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CONSUMER PROTECTION AGAINST UNFAIR CONTRACT TERMS: A COMPARATIVE ANALYSIS BETWEEN MOLDOVAN LAW, ARMENIAN LAW AND EUROPEAN LAW

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Abstract: The paper examines consumer protection against unfair terms in standard-form (adhesion) contracts through a comparative analysis of Moldovan law, Armenian law, and European Union (EU) law. It takes as a benchmark the EU test of a "significant imbalance contrary to good faith," the transparency requirements, and the sanction that renders unfair terms non-binding, and maps these against national preventive and remedial mechanisms. The methodology combines doctrinal and legislative analysis (special consumer statutes, civil code provisions, and sector-specific regulations—financial services, telecommunications, and digital content/data) with selected case law and institutional enforcement practice. The findings indicate notable convergence with the EU acquis, alongside gaps concerning black/grey lists of clauses, courts' ex officio control, the effectiveness of injunctive actions, and the treatment of common subscription-economy terms (unilateral price changes, automatic renewal, unjustified limitations of liability, and pre-formulated arbitration clauses). Building on this, the article advances targeted policy recommendations: strengthening the material and procedural framework for unfair-terms control; explicitly codifying indicative lists; issuing trader compliance checklists; broadening standing for consumer associations; and improving enforcement, sanctions, and ADR/ODR interfaces. The study's contribution is applied and practice-oriented, outlining a feasible roadmap for alignment and good practice for authorities, courts, businesses, and consumer assistance centres, with positive effects on legal certainty and market trust in both domestic and cross-border transactions.
Keywords: Unfair contract terms; Consumer protection; Adhesion contracts; Republic of Moldova; Armenia; EU law; Contract transparency;
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1 Introduction

Unfair terms represent one of the most important institutions of consumer protection law, as they ensure contractual balance and good faith in the relationship between the trader and the consumer. Today, the concept goes beyond the classical notion of adhesion contracts and applies to all consumer contracts—namely, any contracts concluded between a trader and a consumer where the terms have not been individually negotiated.

This approach derives from Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, which provides that "a contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer." (Council Directive 93/13/EEC of 5 April 1993)

Accordingly, the decisive criterion for identifying an unfair term is not the form of the contract but the absence of individual negotiation and the existence of a significant imbalance. Within this logic, the protection applies to any consumer contract, whether standardised, electronic, verbal, or physically signed.

The purpose of this study is to analyse, from a comparative perspective, how the law of the Republic of Moldova, the law of the Republic of Armenia, and European Union law regulate and

apply the principles governing unfair contract terms, identifying points of convergence, existing gaps, and possible directions for harmonisation. The comparative analysis aims to provide a practical perspective on how these three legal systems ensure consumer protection in the contemporary context of the digital economy and standardised contracts.

The methodology adopted relies on a comparative, doctrinal, and normative approach. The study combines the analysis of doctrinal literature, statutory instruments (civil codes, consumer protection laws, and sector-specific regulations), and the relevant case law of the Court of Justice of the European Union (CJEU)—notably the cases *Océano Grupo Editorial*, *Mostaza Claro*, *Banco Español de Crédito*, *Kásler*, and *Gutiérrez Naranjo*—as well as the judicial practice of courts in Moldova and Armenia.

Furthermore, the research includes an assessment of national and European institutional mechanisms concerning the enforcement of sanctions and the control of unfair terms. The paper is thus applied and forward-looking in nature, aiming to contribute to the harmonisation of national legislation with the EU acquis and to the strengthening of effective consumer protection mechanisms across jurisdictions.

2 The legal framework of protection against unfair contract terms

The legal regime governing unfair contract terms in the Republic of Moldova is founded on the provisions of the Civil Code of the Republic of Moldova, republished under Law No. 133 of 15 November 2018, which modernised the law of obligations and contracts by repealing the former Law No. 256/2011. The civil reform sought to align national legislation with the European principles of consumer protection enshrined in Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

In domestic law, the control of unfair terms is based on a coherent set of general principles: good faith, contractual balance, and the protection of public economic order. Articles 992 and 993 of the Civil Code impose on the parties the duty to act in good faith and to preserve contractual equilibrium, while Article 1107(2) provides that any ambiguous clause shall be interpreted in favour of the consumer. Additionally, Articles 330–338 regulate the nullity of juridical acts, providing the substantive basis for declaring unfair terms void as provisions contrary to law and public order.

Thus, good faith, in the sense of the Moldovan Civil Code, is no longer merely a moral standard but a binding legal norm with objective effects on the validity of contractual terms. It obliges the trader to draft contractual provisions that are fair, transparent, and proportionate. Moldovan legal scholarship has emphasised that good faith performs a social corrective function, designed to remedy structural imbalances between the trader and the consumer and to prevent the abuse of economic power.

In addition to civil provisions, the Law No. 105/2003 on Consumer Protection expressly prohibits unfair terms in contracts concluded between consumers and traders (Articles 5 and 16 letter a)). The statute extends protection universally to all consumer contracts, regardless of their form or medium—whether written, electronic, or verbal.

Under Moldovan law, the sanction for unfair terms is absolute nullity (nulitatea absolută), producing ex tunc effects. This sanction derives from the principle of public economic order and serves both a remedial and a preventive function. Consequently, the unfair term is deprived of legal effect from the moment of its inclusion in the contract, and the court is obliged to declare such nullity ex officio. This solution, affirmed in both doctrine and case law, corresponds to the model established by the CJEU, which requires national courts to exercise an active role in ensuring the effective protection of consumers.

In the Republic of Armenia, consumer protection against unfair contract terms is regulated by the Civil Code of Armenia and the Law on the Protection of Consumer Rights, adopted in 2001 and subsequently amended until 2023. Although the Civil Code does not expressly define "unfair

terms," Articles 728–734 regulate consumer contracts and stipulate that any clause imposed unilaterally, which contravenes the principles of good faith or restricts a party's rights, may be declared null and void. Specifically, Article 729(2) provides that any contractual condition depriving the consumer of the right to terminate the contract is void *ipso iure*. The civil framework thereby implicitly recognises the principle of protection against significant contractual imbalance and imposes an obligation of fairness in consumer relations.

The Armenian Law on the Protection of Consumer Rights (Chapter VII, Articles 16–21) complements this framework by explicitly prohibiting clauses that limit the rights granted by law to the consumer, exempt the seller or service provider from liability for non-performance, or impose disproportionate or unfair obligations. These provisions establish a standard of contractual fairness and reinforce the principle that consumer protection prevails over the formal freedom of contract.

Nevertheless, the Armenian legal framework remains incomplete compared with EU standards. The absence of an explicit definition of a "significant imbalance contrary to good faith" and the lack of indicative black and grey lists of prohibited clauses—similar to those included in the Annex to Directive 93/13/EEC—lead to inconsistent application of the protection principle. The control of unfair terms is exercised almost exclusively by the courts and only at the initiative of the consumer, with no ex officio competence, while the applicable sanction is usually relative nullity (voidability) with ex nunc effects, which limits the restoration of the *status quo ante* and prevents full restitution of the performances executed.

At the European Union level, the fundamental legal framework is established by Council Directive 93/13/EEC of 5 April 1993, which defines an unfair term as any contractual provision that, *contrary to the requirement of good faith, causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer*.

The Directive rests on three essential normative pillars: The "significant imbalance contrary to good faith" test, Transparency requirements, and The sanction of non-binding effect (lack of enforceability) of unfair terms.

Article 6(1) provides that such terms shall not be binding on the consumer and that the contract shall remain valid if it can continue without them. Furthermore, Article 5 requires that all contractual terms be drafted in plain, intelligible language, thus reinforcing both formal and substantive transparency. (Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, Official Journal of the European Communities L 95, 21 April 1993, pp. 29–34)

This framework was subsequently strengthened by Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers, adopted on 25 November 2020, which introduced the possibility for qualified entities and consumer organisations to bring injunctive and redress actions on behalf of consumers, thereby consolidating the preventive and collective dimension of consumer protection.

Accordingly, EU law outlines a comprehensive and balanced model, where the control of unfair terms constitutes an essential component of legal consumer protection and an expression of the principle of effectiveness of EU law.

3 Judicial control and institutional enforcement mechanisms

Consumer protection against unfair contract terms represents one of the most important dimensions of European economic public order. It is grounded in the positive obligation of both the State and the courts to guarantee contractual balance and good faith in consumer relations—not only through substantive norms but also through effective and accessible procedural mechanisms.

The Court of Justice of the European Union (CJEU) has developed a substantial body of case law interpreting Directive 93/13/EEC, thereby transforming the control of unfair terms into a

matter of European public policy. In *Océano Grupo Editorial SA v. Rocío Murciano Quintero and others* (Joined Cases C-240/98 to C-244/98), the Court established the duty of the national court to examine ex officio the unfairness of contractual terms, emphasising that consumer protection cannot depend solely on the initiative of the consumer. In *Mostaza Claro v. Centro Móvil Milenium SL* (C-168/05), the Court confirmed that consumer protection prevails over the principle of procedural availability, requiring courts to intervene even where the consumer does not expressly invoke the unfairness of a term.

Subsequently, in *Banco Español de Crédito SA v. Calderón Camino* (C-618/10), the Court clarified that the national court is obliged to disapply an unfair term ipso iure, without awaiting a formal request from the consumer. The landmark case *Kásler and Káslerné Rábai v. OTP Jelzálogbank Zrt* (C-26/13) refined the requirement of substantive transparency, holding that terms are only binding where the consumer is able to understand their economic and legal implications. In *Gutiérrez Naranjo and others v. Cajasur Banco SAU* (C-154/15), the Court enshrined the principle of restitutio in integrum, according to which the declaration of nullity of an unfair term entails the full restitution of all amounts paid under it, with ex tunc effect. Finally, *Invitel Távközlési Zrt v. Nemzeti Fogyasztóvédelmi Hatóság* (C-472/10) recognised the erga omnes effect of judgments declaring a clause unfair, thereby extending protection to all consumers affected by identical terms.

Taken together, these decisions configure a model in which the control of unfair terms constitutes an active judicial instrument—an essential element of effective judicial protection as guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union.

In the Republic of Moldova, the legal regime of unfair terms is expressly defined in Article 1076 of the Civil Code, which introduces the concept of protective nullity (*nulitate de protecție*). Pursuant to paragraphs (1)–(3), *"an unfair term is struck by absolute nullity, and where the party that did not propose the unfair term is a consumer, the court shall invoke nullity ex officio."* (Civil Code of the Republic of Moldova (republished pursuant to Law No. 133 of 15 November 2018), published in the Official Gazette of the Republic of Moldova No. 66–75 of 15 March 2019)

Thus, nullity serves a functional purpose: to protect the consumer and restore contractual balance without affecting the overall validity of the contract. Paragraph (4) confirms that the remainder of the contract remains valid if it can reasonably continue without the unfair clause, while paragraph (5) grants the trader a right of recourse against the supplier who imposed the use of the unfair term in business-to-business transactions.

This regulation transforms the control of unfair terms into a positive obligation of the courts and an instrument for safeguarding public economic order. However, its practical effectiveness depends on coordination with the administrative mechanisms established under Law No. 105/2003 on Consumer Protection. According to Article 37 of that law, the State Inspectorate for the Supervision of Non-Food Products and Consumer Protection and, for the financial sector, the National Financial Market Commission are empowered to monitor compliance with the provisions of Articles 1069–1072, 1075–1079, and 1081 of the Civil Code concerning consumer contracts. These authorities may detect unfair terms either upon a consumer's complaint or ex officio and may request the trader to provide copies of contracts subject to verification (Article 37(1)–(3)).

Under paragraph (4), when unfair terms are confirmed, the authority issues a statement of findings and brings an action before the courts seeking a judicial declaration of nullity. Although these bodies do not possess adjudicatory powers, they enjoy active legal to initiate proceedings in the interest of consumers.

Moreover, Article 37(5) provides that where a court finds certain contractual terms to be unfair and used on a large scale, the judgment may produce erga omnes effects—ordering the removal of such clauses from all similar contracts and prohibiting their future inclusion (Law of the Republic of Moldova No. 105 of 13 March 2003 on Consumer Protection, published in the

Official Gazette of the Republic of Moldova No. 126–131/505 of 11 July 2003). This solution brings Moldovan law in line with the European model developed by the CJEU in Invitel (C-472/10), where judgments declaring a term unfair extend protection to all consumers affected by identical contractual provisions.

Furthermore, paragraphs (6) and (7) introduce the possibility of collective and sectoral actions, allowing consumer associations to bring claims either against individual traders or against groups of traders within the same economic sector who use or recommend identical or similar clauses. This mechanism strengthens preventive control and provides a systemic enforcement tool, complementing individual judicial review.

Therefore, the Republic of Moldova currently operates a mixed system of control over unfair terms, combining:

Active judicial control under Article 1076 of the Civil Code, with the court's ex officio duty to declare absolute nullity;

Administrative and procedural control under Article 37 of Law No. 105/2003, through detection, notification, and judicial referral by competent authorities; and

Collective and sectoral mechanisms allowing extended erga omnes effects and class-type interventions.

This dual structure aligns Moldovan law with European standards of consumer protection, ensuring a balanced interaction between judicial, administrative, and collective instruments.

In contrast, in the Republic of Armenia, the application of protection against unfair terms relies primarily on judicial mechanisms, with no distinct administrative control system comparable to that of Moldova. The Civil Code of Armenia grants courts exclusive jurisdiction to examine the validity and effects of contracts, including the power to declare clauses void where they contravene good faith or fairness. Consequently, protection is reactive and individual, triggered only at the initiative of the aggrieved consumer

The material grounds for judicial intervention are found in Articles 444 and 729(2) of the Civil Code, which provide that unilaterally imposed terms that unjustifiably restrict the rights of the adhering party or limit the trader's liability may be declared null. However, the Code does not impose a duty on courts to review unfairness *ex officio*, and the resulting nullity produces effects *ex nunc*, without full restitution of executed performances.

In practice, judicial control is exercised under Article 13 (protection of civil rights) and Article 14 (prohibition of abuse of rights), which authorise courts to restore contractual balance and eliminate the consequences of bad-faith conduct. These provisions provide a general framework but lack specific procedural norms governing ex officio review or the collective effects of judgments, which limits their practical efficiency (Civil Code of the Republic of Armenia, adopted on 5 May 1998, published in the Official Gazette of the Republic of Armenia, as amended and supplemented (latest consolidated version by the 2023 Law).

From an institutional standpoint, the Competition Protection Commission, regulated under Articles 27 and 37 of the Law on the Protection of Economic Competition, plays a complementary but non-jurisdictional role. According to Article 27(1), the Commission is an autonomous body subordinated to the Government, tasked with ensuring free competition, preventing anti-competitive practices, and safeguarding consumer interests. Under Article 37, it may issue recommendations and warnings, and initiate administrative proceedings against economic operators violating competition rules. However, the Commission lacks competence to bring actions before courts for the annulment of unfair contractual terms and cannot issue binding civil enforcement decisions (Law of the Republic of Armenia on the Protection of Consumer Rights, adopted on 26 November 2001, published in the Official Gazette of the Republic of Armenia, as amended and supplemented (consolidated version 2023).

Hence, its role is primarily consultative and supervisory, limited to identifying unfair or anti-competitive practices. The power to declare terms null and void lies solely with the ordinary courts under the Civil Code. The absence of institutional cooperation between courts and the Commission, together with the lack of collective redress mechanisms, means that the effectiveness of consumer protection largely depends on individual initiative.

Therefore, the Armenian system of enforcement of protection against unfair terms remains predominantly judicial, fragmented, and formalistic, based on ex post and passive control by the courts. The absence of *ex officio* review, an administrative authority with standing, and collective instruments reduces both the deterrent and preventive capacity of the legal framework.

4 Comparative analysis, challenges and directions for harmonisation

The comparative analysis of the legal regimes of the Republic of Moldova, the Republic of Armenia, and the European Union reveals differing degrees of normative and institutional maturity in the protection of consumers against unfair contract terms. While the EU framework is comprehensive, coherent, and supported by a consolidated body of case law from the Court of Justice of the European Union, the Moldovan system demonstrates a progressive convergence toward EU standards, whereas the Armenian framework remains predominantly judicial, formalistic, and limited in procedural efficiency.

From a substantive perspective, all three systems are grounded in the principles of good faith and contractual balance. Yet they diverge in their sanctioning regimes:

In Moldovan law, an unfair term is subject to absolute nullity (nulitate absolută) with ex tunc effect, and the court is expressly obliged to declare such nullity ex officio.

In Armenian law, the sanction takes the form of relative nullity (voidability) producing ex nunc effects, and judicial examination depends exclusively on the consumer's initiative.

Under EU law, Article 6(1) of Directive 93/13/EEC provides that unfair terms are non-binding on the consumer, and the principle of restitutio in integrum, confirmed in *Gutiérrez Naranjo* (C-154/15), ensures the full retroactive restitution of amounts unduly paid.

From a procedural standpoint, the Republic of Moldova aligns closely with the European model by combining active judicial control with preventive administrative enforcement. Courts have a legal duty to review unfair terms ex officio, while the State Inspectorate for the Supervision of Non-Food Products and Consumer Protection (ISSPNPC) and the National Financial Market Commission (NFMC) are empowered to identify and refer unfair terms to court. This dual mechanism enables both individual and collective actions, and judgments may produce erga omnes effects, as established in *Invitel (C-472/10)*.

By contrast, the Armenian procedural framework remains confined to judicial intervention by ordinary courts, with no ex officio competence and no collective redress. Its legislation provides only general grounds for declaring nullity, without proactive procedures. The Competition Protection Commission, though competent in monitoring market conduct under the Law on the Protection of Economic Competition, has merely an advisory and supervisory role, lacking standing before courts and the power to issue binding decisions. As a result, enforcement remains reactive, dependent on the individual consumer's initiative.

Comparatively, the European Union provides a comprehensive and balanced model, where substantive protection is complemented by clear procedural safeguards. Through the dynamic interpretation of the CJEU—from *Océano Grupo Editorial* (C-240/98–C-244/98) and *Mostaza Claro* (C-168/05) to *Banco Español de Crédito* (C-618/10)—the principle of ex officio control and the priority of consumer protection over procedural autonomy have become central. Directive (EU) 2020/1828 further strengthens this model by introducing representative actions that allow consumer organisations to seek both injunctive relief and collective redress, thereby extending protection to the systemic level.

Regarding enforcement effectiveness, the Republic of Moldova is in a stage of consolidation. Although its legal framework is largely harmonised with EU standards, judicial practice remains fragmented: courts seldom invoke nullity ex officio, and cooperation with administrative authorities is still developing. In Armenia, the absence of complementary procedural tools and of collective standing for consumer associations maintains protection at a declarative rather than deterrent level. Within the EU, by contrast, enforcement is supported by an established judicial culture of proactive control and by the integration of consumer protection into the broader concept of economic public order.

Overall, the comparison reveals three regulatory models:

The European model – integrated and proactive, balancing judicial, administrative, and collective control.

The Moldovan model – mixed and convergent, substantially aligned with EU standards but requiring stronger practical implementation.

The Armenian model – formal and judicial, focused on individual protection and lacking systemic preventive mechanisms.

To ensure functional harmonisation, several legislative and institutional reform directions are required. First, it is necessary to introduce "black" and "grey" lists of unfair terms, similar to those contained in the Annex to Directive 93/13/EEC, in order to provide predictability and uniformity in judicial practice. Second, the ex officio control over unfair terms must be extended and cooperation strengthened between courts, authorities and consumer associations. Third, it is advisable to establish a specialised administrative mechanism with the competence to notify and initiate collective actions, in cooperation with competition and market protection authorities. Finally, strengthening the digital framework of protection, through the development of automated analysis tools for standard-form contracts and digital platforms, would allow for an effective and preventive application of consumer protection rules.

In **conclusion**, the protection of consumers against unfair contract terms represents an area of legislative and institutional convergence between the Republic of Moldova, the Republic of Armenia, and the European Union. While EU law sets an advanced standard of contractual balance and transparency, Moldova has achieved substantial alignment, and Armenia must transition from a reactive to a proactive model. Strengthening judicial ex officio review, institutionalising collective redress, and enhancing cooperation between national authorities and consumer organisations will enable the creation of an efficient, equitable, and EU-compatible system—one capable of guaranteeing genuine respect for good faith and contractual fairness in all consumer relations.

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