



PRESS RELEASE No 99/23

Luxembourg, 15 June 2023

Judgment of the Court in Case C-520/21 | Bank M. (Consequences of the annulment of the contract)

EU law does not preclude, in the event of the annulment of a mortgage loan agreement vitiated by unfair terms, the consumers from seeking compensation from the bank going beyond reimbursement of the monthly instalments paid

By contrast, it precludes the bank from relying on similar claims against consumers

In 2008, a consumer and his wife concluded a mortgage loan agreement with Bank M. The loan was indexed to the Swiss franc (CHF), and the monthly instalments were to be paid in Polish zlotys (PLN) after conversion using the Swiss franc's selling rate in accordance with the table of foreign currency rates applied by Bank M. on the date of payment of each monthly instalment.

Considering the conversion clauses determining the rate of exchange to be unfair and their presence to render that agreement invalid, the consumer brought an action against Bank M. before the Warsaw District Court. He sought payment of a sum of money corresponding to half the profit that Bank M. had made, over a certain period, using the monthly instalment of the loan paid pursuant to the agreement. In support of his action, the consumer argues that Bank M. received those monthly instalments without any legal basis.

The Polish court asks the Court of Justice whether the Directive on unfair terms,¹ and the principles of effectiveness, legal certainty and proportionality allow the parties to a mortgage loan agreement, annulled on the ground that it cannot continue in existence after the removal of the unfair terms, to claim compensation going beyond reimbursement of the amounts paid respectively on the basis of that agreement, together with the payment of default interest at the statutory rate from the date on which notice is served.

In today's judgment, the Court of Justice observes that **the directive does not expressly govern the consequences of the invalidity of a contract concluded between a seller or supplier and a consumer after the removal of the unfair terms.** The determination of such consequences is for the Member States, with the proviso that **the rules laid down must be compatible with EU law** and, in particular, with the objectives pursued by the directive. The Court specifies that such compatibility depends on whether the national rules, first, make it possible to restore, in law and in fact, the situation which the consumer would have been in had the contract declared invalid not existed and, second, do not undermine the deterrent effect sought by the directive.

According to the Court, the possibility for a consumer to rely against the bank on claims going beyond reimbursement of the monthly instalments paid **does not appear to undermine the abovementioned objectives.** In particular, such a possibility may help to deter sellers of suppliers from including unfair terms in contracts concluded with consumers inasmuch as their inclusion, leading to the nullity of those contracts, **could lead to financial consequences exceeding the restitution of the amounts paid by the consumer and, where**

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

appropriate, the payment of default interest. Nevertheless, it is for the national court to examine, in the light of all the facts of the dispute, whether upholding such claims on the part of the consumer is in accordance with the principle of proportionality.

On the other hand, **the directive precludes the bank from being able to claim from the consumer compensation going beyond reimbursement of the capital paid together with the payment of statutory default interest.** The Court takes the view that granting such a right would **contribute to eliminating the deterrent effect on sellers or suppliers.** Moreover, the effectiveness of the protection conferred on consumers by the directive would be undermined if they were, when relying on their rights under that directive, exposed to the risk of having to pay such compensation. That interpretation would **risk creating situations in which it would be more advantageous for the consumer to continue the performance of the contract containing an unfair term rather than exercising his or her rights under that directive.**

The Court points out that, in the present case, any annulment of the mortgage loan agreement is a consequence of Bank M.'s use of unfair terms. Therefore, **it can neither be accepted that the bank derive economic advantages from its unlawful conduct, nor that it be compensated for the disadvantages caused by such conduct.**

In addition, the Court is of the opinion that **the argument relating to the stability of the financial markets is not relevant in the context of the interpretation of the directive, which is intended to protect consumers.** Furthermore, sellers or suppliers may not circumvent the objectives pursued by that directive on the ground of preserving the stability of the financial markets. **Banking institutions are under a duty to organise their activities in a manner which complies with the directive.**

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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