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Civil contracts in Finnish legal systems with special consideration of electronic contracts

Introduction

Trade is one of the most important fields of human activity from a dawn of the human history. The voluntary exchange of goods, services, information or money between two or more entities was a cornerstone for fast development towards modern society. Nowadays this exchange from producer to final consumer is changing. Instead of a traditional market place there exists a so-called *electronic market*, which is one of the key institution to organize trade in the 21st century.

A comparative study of the contract law is not an easy task, mainly because of the lack of uniformity in this field. These difficulties are compounded in dealing with the system based on Roman Law and those based on Common Law. It is doubtful whether the term contract is identical in the different systems of European law. This paper concentrates on regulation of the contract law in Finland. A special attention is paid to the electronic contract regulation. Finland is chosen as an example of modern legislative solution which are adequate to needs of Information Society. In addition, it is necessary to clarify also the specific elements of contracts inherent in this legal system.

‘Defect of consent’ is also taken into consideration in this paper. This general term deals with topics which are linked together in many European legal systems. According to the legal and moral theory dominant on the continent in the 19th century, the parties could be bound by the agreement only if extend that they had so willed. The precondition of that is valid alienation of individual freedom and voluntariness, and adequate knowledge. In the absence of the features the consent of the contracting party is unacceptable or simply non-existent.⁸⁰¹

General information about legal system in Finland

The system of government in Finland is a parliamentary democracy, although the president is granted rather wide powers (semi-presidential system with parliamentarism). The 200-member unicameral

⁸⁰¹ H. Beale, A. Hartkamp, H. Kötz, D. Tallon (eds.), *Contract Law. Cases, materials and texts*, Hart Publishing 2002, p. 333.

parliament is called the *Eduskunta*. It is the supreme legislative authority in Finland. Legislation may be initiated by the Council of State, or one of the Eduskunta members who are elected for a four-year term on the basis of proportional representation through open list multi-member districts. Finland has a statutory system, but the law has not been codified in the proper sense of term.⁸⁰² An *Act of Parliament* is adopted when the parliament approves a *Government Bill* for the act and the President of the Republic signs the law into force. The act enters into force (at the earliest) after it was published in the *Statutes of Finland*.⁸⁰³ Finnish legal theory divides its sources of law into two groups: mandatory sources of law and other sources of law. Written legislation⁸⁰⁴ is generally the most important mandatory source of law. Other sources of law include court precedence,⁸⁰⁵ preparatory works of legal acts and even legal scholarship.

The Finnish legal system is based on the Scandinavian and European tradition. The proceedings in the general courts are based on the 1734 *Code of Judicial Procedure* from 1734,⁸⁰⁶ which has undergone numerous partial reforms especially during the 20th century. In the past 10 years, however, the general courts and the proceedings in both civil and criminal cases have been reformed fundamentally. In this reform, technology has played an important role.⁸⁰⁷

⁸⁰² For example, French *Code Civil* or *BGB (Bürgerliches Gesetzbuch)* in Germany.

⁸⁰³ A. Aarnio, *Introduction*, [in:] J. Pöyhönen (ed.), *Introduction to Finnish law*, Helsinki 1993, p. 15.

⁸⁰⁴ This includes the Constitution, the acts of parliament, the EU treaties and Council regulations, and also various regulations issued by the president, government, ministries or other public authorities. In addition to written legislation, customary law, general principles of law and European Court of Justice rulings are considered to be mandatory.

⁸⁰⁵ In practice, the rulings of the Supreme Court and the Supreme Administrative Court enjoy great significance in interpretation of the law. The Supreme Court decision indicated as precedence is in effect mandatory despite it not having this status according to legal theory.

⁸⁰⁶ In Finnish: *Oikeudenkäymiskaari 1.1.1734/4*; English translation is available on: <http://www.finlex.fi/en/laki/kaannokset/1734/en17340004.pdf> [21.10.2007].

⁸⁰⁷ K. Kujanen, *E-service in Finland*, <http://www.univie.ac.at/RI/IRIS2003/beitraege/kujanen.pdf>, p. 1 [10.11.2007].

The Finnish court system consists of local courts, regional appellate courts, and the Supreme Court. The courts of law in Finland can be divided into the general courts, for civil and criminal matters, and the administrative courts, for administrative matters. There are also certain special courts, such as the Land Courts and Water Courts. The general courts consist of the courts of first instance,⁸⁰⁸ i.e., the District Courts (63), the Courts of Appeal (6), and the Supreme Court.⁸⁰⁹ The Constitution of Finland⁸¹⁰ provides the primary provisions regarding the respect of human rights, the competencies of the branches of government on the principle of separate and balanced powers.

The sources of the Finnish contract law

At the beginning it should be said that a uniform Finnish contract law does not exist. According to J. Pöyhönen, Finnish contract law should be characterized as *semi-continental*. Finnish legal system is based on the idea of written law.⁸¹¹ Moreover, German private law discussions and theories have influenced the content of Finnish Contracts Act.⁸¹² On the other hand, the Finnish contract law system is only semi-continental because it lacks a comprehensive civil code. Finnish private law is

⁸⁰⁸ All civil law cases are first tried in the courts of first instance, judgments of which may be appealed to the regional appellate courts. The decisions of appellate courts may be appealed to the Supreme Court only if granted permission by Supreme Court's Board of Appeals.

⁸⁰⁹ For more information: K. Kujanen, *E-services in the courts in Finland*, presentation at the seminar on law and informatics 2004 in Brno, http://hermes.irsig.cnr.it/map_national_docs/Finland/Finland%20JEDI%20Report.pdf [10.01.2007], *Towards a Networked Finland* – Information Society Council's Report [2005] http://www.tietoyhteiskunta.fi/ociety_council/ [25.01.2007], and *Efficiency and vitality in future Finland* – Information Society Council's Report [2006] http://www.tietoyhteiskunta.fi/ociety_council/ [27.01.2007], also www.oikeus.fi (justice.fi).

⁸¹⁰ In Finnish: *Suomen Perustuslaki 11.6.1999/731*; English translation is available on: <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf> [21.01.2007].

⁸¹¹ By a doctrine of the sources of law legislation is seen as the principal source.

⁸¹² In Finnish: *Laki varallisuus-oikeudallisista oikeustoimista 228/1929*. English translation is available on: <http://www.finlex.fi/en/laki/kaannokset/1929/en19290228.pdf> [25.01.2007].

codified in several more or less independent acts.⁸¹³ Other parts, especially the general principles of private law, are uncoded. This means that the role of court decisions, preparatory works for legislation and consequential (sometimes called also realistic) arguments as a source of law is more important. The hierarchy of legal sources is very informal, reflecting generally the low degree of formality in Finnish private law. However, legislation is considered to be the primary source.⁸¹⁴

Although the contract law is regulated in Contracts Act, there is no statutory definition of contract. Because of multiplicity of paradigms⁸¹⁵ the non-formal definition of contract are different, i.e. ‘formally contractual obligations arise out of the meeting of two expressions of wills that are not essentially different’ (*will theorist*) or ‘process where the overall principle is that of respecting the reciprocity of the give-and-take, of the gains and the losses’ (*balance theorist*), and of course *reliance theory*: ‘in which the idea of reliance is often combined with the general aim of contract as a legal institution to further the interests of exchange’.⁸¹⁶

A description of Finnish contract law is based on the idea of *freedom of contract*.⁸¹⁷ This rule is not formally stated in the *Contracts Act*, but it is prevailing. This freedom encompasses several so-called ‘subfreedoms’, i.e. choice to make or to not make contracts, freedom to determine the content of the contract, free choice of the form⁸¹⁸ and free choice in respect of the type and variation of clauses used. To the freedom of contract other three principles must be added, e.g. reliance (and loyalty), balance and the protection of the weaker party (especially, consumer protection). Particularly important is the last one because of the creation of the *Nordic type of welfare state*.⁸¹⁹ The method of protection

⁸¹³ The Contracts Act, The Bill of Exchange Act, The Sale of Goods Act, etc.

⁸¹⁴ J. Pöyhönen, *Contracts and Torts*, [in:] J. Pöyhönen (ed.), *An Introduction to Finnish...*, pp. 61–65.

⁸¹⁵ I.e. contract theories.

⁸¹⁶ J. Pöyhönen, *Contracts...*, p. 62.

⁸¹⁷ It is the idea that individuals should be free to bargain among themselves the terms of their own contracts, without government interference. Anything more than minimal regulations and taxes may be seen as infringements.

⁸¹⁸ If there is no legislative restrictions given, e.g. sale of real estates or consumer credit agreements must be in writing.

⁸¹⁹ Nordic welfare state includes, for example, full employment, high degree of

can be divided into two groups. On the one hand, special state agencies has been established to look for the interest of the weaker party, and to give those parties advice and guidance if asked to.⁸²⁰ On the other hand, the relevant legislation in this area is usually mandatory.⁸²¹

Offer and acceptance

The first chapter of *Contracts Act* contains rules about offer and acceptance. According to Section I not only contracts, but also offers and correspondingly also acceptances are binding.⁸²² In a simple model of law, offeror has to fix a specified period of time for acceptance.⁸²³ However, there are specific rules for situations which do not follow the above-mentioned model.⁸²⁴ The offeror must also react if a reply that purports to be an acceptance does not correspond to the offer, due to an addition, restriction or condition. An acceptance which is not identical to the offer shall be deemed as a rejection constituting a new offer.

Rules about contractual negotiations are not included in the *Contracts Act*. Although, the idea that negotiations must be conducted in a good faith is very important. Party is liable for breaking negotiations in bad faith and for gathering information not used for the purpose of reaching a contract at all. Some contracts, especially complicated long-

equality, a high level of taxes and a high level of public fund spending on welfare. B. Greve, *What Characterise the Nordic Welfare State Model*, *Journal of Social Sciences*, 3 (2), 2007, pp. 43–51.

⁸²⁰ For example Consumer Ombudsman and Consumer Complaint Board.

⁸²¹ It means that contract clauses depriving the weaker party any of his or her rights in any respect are void.

⁸²² Section 1 (1): *An offer to conclude a contract and the acceptance of such an offer shall bind the offeror and the acceptor as provided for below in this chapter.*

⁸²³ Offeror shall be deemed to have stipulated that the acceptance has to reach him/her within the said period of time. This specific period of time for acceptance can be fixed also in a letter or telegram. An offer can be also made orally.

⁸²⁴ For example, *if an offer is made in a letter or telegram or otherwise in a manner that makes an immediate acceptance impossible and no specific period of time has been fixed for acceptance, the acceptance shall reach the offeror within a period of time that could reasonably be contemplated by him/her at the time of making the offer* (Section 3 (2)) or separate provisions for a bid, which are made at an auction (Section 9).

term contracts, are made through different phases, such as preliminary negotiations, letter of intent, concrete negotiations and signing the documents, with normal alteration during these activities.

Interpretation of contracts

Interpretation of a contract is of paramount importance in fulfilling an obligation. It is necessary to explain the meaning behind contractual commitments. Contracts that do not contain clear terms may be disputed. A third party (such as an arbitrator or judge), following established rules of contract interpretation, may have to decide what is enforceable. Judges (or arbitrators) are constantly facing with deciding the rights of parties who have expressed themselves unclearly or incompletely. A number of unwritten rules is used in Finland to guide the court during the process of determining an ambiguous expression. There is a vulnerable balance between different principles and interpretations. A difference on a general level is based between subjective (*will based*) and objective (*reliance based*) paradigms of interpretation. This first idea is based on the assumption ‘to see a contract as a use of private autonomy and of free will’, and consequently the aim of interpretation is to ‘reconstruct the meetings of minds reached by the parties’.⁸²⁵ The result of subjective paradigm is unpractical, because dispute arises just because the parties do not have common goals or ideas about the contract. In the objective paradigm the idea of reliance is a basis for contractual obligations—‘language and expressions used in contracts must reflect this idea, and thus linguistic expressions should be given the common meaning’.⁸²⁶ This kind of paradigms improves the usefulness of a contract as an instrument for economic planning. Expressions in the contract can be taken as they are normally understood. In effect, the area which a contracting party has to find out about the other parties’ aims is reduced.⁸²⁷ In Finnish contract law, interpretation is based of these two paradigms mentioned above. This compromise is leaning towards objective paradigms.⁸²⁸

⁸²⁵ J. Pöyhönen, *Contracts...*, p. 67.

⁸²⁶ *Ibidem*.

⁸²⁷ Court can concentrate on evidence about the general meaning of expression instead of analyzing the state of mind and aims of an individual at a certain time, where no objective evidence is normally possible.

⁸²⁸ Finnish contract law respects the principle *falsa demonstratio non nocet*.

The court will take not only actual words but also existing circumstances into consideration. Words can have different meaning not only according to the context in which they are found but also according to the circumstances in which they are employed.

There are some principles of interpretation in Finnish legal system which are not directly connected with language. A counting court practice should not be neglected. Respect should also be given to legislation in an analogous area.

Some supplementing rules are to be used, if the linguistic principles and the legal principles do not lead to an unambiguous result. The strongest⁸²⁹ one is the rule *in dubio contra stipulatorem*. It means that the risk of an ambiguity of the contract clause is on the side of the party which drafted that clause. It is worth mentioning that there is a range of rules of a more technical type for situations on internal tension between different parts of the same contract. Moreover, in different contract documents the same rules would lead to different results.

The invalidity of contracts

Traditionally, in Finnish legal system the invalidity of contract is conceived as an *allor nothing situation*.⁸³⁰ This regulation has been criticized in the contract law literature. This situation has changed because of new large general clause (section 36⁸³¹). Nowadays it is possible to leave the contract in force and to adjust only some of the contract clauses. Moreover, the contractual rights and obligations of the parties can be re-balanced by the courts in Finland.⁸³² The imbalance of

⁸²⁹ Especially in the field of standard form contract (*adhesion contracts*). It is a contract between two parties which does not allow for negotiations. The consumer is in no position to negotiate the standard terms of such contracts.

⁸³⁰ It means that it is not possible to elect for the contract to subsist and get the price reduced when an invalidity rule is applicable. J. Pöyhönen, *Contracts...*, p. 69.

⁸³¹ Section 36 (956/1982)(1): *If a contract term is unfair or its application would lead to an unfair result, the term may be adjusted or set aside. In determining what is unfair, regard shall be had to the entire contents of the contract, the positions of the parties, the circumstances prevailing at and after the conclusion of the contract, and to other factors.*

⁸³² The threshold for the courts to change the contractual rights and obligations of the parties is high.

the respective rights and obligations must be quite obvious for the courts to intervene. Obviously, party has to prove to the satisfaction of the court. In civil law court cases, there are two basic principles for dealing with evidence, i.e. the parties of the dispute choose the evidence they wish to bring before the court or the 'court's assessment of the evidence is free in the sense that it is not bound by law and that the purpose of the assessment is to find the material correct result'.⁸³³ A specific mention should be made of one particular principle of the Finnish legal system, namely *the principle of free evaluation of evidence*. This principle was adopted in the 1940's. The pertinent provision in the Code⁸³⁴ reads: 'After carefully considering all facts that have come to its attention, the court shall decide what is to be considered the truth'. As a consequence of this principle, an electronic 'document' can in many cases be as valid as evidence as a paper document or the testimony of a witness.⁸³⁵

The parties of a contract are also free to choose arbitration for settlement of a dispute. Both *ad hoc* arbitration and a permanent arbitration court established by the Central Chamber of Commerce are available and can issue binding awards.

Some of the defects in the declaration of intent is worth analyzing in Finnish contract law. To start with the *plea under duress* should be presented. According to section 28 of the Finnish Contract Act a transaction into which a person has been coerced shall not bind him or her. Effectively use of these regulation depends on specific conditions, i.e. the coercion should consist physical violence or a threat involving imminent danger to life or health.⁸³⁶ The contract is voidable even if the party knew nothing about the force and was thus acting in good faith.

The coerced party's situation will change, if the coercion was exercised by a third person and the person to whom the transaction was

⁸³³ *Benchmarking of existing national legal e-business practices*, DG ENTR/04/68, Country report – Finland, <http://ec.europa.eu/enterprise/ict/policy/legal/2006-bm-cr/finland.pdf> [28.10.2007].

⁸³⁴ In Finnish: *Oikeudenkäymiskaari (Code of Judicial Procedure)* 4/1734; English translation is available on: <http://www.finlex.fi/en/laki/kaannokset/1734/en17340004?search%5Btype%5D=pika&search%5Bpika%5D=procedure> [28.01.2007].

⁸³⁵ K. Kujanen, *E-service...*, p. 1.

⁸³⁶ Hereinafter called *grave duress* according to Contracts Act. Grave duress applies to the contracting party or anybody near to him or her.

directed was in good faith.⁸³⁷ The transaction becomes binding, unless the coerced party (innocent party), without undue delay after the coercion, will notify this to that party. Then he/she can invoke the said coercion in relation to the other party.

A transaction entered under coercion, but without *grave duress*, may also not bind the coerced party. This coercion, in accordance with the rules, has to be exercised by the person to whom the transaction was directed or this party has to know or should know that the other party was coerced into the transaction (*bad faith*).⁸³⁸ Otherwise, the contract is valid.

According to section 30 of Contracts Act, *fraud* is when innocent party was induced to make a contract because of some false information. Moreover, fraud exists if the party behaves fraudulently (i.e. intentionally or recklessly).⁸³⁹ Bad faith again ought to be taken into consideration by a court.⁸⁴⁰ To protect innocent party the rule was accepted in Finnish legal system that the fraudulent party has to bear the burden of proof.

The next issue, which would be analyzed, is *undue influence*. Before Contracts Act was established the rules of usury were the very first form of this type of regulation. To protect innocent party this area of defence was widened to cover all forms of misuse of a party's weak position. According to J. Pöyhönen,⁸⁴¹ criteria of section 31 can be divided into two. Firstly, the stronger party must be shown to have undue advantage of the weaker party who is in a situation of distress, lack of understanding or experience, imprudence, or special relationship of dependence. The circumstances are to be understood subjectively. Secondly, the contract must be appreciably unbalanced. This means that the stronger party *has acquired or exacted a benefit which is obviously disproportionate to what he/she has given or promised or for which there is to be no consideration*.⁸⁴² To summarize, the imbalance must be a result

⁸³⁷ Section 28 (2) of Contract Act. The aim is to protect party acting in good faith.

⁸³⁸ Section 29 of Contract Act.

⁸³⁹ That is the difference between sections 30 and 33 (relating to *non-disclosure of information*).

⁸⁴⁰ Section 30: (...) *person to whom the transaction was directed was himself/herself guilty of such inducement or if he/she knew or ought to have known that the other party was so induced.*

⁸⁴¹ J. Pöyhönen, *Contracts...*, p. 73.

⁸⁴² Section 31 of Contracts Act. The same shall apply if a third person was guilty of conduct referred to in the first paragraph of section 31 and the person to

of the blameworthy behavior of the stronger party.

Outlining the problem of *mistake* a basic distinction between mistake in motives and mistake in expression should be made. Everyone has to bear the responsibility of his or her acts and look after on his or her own interest. As a result there is no general relief for mistakes in motives.

Two different situations are regulated in section 32 of Contracts Act. According to the first part of these section a mistaken party⁸⁴³ is bound if the other party acted in good faith. This section does not cover the situation when party signs a contract with a different content than that expected.⁸⁴⁴ The second type of expression mistakes is called 'wiring mistake'. Where a message containing an expression of a person's will is transmitted by telegram or orally through a messenger and it changes due to an error in transmission or a mistake made in its delivery by the messenger, the message shall not bind the sender in the form in which it reached the other party even if the recipient was in good faith.⁸⁴⁵ It means that the behavior of neither party has any connection to the mistake. However, sender shall inform the recipient without undue delay that he/she does not want to be bound by the changed message. Otherwise, and provided that the recipient was in good faith, the message shall be binding in the form it reached the recipient. There is however a tendency to lay responsibility for any damages caused by technical and similar errors to the organization maintaining the system.⁸⁴⁶

According to section 33, invalidate of the contract can be caused by circumstances that would make it incompatible with honour and good faith for anyone knowing of those circumstances (existing when the contract was made). A clear duty of disclosure has been established through this section.⁸⁴⁷ The main aim of this so-called *small general clause* is to protect old people or people who have a limited sense of understanding (but no incapable). Brief mention should be made of the fact that section 34 concerns a forgery contract, and section 35 the validity of negotiable instrument or a receipt.

whom the transaction was directed knew or should have known thereof.

⁸⁴³ Due to a misprint or other error on his/her part.

⁸⁴⁴ In this case, principles of interpretation of contracts play an important role.

⁸⁴⁵ Section 32 (2).

⁸⁴⁶ This issue is very important when an agreement is made via Internet.

⁸⁴⁷ There must be at least a possible knowledge by other party about these circumstances.

The big general clause was created by one of the most significant single amendment to the Contracts Act. If a contract term is unfair or its application would lead to an unfair result, the term may be adjusted or set aside. In determining what is unfair, regard shall be given to the entire contents of the contract, the positions of the parties, the circumstances prevailing at and after the conclusion of the contract, and to other factors. This overview is provided for convenience only, so the reasoning created by the adjustment section and its phases are omitted. Brief mention should be made of the possible types of adjustment. Firstly, only the unreasonable clause can be changed. Secondly, that clause can be considered as totally ineffective. Thirdly, another clause of the same contract can be changed and, fourthly, the whole contract can be declared void.⁸⁴⁸

General elements of electronic contract law⁸⁴⁹ and electronic signatures

It is common knowledge that Finland is considered as a modern Information Society.⁸⁵⁰ Finnish Government undertook a major program of modernization to achieve this aim. This activity encompasses several different areas relating to economic and legal issues. In the field of electronic contract law especially important are provisions which regulate drafting electronic contracts.

Finland has implemented Directive 1999/93/EC of the Community framework for electronic signatures by the Electronic Signature Act,⁸⁵¹ which entered into force on February 1, 2003. This Act distinguishes between *an electronic signature* and *an advanced electronic signature*.

⁸⁴⁸ J. Pöyhönen, *Contracts...*, pp. 77–78.

⁸⁴⁹ This issue is regulated in Consumer Protection Act, the Apartment Sale Act, Society Services Act, Act on Use of Free Speech in Mass Media after amendments, which was made to ensure its compatibility with Directives relating to electronic trade.

⁸⁵⁰ For further information about different definition of this term: A. Mattelart, *Spoleczeństwo informacji*, Kraków 2004; B. Langefors, *Infological Models and Information Users View*, Information System, tom 5; J. Lubacz (ed.), *W drodze do społeczeństwa informacyjnego*, Warszawa 1999; J.S. Nowak, *Spoleczeństwo informacyjne – geneza i definicje*, [in:] G. Bliźniak, J.S. Nowak, *Spoleczeństwo informacyjne 2005*, PTI, 2005.

⁸⁵¹ In Finnish: *Laki sähköisistä allekirjoituksista 24.1.2003/14*; English translation is available on <http://www.finlex.fi/fi/laki/ajantasa/2003/20030014>.

The advanced electronic signature may additionally be certified by a third party certificate provider issuing a qualified certificate.

The Electronic Signatures Act specifies only the types of electronic signatures and their verification, but does not regulate the contractual relationship between the parties who use digital signatures. According to the Act, the requirements of a signature in electronic form are fulfilled by at least an advanced electronic signature based on a qualified certificate and created by means of a secure signature creation device.⁸⁵² Unfortunately, the use of qualified certificates is not very widespread due to a general lack of services that require qualified certificates.⁸⁵³ The situation is the same in the field of electronic contract law as well. Generally, to make binding offers electronic signatures with qualified certificates are required. Moreover, there are no formal requirements specified under the law to make or submit an offer via modern means of communication.⁸⁵⁴ However, the electronic contract should be concluded or recorded in a way that could not be modified unilaterally. Only then such a contract shall be considered equal to a contract made in written form. As the effect, such an agreement can be concluded via e-mail.

Similarly to offers, generally there are no specific additional requirements to acceptance required by law. Traders are not restricted to set additional identification requirements or express acceptance of certain terms as precondition to acceptance. The conclusion of electronic contract complies with requirements laid down in specific directives.⁸⁵⁵

⁸⁵² Section 18 of the The Electronic Signatures Act.

⁸⁵³ See generally P. Künnap, *Benchmarking on existing national legal e-business practices*, DG ENTR/04/68 Country report – Finland, <http://ec.europa.eu/enterprise/ict/policy/legal/2006-bm-cr/finland.pdf> [04.11.2007].

⁸⁵⁴ It means that an offer made via e-mail or otherwise or an invitation to make an offer on an internet-site are valid as such. However, the Supreme Administrative Court's judgment on 23.12.2005 in case 2722/2/03 should be taken into consideration. According to this judgment, *county government could not require that conclusion of the electronic service contract used by a real estate broker with its customers is secured with qualified certificate or other similar means under best practices requirements since the requirement of using qualified certificate or other such advanced verification mechanisms were not required under the letter of the law*. For further information: *Benchmarking of existing national legal...*, p. 8.

⁸⁵⁵ Article 5 of Directive 2000/31/EC on electronic commerce, Articles 4 and 5 of Directive 1997/7/EC on distance contracts, and Articles. 3, 4 and 5 of

Separate issues relate to frauds perpetrated through electronic means. Many fraud cases are left unresolved because of the small amounts.

Standard terms are considered to be a part of the contract only if there is a sufficient link between them and the contracts.⁸⁵⁶ These provisions are not applicable to the contract with consumer. Moreover, the protection of consumer goes even further. In addition, the Consumer Protection Act provides additional safeguards against unreasonable terms in consumer contracts. In principle, all unreasonable terms in consumer contracts are forbidden. Furthermore, 'standard terms sent with an invoice or order confirmation or just made generally available on the webpage of the seller without a direct connection to the actual sale process will, as a general rule, not be considered part of the contract with a consumer'.⁸⁵⁷ A different situation is with so-called 'point-and-click acceptance'. If the consumer 'pass' and 'confirm' a page with contract terms before the contract is concluded,⁸⁵⁸ this contract will be valid.

There are no specific provisions regarding choice of law and forum with regard to e-commerce. The challenge for e-business in this area is the same as for traditional business relations.⁸⁵⁹

Directive 2002/65/EC on distance marketing of consumer financial services, regarding the information that must be given to the consumer before and after the order is placed, e.g. the Consumer Protection Act requires the seller to inform the consumer in advance in which languages the contract terms are presented and in which language the seller will use during the transaction.

⁸⁵⁶ They should be directly included in the contract documentation or the agreement should unambiguously refer to them in its context. Such references will not be needed between businesses, if they can be considered to have become the business practice between the parties.

⁸⁵⁷ *Benchmarking of existing national legal...*, p. 9.

⁸⁵⁸ This can be done by the terms appearing in full text on the page and the consumer confirming that he/she has seen it by scrolling down over the page and clicking on a confirmation button.

⁸⁵⁹ The Rome Convention on the law applicable to contractual obligations, the Lugano Convention regarding the jurisdiction and recognition and enforcement of judgments in civil and commercial matters, the Brussels Treaty has been replaced by Council Regulation (EC) No 44/2001, the United Nations Convention on the International Sale of Goods (CISG).

Conclusion

In the fields of e-signatures, and especially e-contracts, some general assessment of the Finnish legislation and administrative practices should be made to summarize this analysis of the law governing drafting contracts by modern means of communication.

The following main legal and administrative barriers to e-business in Finland have been identified. First of all, lack of trust among the general population should be mentioned. People are hesitant, especially after fraud cases featured in mass media. Another factor which poses barriers to e-commerce relating to confidence is lack of trust between organizations which inhibits collaboration, and therefore full e-commerce. Lack of security, particularly in relation to governmental and financial transactions, can also be perceived. Difficulty in confirming identity of who is about to take part in a transaction, in terms of status, security clearance/confidentiality or credit-worthiness can also be identified as barriers for further development of e-commerce.⁸⁶⁰

Some problem occur when the electronic signature is concerned, e.g., legal and administrative barriers to cross-border exchange of electronic signatures, electronic contracts and electronic invoices. A number of other practical difficulties arise such as what kind of signature should be used for applications in the public sector. Furthermore, the fulfillment with information obligations by many small online shops is not effortless. The compliance problems are mostly due to lack of knowledge and resources. Although consumers are well protected by the legislation, a limited protection is offered for smaller businesses in electronic commerce. However, in the case of small companies buying online, this can be a barrier to conducting business online.

The improvement of the consumers' education on the use of the Internet is also worth mentioning. Legal rules, at least the ones regarding consumers, can also be found easily on-line. To conclude, in Finland *B2B and B2C e-commerce*⁸⁶¹ is recognized as an area with vast potential for growth.

⁸⁶⁰ For more details see generally: P. Künnap, *Benchmarking on existing...*

⁸⁶¹ The European Information Technology Observatory (EITO) defines *B2B e-commerce* as 'the use of Internet technology to conduct or enhance transactions and business relations, either on the back-office side (relation with suppliers), across internal processes, or on the front-office side (relation with customers)'.