



9.12.2010

NOTICE TO MEMBERS

Subject: Petition 0286/2010 by M.D. (British), on the bankruptcy of a property developer in Spain from whom he had commissioned a house

1. Summary of petition

The petitioner indicates that, after he had purchased an off-plan home in 2006 in the Region of Murcia, and paid an advance on signature of the contract, the property developer in question went bankrupt. The petitioner and others have initiated legal proceedings in order to recover their money through an arrangement with creditors or through recovery of the bank guarantee. He is requesting the European Parliament to look into such matters and assess the extent to which such behaviour is compatible with EU law.

2. Admissibility

Declared admissible on 28 June 2009. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 9 December 2010.

The petitioner complains about the lack of deposit guarantee required of a property developer on insolvency in Spain from whom he had commissioned a house and asks whether such behaviour is compatible with EU law.

Under the Treaty on the functioning of the EU, the Commission does not have any general powers to intervene in individual cases relating to problems of general administration of justice, inefficiency of the judicial system and particular issues such as described in the petition, unless there is a link to the law of the EU.

As EU law stands at present, there are no EU rules governing the legal requirements relating

to the granting of licenses to build or the respective remedies against property developers in case of default. Nor is there EU law concerning the purchase of private property, different from time-share (Directive 94/47/EC), the recovery of bank deposits, the remedies against building contractors in breach of contract, or the length of national court proceedings. Such issues are regulated by national law.

There exists a Council Regulation (EC) No 1346/2000 on insolvency proceedings which provide common schemes for the interaction of different insolvency regimes. Pursuant to Article 39 thereof, every creditor, who has his habitual residence in the EU, shall have the right to lodge his claims in writing in each of the insolvency proceedings pending in the EU relating to the debtor's assets. National law should apply to the proceedings which is the insolvency law of the State where proceedings are opened or the law of the State where immovable property is registered.

On the basis of the information provided by the petitioner, it is not possible to establish a possible breach of Council Regulation (EC) No 1346/2000. In the absence of an infringement to EU law, the Commission has no power to take action in this case. As the petitioner is seeking a decision from the Spanish Court against the builder contravening national law, it is a domestic issue which fall under the competence of national authorities.