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Judgments in Joined Cases E-13/22 and E-1/23 *Gylfason and Gröndal v Landsbankinn hf. and Sverrisdóttir and Sigurðsson v Íslandsbanki hf.*, and Case E-4/23 *Neytendastofa v Íslandsbanki hf.*

Transparency and information requirements in variable interest rate mortgage and credit loan agreements

In two judgments delivered today, the Court answered questions referred to it in two joined cases from Reykjavik District Court (*Héraðsdómur Reykjavíkur*) and Reykjanes District Court (*Héraðsdómur Reykjaness*) and one case from the Icelandic Court of Appeal (*Landsréttur*) concerning transparency and the adequacy of information provided to customers on terms and conditions for, inter alia, adjusting the interest rate of a variable interest rate mortgage and credit loan agreements.

In Joined Cases E-13/22 and E-1/23 *Gylfason and Gröndal v Landsbankinn hf. and Sverrisdóttir and Sigurðsson v Íslandsbanki hf.*, the Court examined the questions referred in the context of EEA law on consumer protection, including Directive 93/13/EEC (“the Unfair Contract Terms Directive” or “UCTD”). The Court found that Article 5 UCTD must be interpreted as meaning that the contractual term must not only be formally and grammatically intelligible, but also enable an average consumer to be in a position to understand the specific functioning of the method used for calculating that rate and thus to evaluate, on the basis of clear, intelligible criteria, the potential economic consequences of such a term.

The Court held that in order to satisfy the requirement of good faith under Article 3 UCTD, it is of fundamental importance for the assessment of a term that allows for a bank to unilaterally adjust the interest rate that any adjustment would be carried out in a manner that permits an average consumer to foresee the conditions and procedure for such adjustment with a sufficient degree of predictability. General references to unforeseen potential increases in the creditor’s costs are, by definition, unverifiable by an average consumer. As such, the inclusion of such elements will render it impossible for an average consumer to determine the economic consequences of the term for his or her financial obligations. The Court also observed that the inclusion of terms such as “interest rates on the market” and “changes in the bank’s financing costs” are prima facie not transparent, even if such formulations are in themselves grammatically plain and intelligible. Further, the uncertainty of the terms at issue in the main proceedings are reinforced by the inclusion of the term “amongst other things”. By its nature, the term allows for the inclusion of factors not known by the consumer when the contract is concluded. Subject to the verifications to be carried out by the referring courts, such contractual terms seem liable to cause a significant imbalance in the parties’ rights and obligations.

The Court also found that Article 24 of Directive 2014/17/EU (“the Mortgage Credit Directive”) would be deprived of its effectiveness if other elements used in addition to indexes or reference rates to calculate the borrowing rate are excluded from the outset from an assessment of transparency. Therefore, the requirements as to clarity, accessibility, objectivity and verifiability apply whenever an index or a reference rate is used to calculate the borrowing rate. The Court also held that it would be incompatible with Article 24 if contract terms and the information provided to a consumer are not formally and grammatically intelligible, or do not enable an average consumer to understand the specific functioning of the method used for

calculating the borrowing rate, and, where appropriate the relationship between that mechanism and that provided for by other contractual terms so that the consumer is in a position to evaluate the economic consequences of the mortgage.

Further, the Court observed that it is for the national courts to determine whether a term in a variable-rate mortgage loan agreement meets the requirements of good faith, balance and transparency. The assessment of unfairness must be made taking into account the high level of consumer protection warranted in the area of consumer credit specific to mortgage agreements. Terms such as those at issue, must be declared unfair where such terms cause a significant imbalance in the parties' rights and obligations to the detriment of the consumer.

Finally, the Court found that it is for the referring courts to determine whether the invalidity of any terms held to be unfair in the mortgage agreements in question would be likely to prevent the contracts from continuing to exist. Should the annulment of such terms prevent the contracts from continuing to exist, the referring courts may replace the unfair terms with supplementary provisions of national law. However, if the contracts can continue to exist without the terms in question, the unfair term may not be substituted with such a supplementary provision.

In Case E-4/23 *Neytendastofa v Íslandsbanki hf.* the Court was asked a series of questions on the adequacy of information provided to the consumer on the conditions for adjusting the variable borrowing rate on credit, the annual percentage rate of charge, other charges deriving from the credit agreement and charges to be paid in the case of late payment.

The Court found that Directive 2008/48/EC ("the Consumer Credit Directive"), requires a creditor to specify in an exhaustive listing in the Standard European Consumer Credit Information ("SECCI") standard form and in the credit agreement, respectively, the conditions on which the decision to adjust the borrowing rate on credit that bears variable interest is based. Those information requirements are not met if there is a general reference to an unforeseen increase in the creditor's costs or other conditions that are not known to the creditor, or if the wording of a provision in the standard form includes general and open-ended references such as "etc." absent adequate additional contextual information. The Court also observed that the terms' lack of clarity is aggravated by the use of "amongst other things", which allows for inclusion of factors not known by the consumer.

The Court further found that the Consumer Credit Directive requires that all other charges deriving from the credit agreement must be specified in the SECCI standard form and in the credit agreement. The SECCI standard form must contain all information on charges, and the conditions under which those costs can be changed, in order to allow the consumer to compare different offers and genuinely apprise himself or herself of his or her rights and obligations under the credit agreement. Further, where information on charges deriving from the credit agreement, and the conditions under which those charges can be changed, is not provided in the credit agreement itself, the agreement must specify that such charges apply, that they may be changed, and contain a clear and precise cross-reference to other paper, or other durable media containing further information on those aspects. Finally, the Court found that the Consumer Credit Directive requires that the SECCI standard form must contain all information on charges to be paid in the case of late payment and the conditions under which those costs can be changed.

The full text of the judgments may be found on the Court's website: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.