

Speedread:

- The inclusion of so-called "unacceptable conditions" in consumer agreements is invalid.
- The supplier must refrain from using an unacceptable condition in agreements with all consumers, once the condition has been proclaimed invalid by the court in the case of other consumers.
- The court declaring a condition unacceptable will point out such invalid condition in its judgment.

Inadmissibility of "unacceptable conditions" in consumer agreements

The recent amendment of the Civil Code concerns consumer agreements. Effective from 1 March 2010, it further strengthened the protection of consumers against certain supplier conducts.

Consumer agreements are any agreements, regardless of their type, concluded between a supplier and a consumer. The supplier is defined as a person who in concluding and performing the agreement acts in the framework of his/her trade or other business activity, while the consumer does not act in the framework of his/her trade or other business activity. Thus, according to the Civil Code, consumer agreements may not contain any of the so-called "unacceptable conditions", which are conditions capable of creating considerable inequality in rights and duties of the parties to the detriment of the consumer. Examples of unacceptable conditions are stated in §53 of the Civil Code.

So far a general rule applied, according to which unacceptable conditions included in consumer agreements are invalid. However, an exception to this rule applied if they concerned the main object of performance of the agreement, cost of performance or if such conditions were individually negotiated. According to the amendment such general rule will not be applicable if the contractual conditions concern the main object of performance and cost adequacy, if such conditions are formulated accurately, clearly and understandably or if they were individually negotiated. In such cases they will be valid and capable of being included in the consumer agreements. Furthermore, a new section has been inserted into §53 of the Civil Code, according to which the unacceptability of the condition needs to be assessed with regard to the character of the goods or services for which the agreement has been concluded as well as to all circumstances and conditions present at the time the agreement is concluded and to any other agreement on which the consumer agreement in question depends.

The most important amendment of the Civil Code is a provision ordering the supplier to refrain from using an unacceptable condition in a consumer agreement and, once the court has proclaimed such condition invalid, also in agreements with all other consumers. Such prohibition also applies to other conditions with the same meaning. Same obligations will also apply to the supplier's legal successor.

Changes in consumer protection as implemented by the amendment will not affect those claims filed before the effectiveness of the amendment. Once the court decides about the unacceptability of the contractual condition, the supplier will be obliged to refrain from its application only after the decision had become effective. However, such decision will also affect agreements concluded before the effectiveness of the court's decision.



Continuation

Effective mostly from 1 March 2010, procedural rules have also been amended in order to strengthen the enforcement of the above-mentioned substantive rules prohibiting unacceptable conditions, namely:

- the amendment of Civil Procedure, which in §153 dictates the court to point out the invalid unacceptable condition in its judgment, once it has found the condition unacceptable;
- the amendment of the Consumer Protection Law, according to which the seller's non-refraining from the use of an unacceptable condition, as ordered by the court, may result in cancellation of his/her trade certificate.

Fixed term employment

- The maximum length of fixed term employment was set at two years, renewable at most twice within this period.

Effective from 1 March 2010, §48 of the Labour Code regulating fixed term employment has been amended. Prior to the amendment the maximum duration of fixed term employment was three years with the possibility to extend and renew such employment only once in the three year period. The amendment set the maximum length of fixed term employment at two years, with such employment being renewable and extendable at most twice within this period.

How to assess fixed employment concluded before this amendment? Fixed term employment concluded before 1 March 2010, will expire on the date stated in the employment contract and the conditions of their inception will be governed by the legal regulations valid before the amendment.

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