

Chapter 1: General Contract Law and Law of Sales

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This chapter is the most incomplete one. It will be translated fully, however, before the fall semester will start.

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Important influences of European law to the law of contracts can be seen in

- the general development of liberties of contract,
- special regulations of distance selling of goods and services,
- of door step contracts,
- of misuse of clauses in consumer contracts, and
- of consumer goods sales.

The following shows, how the European law has been transformed into German law.

I. Freedom of Contract

1. Historical Background

Roman origins:

- Free citizens of Rome or of the Roman Empire were entitled by law to set up certain rights and duties by making simple promises with respect to legal status.
- Only strict provisions of form, like the mancipatio (symbolic crossing of a yoke), had to be respected.
- However, claims based on contractual promises and on law of torts were not differentiated clearly. As late as in the Middle Ages, the right of assumption was developed as a contractual right (see Köndgen).
- The German Savigny analysed the autonomy of adult people as the basis of binding contracts under the provision of the freedom of contracts.

2. Different Kinds

The fundamental principle of the European and global contract law is the freedom of contract in threefold sense:

- liberty of form
- freedom to choose a contract partner
- no governmental control of contractual contents

Exemptions do not abandon the principle:

- credit guaranties § 766 BGB
- and promises of donations have to be fixed in writing
- purchases real estate have to be formally documented by a notary (§ 311b subsec. 1 BGB)
- sellers who enjoy monopoly power can be obliged to accept any contract partner, if they are ready to consent
- contracts with illegal or immoral content are void or not enforceable in state courts.

3. Concepts of Autonomy and Functions of Competitions

What are the basic reasons for the three principles of freedom of contract? As mentioned earlier (introduction), there are even common Roman origins, which were improved and adjusted to modern business functions of competition. Here we focus on the concept of contract conclusion, which, as will be explained next, wilful offer and acceptance are provided for. Both of the two declarations do not become legally effective before they have been communicated to the other part of the contract in a way, that he was able to read it and to decide, to want the contract, or not. This has been explained by concepts of personal autonomy, and by freedom of contract conclusion. Modern contract theory, however, analyses it in terms of competition, additionally.

Functions of Competition:

- Already in the 18th century a Scotsman by the name of Adam Smith detected the functions of competition of free business decisions made by private enterprises (this was symbolised by the so called invisible hand in his famous book on the Theory on the Wealth of Nations).
- Later economic scientists showed that the freedom of contract within a framework of state guaranties of free or workable competition can work as an instrument of reaching the highest level of wealth of different nations (Franz Böhm, Hayek).
- While the principle of free competition was enacted in the EEC-Treaty of Rome in 1957, the legal acknowledgment of the freedom of contract was originally left to the national law. Later European law has promulgated many provisions which protect free competition in the internal European market by setting minimum standards of contractual freedom and its limitations.
- The most important directive of this kind is the one of 1993 on unfair terms in consumer contracts, which contains among others the famous provision of clear language (s. chart). We will see (below No. V.4) that this clarity provision mainly aims at competition purposes of transparent markets.

II. Contractual Capacity and Consideration Doctrine

1. Basic Regulations of Incapacity due to Age or Mental Disorder

But let us first have a short look on the regulation of contractual capacity which does not belong to-EU-regulations, but can also be interpreted as common market law. The comparison of German and UK-law shows many equivalents:

UK-law	German law
adults: 18 years	same
minors do not have the legal capacity to contract (reason: not fully able to judge the economic consequences of a commercial transaction)	same
similar provisions in cases of incapacity due to mental disorder	same
not void, but voidable (reason: good deals can be maintained)	only void, if not consented by parents, etc. (reason: same)
no protection of good faith of the other part	same
ultra vires-doctrine abandoned	same (never been enacted)

2. Abandonment of “ultra vires” rules

Ultra vires prohibition means that a legal person cannot act legally binding, if its representatives exceed the purposes of the organisation which are laid down in its statutes. The contract of a business corporation, concluded for an ultra vires purpose, was null and void under the former UK-law. In most other EU member states such ultra vires provisions do not exist.

Example: The financial management of a the British Steel Corporation (BSC) spends 2 Mio. PSt. for speculative deals at the London futures market. After having lost 1.5 Mio., BSC claims its money back because the statutes of the corporation do not allow deals with futures.
– If the contract would be considered as ultra vires the money would have to be paid back.

However, sec. 35 (1) of the Companies Act of 1985 (as amended in 1989) abolished the ultra vires rule. Also-case law has made exemptions of the rule in cases of good faith deals (s.McKendrick, Contract Law, p.349). Insofar one can say that British law has become Europeanised.

3. Consideration Doctrine Europeanized?

Another very particular set of provisions of the Anglo-American law family is the consideration doctrine. Contracts are not valid if there is not a minimum of commercial value at both parts. Promises of donations and the like will only be valid, under-UK-law, if they are in the form of a deed, i.e. a written contract signed by both parties and an independent witness.

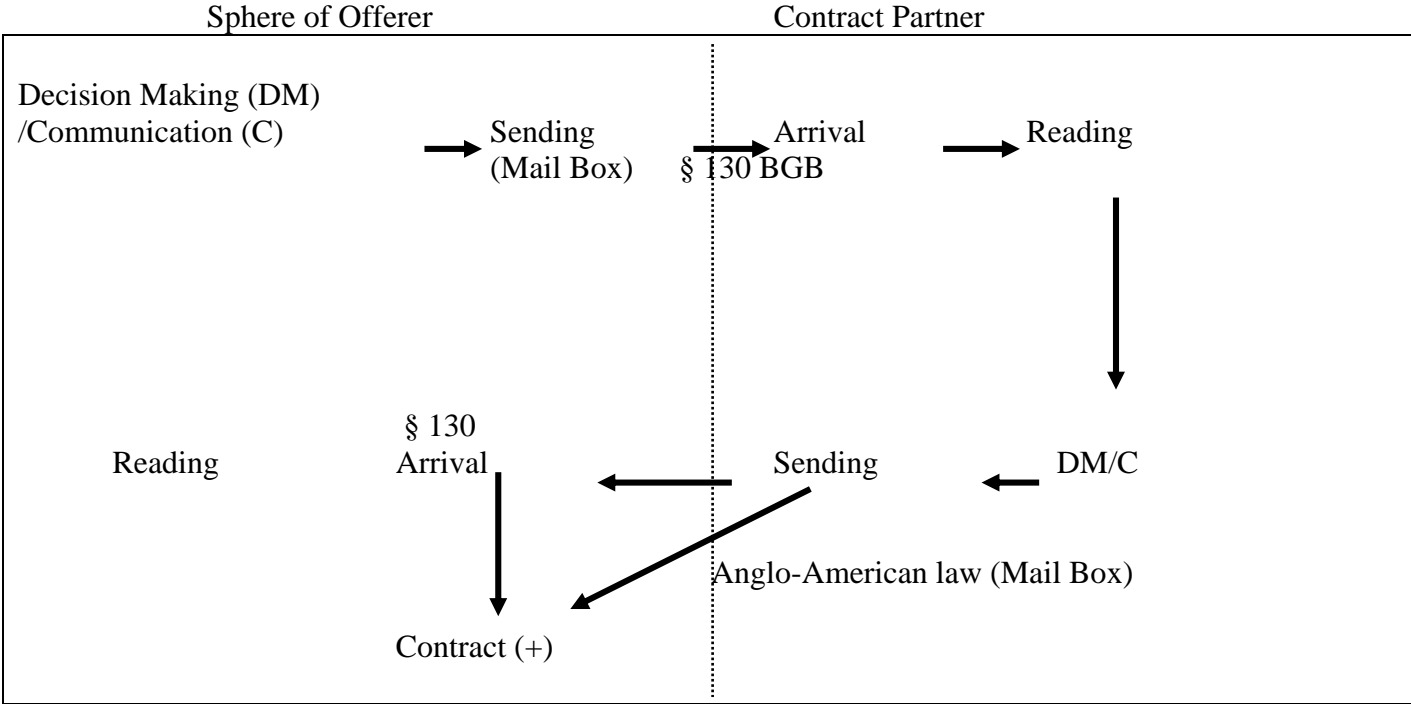
Example: The fisherman’s wife A insures the life of her-husband B, while he has come to death already in a heavy storm on the sea. Insurer I can reject to pay the insured amount of money to A because the contract, without consideration, is void.

Other European law systems do not explicitly rely on the consideration theory. However, promises of donations need to be contracted in written form under German law also. Loan guaranties without commercial value to the guarantor are not valid if they are not in written form. That is why some German scholars think that the consideration doctrine is – in a way – Europeanised.¹ To some extent, this is correct. However, in the mentioned insurance case both law systems differ essentially. The Europeanisation, therefore, is incomplete.

III. Offer and Acceptance

1. The Concept and its Limits

The basic theory of contract conclusion is called offer and acceptance-theory, because two relatively similar decisions and declarations have to be made before a contract becomes binding. The origins of this theory are – again – to be seen in the Roman law. Nearly all civil laws of the EU-member states have adopted this concept. In German law, however, it has been integrated most consequentially as follows:



UK-law has developed the so-called mail box-rule (also postal rule) which means that the acceptance becomes legally binding before the time of arrival: already when the other party puts the acceptance letter into the mail box. UK courts argue that the offerer, by sending his offer by mail, has agreed to use this way of communication. Therefore he must bear the risk of a false or delayed transfer of the acceptance letter by the postal service, also.

Example: After having sent away his letter of acceptance for a long term credit contract with fix 7.5% nominal interest rate, the sender (S) gets an offer on 6.5% of a competitor (B) of the offerer (A). He sends a fax or an e-mail to withdraw his acceptance and accepts the offer of B. A claims for an expected interest income of the stipulated term of the credit.

¹ Kötzt, Eurp.PrivR.

Under the postal rule of the UK-law the sender would be bound to the contract and hence would have to pay the expected interest income to A. Under German law the acceptance could be withdrawn as long as it has not arrived at the place of A. The Europeanisation is incomplete here as well.

2. Declaration of intention and Certainty of the Promise

There is no declared intention in cases of advertising by the advertiser as the public does not have a definite character for receiving the declaration.

For the necessary certainty of the promise see the Daimler case....Such price adaptation clauses are well accepted in the UK-law, too. Europeanisation is perfect.

3. Special Cases of implied Acceptance by Silence of a Party

The principal of acceptance by explicit declaration, rather than by silence, is well accepted in all European countries with a Roman law tradition. There are, however, some exceptions which differ slightly in Germany and the UK.

Business confirmation letters: German law applies the silence rule by exemption. UK-law is more strict, but leads to similar results by deductions from the circumstances: the sender of the confirmation letter waives the provision of necessary arrival of an acceptance, acceptance as such being deducted from the non-reaction of the other party.

4. New Provisions for Distance Sales Contracts

A great extent of Europeanization has been achieved by the EU-directive on distance sales of 1999. For first understanding, the full text of the directive is printed out, as follows:

DIRECTIVE 97/7/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 1997 on the protection of consumers in respect of distance contracts
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189b of the Treaty (3), in the light of the joint text approved by the Conciliation Committee on 27 November 1996,

(1) Whereas, in connection with the attainment of the aims of the internal market, measures must be taken for the gradual consolidation of that market;

(2) Whereas the free movement of goods and services affects not only the business sector but also private individuals; whereas it means that consumers should be able to have access to the goods and services of another Member State on the same terms as the population of that State;

(3) Whereas, for consumers, cross-border distance selling could be one of the main tangible results of the completion of the internal market, as noted, inter alia, in the communication from the Commission to the Council entitled "Towards a single market in distribution"; whereas it is essential to the smooth operation of the internal market for consumers to be able to have dealings with a business outside their country, even if it has a subsidiary in the consumer's country of residence;

(4) Whereas the introduction of new technologies is increasing the number of ways for consumers to obtain information about offers anywhere in the Community and to place

orders; whereas some Member States have already taken different or diverging measures to protect consumers in respect of distance selling, which has had a detrimental effect on competition between businesses in the internal market; whereas it is therefore necessary to introduce at Community level a minimum set of common rules in this area;

(5) Whereas paragraphs 18 and 19 of the Annex to the Council resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy (4) point to the need to protect the purchasers of goods or services from demands for payment for unsolicited goods and from high-pressure selling methods;

(6) Whereas paragraph 33 of the communication from the Commission to the Council entitled 'A new impetus for consumer protection policy', which was approved by the Council resolution of 23 June 1986 (5), states that the Commission will submit proposals regarding the use of new information technologies enabling consumers to place orders with suppliers from their homes;

(7) Whereas the Council resolution of 9 November 1989 on future priorities for relaunching consumer protection policy (6) calls upon the Commission to give priority to the areas referred to in the Annex to that resolution; whereas that Annex refers to new technologies involving teleshopping; whereas the Commission has responded to that resolution by adopting a three-year action plan for consumer protection policy in the European Economic Community (1990-1992); whereas that plan provides for the adoption of a Directive;

(8) Whereas the languages used for distance contracts are a matter for the Member States;

(9) Whereas contracts negotiated at a distance involve the use of one or more means of distance communication; whereas the various means of communication are used as part of an organized distance sales or service-provision scheme not involving the simultaneous presence of the supplier and the consumer; whereas the constant development of those means of communication does not allow an exhaustive list to be compiled but does require principles to be defined which are valid even for those which are not as yet in widespread use;

(10) Whereas the same transaction comprising successive operations or a series of separate operations over a period of time may give rise to different legal descriptions depending on the law of the Member States; whereas the provisions of this Directive cannot be applied differently according to the law of the Member States, subject to their recourse to Article 14; whereas, to that end, there is therefore reason to consider that there must at least be compliance with the provisions of this Directive at the time of the first of a series of successive operations or the first of a series of separate operations over a period of time which may be considered as forming a whole, whether that operation or series of operations are the subject of a single contract or successive, separate contracts;

(11) Whereas the use of means of distance communication must not lead to a reduction in the information provided to the consumer; whereas the information that is required to be sent to the consumer should therefore be determined, whatever the means of communication used; whereas the information supplied must also comply with the other relevant Community rules, in particular those in Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (7); whereas, if exceptions are made to the obligation to provide information, it is up to the consumer, on a discretionary basis, to request certain basic information such as the identity of the supplier, the main characteristics of the goods or services and their price;

(12) Whereas in the case of communication by telephone it is appropriate that the consumer receive enough information at the beginning of the conversation to decide whether or not to continue;

(13) Whereas information disseminated by certain electronic technologies is often ephemeral in nature insofar as it is not received on a permanent medium; whereas the consumer must therefore receive written notice in good time of the information necessary for proper

performance of the contract;

(14) Whereas the consumer is not able actually to see the product or ascertain the nature of the service provided before concluding the contract; whereas provision should be made, unless otherwise specified in this Directive, for a right of withdrawal from the contract; whereas, if this right is to be more than formal, the costs, if any, borne by the consumer when exercising the right of withdrawal must be limited to the direct costs for returning the goods; whereas this right of withdrawal shall be without prejudice to the consumer's rights under national laws, with particular regard to the receipt of damaged products and services or of products and services not corresponding to the description given in the offer of such products or services; whereas it is for the Member States to determine the other conditions and arrangements following exercise of the right of withdrawal;

(15) Whereas it is also necessary to prescribe a time limit for performance of the contract if this is not specified at the time of ordering;

(16) Whereas the promotional technique involving the dispatch of a product or the provision of a service to the consumer in return for payment without a prior request from, or the explicit agreement of, the consumer cannot be permitted, unless a substitute product or service is involved;

(17) Whereas the principles set out in Articles 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 apply; whereas the consumer's right to privacy, particularly as regards freedom from certain particularly intrusive means of communication, should be recognized; whereas specific limits on the use of such means should therefore be stipulated; whereas Member States should take appropriate measures to protect effectively those consumers, who do not wish to be contacted through certain means of communication, against such contacts, without prejudice to the particular safeguards available to the consumer under Community legislation concerning the protection of personal data and privacy;

(18) Whereas it is important for the minimum binding rules contained in this Directive to be supplemented where appropriate by voluntary arrangements among the traders concerned, in line with Commission recommendation 92/295/EEC of 7 April 1992 on codes of practice for the protection of consumers in respect of contracts negotiated at a distance (8);

(19) Whereas in the interest of optimum consumer protection it is important for consumers to be satisfactorily informed of the provisions of this Directive and of codes of practice that may exist in this field;

(20) Whereas non-compliance with this Directive may harm not only consumers but also competitors; whereas provisions may therefore be laid down enabling public bodies or their representatives, or consumer organizations which, under national legislation, have a legitimate interest in consumer protection, or professional organizations which have a legitimate interest in taking action, to monitor the application thereof;

(21) Whereas it is important, with a view to consumer protection, to address the question of cross-border complaints as soon as this is feasible; whereas the Commission published on 14 February 1996 a plan of action on consumer access to justice and the settlement of consumer disputes in the internal market; whereas that plan of action includes specific initiatives to promote out-of-court procedures; whereas objective criteria (Annex II) are suggested to ensure the reliability of those procedures and provision is made for the use of standardized claims forms (Annex III);

(22) Whereas in the use of new technologies the consumer is not in control of the means of communication used; whereas it is therefore necessary to provide that the burden of proof may be on the supplier;

(23) Whereas there is a risk that, in certain cases, the consumer may be deprived of protection under this Directive through the designation of the law of a non-member country as the law applicable to the contract; whereas provisions should therefore be included in this Directive to

avert that risk;

(24) Whereas a Member State may ban, in the general interest, the marketing on its territory of certain goods and services through distance contracts; whereas that ban must comply with Community rules; whereas there is already provision for such bans, notably with regard to medicinal products, under Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (9) and Council Directive 92/28/EEC of 31 March 1992 on the advertising of medicinal products for human use (10),

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Object

The object of this Directive is to approximate the laws, regulations and administrative provisions of the Member States concerning distance contracts between consumers and suppliers.

Article 2

Definitions

For the purposes of this Directive:

(1) 'distance contract` means any contract concerning goods or services concluded between a supplier and a consumer under an organized distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded;

(2) 'consumer` means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession;

(3) 'supplier` means any natural or legal person who, in contracts covered by this Directive, is acting in his commercial or professional capacity;

(4) 'means of distance communication` means any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of a contract between those parties. An indicative list of the means covered by this Directive is contained in Annex I;

(5) 'operator of a means of communication` means any public or private natural or legal person whose trade, business or profession involves making one or more means of distance communication available to suppliers.

Article 3

Exemptions

1. This Directive shall not apply to contracts:

- relating to financial services, a non-exhaustive list of which is given in Annex II,
- concluded by means of automatic vending machines or automated commercial premises,
- concluded with telecommunications operators through the use of public payphones,
- concluded for the construction and sale of immovable property or relating to other immovable property rights, except for rental,
- concluded at an auction.

2. Articles 4, 5, 6 and 7 (1) shall not apply:

- to contracts for the supply of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home of the consumer, to his residence or to his workplace by regular roundsmen,
- to contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period; exceptionally, in the case of outdoor leisure events, the supplier can reserve the right not to apply Article 7 (2) in specific circumstances.

Article 4

Prior information

1. In good time prior to the conclusion of any distance contract, the consumer shall be provided with the following information:

- (a) the identity of the supplier and, in the case of contracts requiring payment in advance, his address;
- (b) the main characteristics of the goods or services;
- (c) the price of the goods or services including all taxes;
- (d) delivery costs, where appropriate;
- (e) the arrangements for payment, delivery or performance;
- (f) the existence of a right of withdrawal, except in the cases referred to in Article 6 (3);
- (g) the cost of using the means of distance communication, where it is calculated other than at the basic rate;
- (h) the period for which the offer or the price remains valid;
- (i) where appropriate, the minimum duration of the contract in the case of contracts for the supply of products or services to be performed permanently or recurrently.

2. The information referred to in paragraph 1, the commercial purpose of which must be made clear, shall be provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the principles governing the protection of those who are unable, pursuant to the legislation of the Member States, to give their consent, such as minors.

3. Moreover, in the case of telephone communications, the identity of the supplier and the commercial purpose of the call shall be made explicitly clear at the beginning of any conversation with the consumer.

Article 5

Written confirmation of information

1. The consumer must receive written confirmation or confirmation in another durable medium available and accessible to him of the information referred to in Article 4 (1) (a) to (f), in good time during the performance of the contract, and at the latest at the time of delivery where goods not for delivery to third parties are concerned, unless the information has already been given to the consumer prior to conclusion of the contract in writing or on another durable medium available and accessible to him.

In any event the following must be provided:

- written information on the conditions and procedures for exercising the right of withdrawal, within the meaning of Article 6, including the cases referred to in the first indent of Article 6 (3),
- the geographical address of the place of business of the supplier to which the consumer may address any complaints,
- information on after-sales services and guarantees which exist,

- the conclusion for cancelling the contract, where it is of unspecified duration or a duration exceeding one year.

2. Paragraph 1 shall not apply to services which are performed through the use of a means of distance communication, where they are supplied on only one occasion and are invoiced by the operator of the means of distance communication. Nevertheless, the consumer must in all cases be able to obtain the geographical address of the place of business of the supplier to which he may address any complaints.

Article 6

Right of withdrawal

1. For any distance contract the consumer shall have a period of at least seven working days in which to withdraw from the contract without penalty and without giving any reason. The only charge that may be made to the consumer because of the exercise of his right of withdrawal is the direct cost of returning the goods.

The period for exercise of this right shall begin:

- in the case of goods, from the day of receipt by the consumer where the obligations laid down in Article 5 have been fulfilled,
- in the case of services, from the day of conclusion of the contract or from the day on which the obligations laid down in Article 5 were fulfilled if they are fulfilled after conclusion of the contract, provided that this period does not exceed the three-month period referred to in the following subparagraph.

If the supplier has failed to fulfil the obligations laid down in Article 5, the period shall be three months. The period shall begin:

- in the case of goods, from the day of receipt by the consumer,
- in the case of services, from the day of conclusion of the contract.

If the information referred to in Article 5 is supplied within this three-month period, the seven working day period referred to in the first subparagraph shall begin as from that moment.

2. Where the right of withdrawal has been exercised by the consumer pursuant to this Article, the supplier shall be obliged to reimburse the sums paid by the consumer free of charge. The only charge that may be made to the consumer because of the exercise of his right of withdrawal is the direct cost of returning the goods. Such reimbursement must be carried out as soon as possible and in any case within 30 days.

3. Unless the parties have agreed otherwise, the consumer may not exercise the right of withdrawal provided for in paragraph 1 in respect of contracts:

- for the provision of services if performance has begun, with the consumer's agreement, before the end of the seven working day period referred to in paragraph 1,
- for the supply of goods or services the price of which is dependent on fluctuations in the financial market which cannot be controlled by the supplier,
- for the supply of goods made to the consumer's specifications or clearly personalized or which, by reason of their nature, cannot be returned or are liable to deteriorate or expire rapidly,
- for the supply of audio or video recordings or computer software which were unsealed by the consumer,
- for the supply of newspapers, periodicals and magazines,
- for gaming and lottery services.

4. The Member States shall make provision in their legislation to ensure that:

- if the price of goods or services is fully or partly covered by credit granted by the supplier, or
- if that price is fully or partly covered by credit granted to the consumer by a third party on the basis of an agreement between the third party and the supplier,

the credit agreement shall be cancelled, without any penalty, if the consumer exercises his right to withdraw from the contract in accordance with paragraph 1.
Member States shall determine the detailed rules for cancellation of the credit agreement.

Article 7

Performance

1. Unless the parties have agreed otherwise, the supplier must execute the order within a maximum of 30 days from the day following that on which the consumer forwarded his order to the supplier.
2. Where a supplier fails to perform his side of the contract on the grounds that the goods or services ordered are unavailable, the consumer must be informed of this situation and must be able to obtain a refund of any sums he has paid as soon as possible and in any case within 30 days.
3. Nevertheless, Member States may lay down that the supplier may provide the consumer with goods or services of equivalent quality and price provided that this possibility was provided for prior to the conclusion of the contract or in the contract. The consumer shall be informed of this possibility in a clear and comprehensible manner. The cost of returning the goods following exercise of the right of withdrawal shall, in this case, be borne by the supplier, and the consumer must be informed of this. In such cases the supply of goods or services may not be deemed to constitute inertia selling within the meaning of Article 9.

Article 8

Payment by card

Member States shall ensure that appropriate measures exist to allow a consumer:

- to request cancellation of a payment where fraudulent use has been made of his payment card in connection with distance contracts covered by this Directive,
- in the event of fraudulent use, to be recredited with the sums paid or have them returned.

Article 9

Inertia selling

Member States shall take the measures necessary to:

- prohibit the supply of goods or services to a consumer without their being ordered by the consumer beforehand, where such supply involves a demand for payment,
- exempt the consumer from the provision of any consideration in cases of unsolicited supply, the absence of a response not constituting consent.

Article 10

Restrictions on the use of certain means of distance communication

1. Use by a supplier of the following means requires the prior consent of the consumer:
 - automated calling system without human intervention (automatic calling machine),
 - facsimile machine (fax).
2. Member States shall ensure that means of distance communication, other than those referred to in paragraph 1, which allow individual communications may be used only where there is no clear objection from the consumer.

Article 11

Judicial or administrative redress

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive in the interests of consumers.
2. The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, as determined by national law, may take action under national law before the courts or before the competent administrative bodies to ensure that the national provisions for the implementation of this Directive are applied:
 - (a) public bodies or their representatives;
 - (b) consumer organizations having a legitimate interest in protecting consumers;
 - (c) professional organizations having a legitimate interest in acting.
3. (a) Member States may stipulate that the burden of proof concerning the existence of prior information, written confirmation, compliance with time-limits or consumer consent can be placed on the supplier.
(b) Member States shall take the measures needed to ensure that suppliers and operators of means of communication, where they are able to do so, cease practices which do not comply with measures adopted pursuant to this Directive.
4. Member States may provide for voluntary supervision by self-regulatory bodies of compliance with the provisions of this Directive and recourse to such bodies for the settlement of disputes to be added to the means which Member States must provide to ensure compliance with the provisions of this Directive.

Article 12

Binding nature

1. The consumer may not waive the rights conferred on him by the transposition of this Directive into national law.
2. Member States shall take the measures needed to ensure that the consumer does not lose the protection granted by this Directive by virtue of the choice of the law of a non-member country as the law applicable to the contract if the latter has close connection with the territory of one or more Member States.

Article 13

Community rules

1. The provisions of this Directive shall apply insofar as there are no particular provisions in rules of Community law governing certain types of distance contracts in their entirety.
2. Where specific Community rules contain provisions governing only certain aspects of the supply of goods or provision of services, those provisions, rather than the provisions of this Directive, shall apply to these specific aspects of the distance contracts.

Article 14

Minimal clause

Member States may introduce or maintain, in the area covered by this Directive, more stringent provisions compatible with the Treaty, to ensure a higher level of consumer protection. Such provisions shall, where appropriate, include a ban, in the general interest, on the marketing of certain goods or services, particularly medicinal products, within their territory by means of distance contracts, with due regard for the Treaty.

Article 15

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than three years after it enters into force. They shall forthwith inform the Commission thereof.
2. When Member States adopt the measures referred to in paragraph 1, these shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The procedure for such reference shall be laid down by Member States.
3. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive.
4. No later than four years after the entry into force of this Directive the Commission shall submit a report to the European Parliament and the Council on the implementation of this Directive, accompanied if appropriate by a proposal for the revision thereof.

Article 16

Consumer information

Member States shall take appropriate measures to inform the consumer of the national law transposing this Directive and shall encourage, where appropriate, professional organizations to inform consumers of their codes of practice.

Article 17

Complaints systems

The Commission shall study the feasibility of establishing effective means to deal with consumers' complaints in respect of distance selling. Within two years after the entry into force of this Directive the Commission shall submit a report to the European Parliament and the Council on the results of the studies, accompanied if appropriate by proposals.

Article 18

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 19

This Directive is addressed to the Member States.

Done at Brussels, 20 May 1997.

For the European Parliament

The President

J.M. GIL-ROBLES

For the Council

The President

J. VAN AARTSEN

(1) OJ No C 156, 23. 6. 1992, p. 14 and OJ No C 308, 15. 11. 1993, p. 18.

(2) OJ No C 19, 25. 1. 1993, p. 111.

(3) Opinion of the European Parliament of 26 May 1993 (OJ No C 176, 28. 6. 1993, p. 95), Council common position of 29 June 1995 (OJ No C 288, 30. 10. 1995, p. 1) and Decision of the European Parliament of 13 December 1995 (OJ No C 17, 22. 1. 1996, p. 51). Decision of the European Parliament of 16 January 1997 and Council Decision of 20 January 1997.

(4) OJ No C 92, 25. 4. 1975, p. 1.

(5) OJ No C 167, 5. 7. 1986, p. 1.

- (6) OJ No C 294, 22. 11. 1989, p. 1.
- (7) OJ No L 250, 19. 9. 1984, p. 17.
- (8) OJ No L 156, 10. 6. 1992, p. 21.
- (9) OJ No L 298, 17. 10. 1989, p. 23.
- (10) OJ No L 113, 30. 4. 1992, p. 13.

Purposes: As mentioned earlier, the EU has no power to regulate civil law as such. Only special purposes are possible.

- consumer protection against special risks in distance sales via telephone, internet, etc.
- implementation of the internal EU-market
- optimisation of competitive market structures

Example: A bought from B a new car of red colour and paid 30.000 Euro. He ordered it by an internet catalogue and by a couple of telephone calls. For an additional price of 50 Euro B managed the application for the necessary license-plates and the provisional insurance cover. A used the car for a longer trip with his girl friend to Italy, Greece and Spain. When he came back to Germany he brought the car back to B because he did not like the colour anymore, and claimed his money back.

The contract was concluded merely by means of telecommunication, since B seems to have had binding intent when he promised to not only transfer the car to A, but also to care for the plates, etc. Under the German Statute on Distance Sales of 1999 and the new §§ 312 b ss. BGB, esp. § 312d subsec. 2 BGB, A has a right to cancel the contract. The delay of this right would normally be 2 weeks only. But since B did not give complete information of this cancellation right to A before the contract has been concluded, the cancellation period lasts for 6 months (§ 355 subsec.3 BGB). In cases of misuse of the good or damages, the buyer must pay for repairs and for compensation of his using advantage (§ 357 subsec. 3 BGB), but this regulation provides for an extra information of the seller which might not be given to A.

In British law this EU-directive has also been implemented. From the viewpoint of a US-businessman it probably does not seem to be a very wise europeanisation, but it is one. Foreign potential contract partners would probably do best to avoid the shown problems and many similar ones, by making their choice of a non-European law.

5. Doorstep Contracts

A further area of consumer protection, the protection against unreflected doorstep contracts, is dominated by an EU-Directive, also.

COUNCIL DIRECTIVE of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (85/577/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES, Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof, Having regard to the proposal from the Commission (1), Having regard to the opinion of the European Parliament (2), Having regard to the opinion of the Economic and Social Committee (3), Whereas it is a common form of commercial practice in the Member States for the conclusion of a contract or a unilateral engagement between a trader and consumer to be made away from the business premises of the trader, and whereas such contracts and engagements are the subject of legislation which differs from one Member State to another; Whereas any disparity between such legislation may directly affect the functioning of the common market; whereas it is therefore necessary to approximate laws in this field; Whereas the preliminary programme of the European Economic Community for a consumer protection and information policy (4) provides inter alia, under paragraphs 24 and 25, that appropriate measures be taken to protect consumers against unfair commercial

practices in respect of doorstep selling; whereas the second programme of the European Economic Community for a consumer protection and information policy (5) confirmed that the action and priorities defined in the preliminary programme would be pursued; Whereas the special feature of contracts concluded away from the business premises of the trader is that as a rule it is the trader who initiates the contract negotiations, for which the consumer is unprepared or which he does not expect; whereas the consumer is often unable to compare the quality and price of the offer with other offers; whereas this surprise element generally exists not only in contracts made at the doorstep but also in other forms of contract concluded by the trader away from his business premises; Whereas the consumer should be given a right of cancellation over a period of at least seven days in order to enable him to assess the obligations arising under the contract; Whereas appropriate measures should be taken to ensure that the consumer is informed in writing of this period for reflection; Whereas the freedom of Member States to maintain or introduce a total or partial prohibition on the conclusion of contracts away from business premises, inasmuch as they consider this to be in the interest of consumers, must not be affected; HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive shall apply to contracts under which a trader supplies goods or services to a consumer and which are concluded:- during an excursion organized by the trader away from his business premises, or during a visit by a trader (i) to the consumer's home or to that of another consumer; (ii) to the consumer's place of work; where the visit does not take place at the express request of the consumer. 2. This Directive shall also apply to contracts for the supply of goods or services other than those concerning which the consumer requested the visit of the trader, provided that when he requested the visit the consumer did not know, or could not reasonably have known, that the supply of those other goods or services formed part of the trader's commercial or professional activities. 3. This Directive shall also apply to contracts in respect of which an offer was made by the consumer under conditions similar to those described in paragraph 1 or paragraph 2 although the consumer was not bound by that offer before its acceptance by the trader. 4. This Directive shall also apply to offers made contractually by the consumer under conditions similar to those described in paragraph 1 or paragraph 2 where the consumer is bound by his offer.

Article 2

For the purposes of this Directive: 'consumer' means a natural person who, in transactions covered by this Directive, is acting for purposes which can be regarded as outside his trade or profession; 'trader' means a natural or legal person who, for the transaction in question, acts in his commercial or professional capacity, and anyone acting in the name or on behalf of a trader.

Article 3

1. The Member States may decide that this Directive shall apply only to contracts for which the payment to be made by the consumer exceeds a specified amount. This amount may not exceed 60 ECU. The Council, acting on a proposal from the Commission, shall examine and, if necessary, revise this amount for the first time no later than four years after notification of the Directive and thereafter every two years, taking into account economic and monetary developments in the Community. 2. This Directive shall not apply to: (a) contracts for the construction, sale and rental of immovable property or contracts concerning other rights relating to immovable property. Contracts for the supply of goods and for their incorporation in immovable property or contracts for repairing immovable property shall fall within the scope of this Directive; (b) contracts for the supply of foodstuffs or beverages or other goods intended for current consumption in the household and supplied by regular roundsmen; (c) contracts for the supply of goods or services, provided that all three of the following conditions are met: (i) the contract is concluded on the basis of a trader's catalogue which the consumer has a proper opportunity of reading in the absence of the trader's representative, (ii) there is intended to be continuity of contact between the trader's representative and the consumer in relation to that or any subsequent transaction, (iii) both the catalogue and the contract clearly inform the consumer of his right to return goods to the supplier within a period of not less than seven days of receipt or otherwise to cancel the contract within that period without obligation of any kind other than to take reasonable care of the goods; (d) insurance contracts; (e) contracts for securities. 3. By way of derogation from Article 1 (2), Member States may refrain from applying this Directive to contracts for the supply of goods or services having a direct connection with the goods or services concerning which the consumer requested the visit of the trader.

Article 4

In the case of transactions within the scope of Article 1, traders shall be required to give consumers written notice of their right of cancellation within the period laid down in Article 5, together with the name and address of a person against whom that right may be exercised. Such notice shall be dated and shall state particulars enabling the contract to be identified. It shall be given to the consumer: (a) in the case of Article 1 (1), at the time of conclusion of the contract; (b) in the case of Article 1 (2), not later than the time of conclusion of the contract; (c) in the case of Article 1 (3) and 1 (4), when the offer is made by the consumer.

Member States shall ensure that their national legislation lays down appropriate consumer protection measures in cases where the information referred to in this Article is not supplied.

Article 5

1. The consumer shall have the right to renounce the effects of his undertaking by sending notice within a period of not less than seven days from receipt by the consumer of the notice referred to in Article 4, in accordance with the procedure laid down by national law. It shall be sufficient if the notice is dispatched before the end of such period. 2. The giving of the notice shall have the effect of releasing the consumer from any obligations under the cancelled contract.

Article 6

The consumer may not waive the rights conferred on him by this Directive.

Article 7

If the consumer exercises his right of renunciation, the legal effects of such renunciation shall be governed by national laws, particularly regarding the reimbursement of payments for goods or services provided and the return of goods received.

Article 8

This Directive shall not prevent Member States from adopting or maintaining more favourable provisions to protect consumers in the field which it covers.

Article 9

1. Member States shall take the measures necessary to comply with this Directive within 24 months of its notification (1). They shall forthwith inform the Commission thereof. 2. Member States shall ensure that the texts of the main provisions of national law which they adopt in the field covered by this Directive are communicated to the Commission.

Article 10

This Directive is addressed to the Member States.

Done at Brussels, 20 December 1985. For the Council The President R. KRIEPS

(1) OJ No C 22, 29. 1. 1977, p. 6; OJ No C 127, 1. 6. 1978, p. 6.

(2) OJ No C 241, 10. 10. 1977, p. 26.

(3) OJ No C 180, 18. 7. 1977, p. 39.

(4) OJ No C 92, 25. 4. 1975, p. 2.

(5) OJ No C 133, 3. 6. 1981, p. 1.

(1) This Directive was notified to the Member States on 23 December 1985.

IV. Communication of Standard Terms

(text will be completed as soon as possible)

V. Content Control of Standard Terms

The law of standard terms has been Europeanized to a certain extent. For first impression, the the EU-directive misuse of standard terms in consumer contracts is printed out, as follows:

COUNCIL DIRECTIVE 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts
THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas it is necessary to adopt measures with the aim of progressively establishing the

internal market before 31 December 1992; whereas the internal market comprises an area without internal frontiers in which goods, persons, services and capital move freely;

Whereas the laws of Member States relating to the terms of contract between the seller of goods or supplier of services, on the one hand, and the consumer 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 and suppliers, notably when they sell and supply in other Member States;

Whereas, in particular, the laws of Member States relating to unfair terms in consumer contracts show marked divergences;

Whereas it is the responsibility of the Member States to ensure that contracts concluded with consumers do not contain unfair terms;

Whereas, generally speaking, consumers do not know the rules of law which, in Member States other than their own, govern contracts for the sale of goods or services; whereas this lack of awareness may deter them from direct transactions for the purchase of goods or services in another Member State;

Whereas, in order to facilitate the establishment of the internal market and to safeguard the citizen in his role as consumer when acquiring goods and services under contracts which are governed by the laws of Member States other than his own, it is essential to remove unfair terms from those contracts;

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

Whereas the two Community programmes for a consumer protection and information policy (4) underlined the importance of safeguarding consumers in the matter of unfair terms of contract; whereas this protection ought to be provided by laws and regulations which are either harmonized at Community level or adopted directly at that level;

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

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 contracts concluded between sellers or suppliers and consumers; whereas as a result inter alia contracts relating to employment, contracts relating to succession rights, contracts relating to rights under family law and contracts relating to the incorporation and organization of companies or partnership agreements must be excluded from this Directive;

Whereas the consumer must receive equal protection under contracts concluded by word of mouth and written contracts regardless, in the latter case, of whether the terms of the contract are contained in one or more documents;

Whereas, however, as they now stand, national laws allow only partial harmonization to be envisaged; whereas, in particular, only contractual terms which have not been individually negotiated are covered by this Directive; whereas Member States should have the option, with due regard for the Treaty, to afford consumers a higher level of protection through national provisions that are more stringent than those of this Directive;

Whereas the statutory or regulatory provisions of the Member States which directly or indirectly determine the terms of consumer contracts are presumed not to contain unfair terms; whereas, therefore, it does not appear to be necessary to subject the terms which reflect mandatory statutory or regulatory provisions and the principles or provisions of international conventions to which the Member States or the Community are party; whereas in that respect the wording 'mandatory statutory or regulatory provisions' in Article 1 (2) also covers rules

which, according to the law, shall apply between the contracting parties provided that no other arrangements have been established;

Whereas Member States must however ensure that unfair terms are not included, particularly because this Directive also applies to trades, business or professions of a public nature;

Whereas it is necessary to fix in a general way the criteria for assessing the unfair character of contract terms;

Whereas the assessment, according to the general criteria chosen, of the unfair character of terms, in particular in sale or supply activities of a public nature providing collective services which take account of solidarity among users, must be supplemented by a means of making an overall evaluation of the different interests involved; whereas this constitutes the requirement of good faith; whereas, in making an assessment of good faith, particular regard shall be had to the strength of the bargaining positions of the parties, whether the consumer had an inducement to agree to the term and whether the goods or services were sold or supplied to the special order of the consumer; whereas the requirement of good faith may be satisfied by the seller or supplier where he deals fairly and equitably with the other party whose legitimate interests he has to take into account;

Whereas, for the purposes of this Directive, the annexed list of terms can be of indicative value only and, because of the nature of the minimal character of the Directive, the scope of these terms may be the subject of amplification or more restrictive editing by the Member States in their national laws;

Whereas the nature of goods or services should have an influence on assessing the unfairness of contractual terms;

Whereas, for the purposes of this Directive, assessment of unfair character shall not be made of terms which describe the main subject matter of the contract nor the quality/price ratio of the goods or services supplied; whereas the main subject matter of the contract and the price/quality ratio may nevertheless be taken into account in assessing the fairness of other terms; whereas it follows, inter alia, that in insurance contracts, the terms which clearly define or circumscribe the insured risk and the insurer's liability shall not be subject to such assessment since these restrictions are taken into account in calculating the premium paid by the consumer;

Whereas contracts should be drafted in plain, intelligible language, the consumer should actually be given an opportunity to examine all the terms and, if in doubt, the interpretation most favourable to the consumer should prevail;

Whereas Member States should ensure that unfair terms are not used in contracts concluded with consumers by a seller or supplier and that if, nevertheless, such terms are so used, they will not bind the consumer, and the contract will continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair provisions;

Whereas there is a risk that, in certain cases, the consumer may be deprived of protection under this Directive by designating the law of a non-Member country as the law applicable to the contract; whereas provisions should therefore be included in this Directive designed to avert this risk;

Whereas persons or organizations, if regarded under the law of a Member State as having a legitimate interest in the matter, must have facilities for initiating proceedings concerning terms of contract drawn up for general use in contracts concluded with consumers, and in particular unfair terms, either before a court or before an administrative authority competent to decide upon complaints or to initiate appropriate legal proceedings; whereas this possibility does not, however, entail prior verification of the general conditions obtaining in individual economic sectors;

Whereas the courts or administrative authorities of the Member States must have at their disposal adequate and effective means of preventing the continued application of unfair terms in consumer contracts,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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 concluded between a seller or supplier and a consumer.
2. The contractual terms which reflect mandatory statutory or regulatory provisions and the provisions or principles of international conventions to which the Member States or the Community are party, particularly in the transport area, shall not be subject to the provisions of this Directive.

Article 2

For the purposes of this Directive:

- (a) 'unfair terms' means the contractual terms defined in Article 3;
- (b) 'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession;
- (c) 'seller or supplier' means any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned.

Article 3

1. A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.
2. A term shall always be regarded as not individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.
The fact that certain aspects of a term or one specific term have been individually negotiated shall not exclude the application of this Article to the rest of a contract if an overall assessment of the contract indicates that it is nevertheless a pre-formulated standard contract. Where any seller or supplier claims that a standard term has been individually negotiated, the burden of proof in this respect shall be incumbent on him.
3. The Annex shall contain an indicative and non-exhaustive list of the terms which may be regarded as unfair.

Article 4

1. Without prejudice to Article 7, the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.
2. Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as these terms are in plain intelligible language.

Article 5

In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. This rule on interpretation shall not apply in the context of the procedures laid down in Article 7 (2).

Article 6

1. Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.

2. Member States shall take the necessary measures to ensure that the consumer does not lose the protection granted by this Directive by virtue of the choice of the law of a non-Member country as the law applicable to the contract if the latter has a close connection with the territory of the Member States.

Article 7

1. Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.

2. The means referred to in paragraph 1 shall include provisions whereby persons or organizations, having a legitimate interest under national law in protecting consumers, may take action according to the national law concerned before the courts or before competent administrative bodies for a decision as to whether contractual terms drawn up for general use are unfair, so that they can apply appropriate and effective means to prevent the continued use of such terms.

3. With due regard for national laws, the legal remedies referred to in paragraph 2 may be directed separately or jointly against a number of sellers or suppliers from the same economic sector or their associations which use or recommend the use of the same general contractual terms or similar terms.

Article 8

Member States may adopt or retain the most stringent provisions compatible with the Treaty in the area covered by this Directive, to ensure a maximum degree of protection for the consumer.

Article 9

The Commission shall present a report to the European Parliament and to the Council concerning the application of this Directive five years at the latest after the date in Article 10 (1).

Article 10

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 December 1994. They shall forthwith inform the Commission thereof.

These provisions shall be applicable to all contracts concluded after 31 December 1994.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

3. Member States shall communicate the main provisions of national law which they adopt in the field covered by this Directive to the Commission.

Article 11

This Directive is addressed to the Member States.

Done at Luxembourg, 5 April 1993.

For the Council

The President
N. HELVEG PETERSEN

- (1) OJ No C 73, 24. 3. 1992, p. 7.
- (2) OJ No C 326, 16. 12. 1991, p. 108 and OJ No C 21, 25. 1. 1993.
- (3) OJ No C 159, 17. 6. 1991, p. 34.
- (4) OJ No C 92, 25. 4. 1975, p. 1 and OJ No C 133, 3. 6. 1981, p. 1.

ANNEX

TERMS REFERRED TO IN ARTICLE 3 (3) 1. Terms which have the object or effect of:

- (a) excluding or limiting the legal liability of a seller or supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that seller or supplier;
- (b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him;
- (c) making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realization depends on his own will alone;
- (d) permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract;
- (e) requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation;
- (f) authorizing the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract;
- (g) enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;
- (h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express this desire not to extend the contract is unreasonably early;
- (i) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;
- (j) enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract;
- (k) enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided;
- (l) providing for the price of goods to be determined at the time of delivery or allowing a seller of goods or supplier of services to increase their price without in both cases giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded;
- (m) giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract;
- (n) limiting the seller's or supplier's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality;

(o) obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his;

(p) giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement;

(q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.

2. Scope of subparagraphs (g), (j) and (l)

(a) Subparagraph (g) is without hindrance to terms by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof immediately.

(b) Subparagraph (j) is without hindrance to terms under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately.

Subparagraph (j) is also without hindrance to terms under which a seller or supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract.

(c) Subparagraphs (g), (j) and (l) do not apply to:

- transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the seller or supplier does not control;

- contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;

(d) Subparagraph (l) is without hindrance to price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.

Text will be continued soon.