



European Communities

EUROPEAN PARLIAMENT

# SESSION DOCUMENTS

English Edition

9 April 1991

A3-0091/91

\*\*I

## REPORT

of the Committee on Legal Affairs and Citizens' Rights

on the proposal from the Commission to the Council for a Directive on unfair terms in consumer contracts  
(COM(90) 322/final/2 - C3-0319/90 - SYN 285)

Rapporteur: Mr Geoffrey HOON

PE 145.256/fin.  
Or. EN

*A Series: Reports - B series: Motions for Resolutions, Oral Questions.*

*- C Series: Documents received from other Institutions (e.g. Consultations)*

\* = Consultation procedure requiring a single reading

\*\*II = Cooperation procedure (second reading) which requires the votes of the majority of the Members of Parliament

\*\*I = Cooperation procedure (first reading)

\*\*\* = Parliamentary assent which requires the votes of the majority of the current Members of Parliament

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By letter of 3 October 1990, the Council consulted the European Parliament, pursuant to Article 100a of the EEC Treaty, on the proposal from the Commission to the Council for a Directive on unfair terms in consumer contracts.

At the sitting of 8 October 1990, the President of Parliament announced that he had referred this proposal to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on the Environment, Public Health and Consumer Protection for its opinion.

At its meeting of 18/19 September 1990 the Committee on Legal Affairs and Citizens' Rights had appointed Mr HOON rapporteur.

At its meetings of 7-9 January, 6-8 February 1991 and 2-3 April 1991, it considered the Commission proposal and a draft report, revised for the last meeting.

At the last meeting it adopted the draft legislative resolution by 13 votes to 3 with 3 abstentions.

The following were present for the vote: Stauffenberg, chairman; Vayssade, Rothley and Speroni, vice-chairmen; Hoon, rapporteur; Bontempi, Bru Puron, De Gucht, Dury, Fontaine, Garcia Amigo, Grund, Inglewood, Janssen van Raay, Malangre, McCubbin, Merz, Salema, Schlechter, Simpson, von Wogau, and Lavvos.

The explanatory statement will be presented orally in plenary sitting.

The opinion of the Committee on the Environment, Public Health and Consumer Protection is attached.

The report was tabled on 9 April 1991.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A.

AMENDMENTS

Proposal from the Commission to the Council for a  
Directive on unfair terms in consumer contracts

Commission text<sup>(1)</sup>

Amendments

(Amendment N° 1)

First citation

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a (1) and (3) thereof,

(Amendment N° 2)

First recital

Whereas it is necessary to adopt measures to progressively establish the internal market before 31 December 1992; whereas the internal market comprises an area which has no internal frontiers and in which goods, persons, services and capital move freely;

Whereas it is necessary to adopt measures to complete the internal market before 31 December 1992; whereas the internal market comprises an area which has no internal frontiers and in which goods, persons, services and capital move freely;

(Amendment N° 3)

Second Recital

Whereas national laws of Member States relating to the terms of contract applicable between the seller of goods or services, on the one hand, and the purchaser of them, on the other hand, show many disparities, with the result that the national markets for the sale of goods and services to consumers differ from each other and that distortions of competition may arise amongst the sellers, notably when they sell in Member States other than their own;

Whereas national laws of Member States relating to the terms of contract applicable between the seller of goods or services, on the one hand, and the purchaser or user of them, on the other hand, show many disparities, with the result that the national markets for the sale of goods and supply of services differ from each other and that distortions of competition may arise amongst businesses, notably when they trade in Member States other than their own;

(1) for full text see COM(90) 322 final, OJ No. C243, 28.9.1990, p. 2

Commission text

Amendments

(Amendment N° 4)

Third Recital

Whereas, in particular, national laws of Member States relating to unfair terms in contracts concluded with consumers show marked divergences, and the same is true of their national laws relating to the obligation of the seller of goods to answer for the quality of them, for their fitness for the purpose for which they are sold, and for their conformity to the contract, and of the supplier of services to answer for the performance of them;

Whereas in particular, national laws of Member States relating to unfair terms in contracts - standard contracts, contracts governed by general terms - show marked divergences, and the same is true of their national laws relating to the obligation of the seller of goods to answer for the quality of them, for their fitness for the purpose for which they are sold, and for their conformity to the contract, and of the supplier of services to answer for the performance of them;

(Amendment N° 5)

Fourth Recital

Whereas consumers do not know the laws which, in other Member States than their own, govern contracts for the sale of goods or services; and whereas this difficulty may deter them from direct transactions of purchase of goods or services in another Member State;

Whereas, in general, consumers and users do not know the laws which govern contracts for the sale of goods or services, in particular where they are obtained in other Member States than their own; and whereas this difficulty may place them at a contractual disadvantage if they conclude contracts governed by general terms and conditions imposed by the supplier of such goods or services, possibly even deterring them from direct transactions in another Member State;

(Amendment N° 6)

Eighth recital

Whereas in accordance with the principle laid down under the heading "Protection of the economic interests of the consumers", as stated in those programmes: "Purchasers of goods and services should be protected against the abuse of power by the seller, in particular against one-sided standard contracts and the unfair exclusion of essential rights in contracts";

Whereas, in accordance with the principle laid down under the heading "Protection of the economic interests of the consumers", as stated in those Commission programmes: "Purchasers of goods and services should be protected against the abuse of power by the seller, in particular against one-sided standard contracts and the unfair exclusion of essential rights in contracts";

Commission text

Amendments

(Amendment N° 7)  
Ninth Recital

Whereas more effective protection of the consumer can be achieved by adopting uniform rules of law in the matter of unfair terms; whereas those rules should apply to all consumer contracts, whether concluded in writing or by word of mouth, and, if in writing, whether by means of one document or several;

Whereas more effective protection of the consumer can be achieved by adopting uniform rules of law in the matter of unfair terms; whereas those rules should apply to all consumer contracts concluded under general terms and conditions in one or more documents;

(Amendment N° 8)  
Tenth Recital

Whereas more effective protection of the consumer can be achieved by adopting rules of law which, in the matter of unfair terms, are to apply to all of them;

Whereas, under Article 100a(3), a high level of consumer protection must be secured within the internal market;

(Amendment N° 9)  
After the tenth recital new recital

Whereas the Member States should make sure that general terms and conditions used in standard contracts have been or can be publicized and that they are comprehensible to consumers who are required to accept them if they wish to acquire goods or services sold or supplied under such terms and conditions;

(Amendment N° 10)  
Twelfth Recital

Whereas it is desirable to identify certain types of terms which must not be used in contracts concluded with consumers;

Whereas, in order to realize the objective set out in Article 100a(3) of the Treaty, a twin approach must be taken in that firstly, it must be established as a general principle that, for a contract to remain valid, all terms contained in general conditions should be complied with, failing which the contract would be void, and that, secondly, specific types of term should be identified which may not be used in standard consumer contracts and, whatever the circumstances, would also be void;

Commission text

Amendments

(Amendment N° 11)  
Thirteenth Recital

Whereas persons or organizations, if regarded under national law as having a legitimate interest in the matter, must have facilities for initiating proceedings concerning terms in contracts concluded with consumers, and in particular unfair terms, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings;

Whereas persons or organizations, if regarded under national law as having a legitimate interest in the matter, must be legally entitled to initiate proceedings concerning terms in contracts concluded with consumers, and in particular unfair terms, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings;

(Amendment N° 12)  
Fourteenth Recital

Whereas the courts or administrative authorities must have powers enabling them to order or obtain the withdrawal from use of offending terms;

Whereas the competent national judicial or administrative authorities must have powers enabling them to order the withdrawal from use of unfair terms contained in general conditions in contracts concluded between consumers and suppliers of goods or services;

(Amendment N° 13)  
Article 1

The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in consumer contracts.

1. The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in contracts in which sellers of goods or providers of services make acquisition thereof by consumers or users subject to their general conditions governing sales or the supply of services.

2. Member States shall retain the right to enact rules giving greater protection to the interests of consumers;

Commission text

Amendments

(Amendment N° 14)  
Article 1a (new)

1. Insofar as the contract terms have been individually negotiated by the contracting parties, they shall not constitute general terms and conditions within the meaning of this Directive.

2. The provisions of this Directive shall not apply to contracts relating to employment law, the law of succession, family law or company law.

3. The provisions of this Directive shall apply only to general terms and conditions on the basis of which arrangements departing from or complementing statutory provisions are agreed.

(Amendment N° 15)  
Article 2, point 1

For the purposes of this Directive :

1. A contractual term is unfair if, of itself or in combination with another term or terms of the same contract, or of another contract upon which, to the knowledge of the person or persons who conclude the first-mentioned contract with the consumer, it is dependent:

- it causes to the detriment of the consumer a significant imbalance in the parties' rights and obligations arising under the contract; or

- it causes the performance of the contract to be unduly detrimental to the consumer; or

- it causes the performance of the contract to be significantly different from what the consumer could legitimately expect; or

- it is incompatible with the requirements of good faith.

1. Provisions in general terms and conditions shall be void if they disadvantage the consumer to such an extent as to be contrary to the requirements of good faith.

(Amendment N° 16)  
Article 2(1)a (new paragraph)

1a. Where there is uncertainty, a provision shall be assumed to be unfair if:

(a) it is not compatible with important principles underlying the statutory provisions from which it departs, or

(b) it curbs important rights or obligations automatically deriving from the contract in such a manner that the purpose of the contract is at risk, or

(c) it contains clauses which are unreadable or likely to be misunderstood by consumers because they are not in plain language.

(Amendment N° 17)  
Article 2, point 4a (new)

For the purposes of this Directive:

4a. "General conditions" means terms unilaterally drawn up in advance by a firm or group of firms for use in all contracts concluded by it which the consumer or user is required to accept if he wishes to acquire the good or service in question.

The wording of general terms shall be straightforward, precise and clear. Imprecisely worded general terms shall be construed contra proferentem.

(Amendment N° 18)  
Article 2 point 5

5. The fairness or unfairness of a contractual term is to be determined by reference to the time at which the contract is concluded, to the surrounding circumstances at that time and to all the other terms of the contract.

5. The unfairness of a contractual term is to be determined by reference to the time at which the contract is concluded, to the surrounding circumstances at that time and to all the other terms of the contract.

Commission text

Amendments

(Amendment N° 19)

Article 2a (new)

1. A seller of goods or supplier of services shall clearly indicate, when a contract is concluded, that he proposes to apply general conditions governing sales or the provision of services to the consumer or user and shall enable the consumer or user to familiarize himself with those conditions before the contract is concluded.

2. Under no circumstances shall general terms become binding without the contractual agreement of the consumer or user.

3. In keeping with the principle of contractual good faith, the content of advertising for products that induces consumers or users to acquire the good or service in question shall be binding on the seller.

(Amendment N° 20)

Article 3

Member States shall:

- prohibit the use of unfair terms in any contract concluded with a consumer by any person acting in the course of his trade, business or profession; this prohibition shall be without prejudice to the seller's right to obtain compensation from his own supplier;

- provide that if, notwithstanding this prohibition, unfair terms are used in such a contract they shall be void, and that the remaining terms of the contract shall continue to be valid and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the void provisions.

Member States shall:

- prohibit the use of unfair terms in any contract concluded with a consumer, involving the imposing of general terms and conditions, by any person acting in the course of his trade, business or profession; this prohibition shall be without prejudice to the seller's right to obtain compensation from his own supplier;

- provide that if, notwithstanding this prohibition, unfair terms are used in such contracts, those terms shall be void, and that the remaining terms of the contract shall continue to be valid and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the void provisions.

Commission text

Amendments

If necessary, unfair terms or other terms that have been disallowed shall be replaced in the contract by the relevant statutory provision or, if there is no such provision, by wording commensurate with the principle of good faith.

(Amendment N° 21)  
Article 4 (1)

1. Member States shall ensure that in the interests of consumers, competitors and the public generally, adequate and effective means exist for the control of unfair terms in contracts concluded with consumers and of the terms of contracts for the sale of goods or services to them.

1. Member States shall ensure that in the interests of consumers and users competitors and the public generally, adequate and effective means exist to prevent the use of unfair terms in contracts concluded with consumers for the sale of goods or services to them where the seller of goods or supplier of services imposes his general terms and conditions in the contracts concerned.

(Amendment N°22)  
Article 4(2)

2. Such means shall include provisions of law whereby persons or organisations, if regarded under national law as having a legitimate interest in protecting consumers, may take action before the courts or before an administrative authority competent to make a decision for determination of the question whether the terms used in such a contract are inconsistent with the provisions of this Directive.

2. Such means shall include provisions of law whereby persons or organisations, if regarded under national law as having a legitimate interest in protecting consumers, may take action before the courts or before an administrative authority competent to make a decision for determination of the question whether one contracting party's own standard terms and conditions covering an unlimited number of contracts are inconsistent with the provisions of this Directive.

(Amendment N° 23)  
Article 4(2)a (new)

2a. The Commission shall from time to time publish in the Official Journal of the European Communities the identity and address of the competent public agency or agencies, for each Member State, referred to in paragraph 2, together with an indication of their powers to bring actions before national courts or administrative authorities.

Commission text

Amendments

(Amendment N° 24)

Article 5

Not later than 31 December 1997 the Commission shall present a report to the Council concerning the operation of this Directive.

Not later than 31 December 1995 the Commission shall present a report to the Council and to the European Parliament concerning the operation of this Directive.

It shall also submit any proposal it may have for amending this text in the light of experience, particularly amendments or additions to the compulsory list of unfair terms annexed to this Directive.

(Amendment N° 25)

Article 6(1), first subparagraph

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1992 and shall forthwith inform the Commission thereof. Those provisions shall apply to all contracts concluded with consumers after 31 December 1992.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1992 and shall inform the Commission thereof not later than 30 June 1993. Those provisions shall apply to all contracts concluded with consumers after 31 December 1992.

(Amendment N° 26)

Annex, point (a)

(a) excluding or limiting the liability of a contracting party in the event of death or personal injury to the consumer resulting from an act or omission of that contracting party;

(a) excluding or limiting the liability of a contracting party in the event of death or personal injury, suffering or impairment of health on the part of the consumer or user resulting from an act or omission of that contracting party or from failure to comply with the provisions of national or international law on the carriage of passengers;

Commission text

Amendments

(Amendment N° 27)

Annex, paragraph (a)a and (a)b (new)

(a)a. leaving the seller or supplier of goods or services free not to conclude the contract while the consumer is under a definite obligation;

permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without simultaneous provision that double the amount of the said sums shall be paid to the consumer should the seller or supplier decide not to conclude or perform the contract;

(a)b. limiting the seller's or supplier's obligation to comply with undertakings made with his employees or representatives.

(Amendment N° 28)

Annex, point (t)

providing that a seller or supplier of goods or services may alter the terms of contract unilaterally, or terminate unilaterally a contract of indeterminate duration by giving an unreasonably short period of notice.

providing that a seller or supplier of goods or services may alter the terms of contract unilaterally, save where such alteration is intended to confer and does confer a benefit upon the consumer, or interpret them unilaterally, or terminate unilaterally a contract of indeterminate duration by giving an unreasonably short period of notice. It may, however, be provided that the seller or supplier has the right to make alterations as a result of technical developments, provided that these do not result in any increase in price or reduction in quality.

### Commission text

This prohibition shall not prevent a supplier of financial services:

- (i) from altering the rate of interest or a loan or credit granted by him or the amount of other charges therefor, or
- (ii) from terminating unilaterally a contract of indeterminate duration,

provided the contract confers the power to do so and also requires suitable notice of the alteration or termination to be given to the other contracting party or parties.

Moreover, this paragraph (b) shall not affect:

- (i) the application of price indexation clauses where these are lawful;
- (ii) stock exchange transactions;
- (iii) contracts for the purchase of foreign currency;

### Amendments

This prohibition shall not prevent a supplier of financial services:

- (i) from altering the rate of interest in a contract involving an interest rate, if a variable interest rate has clearly been agreed, where the alteration is due to objective criteria, e.g. a change in market interest rates, or the amount of other charges therefor, or
- (ii) from altering unilaterally, and without the consumer's consent, contractual terms that, by law, are subject to approval by the relevant regulatory authority, or
- (iii) from terminating unilaterally a contract of indeterminate duration where a reasonable period of notice has been given,

provided the contract confers the power to do so and also requires suitable notification of the alteration or termination to be given to the other contracting party or parties.

Moreover, this paragraph (b) shall not affect:

- (i) the application of price indexation clauses where these are lawful;
- (ii) stock exchange transactions;
- (iii) contracts for the purchase of foreign currency;
- (iv) ongoing adjustments of prices and remuneration to market conditions as part of long-term contractual relationships;

(Amendment N° 29)  
Annex, point (b)a (new)

(b)a imposing obligations on the consumer the duration of which is subject solely to the wishes of the seller or supplier;

Commission text

Amendments

(Amendment N° 30)  
Annex, point (c)(1)

- (in cases where the seller transmits to the consumer the guarantee of the manufacturer of the goods) to benefit from the manufacturer's guarantee for a period equal, at the least, to the normal life of the goods or twelve months, whichever is the shorter; and to enforce payment, either by the seller or by the manufacturer, of the costs incurred by the consumer in obtaining implementation of that guarantee;

- (in cases where the seller transmits to the consumer the guarantee of the manufacturer of the goods) to benefit from the manufacturer's guarantee and to enforce payment, either by the seller or by the manufacturer, of the costs incurred by the consumer in obtaining implementation of that guarantee;

(Amendment N° 31)  
Annex, point (c)(2) first indent

- to be supplied with those services at the agreed time and efficiently from his point of view;

- to be supplied with those services at the agreed time and with due efficiency;

(Amendment N° 32)  
Annex, point (d)

(d) providing for the price of goods to be determined at the time of delivery or allowing a seller or supplier of goods to increase their price, notwithstanding that in these various cases the consumer buyer has no corresponding right to cancel the contract if the final price is too high in relation to the price he expected when concluding the contract; but the application of price indexation clauses where lawful shall not hereby be affected;

(d) providing for the price of goods to be determined at the time of delivery or allowing a seller or supplier of goods to increase their price, notwithstanding that in these various cases the consumer buyer has no corresponding right to cancel the contract if the final price is too high in relation to the price which he could reasonably have expected when concluding the contract; but the application of price indexation clauses where lawful shall not hereby be affected;

(Amendment N° 33)  
Annex, point (e)

(e) excluding or limiting the liability of the seller or supplier or of another party in the event of total or partial non-performance by him;

(e) excluding or limiting the liability of the seller or supplier or of another party in the event of total or partial non-performance by him, save in cases of force majeure;

Commission text

Amendments

(Amendment N° 34)  
Annex, point (e) a (new)

imposing any restriction on the consumer in respect of the legal remedies available to him;

(Amendment N° 35)  
Annex, point (f) a (new)

enabling a seller or supplier to withdraw from a contract, without the consumer's consent, where to do so would be liable to curb the consumer's rights;

(Amendment N° 36)  
Annex, point (f) b (new)

excluding, limiting or hindering the consumer's right to take legal action or exercise any other legal remedy, or

derogating from the rules on jurisdiction laid down by law, or

requiring disputes which have not yet arisen to be submitted to arbitration (prohibition of 'compromise clauses'), or

requiring the consumer to reimburse to the seller or supplier the fees or disbursements incurred by him in recovering his debts without also requiring the seller or supplier to reimburse to the consumer the fees and disbursements incurred by him in obtaining performance of the contract.

Commission text

Amendments

(Amendment N° 37)  
Annex, point (g)

(g) in relation to a contract for the purchase of a timeshare interest in a building, fixing the date of conclusion of the contract in such a way as to deny to the consumer the possibility of withdrawing from the contract within seven clear days after making it.

(g) in relation to a contract for the purchase of a timeshare interest in a building, fixing the date of conclusion of the contract in such a way as to deny to the consumer the possibility of withdrawing from the contract within twenty-eight clear days after making it.

DRAFT LEGISLATIVE RESOLUTION  
(COOPERATION PROCEDURE: First reading)

embodying the opinion of the European Parliament on the proposal from the Commission to the Council for a Directive on unfair terms in consumer contracts

The European Parliament,

- having regard to the proposal from the Commission to the Council (COM(90) 322 final/2 - SYN 285)<sup>1</sup>,
  - having been consulted by the Council pursuant to Article 100A of the EEC Treaty (Doc. C3-0319/90),
  - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and to the opinion of the Committee on the Environment, Public Health and Consumer Protection (Doc. A3-0091/91)
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
  2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
  3. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 149(2)(a) of the EEC Treaty;
  4. Instructs its President to forward this opinion to the Council and Commission.

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<sup>1</sup> OJ No. C 243, 28.9.1990, p.2

## O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Committee on the Environment, Public Health and Consumer Protection  
for the Committee on Legal Affairs and Citizens' Rights  
Draftsman: Mrs Kirsten JENSEN

At its meeting of 17 October 1990 the Committee on the Environment, Public Health and Consumer Protection appointed Mrs Jensen draftsman.

At its meetings of 31 January and 26 February 1991 it considered the draft opinion.

At the latter meeting it adopted the conclusions unanimously.

The following took part in the vote: Collins, chairman; Schleicher and Scott-Hopkins, vice-chairmen; Jensen, draftsman; Alber, Amendola, Bjornvig, de la Camara Martinez, Diez de Rivera Icaza, Florenz, Green, Klaus-Peter, Köhler, Kuhn, Monnier-Besombes, Oomen-Ruijten, Partsch, Pimenta, Pollack, Valverde Lopez, Vernier and Vittinghoff.

## INTRODUCTION

Adoption of the Single European Act opened up the prospect for consumers that the creation of the internal market was actually intended for them. The tightening up of competition policy and falling consumer prices combined with a genuine consumer policy would together improve living conditions and enhance the legal position of ordinary people in the Community.

The consumer policy proposals are now at last beginning to materialize taking as their basis Article 100a of the Treaty, paragraph 3 of which refers to common legislation based on a high level of protection. The present proposal for a directive seems to have suffered from such a long period of gestation.

Not all sections of the proposal for a directive meet the Treaty's requirements concerning a high level of protection but this shortcoming is perhaps due to the fact that consumers, through their organizations, were not sufficiently involved in the framing of the proposal. As it is, consumer representatives have a relatively weak position in, for example, the area of standardization but, on an issue like this, it seems quite paradoxical that consumers should feel left out.

## GENERAL RECOMMENDATION

In order to ensure that sufficient account is taken of consumer interests, consumer policy ought to be enshrined as a separate objective in the EC treaties.

In an internal market embracing twelve nations with different traditions and languages and covering a very large geographical area, consumers will need a separate institution at Community level. With a Community ombudsman the contracting parties would be able to verify whether the terms to which they have been made subject are in conformity with Community rules. A Community ombudsman will be particularly useful in cases where a purchase has been made in a country other than the purchaser's country of residence but will also be a help when the consumer wants to test his own country's compliance with the rules. The ombudsman must be able to propose remedies for shortcomings in Community rules and national legislation or administrative practice. Members of the public must be able to submit cases to the Community ombudsman through their own country's ombudsman or an equivalent administrative body.

The present proposal for a directive ought to have had an introduction affirming that Member States are under a general obligation to ensure that unfair terms cannot be included in contracts. The proposal should lay down minimum terms and recognize the principle of reciprocal recognition of national legislation capable of protecting consumers over and above their common rights. Contracts are unfair where they restrict rights laid down in discretionary legislation.

Since the Annex - the blacklist - of unfair terms is incomplete, it is important to make the point that it is for guidance only. The situation must never arise when it can be stated with reference to the blacklist that what is excluded is automatically lawful.

Contracts which are unclearly worded and directly incomprehensible to ordinary people must not be allowed (the German Supreme Court has evolved a transparency requirement).

The Committee on the Environment, Public Health and Consumer Protection calls on the Committee on Legal Affairs and Citizens' Rights as the committee responsible to incorporate the following amendments in its report:

Commission text

Amendments

(Amendment No. 1)

Second recital

Whereas national laws of Member States relating to the terms of contract applicable between the seller of goods or services, on the one hand, and the purchaser of them, on the other hand, show many disparities, with the result that the national markets for the sale of goods and services to consumers differ from each other and that distortions of competition may arise amongst the sellers, notably when they sell in Member States other than their own;

Whereas national laws of Member States relating to the terms of contract applicable between the seller of goods or services, on the one hand, and the purchaser of them, on the other hand, show many disparities, with the result that the national markets for the sale of goods and services to consumers differ from each other and that difficulties may arise for the inexperienced consumer, notably in the case of sale in another Member State;

(Amendment No. 2)

Third recital

Whereas, in particular, national laws of Member States relating to unfair terms in contracts concluded with consumers show marked divergences, and the same is true of their national laws relating to the obligation of the seller of goods to answer for the quality of them, for their fitness for the purpose for which they are sold, and for their conformity to the contract, and of the supplier of services to answer for the performance of them;

Whereas national laws of Member States relating to unfair terms in contracts concluded with consumers show divergences, e.g. with regard to the obligations of sellers of goods and services and the rules on liability; whereas, however, the principle that contracts must be balanced is enshrined in the legal systems of all Member States;

(Amendment No. 3)

Third recital a (new)

Whereas Member States are under an overriding obligation to seek to ensure that contracts containing unfair terms cannot be concluded;

Commission text

Amendments

(Amendment No. 4)  
Fourth recital a (new)

Whereas terms of contracts must be declared unfair where they restrict rights laid down in legislation;

(Amendment No. 5)  
Eighth recital a (new)

Whereas this Directive sets out minimum rules and must leave it to the Member States' discretion to retain or enact provisions which improve the consumer's legal position;

(Amendment No. 6)  
Twelfth recital a (new),

Whereas there should be a commitment made to present contracts in plain, intelligible language;

(Amendment No. 7)  
Thirteenth recital a (new)

Whereas the Annex containing unfair terms - the blacklist - must be regarded as for guidance only;

(Amendment No. 8)  
Fourteenth recital a (new)

Whereas an ombudsman's institution must be set up in the European Community;

Commission text

Amendments

(Amendment No. 9)  
Article 1(2) (new)

Member States shall retain the right to enact rules giving greater protection to the interests of consumers;

(Amendment No. 10)  
Article 2(1), first indent

- |  |   |
|--|---|
| - it causes to the detriment of the consumer a <u>significant</u> imbalance in the parties' rights and obligations arising under the contract; | - it causes to the detriment of the consumer <u>an</u> imbalance in the parties' rights and obligations arising under the contract; |
|--|---|

(Amendment No. 11)  
Article 2(1), second indent

- |  |  |
|--|--|
| - it causes the performance of the contract to be <u>unduly</u> detrimental to the consumer; | - it causes the performance of the contract to be detrimental to the consumer; |
|--|--|

(Amendment No. 12)  
Article 2(1), third indent

- |  |   |
|--|---|
| - it causes the performance of the contract to be <u>significantly</u> different from what the consumer could legitimately expect; | - it causes the performance of the contract to be different from what the consumer could legitimately expect; |
|--|---|

(Amendment No. 13)  
Article 2(1), fifth indent (new)

- it contains clauses which are unreadable or likely to be misunderstood by consumers because they are not in plain language.

Commission text

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Amendment No. 14  
Article 2(2)

The Annex contains a list of types of unfair terms.

The annex to this Directive contains a minimum list of types of unfair terms which are void under all circumstances and which Member States shall be required to prohibit. Any additional terms are adjudged by Member States to be unfair under the terms of this directive shall be recorded by the Commission and publicised by it.

(Amendment No. 15)  
Article 2(3)a (new)

Member States may provide for certain legal persons and natural persons other than consumers as defined in the preceding subparagraph to enjoy the protection of texts enacted in application of this Directive.

(Amendment No. 16)  
Article 2(5)

The fairness or unfairness of a contractual term is to be determined by reference to the time at which the contract is concluded, to the surrounding circumstances at that time and to all the other terms of the contract.

The fairness or unfairness of a contractual term is to be determined by reference to the time at which the contract is concluded, and to the surrounding circumstances at that time.

(Amendment No. 17)  
Article 2(6) (new)

Unintelligible contract clauses should be deemed unfair.

(Amendment No. 18)  
Article 3, second indent

- provide that if, notwithstanding this prohibition, unfair terms are used in such a contract they shall be void, and that the remaining terms of the contract shall continue to be valid and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the void provisions.

- provide that if, notwithstanding this prohibition, unfair terms are used in such a contract they shall be void, and that the remaining terms of the contract shall continue to be valid and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the void provisions subject to the consent of both parties

Commission text

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(Amendment No. 19)  
Article 4(2)

Such means shall include provisions of law whereby persons or organizations, if regarded under national law as having a legitimate interest in protecting consumers, may take action before the courts or before an administrative authority competent to make a decision for determination of the question whether the terms used in such a contract are inconsistent with the provisions of this Directive.

In particular, Member States must permit authorized consumer protection offices and organizations to take action before the courts or before an administrative authority competent to make a decision for determination of the question whether the terms used in such a contract are inconsistent with the provisions of this Directive.

(Amendment No. 20)  
Article 4(2)a (new)

Such means must include legal provisions imposing fines for the continued use of unfair terms after it has been established that they are unfair.

(Amendment No. 21)  
Article 4a (new)

1. A Community Ombudsman shall be appointed with the task of:

(a) monitoring the application of this Directive by the Member States and of requesting the Commission, where necessary, to initiate the procedure laid down in Article 169 of the EEC Treaty against a Member State failing to fulfil its obligations;

(b) endeavouring to settle by amicable agreement disputes relating to unfair terms, bringing together parties having their permanent residence in two or more different Member States;

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(c) drawing up an annual report on unfair terms, giving an account of his activities and proposing any reform he considers appropriate, particularly amendments or additions to the compulsory list of unfair terms annexed to this Directive. This report shall be forwarded to the Commission, the Member States and the European Parliament.

2. In exercising his duties, the Ombudsman may require notification of any information he considers necessary for his work. National and Community administrations shall give him all the assistance he needs.

3. The Ombudsman shall be appointed for five years by the Commission, subject to the assent of the European Parliament adopted by a majority of its Members. His term of office shall not be renewable.

4. The Ombudsman shall be assisted by an Ombudsman's Office, composed of officials and other servants appointed by the Ombudsman and subject to the Staff Regulations applicable to officials and conditions of employment of other servants of the European Communities.

(Amendment No. 22)  
Article 5

Not later than 31 December 1997 the Commission shall present a report to the Council concerning the operation of this directive.

Not later than 31 December 1995 the Commission shall present a report to the Council and to the European Parliament concerning the operation of this directive.

Commission text

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(Amendment No. 23)  
Article 5(1)a (new)

It shall also submit any proposal it may have for amending this text in the light of experience, particularly amendments or additions to the compulsory list of unfair terms annexed to this Directive. To that end it shall take particular account of suggestions set out in the Ombudsman's annual reports referred to in Article 4a.

(Amendment No. 24)  
Article 6(1), first subparagraph

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1992 and shall forthwith inform the Commission thereof. Those provisions shall apply to all contracts concluded with consumers after 31 December 1992.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1992 and shall inform the Commission thereof not later than 30 June 1993. Those provisions shall apply to all contracts concluded with consumers after 31 December 1992.

(Amendment No. 25)  
Annex, paragraph (a)a and (a)b (new)

(a)a. leaving the seller or supplier of goods or services free not to conclude the contract while the consumer is under a definite obligation;

permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without simultaneous provision that double the amount of the said sums shall be paid to the consumer should the seller or supplier decide not to conclude or perform the contract;  
Commission text

(a)b. limiting the seller's or supplier's obligation to comply with undertakings made with his employees or representatives.

(Amendment No. 26)  
ANNEX, paragraph (b), opening subparagraph

providing that a seller or supplier of goods or services may alter the terms of contract unilaterally, or terminate unilaterally a contract of indeterminate duration by giving an unreasonably short period of notice. This prohibition shall not prevent a supplier of financial services:

providing that a seller or supplier of goods or services may alter the terms of contract unilaterally, or terminate unilaterally a contract of indeterminate duration by giving an unreasonably short period of notice. It may, however, be provided that the seller or supplier has the right to make alterations as a result of technical developments, provided that these do not result in any increase in price or reduction in quality. This prohibition shall not prevent a supplier of financial services:

(Amendment No. 27)  
Annex, paragraph (b) (i)

(i) from altering the rate of interest on a loan or credit granted by him or the amount of other charges therefor, or

(i) from altering the rate of interest on a loan or credit granted by him, if a variable interest rate has clearly been agreed, where the alteration is due to objective criteria, e.g. a change in market interest rates, or

(Amendment No. 28)  
ANNEX, paragraph (c)(3) (new)

- permitting the seller or supplier to determine whether the goods delivered or service provided conform to the terms of the contract;
- requiring the consumer to carry out his obligations even when the seller or supplier has not carried out his own;

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- permitting the seller or supplier, in the event of his terminating the contract, to retain sums paid by the consumer;

- authorizing the seller or supplier to terminate or revoke the contract at his own discretion if the consumer is not so authorized.

(Amendment No. 29)  
ANNEX, paragraph (d)

providing for the price of goods to be determined at the time of delivery or allowing a seller or supplier of goods to increase their price, notwithstanding that in these various cases the consumer buyer has no corresponding right to cancel the contract if the final price is too high in relation to the price he expected when concluding the contract; but the application of price indexation clauses where lawful shall not hereby be affected;

providing for the price of goods to be determined at the time of delivery or allowing a seller or supplier of goods to increase their price, notwithstanding that in these various cases the consumer buyer has no corresponding right to cancel the contract if the final price is too high in relation to the price he expected when concluding the contract; but the application of price indexation clauses where lawful, and provided that the indexation is based on factors which the seller or supplier, his employees, his representatives or those whom he represents are not able to influence in any way whatsoever, shall not hereby be affected;

(Amendment No. 30)  
ANNEX, paragraph (e)a (new)

imposing any restriction on the consumer in respect of the legal remedies available to him;

(Amendment No. 31)  
ANNEX, paragraph (f)a (new)

- excluding, limiting or hindering the consumer's right to take legal action or exercise any other legal remedy;

- derogating from the rules on jurisdiction laid down by law;

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- requiring disputes which have not yet arisen to be submitted to arbitration (prohibition of 'compromise clauses');

- requiring the consumer to reimburse to the seller or supplier the fees or disbursements incurred by him in recovering his debts without also requiring the seller or supplier to reimburse to the consumer the fees and disbursements incurred by him in obtaining performance of the contract.

(Amendment No. 32)  
ANNEX, paragraph (g)

in relation to a contract for the purchase of a timeshare interest in a building, fixing the date of conclusion of the contract in such a way as to deny the consumer the possibility of withdrawing from the contract within seven clear days after making it.

in relation to a contract for the purchase of a timeshare interest in a building, fixing the date of conclusion of the contract in such a way as to deny the consumer the possibility of withdrawing from the contract within 28 clear days after making it.

