



30.1.2015

NOTICE TO MEMBERS

Subject: Petition No 1768/2013 by Ria Martakis (Greek) on the legality granting of bank loans in Swiss francs in Greece

1. Summary of petition

The petitioner inquires whether it is legal to grant bank loans in Swiss francs in Greece, especially where the bank in question had no trained staff to inform prospective borrowers about that particular investment product. She also requests guidelines on how to guard against measures taken by the bank, since the amount of the loan in question is too high, due to constant changes in the exchange rate between the euro and Swiss franc, and she is now facing financial difficulties.

2. Admissibility

Declared admissible on 23 June 2014. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 30 January 2015

The Commission's observations

No legislative framework on mortgages existed at EU level during the period 2007/2008. The Commission issued a Recommendation on pre-contractual information to be given to consumers by lenders offering home loans on 1 March 2001, however. The guidelines incorporated in the Recommendation were agreed in the form of a Voluntary Code of Conduct between the mortgage-lending industry and consumer groups. This code did not specifically refer to foreign currency loans and was not binding on lenders. Based on the information at its disposal, the Commission cannot conclude how stringently the Voluntary

Code had been followed up by individual institutes during the period 2007/2008. It is our understanding that from the very beginning the take up of the Voluntary Code by financial institutions in Greece was substantial. The Greek banks' alleged negligence to inform their customers properly of potential foreign currency risks must therefore also be assessed in light of the Greek national legislation at that time.

The Commission proposed in March 2011 a Mortgage Credit Directive, which was adopted on 4 February 2014. Member States will have to transpose Directive 2014/17/EU into national law by 21 March 2016 at the latest. The Directive introduces cross-sectoral measures applying to all types of mortgage credits, e.g. high level provisions on remuneration to limit excessive risk taking, knowledge and competence requirements for staff, and the disclosure of relevant information to consumers prior to the credit conclusion (European Standardised Information Sheet)¹. The text also includes specific provisions on variable rate loans and regarding foreign currency loans. Article 23 requires Member States, where a credit agreement relates to a foreign currency loan, to set up an appropriate framework which either grants the consumer under specified conditions a right to conversion into an alternative currency, or offers other arrangements to limit the exchange rate risks to which the consumer is exposed. The other arrangements could, for instance, be caps or also warnings, provided they are sufficient to limit the exchange rate risk.. For legal certainty reasons and as outlined in article 43, the provisions of the MCD will not apply to credit agreements existing before 21 March 2016, however.

The European Systemic Risk Board (ESRB) addressed on 21 September 2011 a Recommendation² to all national competent authorities to address the systemic risks resulting from an excess in foreign currency lending. Based on the information received, the ESRB considered in its follow-up report³ Greece as 'fully compliant'.

As far as Directive 2005/29/EC is concerned, its provisions indeed require traders to provide in a clear, intelligible and timely manner material information that consumers need in order to take an informed purchase decision, such as the main characteristics of the product or service offered including the risks and results to be expected from its use.

The Commission's Communication on the application of Directive 2005/29/EC⁴ and its accompanying Report⁵ adopted on 14 March 2013 identify key areas where enforcement should be stepped up, including the sector of financial services. Priorities for action include further developing the 2009 Guidance document, expanding and organising thematic workshops with national enforcers on areas of key concern for consumers.

Furthermore, the Commission has recently launched an awareness raising campaign in order

¹ The pre-contractual sheet 'ESIS' is replacing the European Code of Conduct for loans falling within its scope.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:342:0001:0047:en:PDF>

³ http://www.esrb.europa.eu/pub/pdf/recommendations/2013/ESRB_2013_2_en.pdf?e48c0195897f850f84879712ce2f2cf7 Greece was assessed fully compliant on 2 out of the 7 recommendations. As for the remaining 5 recommendations, the national competent authority provided sufficient explanations to justify its non-action. The data for the follow-up was provided by the national competent authorities, but analysed by a cross- country working group on the basis of identical criteria.

⁴ "Achieving a high level of consumer protection – Building trust in the Internal Market" COM(2013) 138 final.

⁵ COM(2013) 139 final.

to increase the overall knowledge of both consumer rights and enforcement options in various areas. It will cover several Member States including Greece.

Conclusions

The European Commission has no enforcement powers in relation to economic operators who may have infringed EU law in the field of consumer protection and it cannot assess individual cases between consumers and particular traders, which often requires the appraisal of facts.

The Petitioner is therefore invited to bring his case to the attention of the competent Greek authority, the Ministry of Development and Competitiveness, whose contact details are the following:

Ministry of Development and Competitiveness
Directorate of Consumer Policy and Protection
Kaniggos Sq.
GR-10181 Athens
Tel: +30 210 3801507
Fax: +30 210 3841832
E-mail: info@efpolis.gr
www.efpolis.gr

In order to receive appropriate legal advice as to the actions he could initiate in order to preserve his individual rights, the Petitioner can contact a consumer association. The list of national consumer associations in Greece can be found on the following link, after clicking on the relevant country:

http://ec.europa.eu/consumers/empowerment/cons_networks_en.htm