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By PwC Deutschland | 21. März 2025

ECJ: Contract with juvenile sports talent for participation in future income as professional athlete may be unfair

An agreement under which a sportsman under the age of majority is obliged to share part of his future income once he becomes a professional athlete may be in breach of the Directive on unfair terms in consumer contracts. The European Court of Justice held, that the national court must assess the unfairness of such a term by considering whether a legal clause to that effect is plain and intelligible as regards the financial consequences of the commitment.

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Background

In a Latvian request for a preliminary ruling the European Court of Justice (ECJ) had to assess the applicability of EU law on consumer protection, in particular Directive 93/13, to a type of sports development and career support services contract with a company established under Latvian law and a consumer initially under the age of majority who was represented by his parents, and who became a professional sportsperson during the course of the contract.The purpose of that contract was to ensure that that young sportsman had a successful professional sporting career in the field of basketball. That contract, concluded for a duration of 15 years, provided for a whole range of services such as, inter alia, training under the supervision of specialists and sports medical services, psychological support and support in the field of marketing, legal services and accountancy. In return, the young sportsman undertook, if he became a professional, to pay the company a fee amounting to 10% of all the net income from sports events, advertising, marketing and media linked to the sport concerned received over the course of that contract. The sportsman indeed later became a professional and thus was obliged under the contract to pay the company the agreed 10% share from his total earnings of more than € 16 million.

Decision

In its judgment, the ECJ, first, confirms that the Directive is indeed applicable to this situation. The Court notes, however, that that directive provides that the assessment of the unfairness of a contractual term which has not been individually negotiated may relate neither to terms relating to the definition of the main subject matter of the contract nor to those relating to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as those terms are in plain, intelligible language.

As regards the question whether the term at issue is drafted in plain, intelligible language, the Court points out that the directive also lays down a **requirement of transparency**. In that context, the consumer must be provided with all the information necessary to enable him or her to assess the financial consequences of the commitment undertaken by him or her, failing which that term cannot be regarded as having been drafted in plain, intelligible language.

The Court adds that such a term, which provides that a young sportsperson undertakes to pay 10% of the income received over the following 15 years does not automatically create a significant imbalance between the parties. The existence of such an imbalance must be assessed in the light of the rules applicable in national law considering all the circumstances attending the conclusion of that contract, as well as all the other terms of that contract or of another contract on which it is dependent.

Furthermore, the fact that the consumer was a minor at the time and the contract was concluded by the minor’s parents on his behalf is not viewed by the ECJ as relevant when assessing whether that term is unfair.

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ECJ judgment of 20 March 2025 **C-365/23** *Arce*. - ECJ **press release No 36/25**.

Schlagwörter

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