

# Incorrect payment instruction in foreign currency

Topic: **Payment transactions** Case number: **2017/14**

The owner of a company issued two payment instructions in EUR, on the company's behalf, of some significance for a total amount of 180,000 EUR to be debited from the CHF account held by said company. Because the beneficiary's IBAN provided was incorrect, the beneficiary's foreign bank rejected it and returned the payments the next day. The funds were eventually recredited to the company's CHF account with the value date of the date the payments were received by the bank. Due to exchange rate fluctuations, the company therefore suffered a loss of approximately 3000 CHF. According to the company owner, the bank should have contacted him and should have retained the returned funds in the meantime. He also asked the bank to bear the resultant exchange loss, which the bank refused. In the absence of any finding of wrongful conduct on the part of the bank, the Ombudsman was unable to act as mediator.

The claimant was owner manager of a limited liability company holding a CHF account with the bank. The company's payment transactions were generally limited to CHF transfers to beneficiaries in Switzerland. Exceptionally however, the company had to make two payments of a sizeable amount within the euro zone. The company owner, an authorised signatory, therefore went to the bank in person to agree an exchange rate and issue the payment instructions for the total sum of approximately 180,000 EUR. The instruction was processed by the bank immediately in accordance with the instructions received. The next day, both payments were returned by the beneficiary's bank in the euro zone however because, according to the information provided by the latter, the specified IBAN was incorrect. The funds were then changed back to CHF by the Swiss bank and were credited to the company's CHF account. Due to exchange rate fluctuations, the company suffered an exchange loss of approximately 3000 CHF. The owner of the company believed the bank should not have exchanged the funds returned in EUR immediately, but should have retained them pending contact with him. He maintains that the payment instructions could simply have been corrected and a conversion from EUR to CHF would not have been necessary. In this way the exchange rate loss could have been avoided. Alternatively, the client suggested that the bank should have set up an EUR account and credited the funds there. Armed with this reasoning, he therefore asked the bank to bear the resultant exchange rate loss. The bank refused. Upset, the company owner then contacted the Ombudsman.

The Ombudsman understood the company owner's frustration in light of the loss incurred. He also understood that the client would have expected the bank to behave differently in the scenario in question. Having said that, the Ombudsman was obliged to draw the client's attention to the applicable contractual provisions, in particular regarding the bank's basic rules which the company accepted when it opened its account. In fact, the terms and conditions of the basic rules applicable to payment transactions expressly stipulated that in the event of returned payments received, the bank would credit them back to the client's initially debited account with the value date of the date on which the payments were received by the bank. The basic rules in question also stated that the client would have to bear any possible currency risk. Given that the bank was under no contractual obligation to consult the client in such circumstances, the Ombudsman was unable to find any failure on the part of the bank. The company owner's argument that it was clear that the bank should have retained these funds until he could be contacted, or should have set up a foreign currency account to

credit the funds to, could not be accepted by the Ombudsman given the clear contractual terms and conditions which stipulate a different procedure to follow. Moreover, it is interesting to note that from the bank's statement of position sent to the company owner, it is clear that the bank expressly recommended he open an EUR account to make the payment in question. The client refused to do so however, apparently due to costs.

Not finding any failure on the part of the bank, the Ombudsman saw no opportunity for mediation in this case.