



Court of Justice of the European Union

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Judgment in Case C-602/10

SC Volksbank România SA v Autoritatea Națională pentru Protecția
Consumatorilor – Comisariatul Județean pentru Protecția Consumatorilor
Călărași (CJPC)

Press and Information

The Court defines the extent of consumer protection granted in the context of credit agreements

A Member State may restrict the bank charges levied by a creditor

The directive on consumer credit agreements¹ provides that, in the areas which it harmonises, Member States may not maintain or introduce provisions in their national law diverging from those which it lays down. However, the directive does not prevent the Member States from extending, in accordance with EU law, the provisions of the directive to areas not covered by its scope. In addition, the Member States are to ensure that adequate and effective out-of-court dispute resolution procedures for consumer disputes concerning credit agreements are put in place, using existing bodies where appropriate. The directive does not apply to credit agreements existing on the date of entry into force of the national implementing measures.

In Romania, the directive was transposed into domestic law by an order which entered into force on 22 June 2010. The order provides in particular that, when credit is granted, the creditor may levy only a charge for the processing of the application, a credit administration charge or current account administration charge, compensation in the event of early repayment, insurance costs, penalties if appropriate, and a single charge for services provided upon request by consumers.

In the present case, one of the general conditions of the credit agreements concluded before the order entered into force between the bank Volksbank România and its customers provides that, for the making available of the credit, the borrower may be required to pay the bank a 'risk charge', equal to 0.2% of the balance of the loan and payable monthly throughout its term.

The Autoritatea Națională pentru Protecția Consumatorilor – Comisariatul Județean pentru Protecția Consumatorilor Călărași (CJPC) (National Consumer Protection Authority – District Commissariat for Consumer Protection of Călărași), which took the view that the levying of that charge was not provided for by the order, imposed a fine and ancillary penalties on Volksbank.

Before the Judecătoria Călărași (District Court, Călărași, Romania), Volksbank submitted that certain provisions of the order were contrary to the directive. Accordingly that court requested the Court of Justice to define the directive's scope.

The Court of Justice rules, first, on **the inclusion by the Member States of consumer credit agreements secured by immovable property in the material scope of a national measure transposing the directive**, although the directive excludes them from its own scope. The Court points out that **the Member States may, in accordance with EU law, apply the directive's provisions to areas not covered by its scope**. Thus, they may, for credit agreements which do not fall within the directive's material scope, such as, in the present case, credit agreements secured by immovable property, maintain or introduce national measures that correspond to the provisions of the directive or to certain of them.

¹ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66, and – corrigenda – OJ 2009 L 207, p. 14, OJ 2010 L 199, p. 40, and OJ 2011 L 234, p. 46). The directive had to be transposed by 11 June 2010 at the latest.

Second, the Court examines **the inclusion of such credit agreements in the temporal scope of the national legislation although they were existing on the date when that legislation entered into force**. The Court observes that it is in principle for the Member States to determine the conditions in which they propose to extend their national set of rules transposing the directive to credit agreements, such as those in the present case, which do not fall within one of the areas for which the EU legislature sought to lay down harmonised provisions. Consequently, **the Member States may lay down a transitional measure the consequence of which is that that national legislation also applies to agreements existing on the date of its entry into force**.

Third, the Court holds that the directive does not preclude a Member State from **imposing on credit institutions obligations, not provided for by the directive, as regards the types of charges** that they may levy in connection with consumer credit agreements. In the present case, inasmuch as the rule laid down by the Romanian order contains an exhaustive list of bank charges that can be levied by the creditor upon consumers, it constitutes a consumer protection measure in a field not harmonised by the directive.

Fourth, the Court responds to Volksbank's argument that, **the Romanian legislation, in prohibiting credit institutions from levying certain bank charges**, makes consumer credit offered by companies established in other Member States less accessible for customers established in Romania and, consequently, infringes the Treaty rules concerning the freedom to provide services. The Court explains that rules of a Member State do not constitute a restriction within the meaning of the Treaty solely because other Member States apply less strict, or economically more favourable, rules to providers of similar services established in their territory. The Court also holds that a national provision such as that laid down by Romanian law does not render market access less attractive and does not genuinely reduce the ability of the undertakings concerned to compete effectively against undertakings traditionally established in Romania.

Fifth, the Court finds that the directive does not preclude the Romanian legislation which, as regards **consumer credit, allows consumers to have direct recourse to a consumer protection authority**, which may subsequently impose penalties on credit institutions for infringement of the national legislation, without having to use beforehand the out-of-court resolution procedures as provided for by national law for such disputes. The Court observes that the directive requires out-of-court dispute resolution procedures to be adequate and effective. Therefore, it is for the Member States to lay down the detail of those procedures, including whether they are mandatory, whilst ensuring that the directive remains effective.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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