



## PRESS RELEASE No 40/26

Luxembourg, 19 March 2026

Judgment of the Court in Case C-679/24 | UniCredit Bank and Momentum Credit

### **Loans denominated in foreign currency: the Court of Justice clarifies the limitation rules for an action for restitution of sums paid on the basis of an unfair term**

In February 2008, a private individual, HL, concluded with UniCredit Bank, a Hungarian financial establishment, a mortgage loan agreement denominated in Swiss francs (CHF), to be repaid in Hungarian forint (HUF) over a period of 360 months (30 years). That agreement contained a term which placed the risk associated with an appreciation of the foreign currency against HUF entirely on the consumer. In 2012, the bank terminated the loan agreement on the basis of late payment and brought enforcement proceedings against HL.

HL, before the national courts, sought to obtain a finding of the invalidity of the loan agreement, on account of the insufficient nature of the information provided concerning the exchange rate risk. As regards the necessary legal consequences of that finding, he requested that the legal effects of that agreement be maintained, with the exception of the term relating to the exchange rate risk deemed not to have been agreed. The court of first instance dismissed the action on the ground that it was time-barred with respect to HL's request that the court determine the legal consequences of the finding of the invalidity of the agreement. HL brought an appeal before the Budapest High Court, relying on the interpretation given by the Court of Justice<sup>1</sup> to the Directive on unfair terms in consumer contracts:<sup>2</sup> for repayment of sums paid but not due on the basis of an unfair term, no limitation period may be relied upon against a consumer who is unaware of the unfairness of such a clause in a loan agreement.

Since it harboured doubts as to the method of calculating the limitation period of five years provided for by the national legislation in respect of an action by which the consumer requests the court to determine the legal consequences of the invalidity of the loan agreement, the Budapest High Court referred questions to the Court concerning the interpretation of that directive.

**As regards the starting point of the limitation period, the Court finds that EU law precludes** a judicial interpretation of national law according to which the consumer can rely, in court, on the legal consequences of the finding of the invalidity of the loan agreement only within **a limitation period of five years from the date on which that agreement was concluded**, if, on that date, the consumer was not aware or was not in a position to become aware of the unfairness of the contractual term concerned. Taking into account, among other factors, the consumer's inferior bargaining power and level of knowledge vis-à-vis the seller or supplier, and the long duration of mortgage loans, the application of such a limitation period **may** make it excessively difficult for a consumer to exercise his or her rights and, accordingly, **run counter to the principle of effectiveness**.

EU law **also precludes the date on which the national court of last instance ruled on the unfairness of contractual terms** included in agreements concluded with consumers or **the date on which the Court of Justice ruled on the interpretation of the directive from being used to determine the starting point of the limitation period**. An average consumer who is reasonably observant and circumspect cannot be required either to keep himself or herself regularly informed of decisions of the national court of last instance, or to determine, on the basis of a judgment of that court, whether terms included in a particular agreement are unfair. The same considerations apply to judgments of the Court of

Justice, which, moreover, does not determine whether particular terms are unfair and consistently leaves the specific examination of those terms to the national court.

Lastly, the Court states that **the resumption of the limitation period after a period of suspension must be subject to the same guarantees** as those laid down in respect of the determination of that limitation period. Accordingly, EU law also precludes the date of the decision of the national court of last instance or of the Court of Justice from being used for the purpose of resuming the limitation period following its suspension.

**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 EU law or the validity of an EU 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 and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>1</sup> Judgments of 10 June 2021 in Case [C-609/19](#) and Joined Cases [C-776/19 to C-782/19](#) *BNP Paribas Personal Finance* (see also Press Release [No 100/21](#)).

<sup>2</sup> In particular, Articles 1 and 7 of [Council Directive 93/13/EEC](#) of 5 April 1993 on unfair terms in consumer contracts.