



24.6.2010

NOTICE TO MEMBERS

Subject: Petition 1732/2009 by D.R. (Italian), on a pension scheme operated by the former Banca 121

1. Summary of petition

The petitioner complains of a pension scheme run by the former Banca 121, indicating that his funds are frozen for 30 years and that he is required to pay annual interest of 6% in order to receive on maturity a total amount less than the original capital. As a holder of the product he has no influence over the way in which the funds are invested, in addition to which he is required to pay fees on his mandatory account with the bank. Termination of the agreement with the bank is not possible without sustaining considerable losses. The petitioner indicates that many of the bank's customers are in the same situation. Despite a number of court rulings, it is not possible to revoke the contract, which is basically fraudulent. The petitioner is accordingly seeking European Parliament representations to the Italian Government with a view to resolving the problem, introducing legislation penalising banks which place such products on the market and ensuring that defrauded clients are reimbursed.

2. Admissibility

Declared admissible on 3 March 2010. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 24 June 2010.

The Petitioner appears to have encountered problems with a financial product entitled "4 You" offered by an Italian financial institution. He alleges that the contract terms of the financial product are unfair to the detriment of a large number of consumers who are owners of the financial product in question, in particular by providing unfair conditions for terminating the contract. The Petitioner makes reference to judgments allegedly rendered in

this case by national courts.

At European level, consumer rights in relation to unfair contract terms are safeguarded by Directive 1993/13/EEC on unfair terms in consumer contracts. This Directive aims to prevent significant imbalance between the rights and obligations of consumers on the one hand and of sellers and suppliers on the other hand. This general requirement is supplemented by a list of terms which may be regarded as unfair. Terms which are found by a national court, tribunal or administrative body to be unfair under the Directive are not binding on consumers. Furthermore, this Directive obliges the trader to draft its standard terms and conditions in plain and intelligible language.

However, the European Union does not intervene in the pricing policies of companies, which are subject to the conditions of the free market. Therefore, legislation which aims at preventing traders from imposing unfair contract terms on consumers does not apply to the fairness of prices or other core terms. For this reason, the interest rate and price may be excluded from the scope of regulations adopted under this Directive.

The provisions transposing the Directive on unfair terms into Italian law are set out in the Codice del consumo (Decreto Legislativo 6 settembre 2005, n. 206). The Commission is not aware of any deficiencies in the way the Directive has been transposed and implemented in Italy.

The Petitioner alleges that despite court judgments which should have rendered the contract terms unfair, he continues to be bound by these terms. However, he fails to substantiate these claims.

The European Commission is not entitled to intervene in private disputes. Once legislation has been adopted by the European Union, it is up to the Member States to ensure that their national laws are brought into conformity with European legislation and that these laws are complied with. Only the relevant national authorities in Italy are competent to assess whether a contract term is unfair and violates consumers' rights under the Directive.

Therefore, the Petitioner should get in touch with the following Italian authority responsible for consumer protection directly. These authorities should be in a position to take appropriate steps to enforce the applicable consumer protection legislation.

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