



A consumer who has taken out a loan denominated in a foreign currency and who does not know that a term in the loan agreement is unfair cannot be subject to any limitation period for the repayment of sums paid on the basis of that term

The information provided by the lender to the consumer concerning the existence of a foreign exchange risk does not satisfy the requirement of transparency if it is based on the assumption that the exchange rate between the account currency and the payment currency will remain stable throughout the term of the agreement

In 2008 and 2009 consumers concluded with BNP Paribas Personal Finance mortgage loan agreements denominated in Swiss francs (CHF) and repayable in euros to finance the acquisition of immovable property or shares in property companies. Due to the characteristics of those loans, their conclusion entailed a foreign exchange risk linked to the variations in the course of the euro against that of the CHF. Even though the existence of that risk was not mentioned explicitly in the loan agreements, it nevertheless followed indirectly therefrom that that risk was inherent and was borne by the consumer.

Following difficulties faced by the consumers in paying their instalments, legal proceedings were initiated before the tribunal d'instance de Lagny-sur-Marne (District Court, Lagny-sur-Marne, France) and the tribunal de grande instance de Paris (Regional Court, Paris, France), respectively. Those courts are to determine whether the terms of the abovementioned agreements, having exposed the consumers to an uncapped foreign exchange risk, must, in the light of the Directive on unfair terms in consumer contracts,¹ be regarded as unfair and, accordingly, as not binding on the borrowers. In that regard, the District Court, Lagny-sur-Marne, and the Regional Court, Paris, referred to the Court of Justice a series of questions on the interpretation of the directive.

By its judgments delivered today, in the first place, the Court recalls that unfair terms in a consumer contract are not binding on the consumer and must be regarded as never having existed, so as not to have any effects on the consumer's legal and factual situation. Consequently, the Court takes the view that **a claim brought by a consumer in order to obtain a declaration that a term in such a contract is unfair cannot be subject to any limitation period.**

That said, the Court points out that the directive does not preclude national legislation which subjects the action to enforce the restitutory effects of that finding to a limitation period. However, the Court states that **a limitation period for repayment of sums paid on the basis of an unfair term which is likely to have expired even before the consumer becomes aware of the unfair nature of that term cannot be compatible with the directive.**

In the second place, the Court finds that it is for the referring courts to assess whether the terms at issue lay down an essential element characterising the loan agreements at issue and constitute the main subject matter thereof. In such a case, under that directive the unfairness of those terms may be assessed only if the terms were not drafted in plain, intelligible language.

In the third place, the Court notes that **the requirement of transparency is not satisfied by the seller or supplier communicating to the consumer, upon conclusion of the agreement,**

¹ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

information – even a large amount of information – if that information is based on the assumption that the exchange rate between the account currency and the payment currency will remain stable throughout the term of the agreement. That is the case, in particular, where the consumer has not been informed by the seller or supplier of the economic context liable to have an impact on exchange rate variations.

In the fourth place, in the light of the seller or supplier's knowledge of the foreseeable economic context capable of having an impact on exchange rate variations, of that professional's greater means to foresee the foreign exchange risk and of the significant risk relating to foreign exchange variations that the terms at issue place on the consumer, the Court is of the opinion that **those terms may give rise to a significant imbalance in the parties' rights and obligations arising under the loan agreement, to the detriment of the consumer.** In so far as the seller or supplier has failed to comply with the requirement of transparency with regard to the consumer, **those terms seem to place on that consumer a risk which is disproportionate in relation to the services provided and the amount of the loan received,** since the effect of applying those terms is that the consumer must ultimately bear the cost of changes in the exchange rate.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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