

Case No: 90718
Document No: 1432640
Decision No: 082/24/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 5 June 2024

closing a complaint case concerning indexation of student loans in Iceland
under Act No 21/1992

THE EFTA SURVEILLANCE AUTHORITY

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 31 thereof,

Whereas:

1 Introduction

On 2 May 2023, the EFTA Surveillance Authority (“the Authority”) received a complaint against Iceland. This complaint alleged that the contract terms of a student loan taken in 2006 from the Icelandic Student Loan Fund (then *Lánasjóður íslenskra námsmanna*, now *Menntasjóður Námsmanna*) are unfair and in violation of Directive 93/13/EEC of April 1993 on unfair terms in consumer contracts (“Directive 93/13/EEC” or “the Directive”),¹ in particular due to the indexation of the loan with the Consumer Price Index. As the loan contract at issue was signed when Act No 21/1992 on the Student Loans Fund² was in force in Iceland, those terms and conditions will be assessed by the Authority, where relevant, with reference to the legal situation set out by that Act at the time.³

On 12 June 2023 (Doc No 1385003), the complainant submitted more detailed information related to the complaint.

2 Assessment

Directive 93/13/EEC provides for harmonised secondary EEA legislation with regard to the terms used in consumer contracts, laying down general principles for the assessment of whether a particular contractual term is unfair. To this effect, the Directive applies to “*unfair terms in contracts concluded between a seller or a supplier and a consumer*”, in accordance with its Article 1(1). The Directive is intended to cover a broad range of contracts. In accordance with judiciary interpretation of Article 2(c), which defines the notion of “*seller or supplier*”, the Directive can therefore, in principle, cover contracts for loans granted by

¹ Incorporated into the EEA Agreement by Joint Committee Decision No 7/94 of 21 March 1994 in point 7a of Chapter XIX (OJ L 95, 21.4.1993, p. 29).

² Lög nr. 21/1992 um Lánasjóð íslenskra námsmanna.

³ On 16 June 2020, a new Act No 60/2020 on the Icelandic Student Fund (Lög um Menntasjóð Námsmanna) went into force in Iceland, repealing Act 21/1992.

public entities operating in the public interest, such as the contract at issue in the complaint.⁴

Article 1(2) of Directive 93/13/EEC provides, however, that contractual terms which reflect mandatory statutory or regulatory provisions fall outside the scope of that Directive.⁵ The student loan bond⁶ issued by the Student Loans Fund containing an indexation clause, submitted to the Authority with the complaint, was signed when Act No 21/1992 on the Student Loans Fund⁷ was in force in Iceland. Article 7 of that Act provides that all student loans from the fund shall be indexed.⁸ To the Authority, it therefore appears that, even though contracts for loans granted by public entities operating in the public interest as such can fall within the scope of the Directive, a contractual term in a student loan bond issued by the Icelandic Student Loans Fund under Act No 21/1992 stating that the loan shall be indexed, reflects a mandatory statutory provision and therefore falls outside the scope of Directive 93/13/EEC.

For the sake of completeness, the Authority takes note of the judgment of the EFTA Court in Case E-25/13 concerning the interpretation of Directive 93/13/EEC.⁹ There, the Court stated that it follows from Article 3(3) of the Directive read together with point 2(d) of the Annex to the Directive that price indexation clauses should not in and of itself be considered unfair, provided that it is lawful, that the method by which prices vary is explicitly described. The Authority notes that price-indexation of the loan in question is prescribed by law and calculated in accordance with that law.¹⁰

In light of all the above, it appears to the Authority that indexation of the student loan in question granted by the Icelandic Student Loan Fund under Act No 21/1992 falls outside the scope of Directive 93/13/EEC.

By letter of 30 November 2023 (Doc No 1385382), the Internal Market Affairs Directorate informed the complainant of its intention to propose to the Authority that the case be closed. The complainant was invited to submit any observations on the Internal Market Affairs Directorate's assessment of the complaint or present any new information by 30 January 2024.

The complainant did not reply to that letter.

There are, therefore, no grounds for pursuing this case further.

HAS ADOPTED THIS DECISION:

⁴ See e.g. Judgment of the Court of Justice of the European Union of 17 May 2018, Case C-147/16 *Karel de Grote*, paragraphs 49-51.

⁵ Recital 13 of the Directive states that whereas "[...] *the statutory or regulatory provisions of the Member States which directly or indirectly determine the terms of consumer contracts are presumed not to contain unfair terms.*"

⁶ *Skuldabréf vegna námsláns.*

⁷ Lög nr. 21/1992 um Lánasjóð íslenskra námsmanna.

⁸ According to Article 16 of Act No 60/2020 on the Icelandic Student Loan Fund, student loans shall be indexed during the education, although they can be changed to unindexed loans following the end of the studies upon the student's request.

⁹ Judgment of the EFTA Court of 28 August 2014, E-25/13 *Gunnar V. Engilbertsson v Íslandsbanki hf.*, [2014] EFTA Ct. Rep. 524, paragraph 97.

¹⁰ See e.g. Act No 38/2001 on interests and indexation.

The complaint case against Iceland concerning the indexation of student loans, is hereby closed.

For the EFTA Surveillance Authority

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President

Stefan Barriga
Responsible College Member

Árni Páll Árnason
College Member

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Countersigning as Director,
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This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.