

**European Commission  
Directorate General Justice**

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**EUROPEAN CONTRACT LAW**

The European Commission has launched a consultation on the publication of the results of the feasibility study carried out by the Expert Group on European contract law. Finland Chamber of Commerce submits the following statement.

**General comments**

Finland Chamber of Commerce considers that the Expert Group's work is of high quality. Nevertheless, we find it important that the Commission make some amendments before submitting a proposal. The key problem of the text is that it far surpasses the consumer protection legislation in any of the Member States. If this approach is taken in the final text, we don't see much use for the instrument. Undoubtedly businesses will either stick to the present state of affairs, meaning that they will either refrain from cross-border consumer trade fully or partially or accept the risks of foreign legislation, often unknown to them.

**Comments to the Commission's questions**

1. We find the text to be a good basis for continuing preparatory work. It is necessary, however, to amend the text so that it corresponds to the current consumer protection rules of the Member States.
2. We do not support Article 81. We find it unacceptable to extend unfairness control of business-to-consumer contract terms to individually negotiated terms. We accept unfairness control of standard contract terms.
3. We do not support the proposed Article 92. Change of circumstances should lead to an alteration of a contract only in extreme circumstances.
4. We find it necessary that the seller of a faulty product has a right to cure the defect both in B2B and in B2C contracts. Otherwise clients may resort to frivolous demands causing unnecessary costs to sellers.
5. We support Article 177. The risk of destruction of the goods must be placed on the buyer while he or she has possession of the goods.
6. We find it important that the instrument contain a clear rule for an obligation to pay interest for late payment. We cannot support a responsibility for the seller to send a notice informing the buyer of the interest rate. The responsibility should be stated in the Article without requiring additional notices. Also, the applicable interest rate should be such that it is easily obtainable.

### **Comments to proposed Articles**

#### *Article 48 and 92 Court's right to adapt the contract*

Since the court's right to adapt contracts is unknown in many jurisdictions, it is very important that Articles 48 and 92 are written as clearly as possible in order to avoid unintended consequences. The Nordic jurisdictions are familiar with this sort of legislation but are also aware that they are applicable only in exceptional circumstances. This is not clearly visible in the text. Unless the text is amended, it is unlikely that the optional instrument will find many users.

#### *Article 84 (m) Transfer of rights and obligations*

We cannot support an article refusing businesses the right to transfer contracts to other companies without the consumer's consent. This would deny companies the right to conduct normal business transactions and would also make it more difficult to collect late payments. We strongly urge the article to be amended.

#### *Article 87 Surprising terms included in standard terms*

We cannot support the proposed article unless it is modified so that it covers only surprising and **harsh** terms. As the idea of the article is unknown in many jurisdictions, its effect may turn out to be surprising and against its original meaning unless it is clearly stated. The Nordic jurisdictions recognize the issue but they do not cover surprising terms as such but also harshness is required for an unfairness test. If the amendment is not made, it is probable that will not opt to use the optional instrument companies in countries where the jurisdiction does not recognize the aim of the article.

#### *Article 108 (3)(a) Right to cure*

We cannot support the optional instrument to be used in any B2C contracts if businesses are denied the right to cure. The approach of the current text will increase consumers' frivolous actions and accumulate unnecessary costs to companies.

*Article 108 (3)(b) Examination and notification*

We cannot support the optional instrument to be used in any B2C contracts if consumers do not have any obligation to examine the goods as set in Article 123 for B2B contracts and give a notification of non-conformity as set in Article 124 for B2B contracts. This approach will increase consumers' frivolous actions and accumulate unnecessary costs to companies. In addition to the grave imbalance of rights and duties included in the proposal, it would add unclear situations where a consumer could make demands after waiting several years making it often impossible to find out the real state of the situation.

FINLAND CHAMBER OF COMMERCE

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