



European Communities

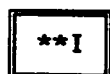
EUROPEAN PARLIAMENT

SESSION DOCUMENTS

English Edition

4 November 1991

A3-0295/91



SECOND 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) 0322 final/2 - C3-0319/90 - SYN 285)

Rapporteur : Mr Geoffrey HOON

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A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)

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|---|--|
| <p> = Consultation procedure requiring a single reading</p> <p> = Cooperation procedure (first reading)</p> | <p> = Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment</p> <p> = Parliamentary assent which requires the votes of a majority of the current Members of Parliament</p> |
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At the sitting of 13 May 1991 the first report was referred back to the Committee on Legal Affairs and Citizens' Right pursuant to Rule 103 of the Rules of Procedure.

At its meetings of 16-17 and 18 September 1991, 25-26 September 1991 and 29-30 and 31 October 1991 the Committee on Legal Affairs and Citizens' Rights considered the draft second report containing compromise-amendments tabled by the rapporteur.

At the last meeting it adopted the draft legislative resolution by 11 votes in favour with 5 abstentions.

The following were present at the moment of the vote: Graf Stauffenberg, chairman; Vayssade, Rothley and Simeoni, vice-chairmen; Alvarez de Paz, Bru Puron, Casini, Elliott, Forte, Garcia Amigo, Grund, Hoon, Inglewood, Janssen van Raay, Mebrak-Zaidi, Medina Ortega, Rogalla and Salema.

The explanatory statement will be presented orally in plenary sitting.

The opinion of the Committee on the Environment, Public Health and Consumer Protection will be published separately.

The report was tabled on 4 November 1991.

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

COMPROMISE - AMENDMENTS

tabled by the rapporteur and new amendments tabled by other members.
 Proposal from the Commission to the Council for a
 Directive on unfair terms in consumer contracts

Commission text (1)Amendment**AMENDMENT No. 1**

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 the 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 concluded with consumers, including standard contracts and contracts setting out 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° 2

Third recital a (new)

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

AMENDMENT No. 3

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 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;

(1) for full text see COM(90) 322 final O.J. n. C 243, 28.09.90 - p. 2

AMENDMENT No. 4

Sixth recital

Whereas sellers of goods and services will thereby be helped in their task of selling goods and services, both at home and throughout the single market; and whereas competition between sellers will thus be stimulated, so contributing to increased choice for Community citizens as purchasers;

Whereas sellers of goods and services will thereby be helped in their task of selling goods and services, both at home and throughout the single market; and whereas competition between sellers will thus be stimulated, so contributing to increased choice for Community citizens as consumers;

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

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, including all contracts concluded on the basis of general terms and conditions set out in one document or several;

Commission text

Amendment

AMENDMENT No. 7

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 courts or administrative authorities must have powers enabling them to order or obtain the withdrawal from use of unfair terms in consumer contracts,

Amendment N° 8

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 consumer contracts including standard form contracts.

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

AMENDMENT No. 9 -

Article 1a (new)

1. Insofar as all of the contract terms have been individually negotiated by the contracting parties, they shall not constitute consumer contracts 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, company law or international legislative instruments.

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.

4. The provisions of this Directive shall not apply to contracts of carriage by sea nor to consumer contracts which are governed by an international maritime convention.

Commission text

Amendment

Amendment N° 10

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.

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 one of the parties to the contract a significant and unreasonable imbalance in that party's rights and obligations arising under the contract; or

- it causes the performance of the contract to be unreasonably detrimental to one of the parties to the contract; or

- it causes the performance of the contract to be significantly different from what one of the parties to the contract could reasonably expect; or

- it is incompatible with the requirements of good faith.

AMENDMENT No. 11

Article 2 (2)

2. The Annex contains a list of types of unfair terms.

2. The Annex contains a binding but non-exhaustif list of types of unfair terms.

AMENDMENT No. 12

Article 2 (3)

3. 'The consumer' means a natural person who, in transactions covered by this Directive, is acting for purposes which can be regarded as outside his trade, business or profession.

3. 'The consumer' means a natural person who purchases a good or uses a service for purposes which can be regarded as outside his trade, business or profession.

Amendment N° 13

Article 2, paragraph 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 made, to the surrounding circumstances at that time and to all the other terms of the contract, including the nature of any service and in particular whether the service is provided in the form of transport for the travelling public where cancellations and delays are unavoidable.

Amendment N° 14

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, including standard-form contracts, for the sale of goods or services.

Commission text

Amendment

AMENDMENT No. 15

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 to the consumer, suffering or impairment of his or her health resulting from an act or omission of that contracting party;

AMENDMENT No. 16

Annex, point (b), first sentence

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

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

AMENDMENT No. 17

Annex, points (a) and (b)

The following types of terms are unfair if they have the object or effect of:

(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;

(b) 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:

(i) from altering the rate of interest on a loan or credit granted by him or the amount of other changes 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.

However, 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;

The following types of terms are unfair if they have the object or effect of:

(a) unchanged

(b) unchanged

This prohibition shall not prevent a supplier of financial services:

(i) from altering the rate of interest payable to or by the consumer or the amount of other charges for financial services, or

(ii) unchanged

provided the contract, or the established custom and practice of parties to contracts of a similar nature, confers the power to do so on the supplier and also requires the notice of the alteration or termination to be given to the other contracting parties; such notice shall be of such length as is deemed to be fair in accordance with the principles set out in paragraph 5 of Article 2 above.

However, this paragraph (b) shall not affect:

(i) unchanged

(ii) unchanged

(iii) contracts for the purchase of foreign currency or traveller's cheques or international money orders denominated in foreign currency.

Amendment N° 18

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 within a reasonable period and with due efficiency;

Amendment N° 19

ANNEX, Point (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;

Amendment N° 20

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

AMENDMENT No. 21

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)¹,
 - having been consulted by the Council pursuant to Article 100A of the EEC Treaty (Doc. C3-0319/90),
 - having regard to the first 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 (A3-0091/91)
 - having regard to the second report of the Committee on Legal Affairs and Citizens' Rights and the opinion of the Committee on the Environment, Public Health and Consumer Protection (Doc. A3-0295/91)
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.

¹ OJ No. C 243, 28.9.1990, p. 2