



**SCREENING CHAPTER 28  
CONSUMER PROTECTION AND HEALTH**

**AGENDA ITEM VI: UNFAIR TERMS**

**Country Session: The Republic of TURKEY  
6-7 July 2006**



## LEGAL BASIS

- **LAW NO. 4077 ON CONSUMER PROTECTION AMENDED BY LAW NO. 4822 (OG No: 25048, 14 March 2003)**

**Came into force on 14 June 2003**

- **BY-LAW ON UNFAIR TERMS IN CONSUMER CONTRACT**

**Came into force on 14 June 2003 (OG No: 25137, 13 June 2003)**

**(Transposed Directive 93/13/EEC on Unfair Terms in Consumer Contracts)**



# **COMPETENT AUTHORITY**

**THE MINISTRY OF INDUSTRY AND TRADE**

**DG FOR PROTECTION OF CONSUMER AND COMPETITION**

## LAW ON CONSUMER PROTECTION (ARTICLE 6) BY-LAW UNFAIR TERMS IN CONTRACTS (ARTICLE 4/d)

### UNFAIR CONTRACTUAL TERM:

Any unfair term in a contract:

- Unilaterally included in the contract by the seller, supplier or creditor,
- Non-negotiated with the consumer,
- Contrary to the requirement of good faith,
- Significant imbalance in the parties' rights and obligations,
- To the detriment of the consumer

is null for the consumer.



## **LAW ON CONSUMER PROTECTION (ARTICLE 6) BY-LAW UNFAIR TERMS IN CONTRACTS (ARTICLE 5)**

### **NOT INDIVIDUALLY NEGOTIATED TERM**

- The term has been drafted in advance.
- The consumer has not been able to influence the substance of the term, particularly in the context of a standard contract.

**Certain aspects of a term or one specific term which have been individually negotiated shall not exclude the application of these Articles to the rest of the contract, provided that it is a standard contract.**

### **THE BURDEN OF PROOF**

**The burden of proof is on the seller or the supplier.**



## BY-LAW ON UNFAIR TERMS IN CONSUMER CONTRACTS

### EVALUATION OF UNFAIRNESS OF CONTRACT TERMS (ARTICLE 6)

- **Contract should be written in plain and intelligible language. In evaluating the unfairness of the contract terms, nature of the goods or services and the circumstance leading to the conclusion of the contract should be taken into account.**
- **In assessing the unfairness of the contract terms, an assessment may not be made neither concerning the balance between the primary contractual obligations of the parties, nor concerning proportionality between the price in the contract and the real price of good or service.**
- **In case of doubt, terms of the contract should be interpreted in favour of the consumer.**



## **BY-LAW ON UNFAIR TERMS IN CONSUMER CONTRACTS**

### **RIGHTS OF CONSUMER IN CASE OF UNFAIR TERMS (ARTICLE 7)**

- The unfair terms in the contracts are null and void.
- The rest of the contract shall be valid, if it is still viable without these terms.

### **JUDICIAL REVIEW (ARTICLE 8)**

- Natural and legal persons with legitimate interest may take legal action to prevent application of unfair terms of standard contracts.
- The court decides on the necessary measures to be taken for the elimination of unfair terms.



## **BY-LAW ON UNFAIR TERMS IN CONSUMER CONTRACTS**

### **ANNEX**

#### **An indicative and non exhaustive list of examples of contract terms that may be regarded as unfair**

- 1- Excluding or limiting the legal liability of a seller, supplier or creditor in the event of the death of a consumer or financial loss to the latter resulting from an act or omission of that seller or supplier**
- 2- Inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller, supplier, creditor or another party in the event of total or partial non-performance or inadequate performance by the seller, supplier or creditor of any of the contractual obligations, including the option of offsetting a debt owed to the seller, supplier or creditor against any claim which the consumer may have against him;**
- 3- Making an agreement binding on the consumer whereas provision of services by the seller, supplier or creditor is subject to a condition whose realization depends on his own will alone;**





## **BY-LAW ON UNFAIR TERMS IN CONSUMER CONTRACTS ANNEX**

- 4- Permitting the seller, supplier or creditor 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, supplier or creditor where the latter is the party cancelling the contract;**
- 5- Requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation;**
- 6- Authorizing the seller, supplier or creditor to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller, supplier or creditor to retain the sums paid for services not yet supplied by him where it is the seller, supplier or creditor himself who dissolves the contract;**
- 7- Enabling the seller, supplier or creditor to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;**
- 8- 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;**



## **BY-LAW ON UNFAIR TERMS IN CONSUMER CONTRACTS ANNEX**

- 9- Irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;**
- 10- Enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract;**
- 11- Enabling the seller, supplier or creditor to alter unilaterally without a valid reason any characteristics of the good or service to be provided;**
- 12- 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;**
- 13- Giving the seller, supplier or creditor 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;**
- 14- Limiting the seller's, supplier's or creditor's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality;**



## **BY-LAW ON UNFAIR TERMS IN CONSUMER CONTRACTS ANNEX**

**15- Obliging the consumer to fulfil all his obligations where the seller, supplier or creditor does not perform his;**

**16- Giving the seller, supplier or creditor 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;**

**17- 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.**

**b) Scope of subparagraphs (7), (10) and (12)**

**1) Subparagraph (7) 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.**



## **BY-LAW ON UNFAIR TERMS IN CONSUMER CONTRACTS ANNEX**

**2) Subparagraph (10) 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 (10) 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.**

**3) Subparagraphs (7), (10) and (12) 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;**

**4) Subparagraph (12) is without hindrance to price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.**



**THANK YOU FOR YOUR ATTENTION**