



24.10.2024

NOTICE TO MEMBERS

Subject: Petition No 0938/2023 by P. T. (German) on unfair commercial practices of debt collection companies and the need for EU-wide rules

1. Summary of petition

According to the petitioner, if a debt collection company has sold valuables on the basis of an ultimately unjustified claim, it only has to pay back the proceeds, but not the actual value. In the petitioner's view, this can cause considerable harm to the people concerned, especially disabled people. The petitioner demands that in future, debt collection companies must verify whether a justified claim exists, that they can be held liable and that they must reimburse the actual value of valuables. This rule should apply throughout the EU.

2. Admissibility

Declared admissible on 20 December 2023. Information requested from Commission under Rule 233(5).

3. Commission reply, received on 24 October 2024

Directives 2008/48/EC¹, 2014/17/EU², and 2021/2167/EU³, as transposed in the Member

¹ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66, ELI: <http://data.europa.eu/eli/dir/2008/48/oj>.)

² Article 28 of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34, ELI: <http://data.europa.eu/eli/dir/2014/17/oj>).

³ Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU (OJ L 438, 8.12.2021, p. 1, ELI: <http://data.europa.eu/eli/dir/2021/2167/oj>).

States, ensure a fair treatment of borrowers and require that the transfer of creditor rights does not change the level of consumer protection. Directives 2008/48/EC and 2014/17/EU, as recently amended by Articles 27 and 28 of Directive 2021/2167/EU, also require adequate policies and procedures from creditors to exercise reasonable forbearance measures before foreclosure proceedings are initiated. Member States may introduce more stringent provisions to protect consumers.

Directive (EU) 2023/2225⁴ repeals Directive 2008/48/EC. Member States are to adopt and publish, by 20 November 2025, the laws, regulations and administrative provisions necessary to comply with this new Directive, and to apply those measures from 20 November 2026. Pursuant to Article 35(1), first-subparagraph, of the Directive, Member States are to require creditors to exercise, where appropriate, reasonable forbearance before enforcement proceedings are initiated. Therefore, before proceeding with an enforcement proceeding the creditor is required to deal proactively with emerging credit risk at an early stage.

Moreover, Directive 2005/29/EC⁵ prohibits unfair commercial practices. According to Article 5(2) of the Directive, a commercial practice is unfair if it is contrary to the requirements of professional diligence, and it materially distorts or is likely to materially distort the economic behaviour of the average consumer whom it reaches or to whom it is addressed. Under Article 11a, consumers harmed by unfair commercial practices must have access to proportionate and effective remedies, including compensation for damages suffered by the consumer. It is for the Member States to determine the conditions for the application and effects of those remedies, taking into account, where appropriate, the gravity and nature of the unfair commercial practice, the damage suffered by the consumer and other relevant circumstances. Furthermore, according to Article 3(9) of the Directive, Member States may, in relation to financial services, impose requirements which are more restrictive or prescriptive than those laid down in the Directive. Therefore, it is for Member States to consider specific rules on financial services in order to protect consumers in areas not already covered by Union law.

Additionally, pursuant to Article 3(1) of Council Directive 93/13/EEC⁶, a contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. It is for the relevant national authorities and courts to determine, according to the circumstances of each case, whether specific terms should be deemed unfair. Under Article 6 of the Directive, a contractual term held to be unfair must be regarded, in principle, as never having existed, so that it cannot have any effect on the consumer.

Therefore, the determination by a court that such a term is unfair must, in principle, have the consequence of restoring the consumer to the legal and factual situation that he or she would

⁴ Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on credit agreements for consumers and repealing Directive 2008/48/EC (OJ L, 2023/2225, 30.10.2023, ELI: <http://data.europa.eu/eli/dir/2023/2225/oj>).

⁵ 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, ELI: <http://data.europa.eu/eli/dir/2005/29/oj>).

⁶ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29, ELI: <http://data.europa.eu/eli/dir/1993/13/oj>).

have been in if that term had not existed. While it is for the Member States, by means of their national legislation, to define the detailed rules under which the unfairness of a contractual clause is established and the actual legal effects of that finding are produced, such a finding must allow the restoration of the legal and factual situation that the consumer would have been in if that unfair term had not existed, by inter alia, creating a right to restitution of advantages wrongly obtained, to the consumer's detriment, by the seller or supplier on the basis of that unfair term.⁷

Conclusion

The supervision of credit servicers' operations and of related transactions, and the application of legal safeguards under national and Union law, falls under the competence of national authorities.

Directive 2005/29/EC and Directive 93/13/EEC protect consumers against unfair commercial practices and against unfair terms in consumer contracts. Union legislation, however, leaves it to the national competent authorities and courts to decide whether a commercial practice or a contract term is unfair.

⁷ CJEU, Case C-520/21 *Bank M. SA*, paragraphs 57- 65.