

Author: Małgorzata Bednarek

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Abstract:

This article analyses the judgments of the Court of Justice of the EU (CJEU) concerning Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. In total, thirty judgments the CJEU delivered between 2010 and 2019 in the field of consumer loan and borrowing agreements (mainly loans in Swiss francs or loans indexed in this currency) were selected for analysis. In the given period, the Tribunal significantly expanded its case law on unfair terms in consumer contracts. In the article the author analyses the position of the CJEU with respect to the following issues: the durability of a loan agreement, the scope of possible ex officio powers, the scope of an admissible intervention of national courts in the content of a consumer agreement, the conditions for admissibility of replacing unfair contractual clauses with national provisions and the importance of pre-contractual information in the case of credit agreements. The manner in which the CJEU interpreted the concept of the main subject of the contract was examined as well.

In the summary, the author commended the CJEU’s care for the uniformity of case-law and drew attention to the main public-law purpose of the Court’s activity, which is to ensure that the use of unfair contractual clauses in commercial transactions is abandoned. Further, the author noted that the limited knowledge of domestic legal orders constitutes a significant barrier to the efficient communication of the Court of Justice with national courts. This, in turn, imposes increased requirements on the referring courts as regards reliable and loyal cooperation with the Court.