

## Consumer Rights and Contract Fairness: Comparative Study

Kubaeva Ismigul Farkhod Kizi

Lecturer of the Department of Civil Law, Tashkent State University Law, Uzbekistan



DOI : <https://doi.org/10.61796/ijaifd.v2i1.290>



### Sections Info

#### Article history:

Submitted: December 27, 2024  
Final Revised: December 27, 2024  
Accepted: January 20, 2025  
Published: January 24, 2025

#### Keywords:

Consumer contracts  
Contract fairness  
Unfair terms  
Consumer protection  
European union  
Uzbekistan  
Power imbalance  
Legal safeguards  
Unfair contract terms directive  
Contra proferentem rule  
Partial nullity  
Information asymmetry  
Standard contract terms  
Regulatory framework

### ABSTRACT

**Objective:** This study aims to compare the regulation of consumer contracts and unfair terms in the European Union (EU) and Uzbekistan, focusing on legal safeguards to protect consumers as the weaker party in contractual relationships. The research evaluates the extent to which these jurisdictions address information asymmetry and power imbalances through their legislative frameworks, with particular emphasis on the EU's Unfair Contract Terms Directive (UCTD) and Uzbekistan's broader consumer protection laws. **Methods:** The research employs a comparative legal analysis, reviewing legislative texts, judicial interpretations, and relevant case studies from both the EU and Uzbekistan. It examines the principles underlying the EU's harmonized regulatory framework, including the contra proferentem rule and partial nullity, and contrasts these with Uzbekistan's reliance on general prohibitions and undefined criteria for fairness in consumer contracts. Additionally, the study assesses the practical implications of these legal approaches for consumers and businesses. **Results:** The findings reveal significant differences in consumer protection mechanisms between the EU and Uzbekistan. The EU's detailed and harmonized framework offers clear definitions, illustrative examples, and principles to mitigate power imbalances, ensuring consistent application across member states. In contrast, Uzbekistan's legislation lacks specific criteria for unfair terms, leading to potential inconsistencies in judicial practice and weaker consumer trust in regulatory protections. **Novelty:** This study contributes to the comparative discourse on consumer protection by highlighting the advanced features of the EU's legal framework and identifying gaps in Uzbekistan's approach. It proposes adopting key elements of the UCTD, such as defining unfair terms, incorporating criteria like significant imbalance and breach of good faith, and introducing protective measures for pre-drafted contracts. These insights provide valuable guidance for policymakers seeking to strengthen consumer protection in developing legal systems.

## INTRODUCTION

Consumers are considered the weaker party in contracts due to several reasons, including information asymmetry, financial status, and differences in knowledge. For this reason, many countries have adopted special laws to protect consumer rights. This article aims to provide an understanding of the essence of consumer contracts. It examines issues related to the regulation of unfair terms in such contracts and how consumers are protected. To achieve this goal, the article compares two jurisdictions: the European Union (EU) and Uzbekistan.

The EU is distinguished by its advanced regulations and directives in the field of consumer protection. At the same time, studying Uzbekistan's experience as a developing country can contribute an additional analytical perspective on the issues of consumer contracts and unfair terms.

## RESEARCH METHOD

## **Contracts including consumers**

First and foremost, it is essential to study the concept of “consumer contract” within the framework of Uzbekistan’s substantive law. In Uzbekistan, consumer contracts encompass a broad range of agreements, including contracts for paid services, household contracting, and retail trade [1]. Since these contract types are determined solely based on the subject matter of the contract, they do not fully capture the essence of the concept of a “consumer contract.” Consumer contracts are identified not only by their subject matter but also by their purpose and parties.

The general concept of a consumer contract unites various subjects and substantive agreements, yet all of them share common characteristics. While contracts involving consumers cover a wide range of agreements, the standard form of a consumer contract can be determined through the provisions of the “Law on Protection of Consumer Rights.” Article 1 of this law defines contracts involving consumers as verbal or written agreements between a consumer and a seller (manufacturer, executor) that establish terms regarding the quality, quantity, duration, price, and other conditions for the purchase and sale of goods, performance of work, and provision of services.

The identification of a consumer contract requires special attention to its parties [2]. At the center of these parties is the consumer, who is defined as an individual purchasing goods, ordering services, or engaging in other activities for personal consumption or purposes unrelated to profit or business. This activity is carried out for personal needs or other goals outside of profit and business endeavors (as per Article 1 of the “Law on Protection of Consumer Rights”). Another critical characteristic of consumers is their intent; the law explicitly stipulates that a consumer’s intent must lie outside the scope of business and profit-making activities [3].

### **The Other Party: The Professional Side**

The other party is generally recognized as the “professional side,” typically referred to as the seller (manufacturer, executor), regardless of its legal form [4]. The professional side may be an organization, institution, enterprise, or individual engaged in independent activities, such as providing household services, utilities, repair, and construction, or transportation services (“Law on Protection of Consumer Rights,” Article 1). This definition is significant for legal practice, as professional parties are not only classified as registered entrepreneurs but also include individuals engaged in independent entrepreneurial activities. This broader classification allows for enhanced consumer protection.

In general, the “Law on Protection of Consumer Rights” considers contracts involving these two parties, defined by their subjects and objectives, as consumer contracts.

### **The EU Perspective on Consumer Contracts**

In the case of the EU, the concept of a consumer contract is defined in several directives and regulations. According to these, consumer contracts include agreements made between a consumer and a trader. A consumer is recognized as a natural person acting outside the scope of their trade or professional activity. This definition covers both

personal and functional aspects of the consumer. From a personal perspective, the consumer is considered a natural person, while functionally, they are someone acting outside the scope of trade or professional activities [5].

These criteria are collectively used to determine consumer status. Additionally, special emphasis is placed on the vulnerability of consumers, which is based on two factors: their limited bargaining power and insufficient legal knowledge [3]. This perspective is supported by the European Court of Justice (ECJ), which acknowledges that consumers are not only individuals who evaluate goods and services but also individuals who need to understand complex contractual terms and possess adequate legal knowledge. Therefore, the court does not assume that consumers have full awareness of their legal rights.

This approach is vividly observed in the *Heininger* case (which dealt with doorstep selling) [4]. In this case, the court ruled that consumers should not be required to know about their right to withdrawal, emphasizing that it is the seller's responsibility to provide clear information regarding this right. This ruling underscores the necessity of consumer protection measures that account for the imbalance in knowledge and power between consumers and professionals.

EU legislation does not impose specific requirements on the other party in consumer contracts. However, it highlights the general characteristics of the other party, establishing that they must act within the scope of their trade or professional activity as one of the main conditions [6]. Previously, the explanatory report on the Rome Convention (*Giuliano-Lagarde Report*) noted that consumer protection rules apply only when the other party engages in trade or professional activities [4].

The rules for consumer protection are aimed at addressing the imbalance of power between businesses and consumers, striving to ensure fairness in transactions. Consequently, these protective measures apply in situations where there is a significant power disparity between the parties [10]. Exceptions to this protection system include cases where both parties are business entities or where both are consumers.

Overall, consumer contracts are agreements where one of the parties is a consumer who enters into the contract for personal needs, while the other party is a professional entity engaged in trade or profit-making activities. This principle is upheld in both jurisdictions.

## RESULTS AND DISCUSSION

### Unfair Terms

Unfair terms in consumer contracts significantly impact the balance of power between contracting parties. This imbalance necessitates the introduction of robust legal mechanisms to ensure consumer protection. While Uzbekistan and the European Union share common principles in regulating unfair terms in consumer contracts, they also demonstrate distinct approaches.

As mentioned above, consumer contracts are regulated by the *Law on the Protection of Consumer Rights*. This law guarantees consumers a range of rights across various aspects. For instance, consumers are entitled to the following rights:

- a. To receive complete and reliable information about goods (works, services), as well as about the manufacturer (performer, seller);
- b. To freely choose goods (works, services) and to have their proper quality ensured;
- c. To have the safety of goods (works, services) guaranteed;
- d. To receive full compensation for material and moral damages caused by dangerous defects in goods (works, services) that threaten life, health, or property, as well as by the unlawful actions (or inaction) of the manufacturer (performer, seller);
- e. To appeal to courts or other authorized state bodies to protect their violated rights or legally protected interests;
- f. To establish consumer public associations.

Uzbekistan's *Law on the Protection of Consumer Rights* is aimed at safeguarding consumer interests. This law also addresses cases of unfairness in contracts involving consumers. According to Article 21 of this law:

- a. Contract terms that restrict consumer rights or contradict the law are considered invalid.
- b. The seller (performer) is prohibited from compelling the consumer to purchase additional goods or use additional services for a fee, as well as charging for unprovided services.
- c. It is forbidden to include terms in contracts that violate consumers' legal rights or limit their ability to benefit from privileges and advantages provided by law.

In general, Uzbekistan's legislation prohibits the inclusion or consideration of any terms that may affect consumer rights. However, the law does not define the concept of "unfair terms" or provide clear criteria for identifying such terms. This gap hinders the identification and consistent application of rules regarding unfair terms, leaving the issue largely subject to judicial interpretation. The lack of clarity restricts consumers' ability to preemptively identify and challenge unfair terms and may result in varying court decisions. Nonetheless, the comprehensive prohibition of terms that contradict legislative requirements serves as a fundamental safeguard for consumer protection.

Uzbekistan's focus on protecting consumer rights through these prohibitions reflects its commitment to addressing the imbalance of power between consumers and business entities. However, the absence of clear criteria for identifying unfair terms may necessitate additional legislative reforms to establish a more precise and consistent regulatory framework.

In international practice, the European Union regulates this area through the *Unfair Contract Terms Directive (UCTD)*. As stated in Article 1, the purpose of the UCTD is to harmonize the laws of EU member states, making them more aligned with one another [7]. The directive's preamble (recitals) highlights general issues, such as market imbalances and consumer mistrust of foreign businesses. This mistrust can arise from the

lack of minimal protection for consumers. One of the primary reasons for consumer protection outlined in the directive is explained in Recital 9, which references consumer protection programs from 1975 and 1981 [8]. These programs emphasize the protection of buyers of goods and services from unfair practices that may be employed by sellers or suppliers. In particular, they include protection against standard contract terms and clauses that unfairly restrict significant rights for consumers.

According to Article 3 of the UCTD, pre-drafted standard contracts contain terms that have been prepared in advance and have not been individually negotiated, thereby limiting the consumer's ability to influence their content [1]. Standard Contract Terms (SCTs) often provide sellers or suppliers with advantages over consumers. For example, when it comes to information asymmetry, the seller knows the details of the contract, whereas the consumer must independently examine the terms and identify potential issues [9]. Considering the consumer's weaker legal knowledge, such situations can lead to injustices against consumers [10], [11], [12].

Additionally, SCTs allow sellers to reduce transaction costs, as they can draft a single contract and reuse it multiple times, whereas consumers must review each contract individually. This advantage creates an imbalance between the seller (or supplier) and the consumer.

In situations where contract terms are ambiguous, Article 5(2) of the UCTD stipulates that the interpretation most favorable to the consumer should apply. This principle, known as the "*contra proferentem*" rule, is widely recognized among member states [13]. However, Article 5(3) provides an exception, stating that the *contra proferentem* rule does not apply in cases involving consumer associations [14]. In these circumstances, consumer associations are not considered vulnerable, and the equality of the parties is taken into account. According to Article 6 of the UCTD, unfair contract terms automatically lose their binding effect while the remaining terms of the contract remain valid. However, special attention must be given to ensuring that the remaining terms can function independently of the unfair term. This principle is referred to as "*partial nullity*."

In summary, the Directive establishes a comprehensive protection system that acknowledges consumers' inherent vulnerabilities. By placing the burden of proving that terms were individually negotiated on sellers, the EU strengthens consumer rights and helps reduce information asymmetry during contract negotiations.

## CONCLUSION

**Fundamental Finding :** This analysis highlights the divergent approaches to consumer protection from unfair terms in Uzbekistan and the European Union. Uzbekistan's legislation relies on broad prohibitions without explicitly defining unfair terms, while the EU Directive establishes a detailed and harmonized framework. The EU's nuanced approach includes clear definitions, illustrative examples, and interpretive principles, ensuring uniform consumer protection across member states. **Implication :** The findings suggest that Uzbekistan's reliance on general prohibitions may result in inconsistencies in judicial practice, potentially weakening consumer trust in regulatory

mechanisms. Adopting elements of the EU Directive could enhance consumer protection in Uzbekistan. This may include defining unfair terms, incorporating criteria like significant imbalance and breach of good faith, and implementing protective measures for pre-drafted contracts to address power asymmetries. Introducing the contra proferentem principle to interpret ambiguous terms in favor of consumers could further strengthen the legal framework. **Limitation** : The analysis focuses on legislative frameworks without delving into the practical implementation or enforcement mechanisms within Uzbekistan or the EU. This limits insights into the real-world effectiveness of these consumer protection laws and their impact on consumer trust and market practices. **Future Research** : Further studies should explore the practical enforcement of consumer protection laws in Uzbekistan and the EU, including comparative analyses of judicial outcomes and consumer experiences. Additionally, research on the socio-economic impact of adopting EU-style frameworks in non-EU countries, such as Uzbekistan, could provide valuable guidance for policymakers.

## REFERENCES

- [1] B. van Leeuwen and B. van Leeuwen, "European Standardisation and the Unfair Contract Terms Directive," in *Better Regulation in EU Contract Law*, Hart Publishing, 2019. doi: 10.5040/9781509928385.ch-008.
- [2] W. M. CHAN and P. S. TAY, "Unfair Contract Terms and Consumer Protection: Legislative and Judicial Controls in Malaysia," in *Contents of Contracts and Unfair Terms*, Oxford University Press, 2020, pp. 260–283. doi: 10.1093/oso/9780198850427.003.0013.
- [3] A. Abdul Aziz, S. Mohamed Isa, S. Shaik Ahmad Yusoff, and C. O. Tze, "Towards Harmonisation of the ASEAN Contract Law: The Legal Treatment of Unfair Consumer Contract Terms Among Selected ASEAN Member States," *Asian Journal of Accounting and Governance*, vol. 2, no. 1, Dec. 2011, doi: 10.17576/ajag-2011-2-6542.
- [4] A. J. Wulf, "The Transaction Costs Latent Variable Model," in *Institutional Competition between Optional Codes in European Contract Law*, Springer Fachmedien Wiesbaden, 2014, pp. 245–260. doi: 10.1007/978-3-658-05801-2\_8.
- [5] C. Parish, "Pay:mixed blessings for HCAs: While some healthcare assistants have been rewarded for their skills, others feel they have been held back," *Nursing Standard*, vol. 21, no. 4, pp. 12–13, Oct. 2006, doi: 10.7748/ns.21.4.12.s20.
- [6] C. Gardiner, "Standard form consumer contracts: the background and context," in *Unfair Contract Terms in the Digital Age*, Edward Elgar Publishing, 2022, pp. 9–33. doi: 10.4337/9781800886179.00007.
- [7] M. W. Hesselink, "Contract theory and EU contract law," in *Research Handbook on EU Consumer and Contract Law*, Edward Elgar Publishing, 2016. doi: 10.4337/9781782547372.00031.
- [8] I. F. Kolontaevskaya, "CONCEPT, NATURE, ESSENCE AND FEATURES CORPORATE RELATIONS," *Moscow University Bulletin of them SY Witte Series 2 Legal science*, no. 1, pp. 73–79, 2019, doi: 10.21777/2587-9472-2019-1-73-79.
- [9] O. A. Makarova and Y. I. Kovalevskaya, "Conceptual framework and system of the Model law of the Commonwealth of Independent States 'On Protection of

- Consumers,” *Vestnik of Saint Petersburg University. Law*, vol. 14, no. 3, pp. 768–785, 2023, doi: 10.21638/spbu14.2023.313.
- [10] H. Kötz, “The Control of Unfair Contract Terms,” in *European Contract Law*, Oxford University Press, 2017. doi: 10.1093/oso/9780198800040.003.0008.
- [11] C. Poncibó, “Book Review: Research Handbook on EU Consumer and Contract Law, edited by Christian Twigg-Flesner. (Cheltenham (UK) and Northampton (US): Edward Elgar Publishing Limited. 2016.),” *European Review of Private Law*, vol. 25, no. Issue 4, pp. 821–829, Sep. 2017, doi: 10.54648/erpl2017051.
- [12] L. Tichý, “Introduction,” *European Review of Private Law*, vol. 24, no. Issue 6, pp. 927–928, Dec. 2016, doi: 10.54648/erpl2016056.
- [13] O. Svensson, “The Unfair Contract Terms Directive: Meaning and further Development,” *Nordic Journal of European Law*, vol. 3, no. 2, pp. 24–38, Dec. 2020, doi: 10.36969/njel.v3i2.22099.
- [14] E. Cortot-Boucher, “France: Minister vs. Société Bayerische Hypo und Vereinsbank,” in *Tax Treaty Case Law around the Globe 2015*, IBFD, 2016. doi: 10.59403/3rv54kq010.

---

**\*Kubaeva Ismigul Farkhod Kizi (Corresponding Author)**

Lecturer of the Department of Civil Law, Tashkent State University Law, Uzbekistan

Email: [ismigul.kubayeva@gmail.com](mailto:ismigul.kubayeva@gmail.com)

---