

(English version)

**Question for written answer E-002844/21**  
**to the Commission**  
**Tomislav Sokol (PPE)**  
(28 May 2021)

**Subject:** Directive on unfair terms in consumer contracts

The directive on unfair terms in consumer contracts was adopted in 1993, when digital services had not yet been developed and digital service providers as we know them today did not yet exist. Directive 93/13/EEC is a legal act adopted for the needs of a non-digital society, and at its core it is a minimum harmonisation instrument, which is why it has been implemented differently across the Member States. This does not help to bring about legal certainty or ensure consumer protection. Given the ongoing reform of the digital sector:

1. Does the Commission feel that the directive on unfair terms in consumer contracts offers sufficient protection to European consumers when they conclude contracts with digital service providers online?
2. Does the Commission plan to propose an amendment to that directive by listing contractual provisions which would in all circumstances be considered unfair (the so-called blacklist)?

**Answer given by Mr Reynders on behalf of the European Commission**  
(23 July 2021)

EU consumer law, including Directive 93/13/EEC<sup>(1)</sup> but also Directive 2011/83/EU<sup>(2)</sup> and Directive 2005/29/EC<sup>(3)</sup>, provides a high level of protection to consumers, is principle based, applies both online and offline, and is fully technology neutral. The results of the 2017 Fitness Check of EU consumer law showed that these Directives were overall fit for purpose and appropriate to tackle the problems faced by consumers including in the digital and online markets<sup>(4)</sup>.

The Commission has in recent years taken steps to further strengthen the effectiveness of EU consumer law online, focusing on strengthened enforcement cooperation between the Member States<sup>(5)</sup>, out-of-court (and online) dispute resolution<sup>(6)</sup>, modernised consumer rules in line with digital developments<sup>(7)</sup>, contracts for the supply of digital content and digital services<sup>(8)</sup> and representative actions for the protection of the collective interests of consumers<sup>(9)</sup>.

At this stage, the Commission does not intend to propose the inclusion in Directive 93/13/EEC of a list of contract terms considered unfair in all circumstances, as there is no compelling evidence that the principle-based approach of the directive combined with its indicative list cannot respond to the needs of the digital reality. Enforcement activities through the Consumer Protection Cooperation Network confirm the overall effectiveness of the directive in the online area<sup>(10)</sup>. In July 2019, the Commission adopted a guidance on the interpretation of Directive 93/13/EEC including its indicative list<sup>(11)</sup>, to guide authorities, businesses and consumers. The Commission continues to investigate unfair practices online<sup>(12)</sup> and the results of these efforts feed into a continuous reflection on the effectiveness of the legislative framework.

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<sup>(1)</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993, p. 29-34.

<sup>(2)</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, OJ L 304, 22.11.2011, p. 64-88.

<sup>(3)</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), OJ L 149, 11.6.2005, p. 22-39.

<sup>(4)</sup> See results of the 2017 Fitness Check of EU Consumer and Marketing Law, Commission Staff Working Document of 23.5.2017, Report of the Fitness Check, SWD(2017) 209 final.

<sup>(5)</sup> Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004, OJ L 345, 27.12.2017, p. 1-26.

<sup>(6)</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), OJ L 165, 18.6.2013, p. 63-79, and Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR), OJ L 165, 18.6.2013, p. 1-12.

<sup>(7)</sup> Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, OJ L 328, 18.12.2019, p. 7-28.

<sup>(8)</sup> Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, PE/26/2019/REV/1, OJ L 136, 22.5.2019, p. 1-27.

<sup>(9)</sup> Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, OJ L 409, 4.12.2020, p. 1-27.

<sup>(10)</sup> [https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/consumer-protection-cooperation-network\\_en](https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/consumer-protection-cooperation-network_en)

<sup>(11)</sup> Commission Notice — Guidance on the interpretation and application of Council Directive 93/13/EEC on unfair terms in consumer contracts' (O) C 323, 27.9.2019, p. 4-92.

<sup>(12)</sup> As announced in the communication from the Commission to the European Parliament and the Council 'New Consumer Agenda — Strengthening consumer resilience for sustainable recovery', COM/2020/696 final.