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ECJ: Partial recovery of commission in case of early repayment of a loan

In a preliminary request from Poland the European Court of Justice decided that the consumer can recover part of the commission linked to the granting of credit if he or she has not been informed that this commission is not dependent of the duration of the contract. The same applies if the consumer has paid that commission in a single instalment when concluding the mortgage agreement.

Background

In the Polish case, a consumer concluded a mortgage agreement for a period of 360 months. When concluding the credit agreement, she paid a commission linked to the granting of the loan, which was included in its total cost. The consumer repaid this loan in full within 19 months. She asked the bank to refund her part of the commission in question, corresponding to the remaining duration of the contract, namely 341 months. Since her complaint **WAS** rejected by the bank, the consumer initiated legal proceedings.

Decision

In essence the ECJ recalls one of the overriding principles of its case law: Consumers must not be placed at a disadvantage because of a lack of information from the bank.

The Court held that the creditor in a mortgage agreement must provide the consumer with pre-contractual information on the breakdown of the charges, based on whether they are regular payments or not. In the absence of information to determine whether the costs concerned are dependent of the duration of the contract or not, they must be considered as such and may be subject to a reduction in the event of early repayment. In this case, the bank does not appear to have provided the consumer with such information regarding the disputed commission. In such a situation, the national court must find that this commission is also covered by the consumer's right to a reduction in the total cost of the credit.

According to the Court, the consumer cannot be penalized by the lack of information that the creditor is required to provide. Moreover, the fact that a charge was paid by the consumer in one single instalment when concluding the contract does not necessarily mean that this cost is independent of the duration of the contract and, therefore, cannot be partially refunded.

Note: Although the current ECJ decision relates to a Polish case, it might also be of interest to German residents. In a very similar decision about the method to calculate compensation for early repayment of a loan the ECJ has elaborated in some detail on the statutory German and EU-provisions (judgment of 14 March 2024 in the case *C-536/22 VR Bank Ravensburg-Weingarten*; see our [blog post of 18 March 2024](#)).

Source:

ECJ, judgment of 17 October 2024 in the case **C-76/22** *Santander Bank Polska*. -ECJ press release **No. 182/24**.

Keywords

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