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JUDGMENT OF THE COURT (Fourth Chamber)

27 March 2014 (*)

(Consumer protection — Credit agreements for consumers — Directive 2008/48/EC — Articles 8 and 23 — Creditor’s obligation to assess the borrower’s creditworthiness prior to conclusion of the agreement — National provision imposing the obligation to consult a database — Forfeiture of entitlement to contractual interest in the event of failure to comply with that obligation — Effective, proportionate and dissuasive nature of the penalty)

In Case C-565/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal d’instance d’Orléans (France), made by decision of 30 November 2012, received at the Court on 6 December 2012, in the proceedings

LCL Le Crédit Lyonnais SA

v

Fesih Kalhan,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Safjan, J. Malenovský, A. Prechal (Rapporteur) and K. Jürimäe, Judges,

Advocate General: N. Wahl,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 20 November 2013,

after considering the observations submitted on behalf of:

- LCL Le Crédit Lyonnais SA, by C. Vexliard, avocate,
- the French Government, by D. Colas and S. Menez, acting as Agents,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the European Commission, by M. van Beek and M. Owsiany-Hornung, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 8 and 23 of 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).

2 The request has been made in proceedings between LCL Le Crédit Lyonnais SA ('LCL') and Mr Kalhan concerning a claim for payment of the outstanding amount of a personal loan which LCL granted to Mr Kalhan and in respect of which he is in default of payment.

Legal context

EU law

3 Recitals 7, 9, 26, 28 and 47 in the preamble to Directive 2008/48 are worded as follows:

'(7) In order to facilitate the emergence of a well-functioning internal market in consumer credit, it is necessary to make provision for a harmonised Community framework in a number of core areas. ...

...

(9) Full harmonisation is necessary in order to ensure that all consumers in the Community enjoy a high and equivalent level of protection of their interests and to create a genuine internal market. Member States should therefore not be allowed to maintain or introduce national provisions other than those laid down in this Directive. ...

...

(26) Member States should take appropriate measures to promote responsible practices during all phases of the credit relationship, taking into account the specific features of their credit market. ... In the expanding credit market, in particular, it is important that creditors should not engage in irresponsible lending or give out credit without prior assessment of creditworthiness, and the Member States should carry out the necessary supervision to avoid such behaviour and should determine the necessary means to sanction creditors in the event of their doing so. ...

...

(28) To assess the credit status of a consumer, the creditor should also consult relevant databases; the legal and actual circumstances may require that such consultations vary in scope. ...

...

(47) Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. While the choice of penalties remains within the discretion of the Member States, the penalties provided for should be effective, proportionate and dissuasive.’

4 Article 8 of Directive 2008/48, entitled ‘Obligation to assess the creditworthiness of the consumer’, provides in paragraph 1:

‘Member States shall ensure that, before the conclusion of the credit agreement, the creditor assesses the consumer’s creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database. Member States whose legislation requires creditors to assess the creditworthiness of consumers on the basis of a consultation of the relevant database may retain this requirement.’

5 Article 23 of Directive 2008/48, entitled ‘Penalties’, provides:

‘Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.’

French law

6 Law No 2010-737 of 1 July 2010 on the reform of consumer credit (*JORF*, 2 July 2010, p. 12001), which is designed to transpose Directive 2008/48 into French domestic law, was incorporated in Article L. 311-1 et seq. of the French Consumer Code (code de la consommation).

7 Article L. 311-9 of the Consumer Code provides:

‘Before concluding the credit agreement, the creditor shall check the borrower’s creditworthiness on the basis of sufficient information, including the information supplied by the borrower at the creditor’s request. The creditor shall consult the register provided for in Article L. 333-4, under the conditions provided for by the decree referred to in Article L. 333-5.’

8 On 26 October 2010 the ministerial decree relating to the national register of individual credit repayment defaults provided for in Article L. 333-5 of the Consumer Code (‘the national register’) was adopted. That decree sets out the detailed arrangements pursuant to which creditors must retain evidence that they have consulted the national register so that that evidence can be produced in the event of a dispute or an audit.

9 The second and third paragraphs of Article L. 311-48 of the Consumer Code provide:

‘Where the creditor has not complied with the requirements laid down in Articles L. 311-8 and L. 311-9, it shall forfeit entitlement to interest, in whole or in the proportion fixed by the court. ...

The borrower shall be required only to repay the principal in accordance with the schedule provided for and also, where appropriate, to pay the interest not forfeited by the creditor. The sums received by way of interest, which produce interest at the statutory rate from the date of their payment, shall be reimbursed by the creditor or set off against the principal remaining due.’

10 Article L. 313-3 of the Monetary and Financial Code (code monétaire et financier) provides:

‘Where a monetary award is made by a decision of a court, the statutory rate of interest shall be increased by five percentage points on expiry of a period of two months from the date on which the decision of the court became enforceable, even if it was immediately enforceable. ...

However, the enforcement judge may, on application by the debtor or the creditor, and in consideration of the debtor’s situation, exempt the debtor from that increase or reduce the amount thereof.’

11 The first, second and third paragraphs of Article 1153 of the French Civil Code (code civil) are worded as follows:

‘In obligations which are restricted to payment of a certain sum, the damages resulting from delay in performance shall consist only in the award of interest at the statutory rate, except for special rules on commerce and securities.

Those damages shall be payable without the creditor being required to demonstrate any loss.

They shall be payable only from the date of the demand for payment or of another equivalent act such as a personal letter where the claim is clearly stated, except where they are automatically payable by operation of law.’

12 Under Article 1154 of the Civil Code:

‘Interest due on the principal may produce interest, either by a judicial claim or by special agreement, provided that, either in the claim or in the agreement, the interest concerned has been owed for at least one whole year.’

13 Article 1254 of the Civil Code provides:

‘A debtor of a debt which bears interest or produces arrears may not, without the consent of the creditor, attribute the payment which he makes to the principal in preference to the arrears or interest: a payment made on the principal and interest, which is not made in full, is to be attributed first of all to the interest.’

The dispute in the main proceedings and the question referred for a preliminary ruling

14 On 4 May 2011 Mr Kalhan entered into an agreement with LCL to take out a personal loan of EUR 38 000, repayable by way of 60 monthly instalments of EUR 730.46, at an annual fixed interest rate of 5.60% and an annual percentage rate of charge (APR) of 5.918%.

15 Repayments on that loan having ceased as from 12 January 2012, LCL sought immediate payment of the outstanding amount of the loan before the tribunal d’instance d’Orléans (Orléans District Court).

16 On 18 October 2012, LCL brought an action against Mr Kalhan before the referring court, claiming, inter alia, that that court should order Mr Kalhan to pay to it the sum of EUR 37 611.23 with interest at the rate of 5.918% per annum from 17 April 2012 and order annual capitalisation of the interest.

17 The referring court raised of its own motion the plea concerning the possible forfeiture of the lender’s entitlement to interest, provided for in the second paragraph of Article L. 311-48 of the Consumer Code, on the ground of failure to consult the national register referred to in Article L. 333-4 of the Consumer Code, in the context of the assessment as to the borrower’s creditworthiness required under Article L. 311-9 of that code. LCL acknowledged that it was unable to demonstrate that it had carried out such a consultation before concluding the credit agreement.

18 The referring court notes that the penalty of forfeiture of entitlement to interest provided for in the second paragraph of Article L. 311-48 of the Consumer Code has been interpreted by the Cour de cassation (French Court of Cassation) as applying only to

contractual interest, but that interest at the statutory rate remains payable under Article 1153 of the Civil Code.

19 It points out that, under Article L. 313-3 of the Monetary and Financial Code, that statutory rate is to be increased by five percentage points if the borrower has not repaid his debt in full within a period of two months after the decision of the court has become enforceable.

20 The referring court also indicates that, according to the case-law of the Cour de cassation, the interest at the statutory rate and the increase of five percentage points apply by operation of law, that is to say, the interest thus increased is due automatically, even if it has not been claimed or if the decision of the court did not provide for that interest.

21 The referring court further points out that, in the present case, the contractual rate of interest is 5.60%, whereas, after the declaration of forfeiture of entitlement to that interest, LCL will be able to claim interest at the statutory rate, which, if increased by five percentage points two months after the judicial decision becomes enforceable, will amount to 5.71% for 2012. The application of the penalty of forfeiture of entitlement to interest is therefore likely to secure an advantage for the creditor.

22 In those circumstances, the referring court inquires, first, as to the effectiveness of the penalty of forfeiture of entitlement to contractual interest in the event of a proven breach of the creditor's obligation to assess the consumer's creditworthiness by consulting the national register established for that purpose.

23 In the view of the referring court, that penalty might be effective where the consumer pays in full the outstanding amounts within two months of the judicial decision becoming enforceable. However, in practice, that possibility is illusory, since, in general, if the creditor has been required to bring proceedings it is because the consumer's situation no longer allowed him to meet his obligations. Moreover, although the court seised of the dispute may allow a period of grace of no longer than 24 months, the interest at the statutory rate will nevertheless remain payable. Furthermore, it could also be argued that the creditor's breach of its obligation to assess the consumer's creditworthiness may have contributed to the latter's over-indebtedness.

24 The referring court also notes that Article L. 313-3 of the Monetary and Financial Code provides that the consumer may request the court to exempt him from the increase in the interest at the statutory rate or to reduce the amount thereof. In practice, however, the cases in which a consumer has been able to benefit from such a measure after forfeiture of entitlement to interest are extremely rare, as a result, *inter alia*, of the fact that the consumer is not informed of that right or that the grant of such a measure is decided, not by reference to the gravity of the creditor's breach, but only by reference to the financial situation of the consumer.

25 Secondly, as regards the proportionality of the system of penalties at issue in the main proceedings, the referring court indicates, first of all, that a court may indeed vary

the penalty of forfeiture of entitlement to interest in view of the gravity of the creditor's breach of the obligation in question. However, even in that case, the creditor will still receive interest at the statutory rate on the outstanding amounts.

26 Moreover, since, under Article 1254 of the Civil Code, interest at the statutory rate becomes payable as a result of the forfeiture of entitlement to contractual interest and payments are attributed in priority to the interest due, the repayment of the principal will necessarily be delayed, with the result that further interest at the statutory rate will become payable.

27 Lastly, the effect of that forfeiture is also reduced by the capitalisation of interest which may be requested by the creditor in accordance with the principle of compound interest as set out in Article 1154 of the Civil Code.

28 Thirdly, the referring court questions the deterrent nature of the system of forfeiture of entitlement to interest as laid down in the Consumer Code. It takes the view that, since creditors can rely on interest being chargeable at the increased statutory rate, even when the penalty of forfeiture of their entitlement to contractual interest is imposed, they have scarcely any incentive to change their practices with a view to ensuring rigorous compliance with their obligations under Directive 2008/48 and the legislation transposing that directive into the domestic law of the Member States.

29 In those circumstances, the tribunal d'instance d'Orléans decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Does the requirement for effective, proportionate and dissuasive penalties laid down in Article 23 of [Directive 2008/48], in the case of breaches on the part of creditors of the obligations set out in the directive, preclude the existence of rules that allow the creditor, which has been penalised by forfeiture of its entitlement to interest as provided for in the French legislation, to benefit, after the imposition of the penalty, from interest payable by operation of law at a statutory rate, which is increased by five percentage points two months after a court decision has become enforceable, on the sums that remain payable by the consumer?’

The question referred for a preliminary ruling

30 By its question, the referring court asks, in essence, whether Article 23 of Directive 2008/48 must be interpreted as precluding the application of a national system of penalties under which, in the event of a breach on the part of the creditor of its obligation, prior to conclusion of the agreement, to assess the borrower's creditworthiness by consulting the relevant database, that creditor forfeits its entitlement to contractual interest but is automatically entitled to interest at the statutory rate, payable from the date of the delivery of a court decision ordering that borrower to pay the outstanding sums, which interest is, moreover, increased by five percentage points if, on expiration of a

period of two months following delivery of that decision, the borrower has not repaid his debt in full.

Admissibility

31 The European Commission challenges the admissibility of the request for a preliminary ruling in two respects.

32 It submits, first, that the national system of penalties applicable in the main proceedings is intended to penalise the breach of an obligation established, not by Directive 2008/48, but by a national rule imposing on creditors an obligation to consult a database which the Member States may retain under Article 8 of that directive, even if that system also applies to the breach of other obligations which result directly from that directive. Consequently, it is not clear whether such a system of penalties comes within the scope of Article 23 of that directive.

33 Secondly, according to the Commission, since the principle of automatic application of interest at the statutory rate and of the increase of that interest appears to imply that the national court cannot set aside the provisions at issue in the main proceedings providing for the payment of those amounts or interpret them in the light of EU law, the usefulness of an answer from the Court of Justice to the question submitted to it by the referring court must be brought into question.

34 In that respect, first, as regards the applicability of Article 23 of Directive 2008/48 to the national system of penalties at issue in the main proceedings, it must be noted that, according to the actual wording of that article, it applies to ‘penalties applicable to infringements of the national provisions adopted pursuant to [that] Directive’.

35 It must be stated that the system of penalties at issue is intended to penalise the infringement of a national provision adopted in the context of the transposition of Directive 2008/48.

36 That system, as provided for in Article L. 311-48 of the Consumer Code, is intended, inter alia, to penalise the creditor’s breach of the obligation, laid down in Article L. 311-9 of that code, to check the borrower’s creditworthiness by consulting the national register established for that purpose. Article 8 of Directive 2008/48 expressly provides that such a consultation requirement may be retained. Furthermore, the system of penalties at issue in the main proceedings generally applies in the event of breach of the obligation to carry out an assessment, prior to conclusion of the agreement, of the consumer’s creditworthiness as laid down in Article L. 311-9 of the Consumer Code, which is intended to transpose Article 8 of that directive. Moreover, it is clear from recital 28 in the preamble to that directive that such a consultation is to be carried out if the legal and actual circumstances so require.

37 As regards, secondly, the Commission’s doubts as to the usefulness of an answer to the question referred for the resolution of the dispute in the main proceedings, it must be

pointed out that, according to settled case-law of the Court, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling from a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, *inter alia*, Case C-279/12 *Fish Legal and Shirley* [2013] ECR, paragraph 30).

38 In that respect, it does not follow clearly from the principle of the automatic or *ipso jure* application of interest at the statutory rate, and the increase of that interest, to a sum which was not repaid within the required period that the referring court would be unable to take usefully into account the answer given by the Court of Justice to the question referred by, *inter alia*, interpreting the national provisions pursuant to which that sum is payable in the light of EU law if that proves to be necessary in view of the answer given.

39 In those circumstances, it must be held that the doubts raised by the Commission are not such as to call into question the admissibility of the request for a preliminary ruling.

Merits

40 It follows from Article 8(1) of Directive 2008/48, read in the light of recital 28 in the preamble thereto, that before the conclusion of a credit agreement the creditor must assess the consumer's creditworthiness, where necessary on the basis of a consultation of the relevant database.

41 In that context, recital 26 in the preamble to that directive states that, in an expanding credit market, in particular, it is important that creditors should not engage in irresponsible lending or give out credit without prior assessment of creditworthiness, and that Member States should carry out the necessary supervision to avoid such behaviour and should determine the necessary means to sanction creditors in the event of their doing so.

42 Since the creditor's obligation, prior to conclusion of the agreement, to assess the borrower's creditworthiness is intended to protect consumers against the risks of over-indebtedness and bankruptcy, it contributes to attaining the objective of Directive 2008/48, which consists, as can be seen from recitals 7 and 9 in the preamble to that directive, in providing, as regards consumer credit, full and mandatory harmonisation in a number of key areas, which is regarded as necessary in order to ensure that all consumers in the European Union enjoy a high and equivalent level of protection of their interests and to facilitate the emergence of a well-functioning internal market in consumer credit.

43 In the light of such an objective, which seeks to ensure the effective protection of consumers against the irresponsible granting of credit agreements which are beyond their financial capacities and which may bankrupt them, Article 23 of Directive 2008/48 provides that the system of penalties applicable in the event of infringement of the national provisions concerning the assessment of the borrower's creditworthiness prior to conclusion of the agreement, adopted pursuant to Article 8 of that directive, is to be established in such a way as to ensure that the penalties are effective, proportionate and dissuasive and, furthermore, that the Member States are to take all measures necessary to ensure that they are implemented. In addition, it can be seen from recital 47 in the preamble to that directive that, within those limits, the choice of penalties remains within the discretion of the Member States.

44 In this respect, it must be pointed out that the Court has consistently held, with regard to the principle of sincere cooperation, now enshrined in Article 4(3) TEU, that, while the choice of penalties remains within their discretion, Member States must ensure in particular that infringements of EU law are penalised under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive (see, to that effect, *inter alia*, Joined Cases C-387/02, C-391/02 and C-403/02 *Berlusconi and Others* [2005] ECR I-3565, paragraphs 64 and 65, and Case C-418/11 *Texdata Software* [2013] ECR, paragraph 50).

45 In particular, the Court has held that the severity of penalties must be commensurate with the seriousness of the infringements for which they are imposed, in particular by ensuring a genuinely dissuasive effect, while respecting the general principle of proportionality (*Texdata Software*, paragraph 51).

46 In the present case, the creditor's obligation to assess the borrower's creditworthiness prior to conclusion of the agreement — imposed by Article L. 311-9 of the Consumer Code, a provision intended to transpose Article 8 of Directive 2008/48 — is penalised, in the event of infringement, by Article L. 311-48 of that code, a provision intended to transpose Article 23 of that directive and which provides for the (in principle, complete) forfeiture of the creditor's entitlement to interest.

47 Thus, the question arises whether the severity of that penalty is commensurate with the seriousness of the infringements for which it is imposed and, in particular, whether such a penalty has a genuinely dissuasive effect.

48 In that regard, the referring court notes that, according to national case-law, the penalty of forfeiture of entitlement to interest relates only to contractual interest, with the result that creditors are automatically entitled to interest at the statutory rate, which, in the vast majority of cases, is also automatically increased by five percentage points. In the main proceedings, the referring court indicates that, for 2012, the rate of contractual interest was 5.60%, whereas the interest at the statutory rate, increased by five percentage points, amounted to 5.71%. The difference between those rates would have been even more pronounced in regard to 2013. It follows, according to the referring court, that the

application of the forfeiture penalty, as provided for by the national legislation, is liable to confer an advantage on the creditor.

49 Against this, the Commission submits that, in situations such as that in the main proceedings, in which the creditor seeks immediate reimbursement of the loan following the borrower's default on payment, the effective and dissuasive nature of the penalty seems assured. The costs linked to the consultation — in the context of the assessment of the borrower's creditworthiness — of the databases established for that purpose are relatively limited, whereas the penalty of forfeiture of entitlement to contractual interest entails a risk carrying a potentially high financial cost. Moreover, while it is true that non-diligent creditors can still claim interest at the statutory rate, increased, where appropriate, by five percentage points, it is nevertheless the case that — contrary to the situation of the creditor which has complied with the obligation to carry out an assessment of the borrower's creditworthiness prior to conclusion of the agreement — the basis on which that interest is applied does not include either the contractual interest or any statutory interest due on that contractual interest.

50 In that respect, in order to assess the genuinely dissuasive nature of the penalty, it is for the referring court, which alone has jurisdiction to interpret and apply national law, to compare, in the circumstances of the case before it, the amounts which the creditor would have received by way of repayment of the loan if it had complied with its obligation to assess, prior to conclusion of the agreement, the borrower's creditworthiness by consulting the relevant database, with the amounts which it would receive if the penalty for breach of that prior obligation were applied. In order to determine the latter amounts, it is for that court to take into consideration all the circumstances and, in particular, all the consequences likely to follow from a finding, by that court, that the creditor failed to comply with that prior obligation.

51 If, after carrying out the abovementioned comparison, the referring court were to conclude that, in the dispute before it, the application of the penalty of forfeiture of entitlement to contractual interest is liable to confer an advantage on the creditor, since the amounts which it forfeits are less than those resulting from the application of interest at the increased statutory rate, it would follow that, clearly, the system of penalties at issue in the main proceedings does not ensure that the penalty incurred is genuinely dissuasive.

52 Moreover, given the importance, noted in paragraph 43 of the present judgment, of the objective of consumer protection inherent in the creditor's obligation to assess the borrower's creditworthiness, the penalty of forfeiture of entitlement to contractual interest cannot be regarded, more generally, as being genuinely deterrent if the referring court were to find, at the conclusion of the comparison referred to in paragraph 50 of the present judgment and in the light of all the relevant circumstances there referred to, that — in a case such as that which has been brought before it, in which the outstanding amount of the principal of the loan is immediately payable as a result of the borrower's default — the amounts which the creditor is likely to receive following the application of

that penalty are not significantly less than those which that creditor could have received had it complied with that obligation.

53 If the penalty of forfeiture of entitlement to interest is weakened, or even entirely undermined, by reason of the fact that the application of interest at the increased statutory rate is liable to offset the effects of such a penalty, it necessarily follows that that penalty is not genuinely dissuasive (see, by analogy, Case C-382/92 *Commission v United Kingdom* [1994] ECR I-2435, paragraphs 56 to 58).

54 In the event that the referring court were to find that the penalty of forfeiture of entitlement to contractual interest is not genuinely dissuasive, within the meaning of Article 23 of Directive 2008/48, it must be noted in this respect that a national court, when hearing a case exclusively between individuals, is required, when applying the provisions of domestic law, to consider the whole body of rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the applicable directive in order to achieve an outcome consistent with the objective pursued by that directive (see, *inter alia*, Case C-351/12 *OSA* [2014] ECR, paragraph 44).

55 In the light of all the foregoing, the answer to the question raised is that Article 23 of Directive 2008/48 must be interpreted as precluding the application of a national system of penalties under which, in the event of failure on the part of the creditor to comply with its obligation, prior to conclusion of an agreement, to assess the borrower's creditworthiness by consulting the relevant database, that creditor forfeits its entitlement to contractual interest but is automatically entitled to interest at the statutory rate, payable from the date of delivery of a court decision ordering that borrower to pay the outstanding sums, which is further increased by five percentage points if, on expiry of a period of two months following that decision, the borrower has not repaid his debt in full, where the referring court finds that — in a case such as that in the main proceedings, in which the outstanding amount of the principal of the loan is immediately payable as a result of the borrower's default — the amounts which the creditor is in fact likely to receive following the application of the penalty of forfeiture of entitlement to contractual interest are not significantly lower than those which it could have received had it complied with its obligation to assess the borrower's creditworthiness.

Costs

56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Article 23 of 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 must be interpreted as precluding the application of a national system

of penalties under which, in the event of failure on the part of the creditor to comply with its obligation, prior to conclusion of an agreement, to assess the borrower's creditworthiness by consulting the relevant database, that creditor forfeits its entitlement to contractual interest but is automatically entitled to interest at the statutory rate, payable from the date of delivery of a court decision ordering that borrower to pay the outstanding sums, which is further increased by five percentage points if, on expiry of a period of two months following that decision, the borrower has not repaid his debt in full, where the referring court finds that — in a case such as that in the main proceedings, in which the outstanding amount of the principal of the loan is immediately payable as a result of the borrower's default — the amounts which the creditor is in fact likely to receive following the application of the penalty of forfeiture of entitlement to contractual interest are not significantly lower than those which it could have received had it complied with its obligation to assess the borrower's creditworthiness.

[Signatures]

* Language of the case: French.