

financial product to which the financial instrument offered is linked to be subject to statutory investor-protection standards similar to those laid down in that directive?

⁽¹⁾ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1).

Reference for a preliminary ruling from the Juzgado Mercantil de Barcelona (Spain) lodged on 30 December 2011 — Alfonso Carlos Amselem Almor v NCG Banco, S.A.

(Case C-665/11)

(2012/C 80/16)

Language of the case: Spanish

Referring court

Juzgado Mercantil de Barcelona

Parties to the main proceedings

Applicant: Alfonso Carlos Amselem Almor

Defendant: NCG Banco, S.A.

Questions referred

1. If a credit institution offers a client with whom it has previously signed a mortgage loan contract an interest rate swap arrangement to cover the risk of variations of interest rates on that loan, must this be regarded as investment advice within the meaning of point (4) of Article 4(1) of the MiFID Directive? ⁽¹⁾
2. Must omission of the suitability test provided for in Article 19(4) of the MiFID Directive with regard to a retail investor give rise to fundamental nullity of the interest rate swap arrangement entered into between the investor and the advising credit institution?
3. In the event that the service provided in the terms described is not regarded as investment advice, does the mere fact of purchasing a complex financial instrument, into which category falls an interest rate swap arrangement, without the appropriateness test provided for in Article 19(5) of the MiFID Directive being carried out, for reasons imputable to the investment institution, give rise to fundamental nullity of the purchase contract concluded with the same credit institution?

4. Under Article 19(9) of the MiFID Directive, does the mere fact that a credit institution offers a complex financial instrument linked to a mortgage loan constitute sufficient cause to exclude application of the obligation to carry out the suitability and appropriateness tests provided for by the said Article 19 which the investment institution must undertake in the case of a retail investor?

5. In order to enable the obligations laid down in Article 19 of the MiFID Directive to be excluded, is it necessary for the financial product to which the financial instrument offered is linked to be subject to statutory investor-protection standards similar to those laid down in that directive?

⁽¹⁾ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1).

Reference for a preliminary ruling from the Tribunale Amministrativo per la Sardegna (Italy) lodged on 2 January 2012 — Danilo Tola v Ministero della Difesa

(Case C-4/12)

(2012/C 80/17)

Language of the case: Italian

Referring court

Tribunale Amministrativo per la Sardegna

Parties to the main proceedings

Applicant: Danilo Tola

Defendant: Ministero della Difesa

Following the withdrawal of the reference for a preliminary ruling on 5 January 2012, by order of 18 January 2012 the Court of Justice removed the case from the register.

Reference for a preliminary ruling from the Augstākās tiesas Senāts (Latvia) lodged on 17 January 2012 — Mohamad Zakaria

(Case C-23/12)

(2012/C 80/18)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts/Latvia