Committee on Petitions

18.12.2012

NOTICE TO MEMBERS

Subject: **Petition 0513/2012 by by Nayden Boyadzhiev (Bulgarian), on the fraudulent practices of La Caixa Bank of Spain**

Petition 0548/2012 by F.L.E (Spanish), on behalf of the Plataforma de Afectados Caixanova (Platform for those affected by Caixa Nova), bearing 1579 signatures, on alleged fraud in the sale of financial instruments to clients of a savings bank

Petition 0676/2012by Francisco Ramón Valiente Martínez (Spanish), on alleged abuses in the sale of financial instruments to clients of Spanish banks and savings banks

Petition 0677/2012 by María Alejandra Pizzorno García (Italian), on alleged abuses in the sale of financial instruments to clients of Spanish banks and savings banks

Petition 0785/2012 by Eva Urbano Romero (Spanish), on an alleged abuse in the sale of financial instruments to clients of a Spanish bank

Petition 0788/2012 by Y.A.S.S. (Spanish), on alleged fraud in the sale of financial instruments to a client of a savings bank

Petition 0949/2012 by Juan Campuzano Casas (Spanish), bearing 6 signatures, on abuses in the sale of financial instruments to clients of a savings bank

Petition 1044/2012 by Mercedes Roman Rodriguez (Spanish), bearing 5 signatures, on alleged abuses in the sale of financial instruments to clients of banks in Spain

1. Summary of petition 0513/2012

The petitioner opened a deposit account at the Estepona branch of La Caixa bank in 2008. The bank clerk recommended that he deposit his savings into a product called *Cédulas Hipotecarias*, assuring him that he could withdraw his savings if he made a request 15 days in advance. The petitioner wanted to withdraw some money in December 2010, but was surprised to find out that instead of holding a deposit account, he held a secondary market product. As a result, his account is locked until 2017. The petitioner believes that his consumer rights have been breached and states that many people are in the same situation. He believes that bank employees should provide their customers with accurate information and give them sufficient time to study the contracts in detail, thereby enabling them to make independent decisions

Summary of petition 0548/2012

The petitioners are Spanish citizens who were clients of Nova Caixa Galicia bank. The petitioners explain that they were advised to invest in 'fixed-term deposits' with high returns and low risk. It seems that they were also told they would be able to withdraw their assets at any time. After contracting the deposits, however, the petitioners reportedly found out that they had in fact been sold 'preferred shares', or 'subordinated debt', which carry higher risk and which cannot be accessed unless they are sold.

Summary of petition 0676/2012

The petitioner denounces that banks and savings banks in Spain have been fraudulently selling 'preferred shares' to clients. The petitioner asks the European Parliament to urge a number of Spanish authorities to investigate the issue and to provide redress for the clients affected.

Summary of petition 0677/2012

The petitioner denounces that banks and savings banks in Spain have been fraudulently selling 'preferred shares' to clients. The petitioner adds that she is one of the affected, explaining that she was sold preferred shares by Caja Madrid in 2009, in a process filled with irregularities

Summary of petition 0785/2012

The petitioner explains that she was advised by the director of her savings bank to invest in the bank's *Valores Santander*, a financial instrument which she was told carried zero risk. The petitioner was also told she would be able to withdraw the assets at any time. Later on, once her family started experiencing economic difficulties, she was told by a new director that she could not recover the full amount. She was then also informed that the previous director had been dismissed from his job.

Summary of petition 0788/2012

The petitioner is a client of Nova Galicia Bank (NCG Banco) in Spain. She explains that, following advice of the bank, she invested in financial products she was told carried no risk.

Later on it has become evident that she was unknowingly sold ‘preferred shares’ or ‘subordinated debt,’ which carry higher risk and which have lost much of their value.

Summary of petition 0949/2012

The petitioners are clients of the savings bank Caixa Laietana, which is one of the financial institutions that merged to form Bankia in 2010. They denounce that they were deceptively sold ‘preferred shares’ for a cumulative value of nearly EUR 150 000. In March 2012, the petitioners were reportedly told by the bank that they would lose the entire amount if they did not accept Bankia shares.

Summary of petition 1044/2012

The petitioners denounce the fraudulent sale of preferred shares and subordinated debt to clients of several banks in Spain.

2. Admissibility

0513/2012: Declared admissible on 12 September 2012.
0548/2012: Declared admissible on 13 September 2012.
0676/2012 & 0677/2012: Declared admissible on 28 September 2012.
0785/2012 & 0788/2012: Declared admissible on 15 October 2012.
0949/2012: Declared admissible on 14 November 2012.
1044/2012: Declared admissible on 5 December 2012.
Information requested from Commission under Rule 202(6).

3. **Commission reply**, received on 18 December 2012

‘The Markets in Financial Instruments Directive 2004/39/E[1]C (MiFID) regulates the provision of investment services by investment firms and credit institutions in relation to financial instruments, including preference shares, subordinated or covered bonds. Article 19 of MiFID contains the conduct of business obligations to be complied with when providing investment services to clients. Article 19(2) of MiFID requires communication from investment firms to clients be fair, clear and not misleading. Article 19 also establishes a general obligation for the financial services provider to perform a suitability test or an appropriateness test to investors when providing investment services. More specifically, the investment firm is obliged to ask for information in order to determine whether the client has the necessary experience and knowledge to understand the risks involved in relation to the product or investment service provided. In the case of a suitability test, the investment objectives and the financial situation of the client should also be taken into consideration before providing investment advice or managing a portfolio. The obligations under Article 19 of MiFID are calibrated to different categories of clients. They are fully applied when retail clients are involved and are adapted in the case of professional clients (in this case, knowledge and experience are presumed).
The Commission is responsible for the monitoring of Member States' correct transposition and application of EU law. However, the exact qualification of the investment service

[1] OJ L 145, 30.4.2004, p. 1–44

provided in an individual case, e.g. whether investment advice or execution of orders, requires the assessment of the specific circumstances of each case and falls under the competence of the national competent authorities and courts. This is also the case in relation to the possible misleading nature of the information provided to investors or to the issue whether the sale by specific credit institutions of preference shares or covered bonds might not comply with the above framework. Moreover, it falls within the scope of national legislation and authorities to decide on the legal consequences of false information being provided or of information being concealed.

Following contacts with the Spanish authorities, it appears that the Spanish competent authority CNVM (Comisión Nacional del Mercado de Valores) had undertaken several initiatives to regulate and supervise the marketing of preference shares, in particular. Regulatory initiatives concerned the information to be produced and provided to clients about characteristics and risk of preference shares, the pricing of the shares as well as the availability of a trading platform for preference shares. The CNMV's supervisory/enforcement initiatives included inspections on a number of banks as well as specific analysis of issuances of preference shares.

Conclusion

It is the primary competence of national authorities and courts to investigate the conduct of individual companies in the light of Union legislation. The European Commission can only intervene in cases of national incorrect transposition or incorrect application of Union law.