



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 55/22

Luxembourg, 31 March 2022

Judgment in Case C-472/20
Lombard Lízing

Loans denominated in foreign currencies: a non-binding opinion of a supreme court, indicating to the lower courts the approach to take in declaring a consumer contract valid where that contract cannot continue to exist as a result of the unfairness of a term relating to the main subject-matter of that contract, is not sufficient to ensure that the persons harmed by that term are fully protected

In the event that the contract is invalid and it is not possible to re-establish the situation existing prior to its conclusion, the national court must restore the contractual balance between the parties without however going beyond what is strictly necessary to that end

In December 2009, an individual concluded a loan agreement for the purchase of a vehicle with the predecessor in law of Lombard Lízing, a Hungarian financial establishment. That agreement was denominated in Swiss francs (CHF), whereas the monthly payments to be made were converted into Hungarian forint (HUF). Thus, the loan was exposed to an exchange rate risk as a result of the fluctuation of the value of HUF by comparison to that of CHF, a risk which, according to the agreement, was to be borne by the borrower.

In proceedings before the Hungarian courts between Lombard Lízing and the borrower, the latter invoked the unfairness of the terms in the loan agreement at issue which placed the exchange rate risk entirely on the borrower, submitting that those terms had not been drafted in a clear and understandable manner. However, under Hungarian law, a loan agreement denominated in a foreign currency containing an unfair term can be declared invalid only if the court doing so also gives effect to the consequences of the invalidity. Those consequences may consist in the declaration of the contract as valid, or as producing effects until the date on which the invalidity decision is delivered.

As regards the abovementioned consequences of the invalidity of the contract, the Advisory Council of the Kúria (Supreme Court, Hungary) delivered a non-binding opinion in June 2019, containing guidelines to be followed by the lower courts. According to that opinion, those courts could, first, declare the contract valid, such that it is regarded as having been denominated in HUF, with an interest rate corresponding to the value of the interest rate in force for the HUF at the date of conclusion of the contract, increased by the margin stipulated in the contract. Secondly, they could declare the contract valid by establishing a maximum exchange rate between the foreign currency concerned and the HUF, while leaving the interest rate associated with that foreign currency, as stipulated in the contract, unchanged.

An appeal was brought before the Fővárosi Törvényszék (Budapest High Court, Hungary), which asks the Court of Justice whether the directive on unfair terms in consumer contracts precludes a national practice consisting in the adoption, by the Advisory Council of the Supreme Court, of a non-binding opinion intended to provide guidance to the lower courts as regards the consequences of the invalidity of such a contract containing an unfair term. In the event that such a practice is not compatible with the directive, the Hungarian court also seeks to ascertain whether, in the circumstances of the present case, the directive allows it to restore the situation which prevailed between the parties before the conclusion of that contract.

By its judgment delivered today, the Court notes that the directive does not, in principle, preclude a Supreme Court of a Member State from adopting binding decisions in relation to the methods of

implementing that directive. Likewise, the Court points out that the directive allows a national court to remove an unfair term by replacing it with a supplementary provision of national law where the invalidity of the unfair term would require the court to annul the contract in its entirety.

However, in the absence of such a supplementary provision of national law, **the existence of a non-binding opinion of a Supreme Court of a Member State**, from which the lower courts to which it is addressed may freely depart, **is not capable of ensuring the effectiveness of the directive** by guaranteeing that persons harmed by an unfair term are fully protected.

In that regard, the Court notes that, where a term of a consumer contract relating to the main subject-matter of that contract must be declared unfair, **the directive does not preclude a national court from restoring the parties to the contract to the situation they would have been in if that contract had not been concluded**. However, **if that is not possible**, it is for that court to ensure that the consumer **is ultimately restored to the situation that he or she would have been in if the unfair term had never existed**.

In that context, the Court specifies that, in the present case, the interests of the consumer could be protected by, inter alia, the reimbursement to the consumer of the amounts unduly paid to the lender on the basis of the term deemed unfair. As regards the possible reclassification, by the national court, of the loan agreement denominated in a foreign currency into a loan agreement denominated in HUF, the Court considers that **the court's powers cannot extend beyond what is strictly necessary to restore the contractual balance between the parties to the contract** and thus to protect the consumer from the particularly unfavourable consequences which could result from the annulment of the loan agreement in question.

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.

Unofficial document for media use, not binding on the Court of Justice.

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

Press contact: Jacques René Zammit ☎ (+352) 4303 3355