

# **Reflections on art. 73-75 CESL**

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# Articles 73-75 CESL

- Article 73 : Determination of price
- Article 74 : Unilateral determination by a party
- Article 75 : Determination by a third party

# Articles 73-75 CESL in comparison with

- **German Civil Code, § 315 BGB ss**
- **Dutch Civil Code, art. 7:4 BW**
- **International Convention on the Sale of Goods, CISG, Art. 55, 56 CISG**
- **UNIDROIT Principles 2010, Art. 5.1.7.**

## Article 73 : Determination of price

- Where the amount of the price payable under a contract cannot be otherwise determined, the price payable is, in the absence of any indication to the contrary, the **price normally charged** in comparable circumstances at the **time of the conclusion** of the contract or, if no such price is available, a **reasonable price**.

# Main difference

- **The German system has no explicit reference to the time of the conclusion of the contract.**

## Article 74 :

### Unilateral determination by a party

- 1. Where the **price** or any other contract term is **to be determined by one party** and that party's determination is **grossly unreasonable** then the price normally charged or term normally used in comparable circumstances at the time of the conclusion of the contract or, if no such price or term is available, a reasonable price or a reasonable term is substituted.
- 2. The parties may not exclude the application of this Article or derogate from or vary its effects.

# Main difference

- **The German solution also foresees in the case of delay.**

# Article 75 :

## Determination by a third party

- 1. Where a third party is to determine the price or any other contract term and cannot or will not do so, a court may, unless this is inconsistent with the contract terms, appoint another person to determine it.
- 2. Where a price or other contract term determined by a third party is grossly unreasonable, the price normally charged or term normally used in comparable circumstances at the time of the conclusion of the contract or, if no such price is available, a reasonable price, or a reasonable term is substituted.
- 3. For the purpose of paragraph 1 a 'court' includes an arbitral tribunal.
- 4. In relations between a trader and a consumer the parties may not to the detriment of the consumer exclude the application of paragraph 2 or derogate from or vary its effects.



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## Article 75 : Determination by a third party

- 4. In relations between a trader and a consumer the parties may not to the detriment of the consumer exclude the application of paragraph 2 or derogate from or vary its effects.

# Main difference

- German law foresees in solution for decision by “multiple” third party (same solution or average).
- German law foresees in solution for delay.
- No other legal regime knows a sort-like time wasting solution like the appointment by court of the replacement of the third person.

## Conclusion Art. 73-75 CESL

- **Article 75 CESL Determination by a third party: the replacement of the third person cannot be found in the other systems - adding to costs and time-consuming**
- **German law foresees in more situations than the other legal systems and provides the best and most individual protection for professionals as well as for consumers**