

# Commentary on digital evidence and electronic signature of a consumer credit contract in France

By Eric A. Caprioli

The operation of consumer credit constitutes an important part of the economy. Credit institutions now use on-line processes when contracting with their clients. In France, the first decision to have been issued in a litigation relating to an electronically signed appendix to an on-line credit contract has been the one of the Nancy Court of Appeal in February 2013.<sup>1</sup>

Later the same year, on 2 May 2013, the Douai Court of Appeal issued a judgment<sup>2</sup> in a similar case. In this instance, a credit institution (Monabanq) initiated legal proceedings against the defendant to claim payment due to exceeding the authorised overdrafts on the basis of an appendix signed electronically on 10 March 2009, whereas the initial contract had been signed with a handwritten signature following a prior offer dated 17 January 2006. The first instance judge<sup>3</sup> foreclosed this legal action, considering that the only valid document in this case was the initial 2006 contract. Indeed, the judge highlighted that the appendix presented by the bank was an unsigned photocopy which did not contain the date or signature of the debtor and therefore, it cannot be qualified as an acceptance by the client of an increase in the authorized credit amount.

<sup>1</sup> The first instance decision in this litigation was Epinal District Court, 12 December 2011, n° 11/00080: JurisData n° 2011-035112, commented by Eric A. Caprioli in *Communication, Commerce Electronique*, LexisNexis, April 2013, comm. 47 (the translation of this case is published in the *Digital Evidence and Electronic Signature Law Review*, 11 (2014)). The appeal decision has been issued by the 2nd civil chamber of the Nancy Court of Appeal on 14 February 2013, Carrefour Banque c/ M. X., n°12/01383: JurisData n° 2013-004062, not published, commented by Eric A. Caprioli in *Communication, Commerce Electronique*, LexisNexis, June 2013, study 11 and *Semaine Juridique*, general edition, April 2013, comm. 497 (the translation of this case is published in the *Digital Evidence and Electronic Signature Law Review*, 11 (2014)).

<sup>2</sup> Douai Court of Appeal, 8th chamber, 1st section, 2 Mai 2013, n° 12/05299: JurisData n° 2013-008597, commented by Eric A. Caprioli in *Communication, Commerce Electronique*, LexisNexis, February 2014, comm. 22 (the translation of the case note is published in the *Digital Evidence and Electronic Signature Law Review*, 11 (2014)).

<sup>3</sup> Maubeuge District Court, 16 March 2012, n° 11-11-622.

The Court of Appeal overturned this ruling and admitted that the client had indeed electronically signed the appendix and therefore, appropriate evidence was provided by the bank. For the judge:

‘The signature which is required in order to complete a juridical act must identify the person who places it on the document; it demonstrates the consent of the parties to the obligations which arise from the act; where it is an electronic signature, it shall involve the use of a reliable identification process that guarantee a firm link with the instrument to which it is related; the reliability of the procedure is presumed, except as otherwise proved, if the electronic signature is generated, the identity of the signatory is assured and the integrity of the act is guaranteed in accordance with the conditions established by the 2001-272 decree of March 30 2011’.

Since the bank presented an electronically signed appendix dated 10 March 2009, proving that the credit amount had been increased, it was considered that the starting point for any legal action in the matter was 12 August 2010 – the day of the first unpaid installment. As a consequence, the two years prescriptive date to intent legal action was not relevant.

To conclude, the present judgment is particular, since the electronic signature of the appendix was not challenged by the bank’s client. If this was the case, the judge would have proceed differently and the signature verification process would not have been solely carried out on the basis of the signed electronic file.

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