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Judgment of the Court in Case C-472/23 | Lexitor

Consumer credit agreements: in the event of failure to comply with the obligation to provide information, a bank may be deprived of its right to interest

This may be the case even where the individual seriousness of the infringement of that obligation and its consequences for the consumer are likely to vary from case to case

Lexitor is a Polish debt collection agency to which a consumer assigned rights arising from a credit agreement concluded with a bank. That company claims that the bank failed to fulfil its obligation to provide information to the consumer when the agreement was concluded. It brought an action before a Polish court seeking payment from the bank of a sum of money corresponding to the interest and charges paid by that consumer.

In support of its claim, Lexitor submits, first, that the annual percentage rate of charge (APRC¹) was overstated; in its view, one of the terms of the agreement taken into account in calculating that rate should have been declared unfair and, therefore, does not bind the consumer.² Second, the agreement does not clearly set out the reasons and rules for amending charges linked to its performance.³ These infringements should, according to Lexitor, trigger the penalty laid down in Polish law and, accordingly, render the credit exempt from the interest and charges laid down in the agreement.

Wishing to ascertain whether the bank infringed the obligation to provide information under EU law⁴ and whether depriving it of its right to interest and fees is compatible with EU law, the Polish court referred the matter to the Court of Justice.

First, the Court notes that the credit agreement must specify, in a clear and concise manner, the APRC calculated at the time of its conclusion. However, the calculation of the APRC presupposes that the contract will remain valid for the period agreed. Therefore, **the fact that a credit agreement includes an APRC, which proves to be overstated** because certain terms of that agreement are subsequently found to be unfair, **does not, in itself, constitute an infringement of the obligation to provide information.**

Secondly, the agreement must describe, in a clear and comprehensible manner, the **conditions for altering the charges** associated with its performance. **The fact that, for that purpose, the agreement is based on indicators which are difficult for the consumer to verify may infringe the obligation to provide information.** That is the case where an average consumer cannot verify either whether the circumstances justifying that change have arisen or their effect on those charges, and is thus not in a position to understand the extent of his or her liability. It is for the national court to ascertain whether that is the case in the dispute before it.

Thirdly, **in the event of an infringement of the obligation to provide information which affects the consumer's ability to assess the extent of his or her liability, the bank may be deprived of the right to interest and charges.** Subject to verification by the national court, the Court considers that penalty to be proportionate, even though the seriousness of the infringement and the resulting consequences for the consumer

may vary from case to case.

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 EU law or the validity of an EU 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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ Total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit.

² The agreement in question allows the bank to receive interest not only on the sum effectively paid to the consumer, but also on the costs of the credit that it included. Leaving aside that solution, on account of its unfair nature, the interest should have been calculated solely on the amount of the credit paid. In that case, the APRC would have been lower than that initially indicated in the agreement.

³ Charges and commissions could be increased in the event of the occurrence of at least one of the conditions listed in the agreement, such as a change in the minimum wage and the level of indicators published by the Polish Central Statistics Office as well as changes to the tax and/or accounting rules applied by the bank, in so far as they would affect the costs incurred by the bank in connection with the performance of that agreement.

⁴ [Directive 2008/48/EC](#) of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers.