



20.2.2024

NOTICE TO MEMBERS

Subject: Petition No 0221/2021 by Argyro Papatryfonos (Cypriot) on the Cypriot legislation's breach of European Directives
Petition No 0811/2023 by Andreas Tryfonos (Cypriot) on an alleged breach of EU and international law in foreclosure judicial proceedings in Cyprus
1. Summary of petitions

Summary of petition No 0221/2021

The petitioner believes that the Cyprus legislation violates EU Directives, European Central Bank directives and Basic Human Rights, omitting the effective implementation of EU legislation. Especially, the petitioner denounces the Law on Transfer and Mortgage of Real Estate of 1965 and its amendments of 2014, 2018 and 2019. The petitioner explains that this law establish a procedure according to which the financial institutions use unfair clauses and non-contractual interest rate on loan contracts to achieve the acquisition of mortgaged properties and proceed to its auctioneering without court procedures or the need of a court order. The petitioner complains that this procedure deprives Cypriot citizens of the right to a fair trial to protect their property, as the law excludes the possibility of going to court to obtain an interim order to freeze the bank acquisition until the courts decide on the abusive nature of the contract or the claims of the financial institutions. The petitioner also denounces the parliamentary procedures of the Parliamentary Finance Committee as obscure and abusive. The petitioner reports that the Parliamentary Finance Committee has had harmonization bills pending for more than two years, despite the fact that in 2013 the Commission initiated infringement proceedings against Cyprus on the grounds that the Cypriot authorities were not effectively implementing Directive 93/13/EEC(1) and Directive 2005/19/EC(2). The European Commission resumed the infringement procedure in July 2019.

Summary of petition No 0811/2023

The petitioner claims that Cyprus is denying citizens the right to seek justice under Article 47 of the Charter of Fundamental Rights of the European Union (right to an effective remedy and to a fair trial) and Article 6 of the European Convention on Human Rights (Right to a fair trial). Specifically, the petitioner is complaining that, under the pretext of the country's financial stability being at risk, Cyprus amended Law No 9/1965 on Transfers and Mortgages

depriving citizens of their inalienable right to go to court and giving banks the right to sell houses by simple letter, without a court decision, forcing citizens to pay hefty legal fees to prevent the sale from going ahead. Lastly, he adds that the Cypriot courts are refusing to send pre-trial questions to the Court of Justice of the European Union (CJEU) in cases involving mortgage debtors who have received housing loans.

2. Admissibility

Petition No 0221/2021 declared admissible on 7 June 2021 and Petition No 0811/2023 declared admissible on 24 November 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 18 January 2022

Petition No 0221/2021

Under Council Directive 93/13/EEC on unfair terms in consumer contracts¹, a contract term which has not been individually negotiated and which causes a significant imbalance between the parties' rights and obligations, contrary to the requirement of good faith, to the detriment of the consumer shall be regarded as unfair and as such shall not be binding. The Directive also requires that consumers have effective remedies against such terms². This includes the possibility for national courts to grant interim measures for stopping or suspending enforcement procedures pending the assessment of the potential unfairness of contract terms on which such procedures are based.

With regard to the standard of protection in national procedures, the Court of Justice of the European Union (CJEU) held that, in the absence of harmonisation of national proceedings, the detailed rules of procedure for enforcing Union consumer law, such as Council Directive 93/13/EEC, are matters falling within the domestic legal order of each Member State, in accordance with the principle of their procedural autonomy. Nonetheless, the CJEU³ has emphasised that those procedural rules must meet two conditions: 1) they should be not less favourable than those governing similar domestic situations (*principle of equivalence*) and; 2) they should not in practice make the exercise of rights conferred by the Union legal order impossible or excessively difficult (*principle of effectiveness*)⁴.

The CJEU held that, since the imbalance between consumers and traders may be corrected only by positive action on the part of a third party, it falls to the national courts to guarantee the effectiveness of the rights conferred on consumers by Council Directive 93/13/EEC. For that reason, the national courts are required to assess of their own motion whether a contractual term falling within the scope of that Directive is unfair⁵. In particular, the CJEU

¹ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993, p. 29-34.

² See Section 5 of Commission Notice – Guidance on the interpretation and application of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ C 323, 27.9.2019, p. 4–92, COM(2019) 5325 final.

³ For more information, see Commission Notice — Guidance on the interpretation and application of Council Directive 93/13/EEC on unfair terms in consumer contracts, OJ C 323, 27.9.2019, p. 4: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2019.323.01.0004.01.ENG&toc=OJ:C:2019:323:TOC, in particular its Section 5 on remedies and guarantees required by Articles 6 and 7 of the Directive.

⁴ See, to that effect, judgments in C-168/05 *Mostaza Claro*, paragraph 24; C-40/08 *Asturcom Telecomunicaciones*, paragraph 38; Case C-415/11 *Aziz*, paragraph 50.

⁵ See judgment 14 June 2012, *Banco Español de Crédito* (C-618/10, paragraphs 41 to 43 and the case-law cited). See also judgment of 14 March 2013, *Aziz* (C-415/11, paragraph 46 and the case-law cited) and judgment of 18

held that the principle of effectiveness precludes national rules of procedure which make it impossible or unduly difficult for consumers to rely on the non-binding nature of unfair contract terms⁶ including in the framework of enforcement procedures.

In addition, the CJEU⁷ has repeatedly stressed the significance of the availability of interim measures in particular in order to halt or suspend enforcement against a consumer while the Court is assessing the unfairness of relevant contract terms. Interim relief is particularly important in relation to enforcement concerning the consumer's home⁸, involving evictions, but is relevant also for other enforcement measures. Interim measures can be essential not only to suspend enforcement against consumers, but also in cases where consumers take legal action to request a declaration of invalidity of certain contract terms⁹. Lastly, not only the complete absence of interim measures may infringe the effectiveness of remedies, but also the fact that it is difficult for consumers to obtain interim relief in light of, for instance, tight time-limits, submissions to be made or securities or evidence to be provided.

Directive 2005/29/EC¹⁰ protects consumers from unfair business-to-consumer commercial practices that harm their economic interests. The Directive applies to a 'business-to-consumer commercial practice' within the meaning of Article 2(d) of Directive 2005/29/EC. It contains general provisions that prohibit misleading and aggressive practices that affect the transactional decisions of consumers, subject to a case-by-case assessment by national courts or authorities, complemented by a list of commercial practices which are in all circumstances considered to be unfair. The Directive does not establish any derogation for the provision of legal services to consumers¹¹.

In the case of Cyprus, the Commission opened in 2013 an infringement procedure against Cyprus for ineffective enforcement by the Cypriot authorities of Council Directive 93/13/EEC and Directive 2005/29/EC.

Since then, the Commission has been in contact with Cyprus, which responded positively to several concerns. However, since certain grievances remained unresolved, the Commission sent an additional letter of formal notice on 25 July 2019¹² followed by a reasoned opinion on 18 February 2021¹³, in accordance with Article 258 of the Treaty on the Functioning of the EU. The main concern was that the decisions of the Cypriot Consumer Protection Service regarding unfair terms are not binding and are not enforced in practice by the Law Office of the Republic either, and only few cases have been brought to the competent courts to issue

February 2016, *Finanmadrid* (C-49/14, paragraph 55).

⁶ The principle of effectiveness was applied, in particular, in Case C-618/10 *Banco Español de Crédito*, Judgement of 14 June 2012, paragraphs 49 – 57 and point 1 of the operative part. See also Case C-49/14, *Finanmadrid*.

⁷ E.g. Case C-415/11 *Aziz*; Case C-34/13 *Kušionová*; Case C-280/13 *Barclays Bank* and Case C-32/14 *ERSTE Bank Hungary*.

⁸ E.g. Case C-34/13 *Kušionová*, paragraphs 63-66 with further references, inter alia, to case law of the European Court of Human Rights and Article 7 of the EU Charter of Fundamental Rights, encompassing the right to accommodation.

⁹ Joined Cases C-568/14 to C-570/14 *Ismael Fernández Oliva*. This case concerned the possibility of obtaining interim relief individual proceedings while a collective legal action is pending.

¹⁰ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), OJ L 149, 11.6.2005, p. 22-39.

¹¹ See also, by analogy, Case C-537/13 *Šiba* concerning the application of Directive 93/13/EEC to contracts on legal services applies to consumer law in general.

¹² https://ec.europa.eu/commission/presscorner/detail/en/INF_19_4251

¹³ https://ec.europa.eu/commission/presscorner/detail/en/inf_21_441

injunctions. Therefore, the Commission was concerned that Cyprus fails to provide adequate and effective means to prevent the continued use of unfair terms in consumer contracts. In addition, the Commission was concerned that in Cyprus the laws on unfair commercial practices are not applicable to lawyers in their relations with consumers. Cyprus replied to the reasoned opinion on 16 April 2021.

As regards Directive (EU) 2019/1023 on restructuring and insolvency¹⁴, the Commission notes a lack of substantiation of the grievances, invoked by the petitioner. The Directive indeed lays down measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt. Nevertheless, this Directive does not include binding rules on consumer over-indebtedness, but only advises the Member States to apply them also to consumers, at the earliest opportunity. In any event, following the notification, made by Cyprus, on the extension of the Directive's transposition period, the new deadline for the adoption of national implementing provisions is set for 17 July 2022.

Conclusion

The Commission monitors the implementation of EU law by Member States. It is currently assessing the reply of the Cypriot authorities of 16 April 2021 to the reasoned opinion delivered by the Commission on 18 February 2021 in order to decide on next steps. The assessment is carried out together with any other information concerning the Cypriot legislation as regards its compliance with Council Directive 93/13/EEC, including new complaints in respect of the application in Cyprus of Council Directive 93/13/EEC received by the Commission. In its final assessment, the Commission will also take into consideration recent case-law of the Court of Justice of the European Union regarding protection of consumers against unfair contract terms in judicial proceedings as well as Article 47 of the EU Charter of Fundamental Rights. Should the Commission conclude that Cyprus violates additional obligations stemming from Articles 6 and 7 of Council Directive 93/13/EEC to provide consumers with appropriate remedies and procedural guarantees, it will consider appropriate steps.

4. Further reply from the Commission, received on 20 February 2024

Petition No 0811/2023

Directive 93/13/EEC¹⁵ aims to safeguard consumers against unfair contract terms. Under Directive 93/13/EEC, a contract term which has not been individually negotiated and which causes a significant imbalance between the parties' rights and obligations, contrary to the requirement of good faith, to the detriment of the consumer shall be regarded as unfair.

The system of protection introduced by Directive 93/13/EEC is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his or her bargaining power and his or her level of knowledge. As regards that weaker position, Article

¹⁴ Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency), *OJ L 172*, 26.6.2019, p. 18–55.

¹⁵ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

6(1) of the directive provides that unfair terms are not binding on consumers. It is a mandatory provision which aims to replace the formal balance which the contract establishes between the rights and obligations of the parties with an effective balance which re-establishes equality between them.¹⁶

Directive 93/13/EEC also requires that consumers have effective remedies against unfair terms in consumer contracts.¹⁷

It is the primary responsibility of national competent authorities, including the courts, to ensure the safeguard of consumer rights under EU law in individual disputes and, where relevant, to order the State to make good the loss sustained by individuals as a result of the infringement of EU law attributable to it.

With regard to the standard of protection in national procedures, the Court of Justice of the European Union (CJEU) held that, in the absence of harmonisation of national proceedings, the detailed rules of procedure for enforcing Union consumer law, such as Council Directive 93/13/EEC, are matters falling within the domestic legal order of each Member State, in accordance with the principle of their procedural autonomy. Nonetheless, the CJEU¹⁸ has emphasised that those procedural rules must meet two conditions: 1) they should be not less favourable than those governing similar domestic situations (*principle of equivalence*) and; 2) they should not in practice make the exercise of rights conferred by the Union legal order impossible or excessively difficult (*principle of effectiveness*).¹⁹

The CJEU held that, since the imbalance between consumers and traders may be corrected only by positive action on the part of a third party, it falls to the national courts to guarantee the effectiveness of the rights conferred on consumers by Council Directive 93/13/EEC. For that reason, the national courts are required to assess of their own motion whether a contractual term falling within the scope of that Directive is unfair.²⁰ The CJEU²¹ also

¹⁶ See judgments of 17 May 2022 in Case C-600/19 *Ibercaja banco*, paragraphs 35-36; Joined Cases C-693/19 *SPV Project 1503* and C-831/19 *Banco di Desio e della Brianza*, paragraphs 51-52; Case C-725/19 *Impuls Leasing România*, paragraph 40.

¹⁷ See Section 5 of Commission Notice – Guidance on the interpretation and application of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ C 323, 27.9.2019, p. 4–92, COM(2019) 5325 final.

¹⁸ For more information, see Commission Notice — Guidance on the interpretation and application of Council Directive 93/13/EEC on unfair terms in consumer contracts, OJ C 323, 27.9.2019, p. 4: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2019.323.01.0004.01.ENG&toc=OJ:C:2019:323:TOC, in particular its Section 5 on remedies and guarantees required by Articles 6 and 7 of the Directive.

¹⁹ See, to that effect, judgments in Case C-168/05 *Mostaza Claro*, paragraph 24; Case C-40/08 *Asturcom Telecomunicaciones*, paragraph 38; Case C-415/11 *Aziz*, paragraph 50; Case C-600/19 *Ibercaja banco*, paragraph 39; Case C-869/19 *Unicaja Banco*, paragraph 22; Case C-725/19 *Impuls Leasing România*, paragraph 43.

²⁰ See judgment in Case C-618/10 *Banco Español de Crédito*, paragraphs 41 to 43. See also judgment in Case C-600/19 *Ibercaja banco*, paragraph 37; Joined Cases C-693/19 *SPV Project 1503* and C-831/19 *Banco di Desio e della Brianza*, paragraph 53; Case C-869/19 *Unicaja Banco*, paragraphs 24-27; Case C-725/19 *Impuls Leasing România*, paragraphs 49-51.

²¹ E.g. Case C-415/11 *Aziz*; Case C-34/13 *Kušionová*; Case C-280/13 *Barclays Bank* and Case

stressed repeatedly the significance of the availability of interim measures in particular in order to halt or suspend enforcement against a consumer while the court is assessing the unfairness of relevant contract terms, in particular in relation to enforcement concerning the consumer's home.²² The CJEU held that the principle of effectiveness precludes national rules of procedure which make it impossible or unduly difficult for consumers to rely on the non-binding nature of unfair contract terms²³ including in the framework of enforcement procedures.

In 2013 the Commission opened an infringement procedure against Cyprus (N° INFR(2013)2082) for ineffective enforcement of Directive 93/13/EEC and Directive 2005/29/EC²⁴ in business-to-consumer relations. Since not all grievances had been resolved, the Commission resumed the infringement procedure and sent an additional letter of formal notice to Cyprus on 25 July 2019, followed by a reasoned opinion on 18 February 2021.²⁵ Cyprus replied to the reasoned opinion on 16 April 2021. The Commission services will decide on possible next steps after assessing this reply together with all the information available concerning the relevant Cypriot legislation, including the legislation that Cyprus notified as transposition of the Directive 2019/2161²⁶ ('Modernisation Directive') in 2021 and 2022, as well as in light of incoming complaints in respect of the application of Directive 93/13/EEC in Cyprus insofar as they concern business-to-consumer relations.

As far as the alleged refusal of Cypriot Courts to refer questions to the Court of Justice of the European Union is concerned, the procedure for preliminary rulings referred to in Article 267 TFEU is based solely on cooperation between the Court of Justice and the national courts. The system provided for under Article 267 of the TFEU is designed to ensure the uniform interpretation of EU law in the Member States, making provision for direct cooperation between the Court of Justice and the national courts by means of a procedure which is independent of any initiative by the parties.

The Court of Justice's ruling in Case C-283/81 *Cilfit v Ministero della Sanità* (ECLI:EU:C:1982:335) states that even the courts referred to in the third subparagraph of Article 267 TFEU are not required to request a ruling on a question raised before them

C-32/14 *ERSTE Bank Hungary*.

²² E.g. Case C-34/13 *Kušionová*, paragraphs 63-66 with further references, inter alia, to case law of the European Court of Human Rights and Article 7 of the EU Charter of Fundamental Rights, encompassing the right to accommodation.

²³ The principle of effectiveness was applied, in particular, in Case C-618/10 *Banco Español de Crédito*, Judgement of 14 June 2012, paragraphs 49 – 57 and point 1 of the operative part. See also Case C-49/14, *Finanmadrid*.

²⁴ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council, OJ L 149, 11.6.2005, p. 22–39.

²⁵ See under Item 5. Justice and Home Affairs

https://ec.europa.eu/commission/presscorner/detail/en/inf_21_441

²⁶ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules.

concerning the interpretation of European Union law if the question is not of a decisive nature, i.e. if the answer to the question, whatever it may be, has no influence on the outcome of the dispute. These national courts are also not required to request a ruling on a question raised before them concerning the interpretation of EU law if the EU legislation in question has already been the subject of interpretation by the Court or if the issue of the correct application of EU law leaves no scope for any reasonable doubt as to the manner in which the question will be resolved. These are matters which should be decided upon by the national courts on their own responsibility.

Given this legal situation, the practice adopted by the Commission in its capacity as guardian of the Treaties is that infringement proceedings under Article 258 TFEU arising from possible non-compliance with Article 267 TFEU should only be initiated if the Member State in question has passed legislation which prohibits the proper functioning of judicial cooperation under this provision or if the general practice of gross, obvious or even conscious breaches of the obligations provided for in Article 267(3) TFEU is made possible as a result of rulings issued by a court referred to in Article 267.

The Commission's role is therefore limited to monitoring the proper functioning of the system of judicial cooperation under Article 267 TFEU, in order to ensure the consistent interpretation of EU law in the Member States. The Commission does not initiate infringement proceedings under Article 258 TFEU if the infringement of obligations under Article 267(3) TFEU constitutes an isolated case.

The petition refers in general to the Cypriot Courts failure to comply with Art. 267(3) TFEU without, however, referring to specific categories of cases. Therefore, the Commission is not in a position to investigate further this matter. That said, the Commission will examine the rules and practices related to the application by all courts, including Cypriot courts, of the preliminary ruling procedure in the context of the 2024 Rule of Law Report.²⁷

Conclusion

The Commission continues to monitor the implementation of EU consumer protection laws in Cyprus. It will assess any further information available pointing to possible infringements of EU law, and, if necessary, address the issue with the Cypriot authorities in the light of the applicable EU law and in line with the enforcement priorities set in the Commission Communication 'EU law: Better Results through Better Application'.²⁸ In its final assessment, the Commission will also take into consideration the principles set out in the recent case-law of the CJEU regarding protection of consumers against unfair contract terms in judicial proceedings.

²⁷ https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2024-rule-law-report_en

²⁸ Communication from the Commission — EU law: Better results through better application, C/2016/8600, OJ C 18, 19.1.2017, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2017.018.01.0010.01.ENG