



## **Foreign exchange transactions which form part of certain types of foreign currency denominated loans do not constitute an investment service**

*They are not, consequently, subject to the rules of EU law relating to investor protection*

Mr and Mrs Lantos applied for a loan with Banif Plus Bank to finance the purchase of a car. In order to obtain a more favorable interest rate than that offered for loans in Hungarian forints, they chose a foreign currency denominated loan, thereby exposing themselves to the risk of the increase in the value of that currency against the forint during the repayment period.

In an action brought by Banif Plus Bank before the Ráckevei Járásbíróság (District Court, Ráckeve, Hungary), the couple asks that court to hold that foreign currency denominated consumer loans come under the Directive on markets in financial instruments,<sup>1</sup> with the result that the bank, as a credit institution, would, inter alia, have been required to evaluate the suitability or the appropriateness of the service to be provided.

The Ráckevei Járásbíróság asks the Court of Justice whether the grant of a foreign currency denominated loan, such as that at issue in the main proceedings, may be considered to be the supply of an investment service to which the disputed provisions of the directive apply. In addition, the Hungarian court seeks to ascertain whether the failure to comply with those provisions means that the loan agreement is void.

In today's judgment the Court observes, first, that certain EU legal measures designed to protect consumers are capable of being relevant in a case such as the present one. This applies to Directive 93/13<sup>2</sup> which has, moreover, already been the subject of a judgment of the Court<sup>3</sup> in the specific context of foreign currency denominated loans and also Directives 87/102<sup>4</sup> and 2008/48,<sup>5</sup> which contain a range of protective provisions imposing certain obligations on the lender concerning, in particular, consumer information.

Next, the Court notes that foreign exchange transactions carried out in the context of the award of a foreign currency denominated loan, such as that at issue, are purely incidental to making the loan available and to the repayment of the loan. Those transactions simply allow the implementation of those two essential requirements of the loan agreement.

Since the borrower seeks only to secure funds with a view to purchasing goods or a service, and not to manage a foreign exchange risk or to speculate on a currency's exchange rate, **the transactions at issue do not have as their purpose the provision of an investment service.**

<sup>1</sup>Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p.1).

<sup>2</sup>Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29)

<sup>3</sup>Case [C-26/13](#) Kásler and Káslerné Rábai, see also Press Release [66/14](#)

<sup>4</sup>Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1986 L 42, p.48).

<sup>5</sup>Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66, corrigenda OJ 2009 L 207, p.14, OJ 2010 L 199, p.40 and OJ 2011 L 234, p.46).

Moreover, in accordance with the directive, those transactions in themselves do not constitute such services either.

The exchange transactions at issue are, besides, linked to an instrument, the loan agreement, which does not constitute a financial instrument within the meaning of the directive. In that regard, the Court considers that those operations do not relate to a forward contract because they do not have as their purpose the sale of a financial asset at a price fixed at the time of conclusion of the agreement. In the present case, the value of the currencies to be taken into account for the calculation of the repayments is not fixed in advance, but is determined on the basis of the sale price of those currencies on the due date of each monthly instalment.

In those circumstances the Court holds that, subject to verification by the referring court, **foreign exchange transactions which are part of foreign currency denominated loans, such as that at issue, do not constitute an investment service, with the result that the grant of such a loan is not subject to the provisions of the directive relating to the protection of investors.**

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**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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