Communication concerning the decision of the Curia of Hungary
in civil case n° Gfv.VII.30.078/2013

In its judgement delivered on 4 July 2013 the Curia had to decide if in a foreign exchange loan contract the spread between the buying rate (applied at disbursement) and the selling rate (applied at reimbursement) should be qualified as a cost. Based on Article 213, paragraph (1), point c) of Act CXII of 1996 on Credit Institutions and Financial Enterprises, costs have to be indicated in the contract, otherwise the contract shall be void. Therefore, in case the rate spread qualified as a cost, the Curia also had to establish the legal consequences of the invalidity of the contract.

The first instance court did not qualify the rate spread as a cost, therefore it rejected the claim, while the second instance court regarded the rate spread as a cost and in its interim decision called for the restitution of the original state.

In its opinion submitted based on Article 274, paragraph (6) of the Code of Civil Procedure the Prosecutor General claimed that the proceeds coming from the spread between the selling and buying rates were to be considered the fee of the conversion but the fee as such was not a part of the loan contract, therefore it could not be regarded as a cost.

The Curia upheld the final interim decision and declared the loan contract valid, qualifying the spread between the selling and buying exchange rates as a cost forming part of the contract and fixing it at one percent (+/-0.5 percent from the central rate).

The Curia pointed out that the provision of Act CXII of 1996 referred to above was meant to provide consumer protection, therefore it examined the provisions of other relevant legal rules, like government decree no. 41/1997 (III. 5.) on the Calculation of APR (APR decree) in the light of consumer protection. It found that one of the aims of APR, whose indication was mandatory in any loan contract, was to enable the customer to compare the price of the various financial products and another function of it was to provide information for the customer about future expenses provided that the contract

was properly performed and conditions were not modified. The Curia noted that the APR decree did not specify the spread between the buying and selling rates as a cost but did not say the opposite either. The burden arising from the rate spread necessarily falls on the customer. Since the purpose of the provisions of Article 213 of Act CXII of 1996 is consumer protection, everything charged on the consumer shall be considered a burden, therefore a cost, and shall be explicitly indicated in the contract. This interpretation is also supported by the fact that if the charge resulting from the rate spread was not considered a cost but a method of calculation and a factor outside the contract, then the financial institution could freely and unilaterally change the rate spread. Therefore, agreeing with the second instance court, the Curia pointed out in the given case that the contract should have explicitly indicated as a cost either the rate spread (+/- 0.5 percent from the central rate) or the percentage rate of the spread between the selling and buying rates (1 percent), from which the financial institution could have diverged to the disadvantage of the customer only by observing the rules of unilateral modification of agreements.

Considering that Act CXII of 1996 does not provide for the legal consequences of the invalidity of the loan contract, the Curia resorted to the provisions of the Civil Code and several-year long judicial practice based on it, opinion 1/2010 (VI. 28.) PK of the Civil Department of the Supreme Court among others. It argued that the reason of invalidity could be terminated, therefore it made the percentage rate of the spread between the selling and buying rates applicable at the time of the conclusion of the contract and the calculation of APR an explicit part of the contract.

Budapest, the 5th of August 2013

Civil Department of the Curia of Hungary