



## **The EU directive on unfair terms in consumer contracts may apply to an educational establishment**

*The national court is required to assess of its own motion whether the terms in a contract concluded between an educational establishment and a student and covered by the directive are unfair*

Ms Susan Kuijpers was a student in an educational establishment in Belgium (Karel de Grote-Hogeschool) in the academic years 2012/2013 and 2013/2014. She was not in a position to pay, in a lump sum, the amount of €1,546 which she owed in respect of registration fees and costs connected with a study trip. She therefore concluded, with the educational establishment, a written contract for an interest-free plan for repayment by instalments. In accordance with that contract, the 'assistance for students' department of the educational establishment advanced her the amount that she needed in order to pay her debt, and she was required to pay that department the sum of €200 per month for seven months. The final instalment of the debt (€146) was required to be paid on 25 September 2014. In addition the contract provided for interest of 10% per annum in the event of default (without formal notice) and an indemnity to cover debt collection costs (set at 10% of the outstanding debt, with a minimum of €100). Despite receiving a letter of formal notice, Ms Kuijpers remained in default of her repayments.

In 2015 the educational establishment issued a summons against Ms Kuijpers before the Vredegerecht te Antwerpen (Magistrates' Court, Antwerp, Belgium) seeking to obtain the principal sum of €1 546 together with default interest of 10% from 25 February 2014 (€269.81). Ms Kuijpers did not appear and was not represented before that court.

Against that background, the Belgian court decided to refer a question to the Court of Justice. It wonders first whether, in the context of a default procedure, the court may examine of its own motion the question of whether the contract falls within the scope of the EU directive on unfair terms in consumer contracts.<sup>1</sup> Next, it wonders whether an educational establishment financed mainly by state funds must be regarded as a 'seller or supplier' within the meaning of the directive, when it grants a repayment plan to a student.

In today's judgment, the Court first of all recalls its case-law according to which **a national court is obliged to assess of its own motion whether a contractual term is unfair**. That obligation includes the obligation for the national court to examine whether the contract containing the term falls within the scope of the EU directive.

As regards, next, the notion of 'seller or supplier', the Court notes that the EU legislature intended a broad definition to be given to that notion. It is a functional concept, requiring determination of whether the contractual relationship is amongst the activities that a person provides in the course of their trade, business or profession.

In addition the Court notes that it seems that the case does not directly concern the task of the educational establishment in question. On the contrary, the case concerns a service provided by that establishment, which is complementary and ancillary to its educational activity, consisting in

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<sup>1</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29)

offering, through a contract, an interest-free, instalment repayment plan in respect of sums due to it by a student. Such a supply is, by its nature, an agreement to provide payment facilities for an existing debt, and is, fundamentally a contract for credit. Therefore, subject to verification by the national court on that point, the Court considers that, **by providing such a service which is complementary and ancillary to its educational activity, the educational establishment acts as a 'seller or supplier' within the meaning of the directive.**

The Court notes that that interpretation is corroborated by the protective purpose of that directive. In the context of a contract, there is, in principle, an inequality between the educational establishment and the student, owing to the asymmetry of information and expertise between those parties.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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