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**SITUATION AND OUTLOOK OF LITIGATIONS REGARDING LOANS IN SWISS  
FRANC IN FRANCE**

In France, 2017 has seen some major breakthroughs concerning the Helvet Immo case, named after BNP mortgage credits based on Swiss Franc commercialized at the beginning of 2008 to more than 4.600 French consumers.

On the civil procedure, France's highest court on Civil matters, the Cour de Cassation, released two major decisions on the 27th of March 2017.

Firstly, the jurisdiction claims that BNP PPF had a duty to guard the borrowers on the excessive debt risk linked to the subscription of a Helvet Immo credit.

Secondly, the court decided that the contractual provision stating that the mortgage capital is in Swiss Francs and reimbursed in Euros, with a floating interest rate (the indexation provision), is unfair because the whole exchange risk relies on the borrower. A provision deemed unfair is prohibited, which in this case would allow the borrower to stop bearing the exchange rate retroactively from the beginning of the contract.

The legal frame for the unfair provision is directly originating from the EU directive n°93/13 transposed in French law. Thus, a similar interpretation by the other UE member states jurisdictions is possible for all contracts with a foreign currency debt.

Metz appeal court, on the 7th of April 2017, ruled void a contract that forced borrowers to reimburse a debt in its own currency and not in euros (i.e. rule in France implementing the necessity to reimburse a debt in euros with a possibility to have the said debt set out in a foreign currency).

The legal frame around credits in a foreign currency (not only concerning BNP credits) has been clarified: these credits are void when the borrower is forced to reimburse in a foreign currency and the indexation provision is deemed unfair concerning contracts in which the

exchange risk only relies on the borrower.

On the criminal procedure, the investigation is now over. On the 4<sup>th</sup> of April, the Public Prosecutor disclosed the charges he was to pursue against BNP. He is pursuing the referral of the Bank in front of the criminal court on suspicion of misleading practices behavior.

The BNP PPF should be facing, in the next months, a criminal court which will rely on a consequent investigation file with many compelling evidences.

The misleading practices behavior charge is very interesting because it found its origins in the EU directive 2005/29/CE, transposed in French law. This could be used in the other UE member states jurisdictions as a legal basis for action against faulty banks

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