

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by Héraðsdómur Reykjavíkur dated 5 November 2013 in the case of Gunnar V. Engilbertsson v Íslandsbanki hf.

(Case E-25/13)

A request has been made to the EFTA Court by a letter dated 5 November 2013 from Héraðsdómur Reykjavíkur (Reykjavík District Court), which was received at the Court Registry on 12 November 2013, for an Advisory Opinion in the case of Gunnar V. Engilbertsson v Íslandsbanki hf., on the following questions:

- 1. Is it compatible with the provisions of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts if the legislation in a State which is a party to the EEA Agreement permits contracts between consumers and suppliers for loans to finance real estate purchases to contain provisions stating that the instalment repayments are to be linked to a pre-determined index?**
- 2. If the answer to the first question is that the index-linking of repayments of loans taken to finance real-estate purchases is compatible with the provisions of Directive 93/13/EEC, then the second question is: Does the Directive limit the discretion of the EEA State in question to determine, whether through legislation or by means of administrative regulations, the factors that may cause changes in the predetermined index and the methods by which these changes are to be measured?**
- 3. If the answer to the second question is that Directive 93/13/EEC does not restrict the discretion of the Member State referred to in that question, then the third question is: is a contractual term regarded as having been individually negotiated within the meaning of Article 3(1) of the Directive when a) it is stated in the bond which the consumer signs when taking out the loan that his obligation is index-linked and the base index to be used when calculating price-changes is specified in the bond, b) the bond is accompanied by a payment schedule showing estimated and itemised payments to be made on the due dates of the loan, and it is stated in the schedule that these estimates may change in accordance with the indexation provision of the bond, and c) both the consumer and the lender sign the payment schedule at the same time as the consumer signs the bond?**
- 4. Is the method of calculation of price changes in contracts for loans to finance real estate purchases regarded as having been explicitly explained to the consumer within the meaning of paragraph 2(d) of the Annex to Directive 93/13/EEC when the circumstances are as described in the third question?**
- 5. Does a State that is party to the EEA Agreement have the option, when adopting Article 6(1) of Directive 93/13/EEC, of either prescribing in**

domestic legislation that unfair contract terms within the meaning of Article 6(1) of the Directive may be declared non-binding on the consumer or prescribing in domestic legislation that such terms shall be non-binding on the consumer at any time?