



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-186/16
Ruxandra Paula Andriciuc and Others v Banca Românească SA

According to Advocate General Wahl, a term of a loan agreement that provides for the repayment of the loan in the foreign currency in which the loan was granted does not necessarily constitute an unfair term

The requirement that contractual terms must be drafted in plain intelligible language cannot oblige the seller or supplier to anticipate and inform the consumer of subsequent changes which were not foreseeable, such as exceptional fluctuations in exchange rates

Between April 2007 and October 2008, Ms Ruxandra Paula Andriciuc and 68 other persons concluded loan agreements in Swiss francs (CHF) with the bank Banca Românească SA, with a view to acquiring immovable property, refinancing other credit arrangements or meeting personal needs. The borrowers were obliged to make monthly repayments of the loans in CHF¹.

The exchange rate between CHF and the Romanian leu (RON) more or less doubled between 2007 and 2014. The borrowers are of the view that the bank was in a position to foresee fluctuations in the CHF exchange rate. They therefore brought an action before the Romanian courts, arguing that the terms providing for repayment of the loan in CHF placed the foreign exchange risk on them and thus constitute unfair terms.

EU law² protects consumers when they conclude contracts with a seller or supplier. It provides, in particular, that a term may be regarded as unfair if it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. The unfairness of a contractual term is assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending it and all the other terms of the contract. Assessment of the unfair nature of a term may not relate to the definition of the main subject matter of the contract in so far as that term is drafted in plain intelligible language.

Hearing the case, the Curtea de Apel Oradea (Court of Appeal of Oradea, Romania) asks the Court of Justice three questions concerning the examination of the contractual term in question. Two of those questions seek to determine whether the term at issue may be regarded as relating to the main subject matter of the contract and whether it is drafted 'in plain intelligible language', meaning that its potentially unfair nature could not be examined. Moreover, the Court is asked to provide clarifications regarding the time at which the existence of a 'significant imbalance' between the rights and obligations of the parties is to be assessed.

In today's Opinion, Advocate General Nils Wahl refers, in addition to the wording of the contractual terms at issue, to the factual and legal context in which the loan agreements at issue were concluded. He highlights two decisive aspects. First, he observes that loan agreements in foreign currency are generally subject to a lower rate of interest than those in national currency, in consideration of the 'foreign exchange risk' to which they may give rise in the event of a fall in the value of the national currency. Second, he notes that the bank granted the loans in CHF and that it is entitled to repayment of those loans in the same currency. In the Advocate General's view, the

¹ According to the information available to the Court, loans in CHF appear to have been taken out by more than 50 000 households in Romania.

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

obligation to make the monthly payments in CHF cannot be considered an ancillary element of the contract, but is clearly one of the key features of a loan agreement in a foreign currency.

The Advocate General concludes that the term of a loan agreement under which the borrower must repay the sum in the same currency as that in which it was granted falls within the 'main subject matter of the contract'.

Concerning the second question asked of the Court, the Advocate General explains that the requirement for a contractual term to be drafted in plain intelligible language means that the term at issue must be understood by the consumer both on a formal and grammatical level, and also in terms of its concrete effect. Thus, an average consumer, who is reasonably well informed and reasonably observant and circumspect, would not only be aware of the possibility of a rise or fall in the value of the foreign currency, but would also be able to assess the potentially significant economic consequences of such a term for his financial obligations. **The requirement that contractual terms must be drafted in plain intelligible language cannot go as far as to oblige the seller or supplier to anticipate and inform the consumer of subsequent changes which were not foreseeable, such as the fluctuations in the exchange rates of the currencies at issue in the case, or to bear the consequences of such changes.**

Last, the Advocate General expresses his views on the question of the time at which the existence of a 'significant imbalance' between the rights and obligations of the parties is to be assessed. He states that that question is meaningful only if the Court were to arrive at the conclusion that the term at issue did not fall within the 'main subject matter of the contract' or was not drafted in plain intelligible language. The Advocate General considers that a seller or supplier cannot be held responsible for developments subsequent to the conclusion of the contract which are beyond his control (such as, in particular, variations in the exchange rate). If it were otherwise, not only would disproportionate obligations be imposed on the seller or supplier, but the principle of legal certainty would also be undermined. On that point, the Advocate General concludes that **it is necessary to take into account all the circumstances that the seller or supplier could reasonably have envisaged at the time of conclusion of the contract. Whether that significant imbalance exists, however, is not to be assessed by reference to developments subsequent to the conclusion of the contract which are outside the seller or supplier's control and which he could not have anticipated (such as variations in the exchange rate).**

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

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