



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-449/13  
CA Consumer Finance SA v Ingrid Bakkaus and Others

## **Creditors must prove that they have fulfilled their pre-contractual obligations to provide information and to check the creditworthiness of borrowers**

*The principle of effectiveness would be compromised if the burden of proving the non-performance of the creditor's obligations lay with the consumer*

An EU directive<sup>1</sup> imposes obligations on the creditor to provide information and explanations so that the borrower can make an informed choice when subscribing to a loan. It also requires the creditor to provide consumers with a Standard European Consumer Credit Information form and to check the consumer's creditworthiness.

In France, in two sets of proceedings, certain individuals were unable to repay the monthly instalments under their respective loan agreements, and so the bank sought immediate repayment of the sums borrowed together with interest. The French court called upon to hear the claim states that the bank is not in a position to produce either the Standard European Consumer Credit Information form or any other document proving that it fulfilled its duty to provide explanations. In one case, however, the credit agreement contains a standard term in which the borrower acknowledges having received and taken note of the form. The French court considers that such a term could cause a problem if it had the effect of reversing the burden of proof to the detriment of the consumer. In its opinion, that type of term could make it impossible for the consumer to exercise the right to challenge whether the creditor has performed its obligations in full.

As regards the obligation to check creditworthiness, the French court states that in the other case the borrower did not provide the bank with supporting evidence of its financial situation. It asks, therefore, whether the consumer's creditworthiness may be checked solely on the basis of information supplied by the consumer, without such information being effectively scrutinised against other evidence. The referring court also asks whether the duty to provide explanations and assistance may be considered to be fulfilled where the creditor has not checked the creditworthiness and the needs of the consumer beforehand.

In its judgment delivered today, the Court of Justice concludes that the directive does not state who is to bear the burden of proving that the creditor has fulfilled its obligations to provide information and to check creditworthiness, and so that question is a matter for the domestic legal system of each Member State. In that regard, the rules of national law must not be less favourable than those governing similar domestic situations (principle of equivalence) and must not make it in practice impossible or excessively difficult to exercise rights conferred by the directive (principle of effectiveness).

Although the Court is not in any doubt that the principle of equivalence has been observed in the present case, it considers that **the principle of effectiveness would be undermined if the burden of proving the non-performance of the creditor's obligations lay with the consumer**. The consumer does not have the means at his disposal to enable him to prove that the creditor did not provide him with the information required and that it did not check his creditworthiness.

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<sup>1</sup> 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).

However, the principle of effectiveness is complied with where the creditor must prove to the court that those pre-contractual obligations have been fulfilled: a diligent creditor must be aware of the need to gather and retain evidence that its obligations to provide information and explanations have been fulfilled.

**As regards the standard term in one of the credit agreements at issue, that term cannot allow the creditor to circumvent its obligations. Thus, the standard term in question is an indication which the lender should substantiate with one or more relevant items of evidence.** Similarly, the consumer must always be in a position to claim that he did not receive the form referred to in that standard term or that the form did not enable the creditor to fulfil its pre-contractual obligations to provide information. The Court states that if such a standard term implied that the consumer acknowledges that the creditor's pre-contractual obligations have been fully and correctly performed, it would result in a reversal of the burden of proof such as to undermine the effectiveness of the rights conferred by the directive.

As to the question whether the assessment of the consumer's creditworthiness may be carried out solely on the basis of information supplied by the consumer, without such information being effectively scrutinised against other evidence, the Court finds that the directive affords **the creditor a margin of discretion for the purposes of determining whether or not the information at its disposal is sufficient to demonstrate the consumer's creditworthiness and whether it is necessary to check that information against other evidence.** Thus, the creditor may, depending on the circumstances of the case, either be satisfied with the information supplied by the consumer, or decide that it is necessary to obtain confirmation of that information (since the information supplied by the consumer is not verified as a matter of course). However, mere unsupported declarations made by the consumer may not, in themselves, be sufficient if they are not accompanied by supporting evidence.

Furthermore, it does not follow from the directive that the assessment of the financial situation and the needs of the consumer must be carried out before the adequate explanations are provided. In principle, there is no link between those two pre-contractual obligations. **The creditor may therefore give explanations to the consumer without being required to assess his creditworthiness beforehand.** However, the creditor must take account of the assessment of the consumer's creditworthiness where that assessment means that the explanations provided need to be adapted.

Finally, the Court states that the obligations to provide information, by virtue of the fact that they are pre-contractual, must be fulfilled before the credit agreement is signed. However, **the explanations do not necessarily have to be provided in a specific document, but may be given orally in the course of an interview.** The Court notes, nevertheless, that the form in which the explanations must be given to the consumer is a matter for national law.

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**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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