Automatic credit granting after error in the entry of an exchange transaction

Topic: **Other loans** Case number: **2022/15**

> The client wanted to buy a certain exchange-traded fund (ETF) via e-banking for USD 50 000. He mistakenly entered the purchase of 50 000 units of the fund, which led to a transaction volume in the millions for which there was no corresponding credit balance. The transaction was automatically processed by the system. Based on the lending value of his previous portfolio and the acquired ETF, he was tacitly granted a substantial Lombard loan based on existing credit documentation. When the transaction was reversed after the error was discovered, the client suffered losses due to exchange rate differences and stamp duty. He demanded a share of the loss from the bank, which refused. In the Ombudsman proceedings, the bank was finally prepared to pay just under 30% of the loss.

The client acknowledged that he had made an input error but was very surprised that it was not recognised and that the transaction was automatically processed granting such a high Lombard loan. He was aware that he had signed a credit agreement and a pledge order and, according to his account, occasionally took out Lombard loans of USD 50 000 to USD 100 000, the term and interest rate of which he always negotiated in advance with his client advisor. The transaction value resulting from the input error significantly exceeded the value of his previous portfolio. The credit used amounted to a multiple of the limits he had previously used.

The client argued with the bank that the transaction should not have been processed automatically due to a lack of credit. Even after signing the standard credit documentation, he did not expect to have a credit limit of the size in question and to be able to carry out transactions that led to such a large tacit granting of credit. This would expose a client to an unexpected risk, as it would completely change the profile of a portfolio because of a simple input error. The bank refused to accommodate and took the view that the client order could have been carried out in this way without further ado on the basis of the existing contractual documentation. In the correspondence between the client and the bank, it was apparent that the business relationship was basically very good and was exceptionally appreciated by both parties. Nevertheless, they were unable to reach an agreement, so the client submitted the case to the Ombudsman.

The Ombudsman was able to understand the client’s surprise at the automatic processing of the transaction. Two cases of the same kind were submitted to him within a short time by two very different clients. He therefore asked the bank to look into the matter again. In addition to the arguments already submitted by the client, he expressed concerns about the concentration risk, which had arisen because the acquired ETF comprised a very large share of the collateralised securities portfolio which, in his view, should have been taken into account when granting a loan. In addition, the Ombudsman wondered whether the bank’s duties to warn and inform, which have also been accepted in exceptional cases by the courts in pure execution-only relationships, should have been taken into account when programming the e-banking system with which the client had placed the erroneous order.

In its extensive statement to the Ombudsman, the bank defended itself very strongly against the

concerns raised and rejected all of these arguments. According to their account, the client was an experienced investor and, as a regular user, had a good understanding of the e-banking platform. He had to go through several check steps when entering the transaction and would have had the opportunity to view the scale and download a document with all the relevant information, which he had not done. In such a situation, a principal had to expect that the system would automatically execute the transaction based on the data entered and that such an error would not be detectable by the bank. He must therefore assume responsibility for the erroneous entry himself.

The bank further pointed out that the signed credit documentation enabled a customer to apply for a credit by entering a specific transaction, which the bank was allowed to grant to him tacitly by executing the same. The credit had been granted in accordance with the contractual regulation signed by the client, as the required lending value had been available. Moreover, there had been a classic execution-only relationship in which the bank had no advisory, warning or monitoring obligations, neither under civil law nor on the basis of the Financial Services Act. This was also clear from the e-banking agreement. The non-execution of the entered transaction would have constituted a breach of the existing contracts and would have meant a risk for the bank, if the transaction had actually been wanted by him that way.

The bank regretted the situation that had arisen but saw no breach of duty and no legal basis for compensation. As a gesture of goodwill and on the basis of the long-standing, highly valued client relationship, the bank nevertheless decided to assume just under 30% of the damages. The bank’s position was very comprehensively justified. Although the client’s concerns were understandable and certain arguments could have been further questioned, the Ombudsman recommended that the client accept the offer. The client followed the recommendation, so that the dispute could be settled on this basis.