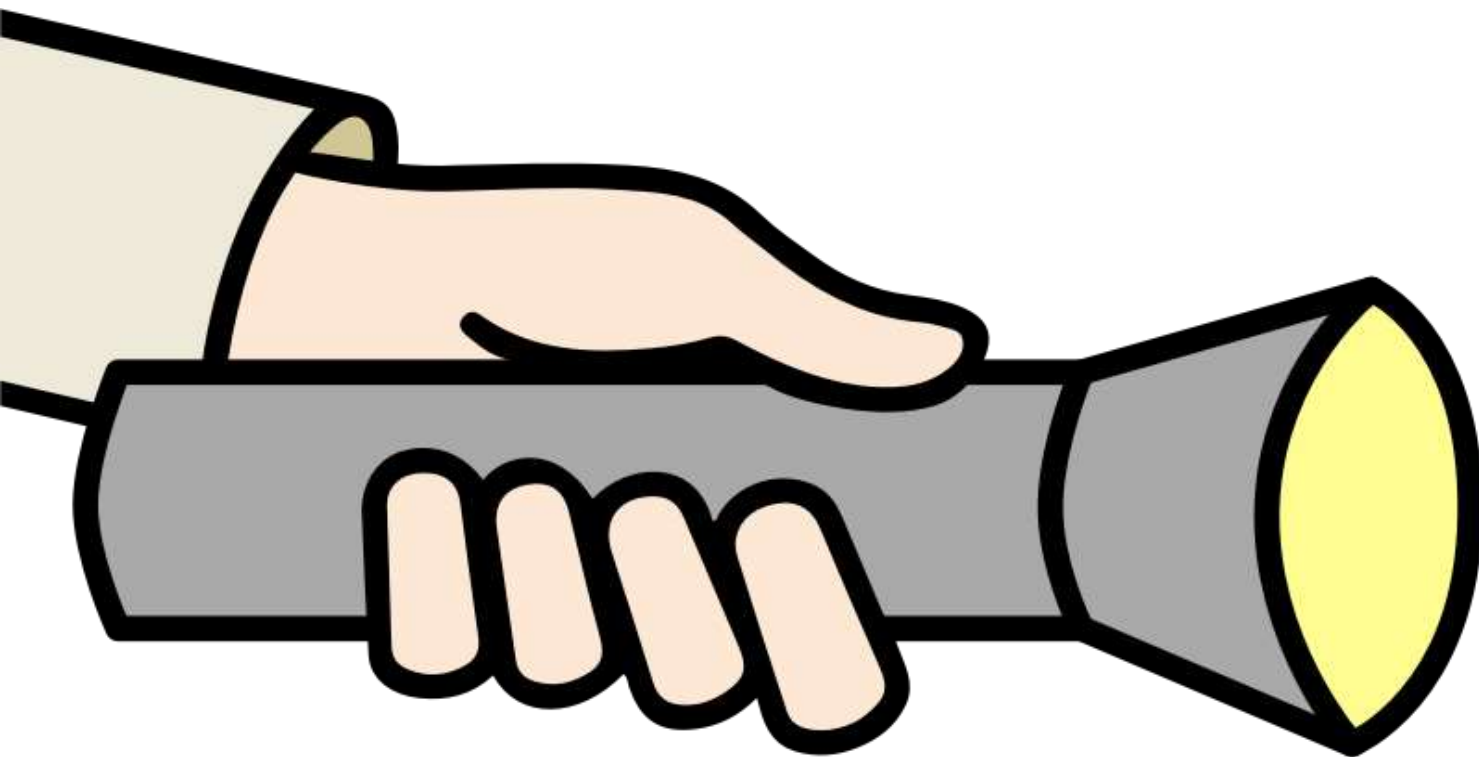
Sale of Goods Act sec. 14(2), (2A), & (2B)
Supply of Goods and Services Act sec. 9(2) (2a)
Supply of Goods and Services Act sec. 13

Suitable for customary use

Of a nature usual in deliverables of the same kind and as can reasonably be expected by the buyer taking the nature of the deliverable into account (…)

Satisfactory quality

→ What a reasonable person would regard as satisfactory.



The role of technical standards

The role of technical standards

Subjective requirements

Compliance with technical standards can be agreed

General issues related to contract interpretation

The role of technical standards

Subjective requirements

Compliance with technical standards can be agreed

General issues related to contract interpretation

Examples



German Federal Court of Justice in NJW 2007, 2983



Danish Maritime and Commercial Court in SH2002.H 271/98



High Court of England and Wales in 125 OBS (Nominees1) v Lend Lease Construction (Europe) Ltd (2017)

The role of technical standards

Objective requirements

Germany and Denmark

Interpret "usual nature" and
"as can reasonably be
expected"

England

Interpret "satisfactory quality"

The role of technical standards

Objective requirements

Germany and Denmark

Interpret “usual nature” and
“as can reasonably be
expected”

England

Interpret “satisfactory quality”

Examples



German Federal Court of
Justice in NJW 1998, 2814



Danish Supreme Court in
U.1992.377 H



High Court of England and Wales in
Britvic Soft Drinks Ltd & Bass
Brewers Ltd v Messer UK Ltd &
Terra Nitrogen UK Ltd (2001)

The role of technical standards

Objective requirements

A deliverable's non-compliance with a technical standard does not in itself equal non-conformity with the contract

The role of technical standards

Objective requirements

A deliverable's non-compliance with a technical standard does not in itself equal non-conformity with the contract



German Federal Court of Justice in NJW 1998, 2814



Reasoning of the courts



Reasoning of the courts

The role of technical standards

Objective requirements

However, a deliverable's compliance with a technical standard is a strong argument in favour of conformity, if the standard is current

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German Federal Court of Justice in NJW 2013 2271



Phrasing of the courts e.g. in U.1992.377H



Phrasing of the courts e.g. in Britvic Soft Drinks Ltd & Bass Brewers Ltd v Messer UK Ltd & Terra Nitrogen UK Ltd (2001) (though more uncertain)

The role of technical standards – summarising

Technical standards are not in themselves the legal rules used to determine conformity

Technical standards are used to interpret “usual nature”, “as reasonably expected”, and “satisfactory quality”

- A deliverable’s non-compliance with a technical standard does not in itself equal non-conformity with the contract
- However, a deliverable’s compliance with a technical standard is a strong argument in favour of conformity, if the standard is current

PART II:

USE CASE: HOW TECHNICAL STANDARDS CAN HELP INTERPRET
CONFORMITY IN B2B DATA CONTRACTS

Conformity in B2B data contracts

Data has become a valuable asset



=

Any contract regulating the access to and/or use of data

Conformity in B2B data contracts

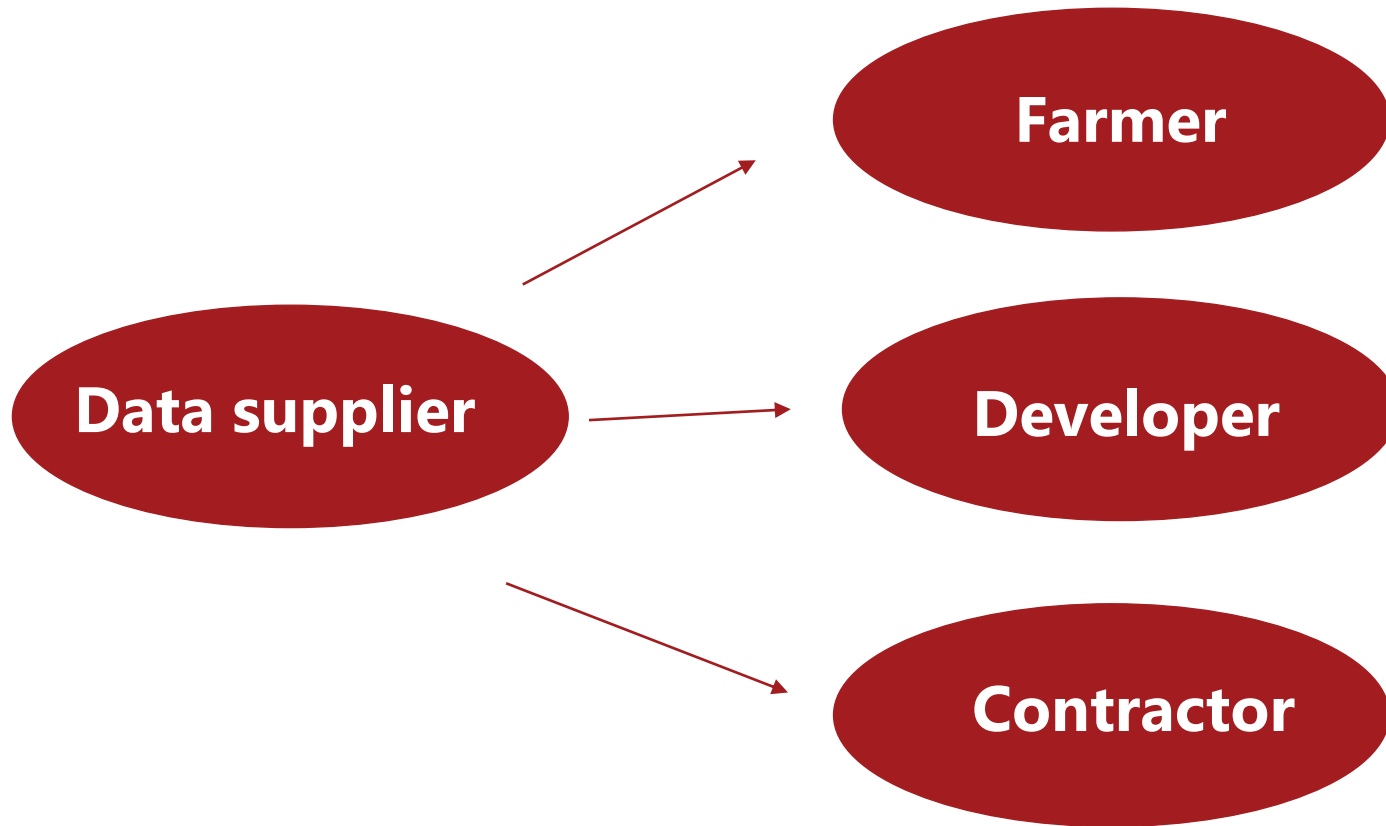
No consensus on data quality

Main reason is data's context-dependency

Conformity in B2B data contracts



Conformity in B2B data contracts



"The supplier transfers soil data containing information on acids, nutrients, and water to the recipient".

Conformity in B2B data contracts

“The supplier transfers soil data containing information on acids, nutrients, and water to the recipient”.



Conformity in B2B data contracts

Legal sources

- ALI ELI Principles for a Data Economy (2021), UNCITRAL Default rules for data provision contracts (draft Oct 2023)
- Specht (2013), Hoeren (2016), Drabinski (2021)
- Sector specific legislation on data quality (EU Directive on Data Accuracy 2018/1139 of 4 July 2018)

Technical standards



Data must be *accurate*

Conformity in B2B data contracts

ISO-8000 on data quality

Actions to ensure accuracy

Example: Creation of metadata

Metadata for soil data

- Each data point must include two measurements of water from two different measuring devices
- If the divergence between the two measurements is too large, a new measurement must be performed

Conformity in B2B data contracts – summarising

ISO-8000 provides a framework for working with the open requirement of accuracy

Supplier's compliance with ISO-8000 can be a strong argument in favour of conformity cf. Part I

Take-aways

Understanding of how technical standards in general influence the conformity assessment

Using technical standards to interpret conformity where conformity is unclear

➤ B2B data contracts

Thank you!

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