



30.1.2015

NOTICE TO MEMBERS

Subject: Petition No 2120/2013 by L.M.V.M. (Spanish) on mortgage loan in Spain

1. Summary of petition

The petitioner is complaining about the method applied by the BBVA bank in Spain to repay his mortgage. He expresses his mistrust in legal and political institutions on the national level and asks the EP to look into the practices of the banks used in relation to their customers. More specifically he points out that his loan, being “flexible” was not adjusted to the interest rate movement as set out by the ECB. He wants his money recovered and considers the bank practices unfair. In addition he complains about too slow process in responding to him as a client when asked the bank for clarification. This he considers as an instrumental behaviour of the BBVA.

2. Admissibility

Declared admissible on 5 September 2014. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 30 January 2015

The Commission's observations

The manner interest rates are calculated in consumer credit contracts are currently not regulated at Union level.

A number of abusive clauses in consumer credit agreements have been identified by Spanish courts, including interest rate floor clauses which prevent mortgage borrowers from benefiting

from a decrease in borrowing costs¹.

Under Directive 93/13/EEC on unfair terms in consumer contracts², a contract term causing a significant imbalance between the parties to the detriment of the consumer shall be regarded as unfair and as such shall not be binding. The Annex to the Directive provides a list of contract terms which may be considered unfair, such as irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract (sub-paragraph 1(i) of the Annex) or enabling the trader to alter the terms of the contract unilaterally without a valid reason which is specified in the contract (sub-paragraph 1(j) of the Annex). Although unfair terms are not binding to consumer, it is for the national authorities and courts to determine whether specific terms in a consumer contract should be deemed unfair on the basis of the national law implementing the Directive.

Directive 2005/29/EC on unfair business-to-consumer commercial practices³ prevents commercial operators from engaging in unfair practices towards consumers. Its provisions require traders to operate in accordance with professional diligence and 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 and the price of a product.

Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property⁴ will be applicable to mortgage credits existing after 21 March 2016 only and does not regulate the content of credit contracts, but the content of pre-contractual information. In particular, creditors will have to inform consumers about the main characteristics of the credit including the formula used to revise the borrowing rate and its different components and where further information on the indices or rates used in the formula can be found; the potential risks associated with the borrowing rate and a worst-case scenario in case of variations in the borrowing rate; the amortisation structure of the loan. The Directive also requires Member States to ensure that any indexes or reference rates used to calculate the borrowing rate are clear, accessible, objective and verifiable by the parties to the credit agreement and competent authorities. The creditor will also have to inform the consumer of any change in the applicable borrowing rate during the lifetime of the contract, before the change takes effect. The Commission will closely follow the transposition of the Directive.

In addition the Commission adopted a proposal for a Regulation on indices used as benchmarks in financial instruments and financial contracts⁵ to ensure that benchmarks produced and used in the EU are robust, reliable, representative and fit for purpose (including via a suitability assessment) and that they are not subject to manipulation.

The issues raised in the petition are not related to bank resolution. Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms ('BRRD') therefore would not seem to apply.

¹ Interest rate floor clauses have also been declared null by the Supreme Court, aff.241/2013, on 9 May, 2013.

² OJ L 095, 21.4.1993, p. 29.

³ OJ L 149, 11.6.2005, p. 22.

⁴ OJ L 60, 28.2.2014, p.34.

⁵ COM/2013/0641 final.

Conclusion

The Commission does not have enforcement powers against individual traders.

The petitioner could bring his case to the attention of the Bank of Spain¹ regarding the alleged delays of his bank in replying to him. It remains the national courts' responsibility in each individual case to decide as to whether the terms used in a specific contract have to be considered unfair in line with Directive 93/13.

¹ <http://www.bde.es/clientebanca/quejas/quejas.htm>