

Invalidation of loan: CJEU case law (3/48/19)

This article explores a recent CJEU ruling on consumer disputes over financial services.

Ruling C-630/17

On 14 February 2019, the Court of Justice of the European Union passed a very interesting ruling on consumer disputes over financial services. In case C-630/17 *Milivojević*, the CJEU had to assess whether a member state's national law may cancel a debtor's agreement with creditors established in another member state and operating without a lending licence from the competent authority of the debtor's member state.

This case arose from a dispute between Ms Anica Milivojević, a Croatian-resident consumer, and Raiffeisenbank, a lender established and licensed in Austria, over the validity of their loan agreement and mortgage agreement and the deregistration of collateral entered on the country's property register. The consumer had borrowed EUR 47,000 from the bank to refurbish and extend her house. The bank's receivables from the consumer were secured with a mortgage.

In 2015, the consumer went to a Croatian court to invalidate the loan agreement on the grounds that the Austrian bank does not hold a lending licence from the Central Bank of Croatia.

In the course of litigation, Croatia passed a national law effective from 14 July 2017 which retroactively invalidated loan agreements with international elements. This law essentially permitted cancellation of the consumer's agreement with the bank. The Croatian court hearing the dispute asked the CJEU some preliminary questions about whether the new Croatian law is contrary to the free movement of services and capital in the EU.

The CJEU finds this national law is not permitted under the Treaty on the Functioning of the European Union. The CJEU's arguments are based on a finding that this national law directly discriminates against financial service providers (creditors) that are not established and not licensed in Croatia. The CJEU finds this national law impairs access to the common market and infringes the free movement of services.

The CJEU also tried to establish whether the national law would be justifiable on any grounds. However, Croatia's arguments that adoption of the new law was necessary to maintain public order and the reputation and proper functioning of Croatia's financial sector, and to protect the most vulnerable party and consumer rights after many Croatian residents had entered into loan agreements with creditors operating without a Croatian licence over the period from 2000 to 2010, failed to satisfy the CJEU.

The CJEU finds none of the arguments put forward by Croatia proves the existence of a serious threat to the basic interests of society. The CJEU also finds the Croatian law obviously exceeds what is necessary to achieve its objectives and the Croatian lawmaker can also take some other measures to minimise infringement of the free movement of services.