

RBI: Statement on ECJ preliminary ruling regarding FX loans in Poland

Vienna, 4 October 2019. The European Court of Justice (ECJ) issued a preliminary ruling yesterday in relation to the case of Dziubak versus Raiffeisen Bank International AG (RBI), addressing questions about the invalidity of certain clauses in foreign currency loans to consumers in Poland.

The Court's statements do not qualify particular clauses or the contract as invalid. Instead, the court provides guidance for interpretation of European law on the presumption that national courts would come to that conclusion on a case by case basis.

Annulment of the lending contract may be pronounced as a solution of last resort in cases where the remaining contract, stripped of the clauses deemed abusive, would change essential features of the original contract such as the basic risk allocation.

Yesterday's decision allows for the substitution of abusive clauses, provided that it follows supplementary provisions of Polish law and not on the basis of customs and practice.

Furthermore, the consequences of annulment need to be carefully assessed so that the borrower may consider all potential negative consequences of invalidity. These consequences remain unclear and are potentially severe for the borrower. For example, in case of annulment the borrower will also be required to pay interest accrued since disbursement of the funds.

The ECJ's decision also makes it very doubtful that the affected loans may be converted to Polish Zloty while retaining the Swiss Franc interest rate.

On the basis of yesterday's decision by the ECJ, at this point in time a meaningful assessment of the outcome and economic impact on foreign currency loans in Poland is not possible. It remains to be seen how yesterday's verdict will be applied on a case-by-case basis by Polish courts according to Polish law.

RBI will closely monitor and evaluate further developments in Polish jurisprudence and legislation.

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