



REPORT FOR THE HEARING

in Case E-4/23

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Icelandic Court of Appeal (*Landsréttur*), in the case between

the Consumer Agency (*Neytendastofa*)

and

Íslandsbanki hf.,

concerning the interpretation of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers (the Consumer Credit Directive), in particular Article 5(1)(f), (i), (g) and (l) and Article 10(2)(f) and (k).

I Introduction

1. By letter of 1 June 2023, registered at the Court on the same day, the Icelandic Court of Appeal requested an Advisory Opinion in the case pending before it between the Icelandic Consumer Agency (“the Consumer Agency”) and Íslandsbanki hf. (“Íslandsbanki”). At issue in the domestic case is whether Íslandsbanki violated Article 7(4)(f), (g), (i) and (l), and Article 12(2)(f) and (k) of the Icelandic Consumer Credit Act by providing inadequate information in its standard form for consumer credit and in its credit agreement. The provisions in the Icelandic Consumer Credit Act correspond to Article 5(1)(f), (i), (g) and (l) and Article 10(2)(f) and (k) of the Consumer Credit Directive.

II Legal background

EEA law

2. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66, and EEA Supplement 2012 No 54, p. 36) (“the Consumer Credit Directive”) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 16/2009 of 5 February 2009 (OJ 2009 L 73, p. 53, and EEA Supplement 2009 No 16, p. 24). The Consumer Credit Directive is referred to at point 7h of Annex XIX (Consumer protection) to the EEA Agreement. Constitutional requirements were

indicated by Iceland, Liechtenstein and Norway. The requirements were fulfilled by 1 September 2011 and the decision entered into force on 1 November 2011.

3. Recitals 7, 8, 9, 10, 18, 19, 31 and 32 of the Consumer Credit Directive, read, in extract:

- (7) *In order to facilitate the emergence of a well-functioning internal market in consumer credit, it is necessary to make provision for a harmonised Community framework in a number of core areas. In view of the continuously developing market in consumer credit and the increasing mobility of European citizens, forward-looking Community legislation which is able to adapt to future forms of credit and which allows Member States the appropriate degree of flexibility in their implementation should help to establish a modern body of law on consumer credit.*
- (8) *It is important that the market should offer a sufficient degree of consumer protection to ensure consumer confidence. Thus, it should be possible for the free movement of credit offers to take place under optimum conditions for both those who offer credit and those who require it, with due regard to specific situations in the individual Member States.*
- (9) *Full harmonisation is necessary in order to ensure that all consumers in the Community enjoy a high and equivalent level of protection of their interests and to create a genuine internal market. Member States should therefore not be allowed to maintain or introduce national provisions other than those laid down in this Directive. However, such restriction should only apply where there are provisions harmonised in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation. ...*
- (10) *The definitions contained in this Directive determine the scope of harmonisation. The obligation on Member States to implement the provisions of this Directive should therefore be limited to its scope as determined by those definitions. ...*
- (18) *... However, this Directive should contain specific provisions on advertising concerning credit agreements as well as certain items of standard information to be provided to consumers in order to enable them, in particular, to compare different offers. Such information should be given in a clear, concise and prominent way by means of a representative example. ...*
- (19) *In order to enable consumers to make their decisions in full knowledge of the facts, they should receive adequate information, which the consumer may take away and consider, prior to the conclusion of the credit agreement, on the conditions and cost of the credit and on their obligations. To ensure the fullest possible transparency and comparability of offers, such information should, in particular, include the annual percentage rate of charge applicable to the*

credit, determined in the same way throughout the Community. As the annual percentage rate of charge can at this stage be indicated only through an example, such example should be representative. Therefore, it should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement under consideration and, if applicable, to the goods purchased. When determining the representative example, the frequency of certain types of credit agreement in a specific market should also be taken into account. As regards the borrowing rate, the frequency of instalments and the capitalisation of interest, creditors should use their conventional method of calculation for the consumer credit concerned.

(31) In order to enable the consumer to know his rights and obligations under the credit agreement, it should contain all necessary information in a clear and concise manner.

(32) In order to ensure full transparency, the consumer should be provided with information concerning the borrowing rate, both at a pre-contractual stage and when the credit agreement is concluded. During the contractual relationship, the consumer should further be informed of changes to the variable borrowing rate and changes to the payments caused thereby. This is without prejudice to provisions of national law not related to consumer information which lay down conditions for, or prescribe the consequences of, changes, other than changes concerning payments, in borrowing rates and other economic conditions governing the credit, for instance rules providing that the creditor may change the borrowing rate only where there is a valid reason for such change or that the consumer may terminate the contract should there be a change in the borrowing rate or in some other economic condition concerning the credit.

4. Article 1 of the Consumer Credit Directive, entitled “Subject matter”, reads:

The purpose of this Directive is to harmonise certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers.

5. Article 3 of the Consumer Credit Directive, entitled “Definitions”, reads, in extract:

For the purposes of this Directive, the following definitions shall apply:

(a) ‘consumer’ means a natural person who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession;

(b) ‘creditor’ means a natural or legal person who grants or promises to grant credit in the course of his trade, business or profession;

(c) *'credit agreement'* means an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments;

...

(g) *'total cost of the credit to the consumer'* means all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for notarial costs; costs in respect of ancillary services relating to the credit agreement, in particular insurance premiums, are also included if, in addition, the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed;

(h) *'total amount payable by the consumer'* means the sum of the total amount of the credit and the total cost of the credit to the consumer;

(i) *'annual percentage rate of charge'* means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable including the costs referred to in Article 19(2);

(j) *'borrowing rate'* means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;

...

(l) *'total amount of credit'* means the ceiling or the total sums made available under a credit agreement;

...

6. Article 5(1)(f), (g), (i) and (l) of the Consumer Credit Directive, entitled "Pre-contractual information", reads:

1. In good time before the consumer is bound by any credit agreement or offer, the creditor and, where applicable, the credit intermediary shall, on the basis of the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer, provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement. Such information, on paper or on another durable medium, shall be provided by means of the Standard European Consumer Credit Information form set out in Annex II. The creditor shall be deemed to have fulfilled the information requirements in

this paragraph and in Article 3, paragraphs (1) and (2) of Directive 2002/65/EC if he has supplied the Standard European Consumer Credit Information.

The information in question shall specify:

(f) the borrowing rate, the conditions governing the application of the borrowing rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedure for changing the borrowing rate; if different borrowing rates apply in different circumstances, the abovementioned information on all the applicable rates;

(g) the annual percentage rate of charge and the total amount payable by the consumer, illustrated by means of a representative example mentioning all the assumptions used in order to calculate that rate; where the consumer has informed the creditor of one or more components of his preferred credit, such as the duration of the credit agreement and the total amount of credit, the creditor shall take those components into account; if a credit agreement provides different ways of drawdown with different charges or borrowing rates and the creditor uses the assumption set out in point (b) of Part II of Annex I, he shall indicate that other drawdown mechanisms for this type of credit agreement may result in higher annual percentage rates of charge;

(i) where applicable, the charges for maintaining one or several accounts recording both payment transactions and drawdowns, unless the opening of an account is optional, together with the charges for using a means of payment for both payment transactions and drawdowns, any other charges deriving from the credit agreement and the conditions under which those charges may be changed;

(l) the interest rate applicable in the case of late payments and the arrangements for its adjustment, and, where applicable, any charges payable for default;

7. Article 10(2)(f) and (k) of the Consumer Credit Directive, entitled “Information to be included in credit agreements”, reads:

2. The credit agreement shall specify in a clear and concise manner:

(f) the borrowing rate, the conditions governing the application of that rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedures for changing the borrowing rate and, if different borrowing rates apply in different circumstances, the abovementioned information in respect of all the applicable rates;

(k) where applicable, the charges for maintaining one or several accounts recording both payment transactions and drawdowns, unless the opening of an account is optional, together with the charges for using a means of payment for both payment transactions and drawdowns, and any other charges deriving from

the credit agreement and the conditions under which those charges may be changed;

8. Article 19(1) of the Consumer Credit Directive, entitled “Calculation of the annual percentage rate of charge”, reads:

The annual percentage rate of charge, equating, on an annual basis, to the present value of all commitments (drawdowns, repayments and charges), future or existing, agreed by the creditor and the consumer, shall be calculated in accordance with the mathematical formula set out in Part I of Annex I.

9. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 7/94 of 21 March 1994 (OJ 1994 L 160, p. 1, and EEA Supplement 1994 No 17, p. 1) (“the Unfair Contract Terms Directive”). The Unfair Contract Terms Directive is referred to at point 7a of Annex XIX (Consumer protection) to the EEA Agreement. Constitutional requirements were indicated by Iceland, Liechtenstein and Norway. The requirements were fulfilled by 23 June 1994 and the decision entered into force on 1 July 1994.

10. Article 3 of the Unfair Contract Terms Directive reads:

1. A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the consumer.

2. A term shall always be regarded as not individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.

The fact that certain aspects of a term or one specific term have been individually negotiated shall not exclude the application of this Article to the rest of a contract if an overall assessment of the contract indicates that it is nevertheless a pre-formulated standard contract.

Where any seller or supplier claims that a standard term has been individually negotiated, the burden of proof in this respect shall be incumbent on him.

3. The Annex shall contain an indicative and non-exhaustive list of the terms which may be regarded as unfair.

11. Article 4 of the Unfair Contract Terms Directive reads:

1. Without prejudice to Article 7, the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the

contract was concluded and by referring, at the time of the conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.

2. Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or good supplies in exchange, on the other, in so far as these terms are in plain intelligible language.

12. Article 5 of the Unfair Contract Terms Directive reads:

In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. This rule on interpretation shall not apply in the context of the procedures laid down in Article 7 (2).

13. Article 6 of the Unfair Contract Terms Directive reads:

1. Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.

2. Member States shall take the necessary measures to ensure that the consumer does not lose the protection granted by this Directive by virtue of the choice of law of a non-Member country as the law applicable to the contract if the latter has a close connection with the territory of the Member States.

National law¹

14. The Consumer Credit Directive was incorporated into Icelandic law by the Consumer Credit Act No 33/2013 (“the Consumer Credit Act”).

15. Article 7 of the Consumer Credit Act, entitled “Information to be provided prior to conclusion of an agreement”, reads, in extract:

The creditor shall, with suitable notice, provide the consumer with the information necessary to compare dissimilar offers and to take an informed decision on whether to enter into a credit agreement before the consumer is bound by a credit agreement or offer. This information shall be provided on the basis of the credit terms, the conditions offered by the creditor and, if applicable, any wishes expressed or information provided by the consumer.

¹ All translations of national law are unofficial.

Such information shall be provided on paper or other durable medium, on a standard form which is published in a regulation issued by the minister.

The creditor shall be regarded as having met the information requirements of Articles 5 and 6 of the Distance Marketing of Consumer Financial Services Act, No 33/2005, if it has provided information on a standard form in accordance with the second paragraph.

The information shall contain the following:

...

f. the borrowing rate, the conditions for its application and, if appropriate, any index or reference interest rate that may affect the initial borrowing rate, and also the period, conditions, and procedure for changing the borrowing rate; if various borrowing rates apply under various circumstances, the aforementioned information shall be provided on them all;

g. the annual percentage rate of charge and the total amount payable by the consumer, illustrated by means of a representative example mentioning all the assumptions used in order to calculate the percentage rate; if the consumer has informed the creditor of one or more components of his preferred credit, such as the duration of the credit agreement and the total amount of credit, the creditor shall take those components into account; if a credit agreement provides different ways of drawdown with different charges or borrowing rates, the creditor shall use shall use the highest charges and the [highest] rate applying to the most common credit agreements and state that other assumptions could result in a higher annual percentage rate of charge;

...

i. where applicable, the charges for maintaining one or more credit lines, in which both payment transactions and drawdowns are recorded, unless the opening of a credit line is optional, together with the charges for using a means of payment for both payment transactions and drawdowns, any other charges deriving from the credit agreement and the conditions under which those charges may be changed;

...

l. the interest rate applying in the case of late payments and the arrangements for its adjustment and, if applicable, charges payable in the event of default;

...

16. Article 12(2)(f) and (k) of the Consumer Credit Act, entitled “Information which shall be specified in the credit agreement”, reads:

The credit agreement shall specify in a clear and concise manner:

f. the borrowing rate, the conditions for its application and, if appropriate, any index or reference interest rate that may affect the initial borrowing rate, and also the periods, conditions, and procedure for changing the borrowing rate; if various borrowing rates apply under different circumstances, the aforementioned information shall be provided regarding all of the rates;

k. where applicable, the charges for maintaining one or more credit lines, in which both payment transactions and drawdowns are recorded, unless the opening of a credit line is optional, together with the charges for using a means of payment for both payment transactions and drawdowns, any other charges deriving from the credit agreement and the conditions under which those charges may be changed;

III Facts and procedure

17. By letter of 12 March 2019, the Consumer Agency requested from Íslandsbanki a copy of the bank's standard form and credit agreement. The requested documents were received by the Consumer Agency on 18 March 2019.

18. In its letter of 28 June 2019, the Consumer Agency raised criticisms regarding the information in the standard form, which is presented to the consumer at the pre-contractual stage. Íslandsbanki countered these criticisms in its letter of 19 July 2019.

19. In its decision of 26 November 2019, the Consumer Agency concluded that Íslandsbanki, by providing inadequate information in its standard form and credit agreement, had violated Article 7(4)(f), (g), (i) and (l), and Article 12(2)(f) and (k) of the Consumer Credit Act. The Consumer Agency instructed Íslandsbanki to put this information in satisfactory order. Íslandsbanki was further informed that failure to comply with this instruction within four weeks could result in a fine.

20. On 19 December 2019, Íslandsbanki referred the Consumer Agency's decision to the Icelandic Consumer Affairs Appeals Committee (*Áfrýjunarnefnd neytendamála*) ("the Appeals Committee"). By its ruling of 13 October 2020, the Appeals Committee upheld the Consumer Agency's decision.

21. On 8 January 2021, Íslandsbanki brought an action before Reykjavík District Court (*Héraðsdómur Reykjavíkur*) seeking to set aside the Appeals Committee's ruling. The Consumer Agency's plea before the District Court was that it should be exonerated of Íslandsbanki's claims.

22. In its judgment of 31 January 2022, Reykjavík District Court held that the Appeals Committee's ruling was vitiated by material flaws and that the procedure in the case before the Appeals Committee had been so deficient, in some aspects, that the District Court had no alternative but to set aside the ruling in its entirety. The Consumer Agency was ordered to pay Íslandsbanki ISK 1 000 000 in legal costs.

23. An appeal against the judgment of the District Court was lodged with the Court of Appeal on 24 February 2022.

24. The Court of Appeal requested an Advisory Opinion from the Court by letter of 1 June 2023, registered at the Court on the same day. The Court of Appeal has referred the following questions:

- 1. Must Articles 5 and 10 of Directive 2008/48/EC, and particularly Article 5(1)(f) and Article 10(2)(f) thereof, be interpreted as meaning that the creditor is to specify, in an exhaustive listing in a standard form and in the credit agreement, the conditions on which its decisions to raise or lower the borrowing rate on credit that bears variable interest may be based?**
- 2. First, is the requirement of Article 5 of Directive 2008/48/EC, that the consumer is to be provided with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement, met if, among the conditions for changing the borrowing rate that are specified on the standard form (cf. Article 5(1)(f)), there is a general reference to an unforeseen increase in the creditor's costs? Secondly, is the requirement of Article 10 of Directive 2008/48/EC, that a credit agreement is to specify in a clear and concise manner the conditions and procedures for changing the borrowing rate (cf. Article 10(2)(f)), met if, among those conditions, there is a general reference to an unforeseen increase in the creditor's costs?**
- 3. Is the requirement of Article 5 of Directive 2008/48/EC, that the consumer is to be provided with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement, met if the wording of a provision in the standard form (cf. Article 5(1)(f)) includes general and open-ended references such as "etc.", as is the case in the standard form involved in this case?**
- 4. Does it follow from Article 5(1)(g) of Directive 2008/48/EC that the APR [annual percentage rate] is to be illustrated in the standard form with a representative example in which all the assumptions used to calculate the percentage are stated even though all components of the credit which the consumer intends to take are known?**
- 5. Does it follow from Article 5(1)(i) and Article 10(2)(k) of Directive 2008/48/EC that "other charges deriving from the credit agreement" are always to be specified, irrespective of whether or not the credit is of such a type that both payment transactions and drawdowns of the credit are recorded?**
- 6. If the answer to Question 5 is such that it follows from Article 5(1)(i) and Article 10(2)(k) of Directive 2008/48/EC that, generally, information is to be provided in the standard form on charges deriving from the credit**

agreement, is this requirement met by referring to the creditor's schedule of charges, which may undergo change? Is it necessary to specify clearly in the standard form itself what the charges are and what they will be in the future?

- 7. Does it follow from Article 5(1)(l) of Directive 2008/48/EC that the charges to be paid in the case of late payment are to be specified in the standard form or whether it is sufficient that the creditor make a general reference to its schedule of charges, which may undergo changes?**

IV Written observations

25. Pursuant to Article 20 of the Statute of the Court and Article 90(1) of the Rules of Procedure, written observations have been received from:

- the Consumer Agency, represented by Ásta Sóllilja Sigurbjörnsdóttir, acting as Agent;
- Íslandsbanki, represented by Áslaug Árnadóttir, advocate;
- the EFTA Surveillance Authority ("ESA"), represented by Marte Brathovde, Ingibjörg-Ólöf Vilhjálmsdóttir and Melpo-Menie Joséphidès, acting as Agents; and
- the European Commission ("the Commission"), represented by Inese Rubene and Petr Ondrůšek, acting as Agents.

V Proposed answers submitted

The Consumer Agency

26. The Consumer Agency submits that the questions referred should be answered as follows:

1. With regards to the first question concerning Article 5(1)(f) and Article 10(2)(f) of the Consumer Credit Directive, the articles must be interpreted as meaning that the creditor is to specify, in an exhaustive listing in a standard form and in the credit agreement, the conditions on which its decisions to raise or lower the borrowing rate on credit that bears variable interest may be based.

2. As to the second question the answer must be that the requirement of Article 5 of the Consumer Credit Directive, that the consumer is to be provided with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement, is not met if among the conditions for changing the borrowing rate that are specified on the standard form (cf. Article 5(1)(f)), there is a general reference to an unforeseen increase in the creditor's costs. Furthermore, the requirement of Article 10 of the Consumer Credit Directive, that a credit agreement is to specify in a clear and

concise manner the conditions and procedures for changing the borrowing rate (cf. Article 10(2)(f)), is not met if among those conditions there is a general reference to an unforeseen increase in the creditor's costs.

3. Furthermore, the requirement of Article 5 of the Consumer Credit Directive, that the consumer is to be provided with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement, is not met if the wording of a provision in the standard form, cf. Article 5(1)(f), includes general and open-ended references such as "etc."

4. With regards to the fourth question it does follow from Article 5(1)(g) of the Consumer Credit Directive, that the APR is to be illustrated in the standard form with a representative example in which all the assumptions used to calculate the percentage are stated even though all components of the credit which the consumer intends to take are known.

5. – 6. The fifth and sixth questions both regard Articles 5(1)(i) and 10(2)(k) of the Consumer Credit Directive and should be answered in conjunction, the answer being that indeed "other charges deriving from the credit agreement" are always to be specified, irrespective of whether the credit is of such a type that both payment transactions and drawdowns of the credit are recorded. That requirement is not met by referring to the creditor's schedule of charges, which may undergo change. It is necessary to specify clearly in the standard form itself and in the credit agreement, what the charges are and the conditions under which those charges may be changed. With regards to the credit agreement the requirement on other charges deriving from the credit can be met with a clear and concise cross-reference in the agreement to the creditors schedule of charges which is provided to the consumer on paper or another durable medium with the credit contract. This however does not apply to the standard form.

7. Finally, it does follow from Article 5(1)(l) of the Consumer Credit Directive that the arrangement for adjusting the interest rate in the case of late payments and the charges to be paid in the case of late payment are to be specified in the standard form. A general reference to a schedule of charges, which may undergo changes, is not sufficient.

Íslandsbanki

27. Íslandsbanki submits that the questions referred should be answered as follows:

1. The first three questions should be answered as follows:

Directive 2008/48/EC does not regulate the method used for calculating interest rates and Articles 5(1)(f) and 10(2)(f) do not in any way restrict, the criteria, factors, or circumstances, that may be considered when adjusting the borrowing rate under a credit agreement with variable interest rates. Further, the Articles do not require that the consumer must be informed of

all the factors that can possibly affect the borrowing rate, or the relative significance of each factor or restrict in any way the use of terms in mortgage credit agreements which allow the lender to adjust the borrowing rate based on an unforeseen increase in the creditor's costs.

2. *The answer to the fourth question should be:*

It follows from Article 5(1)(g) of Directive 2008/48/EC that the APR is to be illustrated in the standard form as a percentage, calculated based on all the preferred components of the consumer known to the creditor.

3. *Questions five and six should be answered as follows:*

Articles 5(1)(i) and 10(2)(k) of Directive 2008/48/EC only apply to charges for maintaining one or more accounts recording payments and drawdowns or charges for using a means of payment.

4. *Question seven should be answered as follows:*

It follows from Article 5(1)(l) of Directive 2008/48/EC that creditors are obliged to inform consumers in the standard form of the current rate of late-payment interest and must explain the specific arrangements for adjusting the rate of late-payment interest. Further, creditors are obliged to inform consumers in the standard form of costs of primary and intermediary debt collection.

ESA

28. ESA submits that the questions referred should be answered as follows:

1. *Articles 5 and 10 of Directive 2008/48/EC, and particularly Articles 5(1)(f) and 10(2)(f) thereof, must be interpreted as meaning that the creditor is to specify, in an exhaustive listing in a Standard European Consumer Credit Information form and in the credit agreement, the conditions on which its decisions to raise or lower the borrowing rate on credit that bears variable interest may be based and how these conditions can influence the borrowing rate.*

2. *The requirement of Article 5 of Directive 2008/48/EC that the consumer is to be provided with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement is not met if, among the conditions for changing the borrowing rate that are specified in the Standard European Consumer Credit Information form, there is a general reference to an unforeseen increase in the creditor's costs.*

The requirement of Article 10 of Directive 2008/48/EC that a credit agreement is to specify in a clear and concise manner the conditions and procedures for changing the borrowing rate is not met if, among those conditions, there is a general reference to an unforeseen increase in the creditor's costs.

3. *The requirement of Article 5 of Directive 2008/48/EC that the consumer is to be provided with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement is not met if the wording of a provision in the standard form includes general and open-ended references such as “etc.”*

4. *It follows from Article 5(1)(g) of Directive 2008/48/EC that the APRC is to be illustrated in the standard form with a representative example in which all the assumptions used to calculate the percentage are stated even though all components of the credit which the consumer intends to take are known.*

5. *It follows from Articles 5(1)(i) and 10(2)(k) of Directive 2008/48/EC that “other charges deriving from the credit agreement” are always to be specified, irrespective of whether the credit is of such a type that both payment transactions and drawdowns of the credit are recorded.*

6. *The requirement to specify “other charges deriving from the credit agreement” pursuant to Article 10(2)(k) of Directive 2008/48/EC is met by reference in the credit agreement to the creditor’s schedule of charges, if (i) the schedule of charges is set out on paper or another durable medium that is incorporated into the credit agreement and (ii) the credit agreement contains a clear and precise reference to the schedule of charges.*

The requirement to specify “other charges deriving from the credit agreement” pursuant to Article 5(1)(i) of Directive 2008/48/EC can only be met by being provided by means of the Standard European Credit Information form set out in Annex II to the CCD.

7. *It follows from Article 5(1)(l) of Directive 2008/48/EC that the charges to be paid in the case of late payment are to be specified in the Standard European Consumer Credit Information form. It is not sufficient that the creditor makes a general reference to its schedule of charges.*

The Commission

29. The Commission submits that the questions referred should be answered as follows:

- 1) *Article 5(1)(f) and Article 10(2)(f) Directive 2008/48 must be interpreted as meaning that the creditor is to specify, in an exhaustive listing in a standard form and in the credit agreement, respectively, the conditions on which its decisions to raise or lower the borrowing rate on credit that bears variable interest may be based.*
- 2) *Article 5(1)(f) of Directive 2008/48/EC precludes that among the conditions for changing the borrowing rate that are specified on the standard form there is a reference to an unforeseen increase in the creditor’s costs, where due to*

that reference the conditions for the change of the borrowing rate are not sufficiently clear to allow the consumer to compare different offers. It is for the national court to assess whether this is the case, taking into account, in particular, whether the conditions for the change of the borrowing rate are foreseeable. Article 10(2)(f) of Directive 2008/48/EC precludes that among the conditions for changing the borrowing rate that are specified in the credit agreement there is a reference to an unforeseen increase in the creditor's costs, where due to that reference the conditions for the change of the borrowing rate are not sufficiently clear to inform the consumer of the actual extent of its commitment. It is for the national court to assess whether this is the case, taking into account, in particular, whether the conditions for the change of the borrowing rate are foreseeable.

- 3) *Article 5(1)(f) of Directive 2008/48/EC precludes the use of general and open-ended references such as "etc." or "amongst others things" as conditions governing the application of the borrowing rate listed in the standard form where due to these references the conditions for the application of the borrowing rate are not sufficiently clear so as to allow the consumer to compare different offers. It is for the national court to assess whether this is the case, taking into account, in particular, whether the conditions for the change of the borrowing rate are foreseeable.*
- 4) *Article 5(1)(g) of Directive 2008/48/EC requires that the APR is to be illustrated in the standard form with a representative example in which all the assumptions used to calculate the percentage are stated even though all components of the credit which the consumer intends to take are known; in such a case, however, the creditor shall take the known components into account when providing the example.*
- 5) *Article 5(1)(i) and Article 10(2)(k) of Directive 2008/48/EC require that "other charges deriving from the credit agreement" are always to be specified, in the standard form and in the credit agreement, respectively, regardless of whether or not the credit is of such a type that both payment transactions and drawdowns of the credit are recorded.*
- 6) *Article 5(1)(i) of Directive 2008/48/EC requires that the standard form contains all information on charges deriving from the credit agreement and the conditions under which those costs can be changed that is necessary to allow the consumer to compare different offers. Article 10(2)(k) of Directive 2008/48/EC requires that where the information on charges deriving from the credit agreement and the conditions under which those costs can be changed is not provided in the credit agreement itself, the agreement specifies that such charges apply and may be changed and contains a clear and precise cross-reference to other paper, or other durable, media containing further information on those aspects.*

7) *Article 5(1)(l) of Directive 2008/48/EC requires that the standard form contains all information on charges to be paid in the case of late payment and the conditions under which those costs can be changed that is necessary to allow the consumer to compare different offers.*

Michael Reiersen
Judge-Rapporteur