



When a financial institution grants a loan denominated in a foreign currency, it must provide the borrower with sufficient information to enable him to take a prudent and well-informed decision.

Therefore, the seller or supplier must communicate all relevant information to the consumer concerned to enable him to evaluate the economic consequences of a clause on his financial obligations

In 2007 and 2008, Ms Ruxandra Paula Andriciuc and other persons who received their income in Romanian lei (RON) took out loans denominated in Swiss francs (CHF) with the Romanian bank Banca Românească in order to purchase immovable property, finance other loans, or meet their personal needs.

According to the loan agreements concluded between the parties, the borrowers were obliged to make the monthly loan repayments in CHF and they accepted to bear the risk related to possible fluctuations in the exchange rate between the RON and the CHF.

Subsequently, the exchange rate concerned changed considerably to the detriment of the borrowers. They brought actions before the Romanian courts seeking declarations that the term according to which the loan must be repaid in CHF, regardless of the potential losses that those borrowers might sustain on account of the exchange rate risk, is an unfair term which is not binding on them in accordance with the provisions of an EU directive. The borrowers argue, in particular, that at the time of conclusion of the contract the bank presented its product in a biased manner, only pointing out the benefits to the borrowers without highlighting the potential risks and the likelihood of those risks occurring. According to the borrowers, in the light of the bank's practice, the disputed term must be regarded as being unfair.

Against that background, the Curtea de Appel Oradea (Court of Appeal, Oradea, Romania) asks the Court of Justice about the extent of the obligation on banks to inform clients of exchange rate risks related to loans denominated in foreign currencies.

In today's judgment, the Court declares that the disputed term is part of the main subject-matter of the loan agreement, so that its unfairness may be examined in the light of the Directive only if it was not drafted in plain intelligible language. The obligation to repay a loan in a certain currency constitutes an essential element of the loan agreement, since it relates not to an ancillary repayment arrangement, but to very nature of the debtor's obligation.

In that connection, the Court recalls that the requirement that a contractual term must be drafted in plain intelligible language also requires the contract to set out in a transparent manner the specific functioning of the mechanism to which the relevant term relates. Where appropriate, the contract must also explain the relationship between that mechanism and that provided for by other contractual terms relating to the advance of the loan, **so that that consumer is in a position to evaluate, on the basis of clear, intelligible criteria, the economic consequences for him which derive from it.** That question must be examined by the Romanian court in the light of all the relevant facts, **including the advertising and information provided by the lender** in the course of the negotiations of a loan agreement.

More specifically, it is for the national court to ascertain whether **all the information likely to have a bearing on the extent of his commitment have been communicated the consumer, enabling him to estimate in particular the total cost of his loan.**

In that context, the Court states that **financial institutions must provide borrowers with adequate information to enable borrowers to take well-informed and prudent decisions. Thus, that information should inform consumers not only as to the possibility of a rise or fall in the value of the foreign currency in which the loan was taken out, but also the impact on repayments of fluctuations of the interest rate and a rise in the interest rate in the currency of the loan.**

Therefore, first, the borrower must be clearly informed of that fact that, by concluding a loan agreement denominated in a foreign currency he is exposing himself to a certain foreign exchange risk which will, potentially, be difficult to bear in the event of a fall in the value of the currency in which he receives his income. Second, **the financial institution must explain** the possible variations in the exchange rate and **the risks inherent in taking out a loan in a foreign currency**, particularly where the consumer borrower does not receive his income in that currency.

Finally, the Court observes that if the bank has not fulfilled those obligations and, therefore, the unfairness of the disputed term may be examined, the national court must determine, the possibility that the bank has failed to observed the requirement of good faith and, second, the existence of a significant imbalance between the parties to the contract. That assessment must be made by reference to the time of conclusion of the contract concerned, taking account of the expertise and knowledge of the bank, in the present case the bank, as far as concerns the possible variations in the rate of exchange and the inherent risks in contracting a loan in a foreign currency. In that connection, the Court states that a contractual term may give rise to an imbalance between the parties which only manifests itself during the performance of the contract.

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.

Press contact: Holly Gallagher 📞 (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" 📞 (+32) 2 2964106