

## **Cancellation of insurance policy on the grounds of unfair business-to-consumer commercial practice (Directive 05/29)**



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The CJEU in case number C-208/21 (preliminary ruling of 02.02.2023), ruled that the consumer is entitled to request the annulment of a contract in accordance with the provision of Directive 05/29 on unfair business-to-consumer commercial practices. In the abovementioned case, a bank concluded a group life insurance policy linked to investment variable capital (unit-linked insurance) with an insurer, in which the bank had the capacity of the policyholder, and its borrowers that of insured persons. The bank simultaneously acted as an insurance intermediary, for commission, on behalf of the insurer, providing, among others, information to its borrowers on the terms of the insurance policy. A borrower – insured brought an action before the Polish courts requesting the annulment of her accession to the above group insurance policy, as well as the refund of the premiums paid up to that time, arguing that the terms of the policy were neither made clear by the bank prior to her accession, nor were they formulated in such a way as to be understood by an average consumer; thus, the borrower invoked that the above constitute an unfair business-to-consumer commercial practice under Directive 05/29.

The competent Polish court requested a preliminary ruling as to whether, based on article 3(2) of the said Directive, the consumer contract in question, which was concluded by means of unfair commercial practices, could be cancelled.

In response to the above, the CJEU stipulated that the drafting of a standard unit-linked group insurance policy by an insurer constitutes a commercial practice under Directive 05/29, as the insurer is a trader within the meaning of the said Directive, even when the commercial practice is carried out by a third party in the name and on behalf of the insurer (in this case, by the bank). When the insurer draws up a standardized insurance policy (in

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this case, a group unit-linked policy) in an ambiguous and inaccurate manner, incomprehensible to the average consumer acceding to the contract, while omitting essential information, and thereby, leading the consumer to conclude the contract, the insurer engages in misleading practices within the meaning of Article 7(1) of the above Directive, which are therefore unfair under Article 5(4).

Finally, the CJEU held that if a consumer is led to the conclusion of a contract through an unfair commercial practice, he/she is entitled to request the annulment of such contract, on the basis of Article 3(2) in conjunction with Article 13 of the said Directive. Of particular interest is that while the bank entered into an insurance policy with the insurer, it was the insured (borrower) who requested its cancellation.