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Judgments of the Court of Justice in Cases C-350/03 and C-229/04

*Elisabeth Schulte, Wolfgang Schulte v. Deutsche Bausparkasse Badenia AG
Crailsheimer Volksbank eG v. Klaus Conrads, Frank Schulzke and Petra Schulzke-Lösche,
Joachim Nitschke*

**THE MEMBER STATES MUST ENSURE THAT A BANK WHICH FAILS TO
INFORM AN INVESTOR IN PROPERTY OF HIS RIGHT TO CANCEL A CREDIT
AGREEMENT INTENDED TO FINANCE THE PURCHASE OF THE PROPERTY
BEARS THE RISKS INHERENT IN AN INVESTMENT SCHEME NEGOTIATED IN
A DOORSTEP-SELLING SITUATION**

However, the right of cancellation does not apply to a contract for the sale of immovable property. The 'doorstep-selling' directive does not generally preclude a requirement that a consumer who cancels the credit agreement must repay the loan immediately and in full with interest at the market rate.

Under the 1985 'doorstep-selling' directive¹, a consumer as a rule has seven days to cancel an agreement concluded in a doorstep-selling situation. The trader is required, at the time the agreement is concluded, to inform the consumer in writing of his right to cancel.

Two German courts, the Landgericht Bochum and the Hanseatisches Oberlandesgericht in Bremen, have referred several questions to the Court of Justice of the European Communities concerning the interpretation of the directive. They have before them disputes between investors in property and banks on the subject of investment schemes for which the pre-contractual negotiations took place in a doorstep-selling situation. Those schemes consist of a contract for the purchase of property concluded with a property company and a credit agreement concluded with a bank, which serves to finance the purchase. They were offered to the consumers during a visit to their home by an agent of the property company or an independent broker.

¹ Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31).

The Court of Justice has found, first, that the directive does not give a consumer the right to cancel an agreement for the purchase of property, even if it forms part of an investment scheme financed by a loan, where the pre-contractual negotiations both for the property purchase agreement and the loan agreement to finance the purchase were conducted in a doorstep-selling situation. Although the directive is intended to protect consumers from the risks inherent in the conclusion of an agreement, in particular when it is concluded during a visit by a trader to the home of the consumer, by giving them a right to cancel under certain conditions, it expressly and unequivocally excludes contracts for the sale of immoveable property from its scope.

Moreover, the directive does not preclude national rules which provide that the sole effect of cancellation of a credit agreement is the annulment of that agreement, even where the investment scheme is such that the loan would never have been granted in the absence of the property purchase.

Nor, moreover, does the directive preclude a general requirement, where a consumer has been informed by the bank of his right to cancel the credit agreement, that the consumer must repay the loan immediately and in full with interest at the market rate, in the event of cancellation.

However, the Court of Justice takes the view that, in circumstances such as those of the main proceedings, where the consumer was not informed of his right to cancel the credit agreement, it is for the bank to bear the risk inherent in the investment at issue. If he had been informed of that right in time by the bank, the consumer could have changed his mind about concluding the agreement and, if he did, he would then not have concluded the purchase agreement before a notary. He would thus have been able to avoid exposure to the **risks that the property was over-valued at the time of purchase, that the anticipated rental receipts fail to materialise and that expectations concerning the development of property prices prove mistaken**. It is for the national legislature and court to guarantee the protection of consumers from the effects of the materialisation of those risks.

Finally, the Court of Justice has held that, when a third party intervenes in the name of, or on behalf of, a trader in the negotiation or conclusion of a contract, **the application of the Directive cannot be made subject to the condition that the trader was or should have been aware that the contract was concluded in a doorstep selling situation**.

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The full text of the judgments may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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