

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (76) 47

ON UNFAIR TERMS IN CONSUMER CONTRACTS AND AN APPROPRIATE METHOD OF CONTROL

*(Adopted by the Committee of Ministers on 16 November 1976
at the 262nd meeting of the Ministers' Deputies)*

The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve a greater unity between its member states ;

Convinced of the need to increase the legal protection of consumers in order to strengthen their power ;

Considering that the inclusion of unfair terms in contracts for the supply of goods and services and that the absence of appropriate legislation in this field place consumers in a position of inferiority which is prejudicial to their interests ;

Considering that consumers are with increasing frequency offered contracts for the supply of goods and services on terms which seldom protect their interests adequately and which they have no true power to amend ;

Considering that for these reasons consumers should be afforded protection against unfair terms of contract,

I. Recommends governments of member states :

1. to introduce legal or other instruments which are effective to protect consumers against unfair terms in contracts relating to the supply of goods or services, in particular against unfair terms in contracts based on standard texts and in other contracts where the consumer has little, if any, possibility of negotiating or influencing their content ;

2. to lay down, as a principle in relation to the contractual situations described in paragraph 1, that any term or combination of terms which causes a balance of rights and obligations under the contract as a whole contrary to the interests of consumers is to be regarded as unfair and to draw the appropriate consequences therefrom ;

3. to take, strengthen or maintain, as appropriate, measures which are apt to prevent the inclusion in such contracts of terms which are inconsistent with the mandatory rules of law, or of other terms which are regarded as unfair in relation to consumers ;

4. to take measures or strengthen the existing measures to protect consumers from inadequate or misleading presentation of the contents of such contracts and in particular to ensure that, where necessary, all the terms of such contracts are readily and comprehensibly available to consumers before they consent to them ;

5. to provide for an appropriate method of control relating to unfair contract terms drawn from the principles set out in the appendix to this resolution. The method of control adopted shall be based on all or part of principles I, II or III therein ;

6. to consider the extension of the principles of paragraphs 1-5 to contracts relating to immovable property ;

II. Invites governments of member states to inform the Secretary General, after the expiration of a period of five years, of the steps which they have taken in consequence of this resolution and of the experience they have acquired in implementing it, so that the Committee of Ministers may decide whether the questions dealt with in this resolution should be re-examined in the light of the needs apparent at that time in the field of consumer protection.

APPENDIX

SYSTEM OF CONTROL

PRINCIPLES

I

1. A procedure should be available under which the question whether terms contained in standard contract forms are unfair may be considered on the initiative of interested persons, organisations representing the interests of consumers, trade or professional associations or public bodies. The views of such persons and bodies may be presented during the procedure.

2. Whether or not the standard contract form is amended under paragraph 1, any individual contract concluded on the basis of the standard form may nevertheless be subject to a procedure for hearing disputes.

II

1. Any interested person, organisation representing the interests of consumers, trade or professional association or public body should be able to submit terms contained in standard contract forms—whether or not revised under Principle I—to a procedure before a judicial body or another appropriate body, which shall be designated or created by each state, so that this body may examine them in order to determine whether any term contained therein is unfair. Such a body may act of its own motion. If some official body has been established in connection with Principle I, that body shall not be competent for the purposes of this paragraph.

2. Decisions taken under the procedure referred to in paragraph 1 should, as far as possible, apply to the terms of all standard contract forms of the same type and should, in appropriate cases, be published.

III

A procedure should be available for the speedy introduction of legislative measures designed to render unlawful the use in contracts of unfair terms.

IV

1. A simple, rapid and cheap judicial procedure, as part of the consumer protection policy and especially against unfair terms of contracts, should be set up which could be easily available for consumers.

2. In this context, measures should be taken to encourage the amicable settlement of individual disputes.