



AEDBF 1988-2013

25 YEARS OF FRENCH LAW ON
LENDING ACTIVITIES BY BANKS
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Introduction

- Since creation of the AEDBF in 1988 :
- we have a new common currency: the euro. Prophets of doom were wrong. We have had no legal problems (so far).
- We also have the European passport for banking institutions
- But we have also seen the rise of a system of rating debt, the acceptance of which by financial markets and regulators fostered irresponsible behavior by lenders
- We still do not have a generalized *right of borrowers to obtain credit* »

I. Conclusion of the credit agreement



- Evolution in French law of a loan by banks from a *contrat réel* to a consensual contract (Civ. 1^{ère} n° 97-21,422, 28/03/2000)

Consequences:

- 1/Protection of the borrower in case of failure of the bank to disburse loan proceeds
- 2/ All the mandatory disclosures must be made in writing before disbursement including the Effective Global Interest Rate (as defined by statute)

I. Conclusion of the credit agreement



- When a loan is made in France by a foreign bank with no banking licence in the EEE :
 - no consequence on the validity of the credit agreement (Ass. Plén. 4/03/2005, n° 03-11,725)
 - obligation to repay security arrangements still valid
- Use of scoring
- KYC/AML/Professional secrecy

II. Protection of the borrower



- Loan agreements must be in writing
- Many new techniques to protect the borrower and the guarantor, such as insurance and derivatives contracts
- Distinction between the client « averti » (informed and knowledgeable) and the others: obligation to warn
- Multiplicity of protective legislation for consumers and non-professional clients

III. Remuneration of the lender



- Rate of interest: must be stated expressly and in writing (articles 1905 and 1907 of the Civil Code)
- TEG/ Effective Global Interest Rate
- Value dates (Com. 6/04/1993)
- Banking year of 360 days (Com. 10/01/1995)
- Usury: limitation of the scope of application

IV. Lender's liability

- Principle of non-involvement in borrower's affairs maintained
- Abusive withdrawal of credit: resolved by L. 313-2 and D. 313-14-1 CMF
- Lending to insolvent debtor (deepening insolvency): resolved by L. 650-1 C. com.
- Obligation to inform, obligation to warn; sanction: lost opportunity
- Security provided to new money L. 611-11 C. com.

Conclusion

- Trend towards transparency and clear information and documentation for all borrowers
- Difference of approach in legislation and case law in treatment of consumers/non-professionals and professionals
- Significant competition among bankers in lending activities
- Towards disintermediation ?