



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 144/21**  
Luxembourg, 2 September 2021

Judgment in Case C-932/19  
OTP Jelzálogbank and Others

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**Hungarian legislation which prohibits the annulment of a loan agreement denominated in a foreign currency on the ground that it contains an unfair term relating to the exchange difference appears to be compatible with EU law**

*This is the case if that legislation makes it possible to re-establish the legal and factual situation which would have existed for the consumer in the absence of the unfair term, even if the annulment of the agreement would be more advantageous for the consumer*

In 2007, a consumer concluded loan agreements denominated in a foreign currency with Hungarian banks belonging to the OTP Group. In the context of disputes relating to those agreements, the consumer claimed that the agreements were void, pleading the unfairness of the terms stipulating that the exchange rate applicable at the time of the release of the loaned funds, which corresponded to the buying rate of the currency in question against the Hungarian forint (HUF), was different from the exchange rate applicable at the time of the repayment of the loaned funds, which reflected the selling rate of the currency in question.

Hearing the case on appeal, the Győri Ítéltábla (Győr Regional Court of Appeal, Hungary) noted that the Hungarian legislature has replaced unfair terms such as those referred to above with a national provision referring to the official exchange rate fixed by the National Bank of Hungary for the currency in question, both as regards disbursement and repayment. Moreover, it stated that Hungarian law does not allow it to declare the abovementioned agreements void on the basis of the invalidity of the unfair terms in question, even though such a solution would be more favourable to the consumer, who would not be affected by the materialisation of the exchange rate risk inherent in the loans in question.

Since it had doubts as to whether the solution adopted by the Hungarian legislature to eliminate unfair terms relating to exchange difference from loan agreements denominated in a foreign currency was compatible with the Unfair Contract Terms Directive,<sup>1</sup> the Győri Ítéltábla referred a question to the Court of Justice on that point.

In today's judgment, the Court observes that the solution adopted by the Hungarian legislature corresponds to the objective pursued by that directive, which is to restore the balance between the parties while maintaining the validity of the agreement as a whole, instead of annulling all agreements containing unfair terms affecting their performance, such as those relating to the exchange difference. Moreover, that directive does not preclude national legislation which prevents the court seised of the case from granting an application for the cancellation of a loan agreement on the basis of the unfair nature of a term relating to the exchange difference, provided that it is guaranteed that the clause is not binding on the consumer. Thus, a finding that such a term is unfair must make it possible to restore the legal and factual situation that would have existed for the consumer in the absence of the term, in particular by giving rise to a right to restitution of advantages wrongly obtained to the consumer's detriment by the seller or supplier on the basis of the unfair term.

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

In that context, the Court emphasises that **it is for the Hungarian court to determine whether the legislation applicable to the dispute in the main proceedings does in fact make it possible to restore the legal and factual situation of the consumer.**

As regards the question whether the national court may, or even must, grant the request of the consumer concerned that the loan agreement in question be annulled in its entirety, rather than annulling only the clause relating to the exchange difference and replacing it with a national provision, the Court answers in the negative. **The Unfair Contract Terms Directive does not allow the court hearing the case to base its decision solely on a possible advantage for the consumer of the annulment of the agreement at issue as a whole.** It is in principle in the light of the criteria laid down in national law that it is necessary to examine, in a specific situation, the possibility of upholding an agreement some terms of which have been declared invalid.

Thus, in accordance with the criterion of objectivity laid down by the Court in its relevant case-law, **the situation of one of the parties to the agreement cannot be regarded, under national law, as the decisive criterion governing the fate of the agreement.** Consequently, **the wishes expressed by the consumer concerned cannot prevail in the national court's assessment of the question whether the Hungarian legislation makes it possible to re-establish the legal and factual situation of the consumer.**

In those circumstances, the Court notes that, in so far as the Hungarian legislation makes it possible to re-establish that situation, **it must be regarded as being compatible with the Unfair Contract Terms Directive.**

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**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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