



Press and Information

Court of Justice of the European Union

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Judgment in Case C-565/12

Le Crédit Lyonnais SA v Fesih Kalhan

The Court clarifies the conditions under which application of the forfeiture of entitlement to contractual interest is, as a penalty for a creditor's breach of its pre-contractual obligation to assess a borrower's creditworthiness, compatible with EU law

French law provides that a creditor which has failed to properly assess a borrower's creditworthiness prior to the conclusion of a credit agreement can no longer claim contractual interest. However, interest at the statutory rate remains automatically due and must be increased by five percentage points if the borrower has failed to settle his debt in full in the two months following an enforceable judicial decision.

In 2011, Mr Kalhan entered into a consumer credit agreement with Le Crédit Lyonnais (LCL) for a loan of €38 000, subject to contractual interest at an annual fixed rate of **5.60%**. As Mr Kalhan was unable to repay that loan, LCL brought an action before the tribunal d'instance d'Orléans (District Court, Orléans) seeking payment of the outstanding amount. That national court points out that LCL did not properly assess Mr Kalhan's creditworthiness, with the result that it cannot claim contractual interest under French law. However, the national court notes that interest at the statutory rate, which is applicable in place of the contractual interest, amounts to **5.71%** for 2012 (including the increase of five percentage points), which, far from constituting a penalty for the creditor, confers an advantage on it. The national court therefore asks whether the French system of penalties is compatible with EU law, in particular with Directive 2008/48¹, which provides, inter alia, that the penalties applicable to infringements of the national provisions relating to the pre-contractual assessment of a borrower's creditworthiness must be effective, proportionate and dissuasive.

Addressing that question, the Court of Justice points out that, under Directive 2008/48, in order to ensure effective protection of consumers against the irresponsible granting of credit agreements, a creditor is required, before entering into any agreement, to assess a borrower's creditworthiness and that the Member States are required to establish effective, proportionate and dissuasive measures to penalise any failure to comply with that obligation. The Court therefore examines whether the severity of the penalty provided for by the French legislation (namely the forfeiture of entitlement to contractual interest) is commensurate with the seriousness of the infringement for which it is imposed and, in particular, whether such a penalty has a genuinely dissuasive effect.

In this respect, the Court notes that, in the case where the outstanding amount of the principal sum is immediately repayable as a result of the borrower's default, the referring court must compare the amounts which the creditor would have received if it had complied with its pre-contractual obligation to assess the borrower's creditworthiness with the amounts which it would receive following application of the abovementioned penalty. If the referring court were to conclude that the application of the penalty is liable to confer an advantage on the creditor, it follows that the system of penalties in question does not have a genuinely dissuasive effect.

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 Court also notes that the penalty in question cannot be regarded as genuinely dissuasive if the amounts which the creditor is likely to receive following application of the penalty are not **significantly** lower than those which it could have received if it had complied with its obligation. If the penalty of forfeiture of entitlement to interest is weakened, or even entirely undermined, the penalty will not be genuinely dissuasive, contrary to the provisions of Directive 2008/48.

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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