

Commission of the European Communities
(Attn: Secretary-General)
Rue de la Loi 200,
B-1049 Brussels
BELGIUM

3rd November 2011

Dear Sirs,

Complaint about the non-Compliance of Cyprus with EU law

EU Unfair Commercial Practices Directive (UCPD) - 2005/29/EC was transposed into Cypriot law on the 12th of December 2007, under law 103 (I) of 2007. However, our complaint is that the Government of Cyprus has not complied with its obligations under this Directive in several ways, as described in the Annex to this letter.

Background

The [Cyprus Property Action Group](#) (CPAG) was formed in May 2007, in order to lobby the Government of Cyprus and property industry to take action to address the many pitfalls of buying property in Cyprus. Around 30,000 EU citizens have bought property in Cyprus but cannot obtain title deeds.

We and the many UK MEPs who wrote to the EU Commission recently, believe that the withholding of deeds by Cypriot developers, often whilst this property is being used as collateral (another unfair practice!) for developer mortgages, is an unfair commercial practice. Furthermore, whilst buyers are caught in this 'title deed trap', they are routinely subject to other unfair and aggressive commercial practices.

Moreover, we plan to demonstrate in this complaint that the Cyprus Government has not only deliberately suppressed knowledge of this important consumer protection law, but now consumers know about it, that in the case of immovable property, the national enforcement authority is turning down valid complaints and therefore is failing to enforce the law.

Finally, we have been in contact with the EU Justice Commission who are investigating Cyprus and the implementation of this Directive and have therefore copied them on this communication. In addition, if you require supporting complaints from these buyers who have already complained to the CCPS please let us know.

Yours sincerely,

Denis O'Hare

Cyprus Property Action Group

ANNEX : Complaint - Unfair Commercial Practices Directive

Part One - Failure to Publicise the Directive

Under Article 17- Information

'Member States shall take appropriate measures to inform consumers of the national law transposing this Directive and shall, where appropriate, encourage traders and code owners to inform consumers of their codes of conduct.'

We at CPAG can state that we have no recollection of any publicity regarding this Directive and its enforcement. This is despite meeting and communicating with the very Ministry responsible for its enforcement and at the time of its transposition into Cyprus law. In addition, we have had Greek Cypriot members and close contact with the Green Party and its Member of Parliament who would have alerted us to the existence of this protection if it had been publicised in the Greek media.

Consumer Protection Campaign

From our research we have discovered that this is a [press release](#) that was used by Cyprus and the EU, regarding EU consumer protection at the time of the transposition of the UCPD.

To quote from this press release during the visit of the EU Commissioner for Consumers:

'The campaign promotes the Cyprus Consumer Association 'CCA' as a source for further information and advice to consumers. "Their challenge will be to reach out, to become a point of reference and guidance for many, and a driving force, in consumer protection issues in Cypriot society", Ms Kuneva (EU Commissioner) said.'

'On behalf of CCA, Egli Hadjipaschali declared that "This campaign provides the Cyprus Consumer Association a great opportunity to familiarise consumers with their rights and encourage them to exercise these.' The CCA website was quoted as a source of information.

'Mrs Kuneva also referred to another objective of the campaign: "We want to involve the Cypriot business community. Companies – large and small – need to know about consumer rights." Her message to the Cypriot business community was to be "consumer friendly" and to adhere to best practice "beyond legal obligations".'

In summary, it would appear that the Cyprus Consumer Association, funded by EU money as it proudly proclaims on their website, was meant to be the centre for ensuring that consumers were informed about consumer protection and the laws, as per every other country in the EU – see later. This responsibility to consumers was reiterated by the CCA representative in this

press release on the headed notepaper of the EU Commission Head of Representation in Cyprus.

However, even today the Cyprus Consumer Association website makes no mention of the law in the [Greek](#) or the [English](#) version, nor does the English version of the Cyprus Ministry of Commerce [website](#).

The [head](#) of the Cyprus Consumers Association recently told the Cyprus Mail newspaper that he had not heard of the law!

NB : It is also the case that Directive 93/13/EEC (Unfair Terms in Consumer Contracts) is not mentioned on the Cyprus Consumers Association website. So it would appear that the Government are certainly not complying with Article 7 of that Directive either:

Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.

The enforcement agency for these EU Directives, the Cyprus Consumer Protection Service, is also not mentioned on the Consumer Association website therefore consumers seeking assistance on these matters have been denied knowledge of this important consumer protection law and the designated appeal channel.

This evidence would appear to show that this has been a deliberate ploy, when the current head of the Consumer Association, the body cited as the source of information, says he has never even heard of the law!

Communications with Government

In December 2007, (please note that the above Directive and also the Misleading Advertising Directive were both transposed on the 12th of December 2007), representatives of our organisation met at the HQ of the Cyprus Green Party with the Director of the European Consumer Centre for Cyprus (ECC) and her colleague.

We had been informed by the General Secretary of the Green Party and Cypriot MP, George Perdikis, that this organisation could help us with preventing some of the misleading literature and practices used by the Cyprus property industry to dishonestly ensnare unwitting buyers into risk-laden property purchases in Cyprus. Mr Perdikis has been very helpful indeed throughout and would have told us about the Unfair Commercial Practices Directive law and the Cyprus Consumer Protection Service if he had knowledge of it.

Moreover, as a Member of Parliament (and lawmaker) he would normally have voted on the transposition of such an important consumer protection law if it had been put before the Cypriot Parliament.

At the meeting, we explained the various misleading and dishonest advertising practices to the ECC Director using the section from the much larger dossier we had sent to the Cyprus

Government via the then Finance Minister, Michael Sarris. This was after he had commissioned it following a previous meeting with us on the property industry and the risk to the Cyprus economy if the matter was not addressed.

Sadly, our predictions have turned out to be true as the Government appear to have little control over the vested interest – developers, banks and lawyers – moreover we are of the view that the suppression of knowledge of the Directive has been carried out to protect these factions, as will become all too clear later in this complaint.

Returning to the meeting, the ECC personnel were most sympathetic and asked us to write to the Permanent Secretary, Competition and Consumer Protection Service, Ministry of Commerce, Industry and Tourism in order that the matter could be addressed (attachment A 1-4).

We discovered years later that this body has from the outset been designated as the Competent Authority responsible for the enforcement of the subject Directive.

Our letter to the Permanent Secretary is attached and you will note that we copied the Ministers of Finance and the Interior plus the British High Commission (which publicly endorses our activities).

Although we wrote to the Permanent Secretary we received a reply from the Legal Adviser ECC Cyprus dated 27th December 2007 (attachment B), in which she states *'I am directed to refer to your letter of 6th December, 2007 forwarded to the Competition and Consumer Protection Service of the Ministry of Commerce, Industry and Tourism in relation to the above matter and inform you that unfortunately the European Consumer Centre of Cyprus does **not investigate complaints that involve the purchase of immovable property**, as such cases are usually quite complicated and involve a high amount of money.'*

It should be noted the UCPD itself states *'For this reason, in the field of financial services and **immovable property**, this Directive is without prejudice to the right of Member States to go beyond its provisions to protect economic interests of consumers.'*

It is clear to us from this reply that the legal adviser was deliberately instructed to construct a response to prevent us from acquiring any knowledge of this consumer protection legislation or channels of appeal which had at that date just been introduced as a result of EU legislation. What other observation could there be?

EU Ombudsman

As the ECC Cyprus receives EU funding we complained to the EU Ombudsman in a letter dated 10th October 2008 (attachment C), which is attached and headed Consumer Protection. This complaint was assigned registration number 2817/2008/STM by the EU Ombudsman.

In a letter dated 10th of November (attachment D), the EU Ombudsman reports that he has decided that the Cypriot Ombudsman should be the party to investigate our complaint and asks if we wish our complaint to be transferred. Ending his note by stating 'Please note that

the Cypriot Ombudsman will decide whether they are competent to act and will contact you directly.'

We reluctantly agreed and the EU Ombudsman confirmed on the 11th February 2009, that he had transferred the complaint again stating that 'the Cypriot Ombudsman will contact you directly'. However, from our previous experience of the Cypriot Ombudsman we had no faith whatsoever that we would be contacted or the complaint would be investigated and this has turned out to be the case. Please note that we have written to the Cypriot Ombudsman on several occasions previously on other matters and have not even received the courtesy of a reply.

In February 2011, we wrote to the EU Ombudsman about several matters including this complaint stating 'We can inform you that to date no such contact has been made. ***Therefore, it would also appear that no investigation into the matter has been made and that your request to the Cyprus Ombudsman has been ignored, deliberately or otherwise***'

We received a response to our letter which was dated 4th March from the EU Ombudsman, however this matter was not even mentioned. At no stage during any of the above communications were we alerted to the Unfair Commercial Practices Directive law or the Cyprus enforcement agency.

EU Commission

The EU in its best intentions to provide improved consumer protection has developed various websites aimed at educating consumers about EU legislation and appeals channels, however unless consumers are made aware of these helpful websites then they cannot use the legislation which has been designed to help them.

Clearly, therefore the emphasis on the dissemination of this type of information has to be focussed on the individual EU member states. Furthermore, from what we can see the EU seems to have designed a strategy and plan for this by ensuring the provision of (and funding) of the Consumer Associations and ECC's in each member state, which in the case of Cyprus it would appear has deliberately not been used for the UCPD.

For instance to quote from the EU [Consumer Policy Strategy](#) 2007 – 2013 document :

'The European Consumer Centres Network (ECC-Net) aims to promote consumer confidence by advising citizens on their rights as consumers and providing easy access to redress in cross border cases. The Commission will continue to co-finance and manage this network with Member States and establish centres in each Member State.'

As an another example, there is an 'Is it Fair' website covering the [UCPD](#) and on this site there are links to both the ECC -Net and national consumer associations under 'Step 1 – Seek Advice' and also 'Step 2 – File a Complaint' with added advice to 'click on the flag of your country' when you reach the [next page](#) which contains the flags of each one of the member states.

Clicking on each and every country flag will get you to extremely useful information about how the EU Directives are enforced in that country and the roles and responsibilities of the government organisations in respect of these Directives suffixed 'web_country_profile.pdf'

Only when you click on the flag of Cyprus do you not get this!

Instead, you are directed to a page http://ec.europa.eu/consumers/strategy/index_en.htm - and at this stage consumers will be denied access to the relevant information on the legislation and enforcement of EU Directives in Cyprus through this 'arrangement'.

This begs the question, *is this deliberate?* Bearing in mind the lack of information in Cyprus on the websites which are supposed to assist consumers the answer would have to be that this is part of the deliberate and coordinated withholding of information on the UCPD by the Government of Cyprus.

Please note, there should be an IT system record at the Commission to prove how long this website situation has existed and possibly the individuals responsible. We can tell you that we have monitored this for a while so it is not new.

Update : This link was corrected in early May 2012, we asked the EU Justice Commission who had initiated this, unfortunately we have not been able to obtain this information from the EU.

Summary

It is our contention that the Cyprus Government deliberately failed to properly publicise this law, and the protection it gives consumers, in order to protect the property industry which up to now has been based on the deception of buyers by estate agents, developers, banks and buyers' own lawyers, regarding the withholding of material facts. Meaning that should this law be properly communicated to consumers (and the industry) and if it was to be properly enforced, the dishonest and unethical industry could not function as it does - and moreover, has to, in order to survive.

Since the law was transposed CPAG have had meetings with ministers, including the Commerce Minister (enforcement agency) and this law and its provisions were never even mentioned.

None of the small number of Cypriot law firms which assist CPAG had even heard of the law or enforcement agency when it was first mentioned to them six months ago.

In summary, due to the non-compliance of the Government to publicise this protection for consumers under 2005/29/EC property buyers have been ***denied access to its provisions***

'Justice delayed is Justice denied'!

Part Two - Failure to Enforce the Directive

Since we discovered the existence of this law in Cyprus and the enforcement agency, the Cyprus Consumer Protection Service, starting in May 2011, some of our supporters have complained using templates we have published on our website. They also [wrote](#) to the EU Justice Commissioner.

These property buyer complainants have basically been in two groups:

a) [Buyers](#) who are still awaiting title deeds, often for 10 or even 20 years.

These buyers, who are routinely defrauded and financially exploited under threat of their title deeds not being transferred, stand to lose their homes if their developer becomes bankrupt (which is happening more and more) should they not be able to pay off the developer's debt, taxes and the Official Receiver's inflated fees, plus legal expenses.

We are aware that Cyprus has misleadingly informed the EU Commission that buyers are fully protected as a result of lodging their contracts at the Land Registry – this is completely untrue as many buyers are now finding, due to the above.

They have complained to the CCPS and been turned down on the basis that their sales contracts were signed before the law became effective, even though the complaint contained a reasoned argument as to why the CCPS could not use this excuse.

Effectively, these grossly unfair commercial practices are happening now, nearly 4 years after the law was transposed. This CCPS response is akin to bringing in a road traffic speed limit and saying that it only applies to vehicles bought after that date!

Moreover, the Government (through the CCPS) has not even taken a single one of these complaints to the Cyprus courts to 'test' the unfairness of these practices.

The Cyprus Consumer Protection Service (CCPS) is designated by the Cyprus Council of Ministers as the Competent Authority responsible for the enforcement of this Directive.

This means that with regards to infringements under this law (103 (I) of 2007, the CCPS is regarded by the Government of Cyprus and the EU Commission as the 'effective remedy before a national authority' - as is defined under Article 13 of the Convention.

Accordingly, we have a control group of 50 complainants who are now taking their cases to the European Court of Human Rights, with over half of these having already been [registered](#) at the ECHR, on the basis that they have exhausted the effective remedy before a national authority.

Furthermore, should CPAG openly publicise this proven ability to access the ECHR, at no cost to the complainant, we would imagine that many of the 30,000 buyers in Cyprus without title deeds would follow suit.

b) [Buyers](#) who have bought since the law was transposed.

Just a small number have complained to the CCPS that they were not given the material facts about developer mortgages encumbering their properties by the developer, or by the bank which gave them their own mortgage to buy the property, or indeed their lawyer who was supposed to protect their interests.

We are not aware of a single developer (or bank) website, or related publication, which mentions the possible presence (or risk) of developer mortgages, so most prospective buyers are easily deceived, especially as many of the lawyers who act for buyers are part of the coordinated industry deception. In addition, even if they were aware of the risk of developer mortgages buyers themselves could only carry out a [Land Registry search](#) *after* they had signed a sales contract, a copy of which is demanded by the Land Registry before a search can be carried out.

Others have included the fact that they were not told that they were moving into properties which did not have a Certificate of Completion required under law Cap96/Article 10, the absence of which makes occupancy a criminal offence for both the buyer and developer. Moreover, should the developer not have complied with the building permit, under recent legal changes, the buyer could eventually be transferred a title deed which prohibits the sale of the property and effectively makes it worthless.

This small number of these complaints is due to the fact that most buyers in this situation will firstly, not know about these developer practices yet and secondly, not know of the existence of the UCPD law and the CCPS – how could they be with the Government's deliberate suppression of information as described in the earlier part of this complaint?

However, unlike the previous category of complaint the CCPS has not yet delivered a decision on these complainants of this fairly irrefutable breaking of the UCPD law, even though the first complaints were made on the 30th of May 2011. Should buyers not receive a response within a 6 month timeframe they will also be supported by CPAG to take their cases to the ECHR.

Finally, what is clear is that developers, estate agents, banks and buyers' own lawyers will have, unwittingly and habitually, broken this law since its transposition in December 2007, regarding the withholding of material facts, due to their lack of any knowledge of the law.

Since this date, for example developer debt has risen from €2 billion to €6 billion and housing loans have risen from €6.9 billion to a current balance of €12.3 billion.

Accordingly, we have also given the EU Justice Commission the details on how to find the numbers and perpetrators of these infringements using the Cyprus Land Registry and Central Bank systems – should the Cyprus Government be willing to provide these!

Cyprus Property Action Group



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE

Directorate A : Civil justice
Unit A.3 : Consumer and marketing law

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Subject: CHAP(2011)3252, EU-pilot 2632/11/JUST

Dear Mr O'Hare,


Thank you for your letter of 3 November 2011 by which you complain against the alleged lack of action of the Cypriot authorities in relation to the practices of Cypriot developers to withhold title deeds and the subsequent damages suffered by immovable property buyers. This complaint has been registered under the number CHAP(2011) 2632.

I would like to assure you that the European Commission takes this situation very seriously.

Our Unit has recently sent a request for information to the Cypriot authorities via the so-called EU-pilot under the abovementioned file number to investigate the matter. In the letter to the Cypriot authorities, we have requested explanations as to the actions carried out at national level to address the reported practices and ensure an appropriate protection of European consumers.

The Cypriot authorities have until January 2012 to submit a reply. Further action will depend on this reply.

Yours sincerely,



Veronica Manfredi
Head of Unit