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## Press and Information

### PRESS RELEASE No 49/05

2 June 2005

Advocate General's Opinion in Case C-229/04

*Crailsheimer Volksbank eG v Klaus Conrads, Frank Schulzke, Petra Schulzke-Lösche and Joachim Nitschke*

### **ACCORDING TO ADVOCATE GENERAL LÉGER THE CONSUMER'S RIGHT OF CANCELLATION IN THE CASE OF DOOR-STEP SELLING BY AN INTERMEDIARY EXISTS EVEN IF THE TRADER WAS UNAWARE OF THAT PRACTICE**

*An investor in immovable property who cancels a credit agreement must repay the loan immediately, but he is not obliged also to pay interest at the market rate where he has not been informed of his right of cancellation.*

Following *Heininger*<sup>1</sup> and *Schulte*<sup>2</sup> this case concerns once more the interpretation of the 'Door-step Selling' Directive<sup>3</sup> in the specific context of investments in immovable property made in Germany by individuals during the 1990s. It should be recalled that that directive aims to protect the consumer in respect of contracts negotiated, for example, during a visit by a trader or an intermediary to the consumer's home, where the consumer has not requested such a visit.

In the *Heininger* case the Court held that the right of cancellation laid down by the directive applies to a secured-credit agreement. A consumer who is not informed of his right of cancellation does not lose that right and the consequences of a cancellation of that agreement for the contract for the purchase of immovable property are governed by national law. In the *Schulte* case Advocate General Léger argued that consumers cannot rely on the directive in order to cancel their contracts for the purchase of immovable property, as such contracts are expressly excluded from the directive.

<sup>1</sup> Case C-481/99 [2001] ECR I-9945; Press Release No 66/01.

<sup>2</sup> Case C-350/03, pending before the Court; see the Opinion of Mr Léger of 28 September 2004, Press Release No 68/04.

<sup>3</sup> Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises, OJ 1985 L 372, p. 31.

The present case concerns the conditions and the consequences of cancellation. A German court (Hanseatisches Oberlandesgericht in Bremen) has three disputes before it.

An independent broker presented himself unannounced at the home of private individuals, explained to them the savings which could be made by purchasing an apartment in a hotel complex near Stuttgart under a tax-saving scheme and then invited them to sign a credit agreement with Crailsheimer Volksbank eG. The broker was the last link in a chain of a number of independent companies and was thus totally unknown to the bank.

As the hotel complex's business soon proved to be loss-making, and a number of companies involved in it were bankrupt, the investors in the immovable property who were relying on the income from the rental of their apartments were no longer able to repay the loan to Crailsheimer Volksbank, which brought proceedings against them. The investors cancelled their credit agreements claiming that the agreements had been concluded in a door-step selling situation. The Hanseatisches Oberlandesgericht found that the outcome of the disputes was conditional on the interpretation of the 'Door-step Selling' directive and referred a number of questions to the Court of Justice of the European Communities.

Advocate General Léger presented his Opinion in that case today.

According to the Advocate General, the right of cancellation laid down by the directive is not based on the premiss that, where a contract has been concluded by the intermediary of a third party, the trader knew or, at least, ought to have known of the third party's conduct. It is the element of surprise inherent in door-step selling and, therefore, the objective situation described in the directive which justifies protecting the consumer by a right of cancellation.

As to the consequences of cancellation, the Advocate General recalls that the directive states that they are governed by national laws which must ensure that the directive is fully effective in accordance with the objective it pursues, namely the protection of consumers.

In that regard, the Advocate General takes the view that in the case of a comprehensive financial transaction, including a secured-credit agreement and a contract for the sale of immovable property, that objective does not preclude the consumer, where the credit agreement is cancelled, from having to repay the loan even where, on his instructions, the loan was paid directly to the vendor of the immovable property. The consumer freely chose to apply the loan to the purchase of the apartment, and the bank merely carried out his instructions on that matter.

Nor does the directive preclude an obligation of immediate repayment, which is a logical consequence of the cancellation of the credit agreement. If that were not the case, the directive would rapidly become a means of unjust enrichment for unscrupulous consumers.

Finally, the directive does not preclude, in principle, an obligation to pay statutory interest where a credit agreement has been cancelled. In order to restore matters to their original position it is logical that the borrower should also reimburse the income that the amount of the loan would have generated if it had remained at the lender's disposal. However, the directive precludes such an obligation in respect of the period during which the bank did not inform the consumer of his right of cancellation, since the delay in cancellation is due exclusively to the bank's negligence.

**IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.**

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

*Languages available: DE, EN, FR, IT*

*The full text of the Opinion may be found on the Court's internet site*

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

*It can usually be consulted after midday (CET) on the day of delivery.*

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