

The Unfair Contract Terms Directive (93/13/EEC)



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Background (1)

- Contract terms define the rights and duties of the parties who are bound by them
- In B2C contracts sellers or suppliers have an advantage by defining the terms in advance which are not individually negotiated (i.e. are drafted in advance)

Background (2)

- However, standard form contracts facilitate commercial transactions
- If abuses can be avoided, standard terms also work to the advantage of consumers

Scope of Application(1)

- Directive introduces a notion of “good faith” to prevent significant imbalances in the rights and obligations of consumers on the one hand and sellers and suppliers on the other hand
- This general requirement is supplemented by an indicative and non exhaustive list of examples of contract terms that may be regarded as unfair

Scope of Application (2)

- Contract terms found to be unfair under the Directive are not binding on consumers
- Requirement that contract terms be drafted in plain and intelligible language
- Ambiguities will be interpreted in favour of consumers.

Enforcement

- Member States must ensure that effective means exist under national law to enforce these rights and that such terms are no longer used by sellers and suppliers

Minimum Directive

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

Implementation

- Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the Directive
- Member States shall communicate these provisions to the Commission