



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 173/18**

Luxembourg, 14 November 2018

Advocate General's Opinion in Case C-630/17  
Anica Milivojević v Raiffeisenbank St. Stefan-Jagerberg-Wolfsberg

**Advocate General Tanchev proposes that the Court should rule that a national law that allows loan contracts concluded with foreign lenders who were not authorised to provide credit services in that country to be retroactively annulled is contrary to EU law when the same law does not apply to Croatian lenders**

*Such a law annulling the contracts retroactively for periods dating back to up to seventeen years when the same rule does not apply to unauthorized lenders established in that country could only be justified by presentation by that Member State of evidence of a pressing problem requiring extreme action*

In 2007, Mrs Anica Milivojević, a Croatian national, concluded with Raiffeisenbank, whose registered office is in Austria, a single-loan contract to the sum of €47 000. The loan was entered into with the help of an intermediary who is resident in Croatia. To guarantee the repayment of the loan, Mrs Milivojević also signed a memorandum of guarantee before a notary on the basis of which a mortgage on her immovable property was registered in the Croatian Land Registry.

In 2015, Mrs Milivojević commenced proceedings against Raiffeisenbank, seeking a declaration of nullity of the single-loan contract and of the other related legal acts.

The Općinski Sud u Rijeci (Municipal Court of Rijeka, Croatia) brought the proceedings to an end in July 2017, but re-opened the case in August 2017 owing to the entry into force of a national law of 14 July 2017 that might be applicable to the main proceedings. At that time the contract had been in force for seven years.

The Government of Croatia declared in an Opinion of 25 May 2017 that the, then, draft Law of 14 July 2017 should be allowed to take effect retroactively, given that the aim of the measure could not be attained in any other way. The law provides for nullity of loan contracts and other legal acts that are based on the loan contracts concluded between a Croatian debtor and a foreign creditor that does not have the prescribed permits or approvals from the competent authorities of Croatia. In accordance with the statement in the Draft Law, the contracts in question are those concluded within the period between 2000 and 2010. After that period Croatia acceded to the EU, enabling foreign credit establishments temporarily to provide financial services, without any permit from the National Bank of Croatia.

The Općinski Sud u Rijeci indicates that it is not apparent from the Opinion of the Government of the Republic of Croatia referred to that there is any protection for the rights of Mrs Milivojević (such as the right of consumers to receive information or the right to be protected against dishonest dealing) in issue that might be recognised in EU law as an exception to the freedom to provide services.

The Općinski Sud u Rijeci states that by virtue of the declaration of nullity of the loan contracts and of the other related legal acts, Raiffeisenbank is henceforth prevented from providing financial services. Therefore it asks the Court of Justice whether this is contrary to the freedom to provide services in the internal market in the EU and, possibly to the free movement of capital.

In today's Opinion, Advocate General Evgeni Tanchev states, first of all, that the argument made by Croatia to the effect that EU law is not applicable to the contract in issue because its date of

conclusion was prior to the date of accession of Croatia to the EU cannot be accepted because the contract has on-going legal effects. Moreover, in Croatia's Treaty of Accession there is no derogation to the established case law of the Court that EU law applies from the date of accession of a new Member State to the future effects of situations arising before that date.

Second, the Advocate General considers that the Law of 14 July 2017 discriminates against lenders established outside of Croatia wishing to provide credit services in that Member State because the law does not apply to unauthorised lenders established in Croatia. The national law's definition of 'unauthorised lender' refers only to moral persons that have their statutory seat situated outside of Croatia.

Furthermore, the Advocate General notes that unauthorised lenders established outside Croatia are treated less favourably than unauthorised lenders inside Croatia due to the absence of retroactivity in the law applicable to nullity of certain contracts entered into by unauthorised lenders established inside Croatia and to the effect that nullity can only apply to consumer credit contracts.

Next, the Advocate General examines whether the national law can be justified on the grounds of public policy, public security or public health, which are relevant to directly discriminatory restrictions on the freedom to provide services.

According to the Advocate General, the reference made by Croatia regarding the protection of public order and of the rights of the large number of the Croatian citizens that concluded such contracts is insufficient to provide justification on these grounds. Moreover, a discriminatory law which provides for the nullity of all credit contracts featuring a foreign element and extending back to contracts entered into up to seventeen years ago (and which remained operative for many years notwithstanding the absence of authorisation by the National Bank of Croatia) could only be justified by presentation of evidence of a pressing problem requiring extreme action.

He concludes that a discriminatory and blanket law of the kind in issue manifestly exceeds the limits of what was required in order to achieve a legitimate goal it might have pursued, when the absence of authorisation had carried on for many years and nullity is to take place from the commencement of the contract. The evidence required to reach a contrary conclusion has not been presented.

The Advocate General adds that measures such as Directive 93/13 on unfair terms in consumer contracts<sup>1</sup> and Directive 2008/48 on credit agreements for consumers<sup>2</sup> afford protection under EU law to consumers of credit services who have been treated unfairly.

The Advocate General therefore concludes that, in the circumstances of these proceedings, **EU law<sup>3</sup> precludes a Member State law which provides for the nullity of loan contracts, and retroactively from their date of conclusion, along with other legal acts that are consequential upon such loan contracts, when they are entered into between a lender established in a Member State other than that of the person for whom the services are intended, although the lender was not in possession of the authorizations required from the competent authorities of that Member State at the time the contract was concluded.**

---

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. 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 are now beginning their deliberations in this case. Judgment will be given at a later date.

**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

---

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

<sup>2</sup> Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers (OJ 2008 L 133, p. 66)

<sup>3</sup> Article 56 of the Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, p. 47–390)

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 Opinion is published on the CURIA website on the day of delivery.

Press contact: ☎ (+352) 4303 3355