



Press and Information

Court of Justice of the European Union
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Judgment in Case C-243/20
Trapeza Peiraios

The Court clarifies the extent of protection afforded to consumers under a loan contract repayable in a foreign currency

The Directive on unfair terms in consumer contracts does not preclude the adoption of national provisions ensuring a higher level of consumer protection for certain terms not falling within its scope

In 2004, two consumers concluded a mortgage contract with the Greek bank Trapeza Peiraios, which was initially denominated in euros. In 2007, the parties signed two amendments to that contract, replacing the currency in which it was denominated for Swiss francs (CHF).

On 17 September 2018, those consumers brought an action before the Polymeles Protodikeio Athinon (Court of First Instance, Athens, Greece) seeking a declaration that the terms of that contract, under which repayment of the loan was to be made either in CHF or in the equivalent amount in euros according to the exchange rate applicable on the monthly repayment date or of the entire outstanding balance in the event of termination of the loan contract, were unfair.

The Directive on unfair terms in consumer contracts¹ is applicable, in principle, to all contractual terms which have not been individually negotiated. However, that directive does not apply if a contractual term reflects mandatory statutory or regulatory provisions.

The Polymeles Protodikeio Athinon (Court of First Instance, Athens, Greece) observed, first, that the Greek law² transposing that directive into domestic law did not expressly include that exception and, second, that the terms at issue reflect the content of a supplementary legislative provision.³ In that regard, it stated that Greek case-law is divided on the question of whether the abovementioned exception can be considered to have been transposed, which would preclude the court from examining whether a term in a loan contract is unfair where that term merely reflects a supplementary legal provision.

It was in those circumstances that the Polymeles Protodikeio Athinon referred the matter to the Court of Justice for a preliminary ruling.

In today's judgment, the Court points out first that the exclusion of terms reflecting mandatory provisions of national law, as provided for by the directive concerned, is justified by the fact that it is, in principle, legitimate to presume that the national legislature has struck a balance between all the rights and obligations of the parties to certain contracts. The Court states that that exclusion covers not only the provisions of national law which apply between the parties irrespective of their choice, but also those which apply by default, that is to say, where there is no other arrangement between the parties.

Accordingly, the Court holds that **that directive excludes from its scope a contractual term which reflects a supplementary national provision, that is to say, a provision which applies where no other arrangement has been agreed between the contracting parties in that respect, even if the term in question has not been individually negotiated.**

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

² Law 2251/1994.

³ Article 291 of the Astikos Kodikas (Civil Code).

The Court goes on to state that, where the provision defining the scope of that directive is not formally transposed into the legal order of a Member State, **the national courts cannot consider that that provision has been incorporated indirectly through the transposition of other provisions of the directive which do not have the same purpose**, such as those relating to the concept of 'unfair terms' and to the scope of assessment of the unfairness of such terms.

Lastly, the Court points out that the directive concerned has carried out only partial and minimal harmonisation of national laws on unfair terms, leaving it to the Member States to ensure a higher level of protection for consumers than that provided for in the directive. Therefore, Member States may maintain or adopt, in the area covered by that directive, which covers terms likely to be unfair in contracts concluded between sellers or suppliers and consumers, more stringent rules than those laid down by the directive itself, provided that those national rules are intended to ensure a higher level of consumer protection.

However, the Court states that terms which are excluded from the scope of the directive in question because they reflect mandatory provisions of national law do not fall within the field governed by that directive and that, consequently, the provision of the directive which opens up the possibility referred to above does not apply to such terms.

The Court specifies, however, that Member States may apply provisions of the directive to situations which fall outside its scope, provided that that application would be compatible with the objectives pursued by the directive and with the Treaties.

Consequently, it concludes that **the Directive on unfair terms in consumer contracts does not preclude the adoption or retention of provisions of national law the effect of which is to apply the framework of consumer protection to terms which are excluded from the scope of that directive because they reflect mandatory national provisions.**

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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