



JUSTITSMINISTERIET

Ministry of Justice

Annex 3

Date: May 1, 2023

Recommendations regarding the Unfair Contract Terms Directive

The Danish Government has the following recommendations regarding the Unfair Contract Terms Directive:

Recommendation 1: New services and industries

With the evolving development in contract terms and especially with the rise of the digital economy and new services, the Danish Government encourages the Commission to look into whether the Unfair Contract Terms Directive is fit for new services and industries. The Commission is especially encouraged to evaluate the current “grey list” in Annex 1 to the directive to ensure that the list is fulfilling and fit for the digital age.

As an example, the gaming industry has evolved increasingly during the last decade. Purchases of digital items or services with virtual in-app currencies are one of the most important revenue streams for gaming businesses. Traders in the industry often stipulate in their terms and conditions that in-app currencies are non-refundable.

The Danish Government therefore encourages the Commission to evaluate whether the directive is fit for the digital age, and especially to examine whether contractual terms in the gaming industry stipulating that in-app currencies are non-refundable should be regarded as unfair.

Recommendation

The Danish Government recommends the Commission to evaluate whether the directive and Annex 1 is fit for the digital age, and especially to examine whether contractual terms in the gaming industry stipulating that in-app currencies are non-refundable should be regarded as unfair.

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Recommendation 2: A new “black list”

Considering the cross-border nature of many digital services, the current legal framework, where each Member State can create its own “black list” of contract terms that are always considered as unfair without requiring a case-by-case assessment, lacks transparency for businesses and consumers. Further, as a consequence, the stipulations can be difficult to comply with for traders as well as difficult to enforce for authorities. The Commission may therefore examine whether such a “black list” should be introduced as an Annex to the directive.

Recommendation

The Danish Government recommends the Commission to examine whether a “black list” of contract terms that are always considered as unfair without requiring a case-by-case assessment should be introduced as an Annex to the Unfair Contract Terms Directive.

Recommendation 3: Unilateral changes of contract terms

The directive and case law address when and how traders may make use of unilateral changes of contract terms. However, the legal framework is unclear as to when traders may make use of unilateral changes to contracts. The lack of clarity is to the detriment of both consumers and businesses and may lead to fragmentation in Member States’ legal framework.

The Danish Government therefore encourages the Commission to ensure clarity on the definition of valid reasons for unilateral changes to contracts. Further, the Commission is encouraged to introduce a requirement for a fair warning of such changes and a realistic access to termination.

Further, the Danish Government finds that it would be beneficial for consumers if businesses were required to submit unilateral changes to contracts to consumers on a durable medium. In this regard, it should be clear and understandable for consumers what they are consenting to.

Recommendation

The Danish Government recommends the Commission to ensure clarity on the definition of valid reasons for unilateral changes to contracts and to evaluate whether requirements for a fair warning of such changes and a realistic access to termination should be introduced.

Recommendation 4: Codification of case law

In addition to the recommendations above, the Danish Government notes that it will strengthen the clarity of the directive if relevant case law from the European Court of Justice is codified. The Danish Government therefore encourages the Commission to evaluate whether relevant case law should be codified.

Recommendation

The Danish Government recommends the Commission to evaluate whether relevant case law can be codified with the aim of strengthening the legal clarity of the directive.