



29.8.2014

## NOTICE TO MEMBERS

**Subject: Petition No 1436/2013 by A.T. (Spanish), on unilateral changes to mortgage conditions in Spain**

### **1. Summary of petition**

The petitioner says that a bank with which her family took out a mortgage has unilaterally amended the conditions and monthly repayments for this bank loan.

Despite the complaints she made to the Bank of Spain, the petitioner says she has not received any answer to her questions.

### **2. Admissibility**

Declared admissible on 7 May 2014. Information requested from Commission under Rule 216(6).

### **3. Commission reply, received on 29 August 2014**

Directive 93/13/EEC on unfair terms in consumer contracts<sup>1</sup> may not be applicable to the situation since the initial loan seems to imply a business to business (B2B) relation. Under articles 3.1 and 6.1 of Directive 93/13/EEC, contractual terms in contracts between traders and consumers which have not been individually negotiated are not binding on consumers if they create a significant imbalance between the interests of the trader and the consumer to the latter's detriment. National courts are responsible for assessing whether a contractual term is unfair.

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<sup>1</sup> OJ L 95, 21.4.1993, p.29.

Business to business credits are in general subject to private law arrangements at national level. The EU law, with very few exceptions, regulates consumer credits only.

It seems at first sight unusual that a debt of one loan could be transferred to another loan without the knowledge of all parties involved. Whether or not a bank can increase the instalments unilaterally depends on the national private contract law arrangements.

The EU adopted on 4 February 2014 the Mortgage Credit Directive<sup>1</sup>. The Directive will only be applicable to credit agreements after 21 March 2016. Creditors will be obliged to inform the borrower at pre-contractual stage of the main characteristics of the loan (e.g. fixed or variable rate loan) via the European Standardised Information Sheet (ESIS) and on the effective annual borrowing costs via the Annual Percentage Rate of Charge (APRC) rate. Recital 67 of the Directive stipulates that ‘consumers should be provided with information concerning the borrowing rate during the contractual relationship as well as at pre-contractual stage. Member States should be able to maintain or introduce restrictions or prohibitions on unilateral changes to the borrowing rate by the creditor. Member States should be able to provide that where the borrowing rate changes the consumer is entitled to receive an updated amortisation table.’

The Directive, however, does not regulate the transfer of the debt from one credit agreement to another. These transfers are regulated by national contract or civil law.

#### Conclusion

In absence of applicable EU law, the petitioner is advised to continue pursuing the issue via the relevant national complaint channels.

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<sup>1</sup> Directive 2014/17/EU of 4 February 2014 on credit agreements for consumers relating to residential immovable property.