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Recent developments in European Consumer Law

FRIDAY, 21 SEPTEMBER 2018

CJEU on equivalence as to consumer associations' intervention in individual proceedings (C-448/17)

One of the latest instalments in unfair terms adjudication was delivered yesterday by the Court of Justice in [case C-448/17](#) (EOS KSI Slovensko), concerning a Slovak consumer who had concluded a consumer credit contract.

In this case, the most prominent substantive problem with the contract itself was that it did not mention the APR. Only a mathematical formula was provided, with no further information that would allow the consumer to calculate the applicable rate.

The creditor - a debt recovery company - sought an order for payment, which was granted though a procedure taking place on the basis of documental evidence, without a hearing. Under Slovakian law, this procedure involved not a judge but a civil clerk. Once the order was granted, without any assessment being carried out under unfair terms rules, nor consideration being given to the lack of APR, the consumer had 15 days to file their opposition. This, in turn, required an indication of substantive reasons for opposing enforcement.

Intervention by an interested consumer association was rejected in follow-up proceedings on the basis of the fact that previous action by the consumer was required before other interested parties could intervene - in other words, the association could intervene in a case that was already pending *thanks to the consumer's action*, but not initiate a new case.

A Slovak court took stakes with a number of issues in the scenario above:

First, it asked whether it was open to Slovak law to restrict the possibility for interventions by consumer associations in the way it did, in particular in light of the fact that for claims regulated entirely by "Slovak" (vis à vis "European") law the criteria for considering a case to be pending are looser than in cases where EU consumer law plays a role.

The Court of Justice answered this question by, on the one hand, re-affirming

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that article 7 of the UCTD does not require member states to allow consumer associations to intervene in individual proceedings (para 41 - no problems, thus, on the effectiveness front); on the other hand, the Court recalls, in these cases the member states are anyhow bound by the principles of effectiveness and equivalence. In particular, the latter principle precludes a national legislation which sets different *pendency requirements* for purely "national" cases and cases connected to EU (consumer) law. Thus, **should the national court indeed find the existence of one such difference** here, the stricter pendency rule would be incompatible with EU law (para 40).

Second, the referring court asked the CJEU to test the procedure for granting the order for payment and, subsequently, the enforcement, for compatibility with the Directive. The CJEU recalls its previous case-law to the effect that the absence of unfairness assessment in the order for payment procedure is not per se problematic as long as the consumer is protected by the possibility of (ex officio) unfair terms control at the stage of enforcement. However, insofar as Slovak law requires the debtor to file a motivated objection within 15 days, there is a concrete risk that no assessment will take place since the requirements make it rather difficult for the consumer to take action (para 53). This situation is not in line with the Directive.

Third, concerning the specific contract at stake, the court asked whether the provisions in the credit contract could be considered as transparent in spite of the lack of mention of the APR and interest rate. Mentioning of the APR is required on the basis of the 1987 consumer credit directive - but what impact does a violation of that requirement have on the unfairness assessment? According to the CJEU, the consequence of this omission is that the consumer cannot be considered as liable for having actually accepted the terms of the contract (para 67), with the consequence that, to the ends of unfair terms control, the missing APR can be considered as a decisive factor in assessing whether the interest terms are drafted in plain intelligible language. This finding, of course, will then open the way to a possible finding of unfairness.

Posted by [Candida Leone](#) at 16:26



Labels: [civil procedure](#), [cjeu](#), [consumer associations](#), [effectiveness](#), [equivalence](#), [ex officio](#), [unfair terms](#)

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