

**Court of Appeal (Landsréttur)**

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1 June 2023

**Court of Appeal Case No 99/2022 – *The Consumers’ Agency (Neytendastofa) v Íslandsbanki hf.*: Request for an advisory opinion**

**1. INTRODUCTION**

- (1) With reference to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (*cf.* Article 107 of the European Economic Area Act, No 2/1993) Iceland’s Court of Appeal (Landsréttur) requests an advisory opinion from the EFTA Court in connection with Court of Appeal Case No 99/2022, *the Consumers’ Agency (Neytendastofa) v Íslandsbanki hf.* The Consumers’ Agency is the appellant in this case and Íslandsbanki hf. is the defendant.
- (2) It is disputed between the parties whether, by providing inadequate information on its standard form for consumer credit, the defendant violated Article 7(4)(f), (g), (i) and (l) of the Consumer Credit Act, No 33/2013, and whether, by providing inadequate information in a loan agreement, it violated Article 12(2)(f) and (k) of the act, which cover, amongst other things, the information required as a condition for changes to the borrowing rate, the annual percentage rate of charge [hereinafter also: APR] and the cost of the credit. In its ruling of 13 October 2020 in Case No 11/2019, the Consumer Affairs Appeals Committee concluded that the defendant had, by providing inadequate information on its standard information form for consumer credit and also in a credit agreement, violated the provisions of Act No 33/2013 mentioned above. The district court, in its judgment, granted the request by the defendant to have the aforementioned ruling by the Consumer Affairs Appeals Committee set aside.
- (3) This case raises questions regarding the interpretation of the provisions of Directive 2008/48/EC (hereinafter referred to as “the directive”). The directive was adopted by the European Parliament on 23 April 2008, upon which date an older directive, Directive 87/102/EEC, on the same matter, was repealed. Directive 2008/48/EC was incorporated in the Agreement on the European Economic Area by Decision of the EEA

Joint Committee No 16/2009, which was published on 19 March 2009 in the EEA Supplement to the Official Journal of the European Union, No 16/2009. The directive prescribes full harmonisation. Iceland's Consumer Credit Act, No 33/2013, constitutes a transposition of Directive 2008/48/EC into Icelandic law, and when Act No 33/2013 was adopted, the earlier legislation, Act No 121/1994, was repealed.

- (4) The Court of Appeal now requests an advisory opinion from the EFTA Court regarding the scope and substance of the directive, in particular as regards the interpretation of Article 5(1)(f), (i), (g) and (l) and of Article 10(2)(f) and (k) of the directive.

## 2. PARTIES TO THE CASE

- (5) The parties to the case before the Court of Appeal are:

- (6) Appellant: Neytendastofa (The Consumers' Agency)  
ID No 690605-3410  
Borgartún 21  
105 Reykjavík.

Counsel: Ásta Sóllilja Sigurbjörnsdóttir  
Embætti ríkislögmanns (Office of the Attorney General)  
Hverfisgata 4-6  
101 Reykjavík

- (7) Defendant: Íslandsbanki hf.  
ID No 491008-0160  
Hagasmári 3  
201 Kópavogur

Counsel: Áslaug Árnadóttir  
Landslög  
Borgartún 26  
105 Reykjavík

## 3. CIRCUMSTANCES OF THE CASE

- (8) The background to this case is that, by a letter dated 12 March 2019, the appellant requested from the defendant a copy of its standard form and credit agreement (*cf.* Articles 7 and 12 of Act No 33/2013). The documents requested were received by the appellant on 18 March 2019. In its letter dated 28 June 2019, the appellant raised criticisms of the information on the standard information form that is presented to the consumer at the pre-contractual stage. The defendant countered these criticisms in its letter of 19 July 2019. On 26 November 2019, the appellant took a decision on the matter, stating its conclusion that, by providing inadequate information on its standard form, the defendant had violated Article 7(4)(f), (g), (i) and (l) of the Consumer Credit Act, No 33/2013. Furthermore, it concluded that, by providing inadequate information in its credit agreement, Íslandsbanki hf. had violated Article 12(2)(f) and (k) of the same act. The appellant instructed the defendant to put this information in satisfactory order.

If this were not done within four weeks (the defendant was informed), it could expect that a decision would be taken on the imposition of a fine.

- (9) The defendant referred the appellant's decision to the Consumer Affairs Appeals Committee on 19 December 2019. The Appeals Committee delivered its ruling on the matter on 13 October 2020, in Case No 11/2019. In this ruling, the appellant's decision was upheld. On 8 January 2021, the defendant brought an action before Reykjavík District Court seeking the setting aside of the aforementioned ruling of the Consumer Affairs Appeals Committee of 13 October 2020 in Case No 11/2019; as has been stated above, the ruling confirmed a decision by the Consumers' Agency, No 49/2019, of 26 November 2019. The appellant's plea in the district court was to be exonerated of the defendant's claims.
- (10) In its judgment in Case No E-127/2021, Reykjavík District Court took the view that the Appeals Committee's ruling in Case No 11/2019 was vitiated by such material flaws, and moreover that procedure in the case before the committee had been so deficient in some aspects, that it had no alternative but to set aside the ruling in its entirety. The appellant was ordered to pay the defendant ISK 1 000 000 in legal costs.
- (11) For further elucidation, the conclusions reached by the Consumer Affairs Appeals Committee and the district court will be described below, the discussion being divided in accordance with the legal provisions at issue in the case.
- (12) Regarding a violation of Article 7(4)(f) and Article 12(2)(f) of Act No 33/2013, the Appeals Committee refers to the following description in the standard information form<sup>1</sup> describing the conditions under which the bank may adjust the borrowing rate: "The borrowing rate, and adjustments thereto, shall be based, amongst other things, on changes in the bank's financing costs (credit terms), its operating costs, public levies and/or other unforeseen costs, the prime rate of the Central Bank of Iceland, changes in the consumer price index, etc. Decisions on adjustments of the borrowing rate are taken by a professional committee within the bank, acting on behalf of the governing board. The committee looks at, in particular, trends in the cost factors listed above and assesses whether changes in them constitute grounds for adjustment of the borrowing rate. The weighting of the factors listed above in decisions on adjustments of the borrowing rate is variable, being determined by, amongst other things, government decisions and circumstances on the market at any given time. When adjustments are made to the borrowing rate, all these factors are assessed, collectively and individually. Changes in any of these factors may result in an adjustment of the borrowing rate, either raising it or lowering it. Adjustments to the borrowing rate are announced with 30 days' notice." According to the Appeals Committee, the provisions of the credit agreement regarding adjustment of the borrowing rate were worded, for the most part, in the same way.
- (13) Regarding this description, the Appeals Committee held in its ruling (in which the defendant in the present case, Íslandsbanki hf., is referred to as "the appellant"): "*Thus, both in the appellant's information form and in its credit agreement, it was stated that the borrowing rate could undergo adjustments that would take account of '... and/or*

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<sup>1</sup> See Annex 1; The defendant's standard consumer credit information form.

*other unforeseen costs'. No explanation of what these unforeseen costs might consist of, for this purpose, was given in the information provided by the appellant, or of how likely it was that such costs could influence the determination of the borrowing rate or what weighting such costs could have in the appellant's decision-making. The committee must take the view that it was practically impossible for the ordinary consumer to form an idea of the circumstances in which the borrowing rate could undergo adjustment on the basis of this reference by the appellant to unforeseen costs in the appellant's information form on which the present dispute is based. Furthermore, the appellant's listing of the factors that could lead either to a raising or a lowering of the borrowing rate was evidently not exhaustive, beginning as it did with the words '... amongst other things' and ending with 'etc.'. In the light of this fact, the committee must take the view that the appellant failed to meet its information obligation under Article 7(4)(f) and Article 12[(2)](f) of Act No 33/2013. Having reference hereto, the decision against which this appeal was brought, regarding a violation by the appellant of these statutory provisions, is upheld."*

- (14) The concluding section of the district court judgment covering the violation of Article 7(4)(f) and Article 12(2)(f) of Act No 33/2013 includes the following (referring, in this district court judgment, to the appellant in the present case, the Consumers' Agency, as "the defendant" and to the defendant in the present case, Íslandsbanki hf., as "the plaintiff" in the district court case): *"The Court points out that it was stated in the notes accompanying the bill which became Act No 33/2013 regarding Article 7, that this provision was a new clause. However, no specific discussion was devoted to Article 7(4)(f) or Article 12(2)(f). Furthermore, the Court points out that the aforementioned provisions constitute the transposition of provisions of Directive 2008/48/EC. Thus, Article 7 constitutes the transposition of Article 5 of the directive and Article 12 constitutes the transposition of Article 10 of the directive, the provisions of the act being worded identically to those of the directive. Under Article 3 of the European Economic Area Act, No 2/1993, laws and regulations are to be interpreted, to the extent appropriate, in accordance with the EEA Agreement and the rules based thereon (cf. Supreme Court judgment in Case No 160/2015, which itself concerned consumer credit). Also, it can be deduced from the evidence in the case regarding the versions of this standard consumer credit information form used in some other European countries that no requirements seem to have been made in those versions that were comparable to the requirements made of the plaintiff by the committee in its ruling. Furthermore, the Court points out that the committee's view that it is 'practically impossible' for the ordinary consumer to form an idea of the 'circumstances' in which the borrowing rate could undergo adjustment cannot succeed. It is clear that the provision of information by the plaintiff is fairly thorough in this area, both in the standard form and in the credit agreement. The Court considers that the expression 'and/or other unforeseen costs' must be viewed in the light of its being, in fact, a complement to the foregoing list of factors. Having regard to the view adopted by the Supreme Court in its judgment in Case No 243/2015, it is necessary to take a comprehensive view of how information was presented to the ordinary consumer. Regarding the committee's view that the plaintiff had failed to explain, when its case was heard by the committee, what could be regarded as 'unforeseen costs', how likely it was that such costs could influence the determination of the borrowing rate and what weighting they could have in the taking*

*of decisions, the court notes that the aforementioned information from the plaintiff states that the weighting of the factors listed there in the determination of the borrowing rate was variable and was subject to, amongst other things, 'government decisions and circumstances on the market at any given time'. According to the submissions made to the court on behalf of the plaintiff, the 'unforeseen costs' referred to were costs that the bank was unable to foresee, but which did constitute its credit terms or operating costs, or public levies. In any case, it cannot be observed from the evidence in the case that the Appeals Committee requested any further explanations from the plaintiff on this point."* Taking all the foregoing into account, the district court considered there to have been serious flaws in the committee's ruling on this substantive aspect of the case.

- (15) Regarding a violation of Article 7(4)(g) of Act No 33/2013, the Appeals Committee refers in its ruling to the following description in the information form in question, which defines the percentage rate of charge, in addition to presenting a general description thereof, with a description, to some extent, of how it is calculated: "The APR sets out the total cost of credit as an annual percentage of the total amount of the credit. The total cost of the credit consists of the total cost, including interest, inflation adjustment, commission, taxes and other levies that are to be paid in connection with the credit agreement and of which the creditor is aware at the time of conclusion of the contract, with the exception of the cost of registration of the contract. The APR shall be based on the assumption that price levels, the borrowing rate and other charges will remain unchanged until the end of the credit period. If the credit agreement permits price-level indexation, then the calculation of the APR shall be based on the annual inflation rate according to the change in the consumer price index over a twelve-month period and the assumption that the inflation rate will remain unchanged until the end of the credit period. In all cases, it shall be assumed when the APR is calculated that the credit agreement will remain in force throughout the credit period agreed and that the creditor and the borrower honour their obligations under the terms of the agreement."
- (16) In its ruling, the Appeals Committee held that it was undisputed that the information form provided by the defendant did not include a representative example, as referred to in Article 7(4)(g) of Act No 33/2013. Before the committee, the defendant argued that it was assumed, in this article, that when information was provided pursuant thereto, details would not be available regarding all components of the credit which the borrower was intending to take. As it was not certain that all assumptions would be to hand, and consequently as it would not be possible to calculate the APR, the provision specified that the premises used for the calculation of the APR had to be explained to the consumer. The defendant therefore considered it clear that it was necessary to produce representative examples only when it was not possible to calculate the APR. The bank considered that the calculation of the APR constituted, at all times, adequate provision of information, as the rate was accompanied by an explanation of what was included in it and the premises used for its calculation. If no information is available on the actual percentage rate, then the APR is to be explained with examples (argued the defendant).
- (17) The Appeals Committee considered, on the other hand, that there was no ignoring the fact that the wording of Article 7[(4)](g) of Act No 33/2013 was clear regarding the

requirement that the APR is to be illustrated with a representative example in which all the assumptions used in the calculation of the rate appear. The committee observes that the provision did not contain any exception to cover a case in which all the assumptions on which the percentage rate is based are available when the information is provided. Furthermore, the Appeals Committee considered that it could be informative for consumers to become acquainted with the assumptions on which the creditor bases its calculation of the percentage rate. Provision of information of this type increases transparency and enables the consumer to arrive at an understanding of how offers can be compared with each other. Having regard to these considerations, the committee upheld the conclusion reached by the Consumers' Agency in its decision, i.e., that Íslandsbanki hf. had violated Article 7(4)(g) of Act No 33/2013.

- (18) The section of the district court judgment presenting its conclusions on the violation of Article 7(4)(g) of Act No 33/2013 includes the following finding: *“The Court wishes to state that, under Act No 33/2013, the APR constitutes a certain presentation of the total cost of the credit, displaying it as a percentage rate. The term is defined in Article 5 of the act, and the calculation is to be made in accordance with Article 21. The APR is to be based on the factors that are used in the granting of credit and are stated in the standard information form; otherwise, it cannot be regarded as a representative example. The Court points out that information on the APR is a matter of fundamental importance for the consumer, as it enables him to compare offers from various parties and to take an informed decision on borrowing. This may be seen from Recital 19 to Directive 2008/48/EC, which states that information provided should, in particular, include the APR so as to ensure the fullest possible transparency and comparability of offers. This can also be seen from the EU guidance on the application of the APR, in which emphasis is placed on simplicity of presentation in order to facilitate comparison of offers by the consumer. Thus, the Court concurs with the plaintiff that, in the case which was examined by the committee, the presentation of the APR, which was accompanied by a description of the assumptions for the calculation, together with explanations of these assumptions, met the requirements of the act regarding a representative example. In fact, the Court must take the view that the plaintiff’s presentation was in conformity with the information form accompanying Regulation No 921/2013, and the Court refers to the Supreme Court’s judgment in Case No 243/2015, which held that it was necessary to take a comprehensive view of how information was presented to the ordinary consumer.”* The court considered that the committee’s ruling was substantively flawed as regards this aspect of the case.
- (19) Regarding a violation of Article 7(4)(i) of Act No 33/2013 and Article 12(2)(k) of Act No 33/2013, the appellant and the defendant disagreed as to whether the references in these provisions to other charges deriving from the credit agreement applied generally or only to those credit agreements which concern so-called “credit lines” or in connection with using a means of payment. The ruling by the Appeals Committee refers to the following schedule of charges of the defendant, noting that it can be accessed on the internet “as it is at any given time”. Then, six different cost components are listed, which the bank refers to as “initial costs” (*Stofnkostnaður*). Then four cost components are listed, which the bank calls “notification and payment charges”. The Appeals Committee states in its conclusions that it is not completely clear whether this listing is

exhaustive regarding those cost components in the defendant's schedule of charges in connection with the type of credit agreements to which the information form under examination in this case referred. The Appeals Committee's ruling continues (referring to the defendant in the present case as "the plaintiff"): *"On the other hand, the only conclusion to be drawn from the evidence in the case and from the plaintiff's reference, in the information form, to its schedule of charges as it is at any given time is that the plaintiff considers that the bank is permitted to amend its schedule of charges during the period covered by the agreement and that it is not bound by the costs stated in the information form. Notwithstanding this fact, no information is stated in the information form regarding the premises on which such an amendment could be made. Furthermore, the committee considers that there is nothing in the credit agreement submitted in evidence in this case to indicate that there was any mention of these costs or any reference to the schedule of charges, even though it could be considered clear from the standard form that the plaintiff took the view that the consumer was bound by the schedule of charges. Having reference to this, the Consumers' Agency's conclusion, that the plaintiff violated Article 7(4)(i) of Act No 33/2013 and Article 12(2)(k) of Act No 33/2013, is upheld."*

- (20) The section of the district court judgment presenting its conclusions regarding the violation of Article 7(4)(i) and Article 12(2)(k) of Act No 33/2013 includes the following statement (the appellant in the present case, the Consumers' Agency, being referred to as "the defendant" in the district court case and the defendant in the present case, Íslandsbanki hf., as "the plaintiff" in the district court case): *"The plaintiff considers that the interpretation by the Appeals Committee cannot succeed, as it cannot be derived from a textual interpretation of the text of these provisions and has no support in the preparatory works accompanying the law. The Court concurs with this view of the plaintiff. The Court considers the Appeals Committee's interpretation of these provisions, to the effect that it is not possible to exclude their application in specific cases, to be untenable. The Appeals Committee appears to have regarded the provisions in question as being not completely clear, but all the same chose to adopt an interpretation that cannot be clearly derived from the provisions and that is onerous for the plaintiff, against whom the decision is directed. When interpreting a provision of this type, account must be taken of the fact that the more onerous a decision is, the more stringent the demands [necessarily are] for the clarity of the legal authority upon which the decision is based. The Court notes that this was a decision taken by a higher administrative authority. It was not legitimate for the committee's concern for consumer protection to distort the meaning that must properly be derived from the wording of the provisions in question and to override the rights of the plaintiff on this point in an onerous manner. This is a material flaw in the committee's ruling. The committee also states that it is not clear whether the listing in the information form is exhaustive, yet it cannot be seen that it called for information on this point from the plaintiff during the hearing of the case."*
- (21) Regarding a violation of Article 7(4)(l) of Act No 33/2013, the Appeals Committee came to the conclusion, as mentioned above, that the defendant, Íslandsbanki hf., had violated Article 7(4)(l) of Act No 33/2013, as the bank had not provided consumers with information prior to the conclusion of the credit agreement regarding the

applicable borrowing rate in the case of late payment and the arrangements applying to adjustment of the rate and to costs in the event of payment default. Before the Appeals Committee, the defendant sought to have the decision appealed set aside as regards the conclusion that the defendant had violated Article 7(4)(1) of Act No 33/2013 by failing to provide information on other costs connected with payment default. Amongst other things, the Appeals Committee came to this conclusion in its ruling (referring to the defendant in the present case, Íslandsbanki hf., as “the plaintiff”): *“There appears to be no dispute, based on the evidence in the case, that the plaintiff’s schedule of charges set out the costs that a consumer might have to pay as a result of default on repayment of the credit which were not stated in the standard information form. The committee must therefore take the view that the bank failed to meet the requirement following from Article 7(4)(1) (cf. Article 7(2)) of Act No 33/2013. The plaintiff could not meet the requirements of the act by providing consumers with guidance on where they themselves could obtain information which the plaintiff itself was supposed to provide. The plaintiff cannot attempt to justify this deviation from the legal obligation in question by claiming that its schedule of charges is so extensive that including this information in the standard information form would result in difficult reading for consumers.”* The conclusion set out in the decision of the Consumers’ Agency, that Íslandsbanki hf. had violated Article 7(4)(1) of Act No 33/2013, was upheld.

- (22) The section of the district court judgment setting out its conclusion regarding the violation of Article 7(4)(1) of Act No 33/2013 includes the following finding: *“In accordance with this, it seems clear that the plaintiff provided information regarding default interest and the cost of primary and intermediary collection in accordance with the Debt Collection Act as per the requirement stated in this provision. Moreover, it is clear that these amounts could undergo change, and consequently, the plaintiff was correct to refer to this. With reference to the considerations expressed in the Supreme Court’s judgment in Case No 243/2015, the Court must take the view that the ordinary consumer should be able to form an idea of the costs that would be payable in connection with primary and intermediary collection and payment default on the basis of what is stated there. It cannot be deduced from the provision that the intention was that banks should provide, in the standard information form, details of all points, and of each separate point, in the legal collection procedures in the bank’s schedule of charges. Furthermore, the Court points out that from the materials concerning the terms of other creditors, which the defendant itself submitted in the hearing of the case, the only conclusion to be drawn is that their presentation is similar to that of the plaintiff on this point. The Court also considers that account must be taken of the view that can be deduced from the judgment of the Court of Appeal in Case No 227/2019, from which it does not appear that a presentation comparable to that described above was seen as being contrary to the provisions referred to. In that case, the decisive factor was that consumers had not been informed of the current rate of default interest prior to their accessing credit, which was at variance with the provisions referred to; in the present case, it has been established that the plaintiff had already responded to criticism on this point and consequently the dispute between the parties in this part of the case did not focus on this point.”*



- (23) The appeal in this case was lodged with the Court of Appeal on 24 February 2022. The appellant's counsel sent the Court of Appeal a letter on 12 May 2022 requesting a session of the court to discuss whether it would be appropriate to request an advisory opinion from the EFTA Court. The session was held at the Court of Appeal on 11 October 2022, at which counsel for the parties presented their arguments for requesting such an opinion. On 23 April 2023, the Court granted their request.

#### **4. LEGISLATION APPLICABLE TO THE CASE**

##### **4.1. Icelandic legislation invoked by the parties – the Consumer Credit Act, No 33/2013**

- (24) Article 7 of Act No 33/2013.

Information to be provided prior to conclusion of an agreement.

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.

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 following shall be stated in the information:

[...]

f. the borrowing rate, the conditions governing its application and, where available, an index or reference rate that may influence the initial borrowing rate, and also the periods, conditions and procedure for changing the borrowing rate; if different borrowing rates apply in different circumstances the above information shall be provided regarding all of the 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 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<sup>2</sup> 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; [.]

#### **4.2. Directive 2008/48/EC of the European Parliament and of the Council on credit agreements for consumers**

(25) Article 5 of the directive:

##### Pre-contractual information

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.

[...]

(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;

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<sup>2</sup> The Icelandic word here, *forsendur*, could also be translated as ‘premises’; elsewhere in this text it is translated (legitimately) as ‘assumptions’ and also as ‘premises’. It is used, for example, to translate both *assumptions* and *conditions* in the official Icelandic translation of Directive 2008/48/EC. The word *skilyrði* (‘conditions’) implies more of an obligation that is laid down or imposed. For example, *skilyrði* is the word used to translate ‘the conditions offered by the creditor’ in Article 7(1). All these words overlap, to a certain extent, semantically, and even different contexts sometimes do not rule out certain possible substitutions. Even though the arguments in the case do not seem to exploit possible inconsistencies in the application or interpretation of these terms in the various Icelandic texts under examination, it may be worth bearing this in mind. [Translator’s note.]

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;

Article 10 of the directive:

1. Credit agreements shall be drawn up on paper or on another durable medium. All the contracting parties shall receive a copy of the credit agreement. This Article shall be without prejudice to any national rules regarding the validity of the conclusion of credit agreements which are in conformity with Community law.

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; [.]

#### **4.3. Case-law of the European Court of Justice**

- (26) In its judgment of 19 December 2019 in Case C-290/19, *RN v Home Credit Slovakia*, the European Court of Justice (“ECJ”) discussed, amongst other things, the provision of information on the APR under Directive 2008/48/EC. Its conclusion was that Article 10(2) of the directive was to be interpreted as precluding the possibility that the APR could be stated in a consumer credit agreement not as a single figure but as a range referring to a minimum and a maximum figure.
- (27) The dispute in Case C-42/15, *Home Credit Slovakia a.s. v Klára Bíróová*, judgment of 9 November 2016, concerned, amongst other things, the issue of whether all the information provided to consumers under Article 10(2) of Directive 2008/48/EC had to be provided in a single document or whether it was possible to make references to other documents. The ECJ’s conclusion was that no requirement was laid down in the directive to the effect that all the information to be provided to the consumer has to be stated in the information form or the credit agreement. The ECJ held, in its judgment, that it was sufficient to have a reference in an information form or credit agreement to another document or durable medium where the consumer could find the information in question.

#### **5. REASON FOR THE REQUEST FOR AN ADVISORY OPINION**

- (28) The district court considered in its judgment that the ruling by the Appeals Committee in Case No 11/2019 was vitiated by such material flaws, and moreover that the procedure in the case before the committee had been so deficient in some aspects, that it had no alternative but to set aside the ruling in its entirety.
- (29) An appeal in the case was lodged with the Court of Appeal on 24 February 2022. In the notice of appeal, the Consumers’ Agency stated that the purpose of the appeal was to have the decision by the district court setting aside the ruling by the Consumer Affairs Appeals Committee, No 11/2019, reversed and to have the court order that the appellant pay the legal costs reversed. The Consumers’ Agency, argued that the case involved substantial public interests, given that the dispute in the case concerns what is to be regarded as the provision of satisfactory information to consumers under the Consumer Credit Act, No 33/2013. The aim of the provisions of the Act regarding the provision of information by creditors is to put borrowers in the best possible position in order to take an informed decision on whether or not to take up credit and, for this purpose, the provisions aim to enable borrowers to assess and compare various offers and terms available from the creditor.
- (30) In its decision of 26 April 2023, the Court accepted that there was reason to seek an advisory opinion from the EFTA Court.
- (31) The Court considers it appropriate to shed some light on the background of part of the matter at issue in Icelandic law, specifically that part of the case that concerns the

specification of variable interest (borrowing) rates in the standard information form and the credit agreement. Before this is done, the Court of Appeal wishes to state clearly that it is aware that it is not the role of the EFTA Court to discuss the interpretation of Icelandic law or what significance earlier decisions by the Icelandic courts could have on proceedings in the present case, or to establish the facts of the case.

- (32) When Act No 33/2013, which applies in this case, was enacted, the earlier Consumer Credit Act, No 121/1994 was repealed. The earlier act contained a provision, in Article 6(2), covering how information regarding variable interest rates was to be provided. This read as follows:

“If changes may be made to the cost of the credit, repayments, or other aspects of the loan terms during the contractual period, the creditor shall inform the consumer of the circumstances under which such changes may be made. If it is not possible to calculate the annual percentage rate of charge, the creditor shall, instead, inform the consumer of the borrowing rate, what fees apply to the credit and the circumstances under which the changes may be made.”

- (33) Article 9 of that Act specifically detailed this point concerning the borrowing rate, providing that it was permitted to state in the credit agreement that the rate could be, partially or entirely, variable, but that in such a case it was to be specified, amongst other things, how this was to be effected and under what “circumstances” the rate would change.

- (34) For comparison, Article 12(2)(f) of the current Act, No 33/2013, which constitutes the transposition of Article 10(2)(f) of the directive, provides that the following is to be stated, clearly and concisely, in the credit agreement:

“the borrowing rate, the conditions governing the application of that rate and, where appropriate, 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,”

- (35) The Supreme Court of Iceland delivered its judgment in Case No 623/2016 on 12 October 2017; this case involved, amongst other things, a dispute on the interpretation of Article 6(2) of Act No 121/1994, which was then in force. One of the points in dispute was a contractual term, which was worded as follows:

“4. Revision of the borrowing rate. Íslandsbanki hf. may change the borrowing rate recorded above on interest due dates, though not until five years have elapsed since the date of issue of this bond, and thereafter at intervals of five years. Not less than one month prior to when a change of the borrowing rate is to take effect, Íslandsbanki hf. shall notify the issuer of the change. If the issuer is not prepared to accept the change to the borrowing rate, he or she may, without paying any special fee for early repayment, repay the credit in full together with accrued interest, inflation adjustment and costs, on the interest due

date when the change was to have taken effect, providing that he or she informs the creditor of his or her intention to do so with two weeks' notice.”

(36) In its judgment, the Supreme Court held the following concerning the contractual term.

“In accordance with [Article 6(2) and Article 9 of Act No 121/1994], the creditor was therefore obliged to state in the bond the circumstances under which this authorisation might be exercised. This requirement was not met by the mere statement that the creditor could decide unilaterally to change the borrowing rate, that this could not occur until five years after the issue of the bond and thereafter at intervals of five years and that the creditor was to notify the borrower of such changes with one month's notice, as the provision in the bond concerned only the procedure for making a change to the borrowing rate and not the grounds for deciding on the change. Nothing was stated about such grounds. For this reason, without going further, the terms of the bond did not meet the requirement of Article 6(2) and Article 9 of Act No 121/1994 that the circumstances under which the borrowing rate on the appellant's debt might be changed must be specified.”

(37) It can be seen from the Supreme Court's judgment that in order to meet the requirement of the earlier legislation it was not sufficient that a credit agreement state the formal details of when the creditor was permitted to change the borrowing rate applying to a credit with variable interest: it also had to state what substantive grounds could serve as a basis for the creditor's decision to raise or lower the rate. The judgment rejected the bank's demand to have the Appeals Committee ruling in Case No 6/2009 set aside. This meant that the bank was prohibited from changing the borrowing rate in accordance with the authorisation provided for in the credit agreement.

(38) The contractual term which is in dispute in the present case reads as follows:

“The borrowing rate for individuals are variable, and adjustments thereto, are based, amongst other things, on changes in the bank's financing costs (credit terms), its operating costs, public levies and/or other unforeseen costs, the prime rate of the Central Bank of Iceland, changes in the consumer price index, etc. Decisions on adjustments of the borrowing rate are taken by a professional committee within the bank, acting on behalf of the governing board. The committee takes account, in particular, of trends in the cost factors listed above and assesses whether changes in them constitute grounds for adjustment of the borrowing rate. The weighting of the factors listed above in decisions on adjustments of the borrowing rate is variable, being determined by, amongst other things, government decisions and circumstances on the market at any given time. When adjustments are made to the borrowing rate, all these factors are assessed, collectively and/or individually. Changes in any of these factors may result in an adjustment of the borrowing rate, either raising it or lowering it.”

## 6. THE PARTIES' GROUNDS FOR ACTION

### 6.1. The Consumers' Agency

(39) The Consumers' Agency's grounds for action are as follows:

"The conclusion in the judgment against which the appeal is brought is that the ruling by the Consumer Affairs Appeals Committee in Case No 11/2019 was vitiated by such material flaws, and moreover that the procedure in the case before the 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 appellant does not concur with the above conclusion, and argues that the conclusion in the ruling by the Consumer Affairs Appeals Committee in Case No 11/2019 was substantively correct in terms of the law and that the procedure in the case before the committee was in full conformity with the written and unwritten rules of administrative law. Thus, the ruling by the Appeals Committee is fully supported by the provisions of Act No 33/2013, both in its substance and as regards the remedies prescribed. The appellant also argues that the defendant had adequate opportunity, during the hearing of the case by the Appeals Committee, to express its position on all matters that were of significance for the resolution of the case. The appellant rejects the contrary conclusion, which is reached in the judgment against which this appeal is brought, as incorrect.

The appellant bases its case before the Court of Appeal on all the same grounds for action and legal arguments as were stated in its written observations to the district court and in the oral submissions during the hearing of the case. In addition, the appellant refers to the conclusion presented in the ruling by the Appeals Committee itself, which is well-grounded and thoroughly reasoned.

In particular, the appellant rejects the general position adopted by the district court judge as it appears in the judgment against which this appeal is brought, that when assessing whether the information obligation under Articles 7 and 12 of the Consumer Credit Act, No 33/2013, is met, it is necessary to take a comprehensive view of whether the information, and how it was presented, was such that the ordinary consumer would easily be able to form an idea of what the terms of his credit were. In support of this view, the district court referred to the Supreme Court's judgment in Case No 243/2015.

In this context, the appellant stresses that Act No 33/2013 constitutes the transposition of Directive 2008/48/EC of the European Parliament and of the Council on credit agreements for consumers. The directive entails full harmonisation of laws across the EEA, laying down rules covering matters including the information to be provided to consumers, pre-contractually and also in credit agreements. The directive sets out in detail the information to be provided, pre-contractually and in the credit agreement, in addition to which it sets out requirements on how the pre-contractual information is to be provided, i.e., the form in which it is to be provided. The Supreme Court's judgment in Case No 243/2015 involved the provisions of the earlier Consumer Credit Act, No

121/1994. That act had transposed into Icelandic law Council Directive 87/102/EEC, which had involved minimum harmonisation.

Under the new rules and full harmonisation, the margin for Member States, supervisory bodies or the courts to assess whether the clarity and presentation of information for the ordinary consumer in each individual case was abolished. The view on which the judgment against which this appeal is brought was based, namely, that it is sufficient to take a comprehensive view of whether information, and its presentation, are such that the ordinary consumer can easily form an idea of what the credit terms are, therefore no longer applies.

*Provision of information on the conditions for changing the borrowing rate.*

In the judgment against which this appeal is brought, the court came to the conclusion, firstly, that the ruling by the Consumer Affairs Appeals Committee was seriously vitiated as regards the conclusion that the defendant violated Article 7(4)(f) and Article 12(2)(f) of Act No 33/2013. The appellant rejects this conclusion by the court, referring to the same grounds for action as were set out in its written observations to the district court.

The appellant considers it completely evident, when the wording of Directive 87/102/EEC, on the one hand, and of Directive 2008/48/EC, on the other, is taken into account, that it is not possible to take the view that the passing of Act No 33/2013 reduced the creditor's information obligation regarding the conditions that could determine a change to the borrowing rate of a credit agreement. In this regard, particular reference is made to paragraphs 12-15 of the appellant's written observations to the district court. The appellant takes the view that this position was established in the Supreme Court's judgment in Case No 623/2016, in which the substantive provisions of Act No 121/1994 and Act No 33/2013 were compared. The conclusion of that judgment states: "*Even though these provisions of Act No 33/2013 are in some respects more detailed than the older rules found in Articles 6 and 9 of Act No 121/1994, creditors are under an obligation, now as previously, to provide information about the borrowing rate when a credit agreement is concluded; naturally, when determining whether such obligations were observed in the period of validity of the old act, only the provisions of that act can be taken into account.*" From this conclusion, the appellant considers it obvious that the Supreme Court has already adopted the position that no less stringent demands must be made regarding the provision of information by the creditor concerning the borrowing rate of a credit agreement since the commencement of the new act. In this connection, the appellant points out that the purpose of Directive 2008/48/EC was to revise the rules on consumer credit in order to increase consumer protection and to ensure a harmonised legal environment for the granting of consumer credit. This purpose will not be achieved by reducing the demands set regarding the provision of information by creditors.

As is stated in the judgment against which this appeal is brought, the purpose of the Consumer Credit Act, No 33/2013, is the same as that of the directive which the act



was designed to transpose, which is, amongst other things, to increase consumer protection.

The conclusion reached in the judgment against which this appeal is brought was that the Consumer Affairs Appeals Committee had incorrectly applied the criterion of Act No 121/1994 in its interpretation of the provisions of Act No 33/2013. Thus, the committee took the view that it was necessary to specify “*under what circumstances*” the borrowing rate of credit might be changed, even though the provision of Act No 33/2013 referred to laid down the requirement that the creditor was to provide information on the “*conditions*” for changes to the borrowing rate. The court viewed this as a material flaw in the committee’s conclusion. Furthermore, the court criticised the fact that the committee had stated in its discussion that there was an obligation to provide information on the “*reasons*” behind changes, and not the “*conditions*” for changes, even though this wording was not based directly on the act.<sup>3</sup>

The appellant considers the court’s discussion to have been based on incorrect premises and rejects the view that the reasoning given by the Appeals Committee for its conclusion regarding this aspect of the case was so seriously vitiated as to entail the setting aside of the committee’s conclusion.

The appellant reiterates that the substance of those provisions of the directives that Article 9 of Act No 121/1994, on the one hand, and Article 7(4)(f) and Article 12(2)(f) of Act No 33/2013, on the other, were intended to introduce into Icelandic law is the same, and their purpose was the same. The conclusion reached in the judgment against which this appeal is brought, that less stringent demands were to be made regarding the information obligation than were made in the time of the older legislation, militates against this purpose. The conclusion reached in the judgment against which this appeal is brought reduces creditors’ information obligation. If this interpretation is allowed to remain without criticism, then consumers are in a worse position today than they were during the period of validity of the older legislation, Act No 121/1994. Such a conclusion in no way conforms with the purpose and the aim of the current act, and cannot be derived in any way from the changes of wording that were made in Act No 33/2013. The appellant considers, in fact, that if it had been the intention that such an understanding prevail regarding the obligations set out in Article 7(4)(f) and Article 12(2)(f) of Act No 33/2013, this would have had to be expressed more clearly in the act, the preparatory works which accompanied it or the directives which the act was intended to transpose into Icelandic law.

The appellant also points out, in this connection, that the reasons given in the judgment against which this appeal is brought to the effect that it was not possible to apply the same criterion when assessing whether the requirements of Act No 121/1994 and Act No 33/2013 were met and, on the other hand, regarding the precedent value of the

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<sup>3</sup> It should perhaps be pointed out that the Icelandic words *aðstæður* (circumstances) and *ástæður* (reasons) are similar. [Translator’s note.]

Supreme Court's judgment in Case No 243/2015 (see paragraphs [7-8]<sup>4</sup> above) are not compatible.

Regarding this part of the judgment against which the appeal is brought, the appellant also rejects the court's discussion on the import of the wording of Article 7(4)(f) and Article 12(2)(f) of Act No 33/2013, i.e. of the words "*where available*" (Icelandic: *ef við á*) and "*may influence*" (Icelandic: *geta haft áhrif*). In its judgment, the court criticises the fact that the Consumer Affairs Appeals Committee considered it of significance, in its discussion of this part of the case, that the standard form contained no exhaustive listing of the factors that could influence changes to the borrowing rate.

The appellant considers it unavoidable to take the view that the wording "*where available*" in the act referred to cases where an index or reference interest rate could influence the original borrowing rate or when the borrowing rate was variable. Naturally, it is not possible to impose an obligation on the creditor to specify periods, conditions and procedure for changes to borrowing rates that are not designed to undergo change over the credit period. Similarly, the requirement that information be provided on an index or reference interest rate that "*may influence*" the borrowing rate does not imply that only some reference points are to be specified; rather, the wording means that it is not necessary that each and every instance specified must have an influence on each occasion that a change is made to the borrowing rate.

Finally, as regards this part of the case, it can be understood from the judgment against which this appeal is brought that the district court regarded it as a point deserving criticism that the committee did not consider it had received sufficient explanation from the defendant as to what was to be regarded as "*unforeseen costs*" before the committee reached its conclusion in the matter. The appellant rejects the view that this consideration may be of such significance as to result in the setting aside of the Appeals Committee ruling. In the conclusion of the judgment, the district court judge refers to the fact that it was represented to the court, on behalf of the defendant, that the costs in question were costs which the bank could not foresee, yet which did not fall under the bank's terms of credit or operating costs, or under public levies. The appellant points out that this statement alone reinforces the Appeals Committee's conclusion that the reference by the defendant in its standard information form is not adequate for the ordinary consumer to be able to form an idea of what factors may influence changes to the borrowing rate of their credit.

#### *Provision of information on the APR*

In the judgment against which this appeal is brought, the court came to the conclusion that the ruling by the Consumer Affairs Appeals Committee was seriously vitiated as regards the conclusion that the defendant had violated Article 7(4)(g) of Act No 33/2013. The appellant rejects this conclusion by the court, referring to the same grounds for action as were set out in its written observations to the district court.

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<sup>4</sup> Paragraphs 7 and 8 contain no reference to this judgment (No 243/2015). It seems possible that a reference to Paragraph 18 was intended. [Translator's note.]

The appellant points out that the reasoning presented in the district court judgment includes the assertion that “*there is a certain contradiction in the pleading by the Consumers’ Agency before the committee and in the writ initiating the case*”. The appellant has difficulty understanding what influence this may have on the conclusion in the case, as it is clear that the pleading by the defendant and the plaintiff at the district court level cannot be the same. If, on the other hand, it was the judge’s intention to refer to the appellant’s written observations to the district court, and not to the writ, then the appellant rejects the assertion that there was a contradiction between the appellant’s presentation of its case before the Appeals Committee, on the one hand, and before the district court on the other. The appellant also emphasises that even if such a contradiction had been present in the its pleadings, this should not have had any influence on the conclusion in the case. The appellant accepted the conclusion reached by the Appeals Committee, also as regards its being incompatible with its presentation of its case before the committee, and called, both before the district court, and the Court of Appeal, for that conclusion to be upheld, with all the same reasons as appear in the ruling. In addition, it is pointed out that in applying Act No 33/2013, the appellant was completely consistent with its own practice and that the requirements it makes of the defendant are comparable with those that have been made of other creditors, and with which they have complied.

The appellant concurs with the district court in the judgment against which this appeal is brought that it is of fundamental importance for the consumer to receive information on the APR, since it will enable him to compare offers from various parties and to take an informed decision on borrowing. Furthermore, it is important that the presentation of the rate be simple so as to facilitate this comparison. On the other hand, it does not agree with the view that the defendant’s presentation met this requirement or that it was in accordance with the standard information form which accompanies Regulation No 921/2013. The appellant stresses that it is important for consumers to see the assumptions for the calculation of the APR side by side with the percentage figure so as to understand whether the percentage figure is based on assumptions that lie outside those for which they are hoping. Furthermore, the representative example required by the act is similarly important, as it is of a nature as to put the consumer in a better position to compare the terms of different credit products and creditors and, not least, to understand what effect a change in individual components in the formula will have on the cost of the credit.

Furthermore, regarding this part of the case, reference is made to the previous discussion by the appellant on how the requirements changed with the introduction of Directive 2008/48/EC, in comparison with those of Directive 87/102/EEC, with the result that reference to the Supreme Court’s judgment in Case No 243/2015 cannot be relevant.

*Provision of information on the cost of having one or more credit lines*

In the judgment against which this appeal is brought, the court’s conclusion was that the Consumer Affairs Appeals Committee ruling was vitiated by material flaws regarding the finding that the defendant had violated Article 7(4)(i) and [Article

12](2)(k) of Act No 33/2013. The [appellant]<sup>5</sup> rejects this conclusion by the court, referring to the same grounds for action as are stated in the appellant's written observations to the district court.

The appellant places particular emphasis on what was stated in its written observations to the district court regarding the provisions of Article 7(4)(i) and Article 12(2)(k) of Act No 33/2013. These provisions begin with a reference to credit lines, but their contents are much more wide-reaching, as becomes obvious when the provisions are read in their entirety. The provisions in question set out a fourfold information obligation, worded as follows: “*where applicable, [1] 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, [2] together with the charges for using a means of payment for both payment transactions and drawdowns, [3] any other charges derived from the credit agreement and [4] the conditions under which those charges may be changed.*” This information is set out in four boxes on the standard form under the section *Costs of the credit*, subsection *Related costs*. [Figures inserted by the appellant.]

The appellant does not accept the conclusion reached in the judgment against which this appeal is brought that the provisions at issue in this part of the case apply only to the form of credit agreements in which credit lines are used. That interpretation of the provisions would result in a situation where creditors were able to demand that consumers pay unspecified costs without providing adequate information on this point in the pre-contractual phase, or in the credit agreement itself, when credit lines or the use of means of payment are not involved. Such a conclusion is in complete contradiction to the objectives and purpose of Act No 33/2013 and the directive it was intended to transpose.

Furthermore, the appellant considers that the standard form in Regulation No 921/2013 fully supports the interpretation which the appellant places on the provision and which was used as the basis for the conclusion of the Consumer Affairs Appeals Committee ruling in Case No 11/2019. The appellant considers it proper to emphasise, in this connection, that the criticisms it has made of the provision of information by the defendant on this point do not concern how the information on costs is set out in the standard information form and the credit contract. Its criticisms concern the fact that it is merely stated that the costs in question are to be paid in accordance with the schedule of charges at any given time; no information is provided regarding the conditions for being able to change the costs.

The appellant also points out that the creditor should aggregate the total cost of the credit and, using it as a basis, calculate the APR. The cost which comes under the provision referred to, i.e. the cost for using a means of payment, is part of the total cost of the credit and it is of great importance that this should be explained clearly to consumers, both pre-contractually and when they enter into credit agreements.

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<sup>5</sup> The original text here reads “the defendant”, which would seem to be an error. [Translator's note.]

Provision of information on the interest rate applying to late payments

In the judgment against which this appeal is brought, the court's conclusion was that the Consumer Affairs Appeals Committee ruling was vitiated by material flaws regarding the finding that the defendant had violated Article 7(4)(1) of Act No 33/2013. With reference to the same reasoning that it submitted in its written observations to the district court, the appellant rejects this conclusion by the court.

In particular, the appellant objects to the reference, in the reasoning for the judgment against which this appeal is brought, to the Supreme Court's judgment in Case No 243/2015 regarding this point. The appellant points out that in its judgment, the Supreme Court takes the view that information in the documents accompanying an agreement is to be regarded as part of the agreement, and that they thus meet the requirements of the act. In the case under discussion here, on the other hand, the district court accepted a reference to the act and to the creditor's schedule of charges, which in the appellant's opinion cannot be seen as constituting documents accompanying a credit agreement. The appellant's assessment is therefore that these cases cannot be seen as equivalent in the way this is done in the judgment against which this appeal is brought.

The appellant also rejects the district court's interpretation of the Court of Appeal's judgment in Case No 227/2019, as this is expressed in the conclusion section of the judgment against which this appeal is brought, regarding this part of the case. In the Consumer's Agency's decision, No 59/2016, which was at issue in this judgment by the Court of Appeal, the appellant made the same demands of the creditor as have been made of the defendant in the present case. In the Consumer's Agency's decision No 59/2016, the appellant adduced reasons for its view that the creditor had violated Article 7(4)(1) by, on the one hand, failing to state the current rate of arrears interest and, on the other, by making a reference to the Debt Collection Act and the Regulation on maximum collection costs which was not adequate. The decision on this point was upheld by the Consumer Affairs Appeals Committee; however, the committee did not specifically examine the later violation of the aforementioned point (1). The Consumer Affairs Appeals Committee ruling regarding a violation of Article 7(4)(1) was upheld by both the district court and the Court of Appeal but, as happened when the matter was examined by the Consumer Affairs Appeals Committee, no special examination was made in the judgment of the reference to the Debt Collection Act and the Regulation on maximum collection costs; instead, the court considered it sufficient to examine that part of the case that involved the specification of the current rate of arrears interest. The appellant's view is that there is no way of ignoring the fact that its decision was upheld by the Appeals Committee and the Appeals Committee's ruling was upheld by the courts, even though no special examination was made of this claim. Therefore, the appellant considers the district court's reliance on the Court of Appeal ruling in Case No 227/2019 to be based on the wrong premises. The setting aside of the ruling by the Consumer Affairs Appeals Committee regarding the violation by the defendant of Article 7(4)(1) of Act No 33/2013 is not supported by anything in this judgment of the Court of Appeal.

With reference to all the foregoing, the appellant maintains that the ruling by the Consumer Affairs Appeals Committee in Case No 11/2019 was correct, both formally and substantively. The appellant rejects the opposite conclusion, which is expressed in the judgment against which this appeal is brought, as incorrect. Thus, the appellant rejects all the premises cited in the judgment, including those discussed specifically above, as incorrect. Consequently, the appellant considers it a matter of urgency that the judgment against which this appeal is brought be reviewed and that it be exonerated of the claims made by the defendant.”

## **6.2. Íslandsbanki hf.**

(40) Íslandsbanki hf.’s grounds for action are as follows:

“The judgment against which the appeal is brought set aside the ruling by the Consumer Affairs Appeals Committee of 13 October 2020 in Case No 11/2019. The defendant considers that this conclusion should be upheld; it bases this view on the same grounds for action and the same legal reasoning as are stated in the writ. In addition, the defendant wishes to state the following:

### **1. *The purpose of the Consumer Credit Act; its interpretation by the courts***

When discussing the provision of information on consumer credit, it is necessary to bear in mind that the purpose of providing such information is to give consumers the information necessary for them to compare dissimilar offers and to take an informed decision on borrowing (*cf.* the first paragraph of Article 7 of Act No 33/2013).

It should also be pointed out, as was stated in the judgment against which the appeal is brought, that the Supreme Court has emphasised, in its judgments dealing with information provided by creditors to consumers under the Consumer Credit Act, that the information is to be of such a nature that the ordinary consumer will be able to understand the terms of the credit.

The defendant rejects the assertion in the appellant’s observations to the effect that the judgments referred to in the conclusion of the judgment against which the appeal is brought do not have precedent value because Act No 33/2013 transposed Directive 2008/48/EC and this directive constituted a full harmonisation of rules, so abolishing the margin of appreciation available to the judiciaries of the Member States to assess whether the clarity and presentation of information are adequate for the ordinary consumer.

European Union directives do not have direct legal effect in Iceland. Following their incorporation in the EEA Agreement, Iceland is obliged to arrange its legislation in such a way as to ensure that the purpose of any given directive will be achieved. If a directive prescribes full harmonisation, this will affect the margin of appreciation available to the legislator when transposing the directive. Full harmonisation, on the other hand, does not affect the authorisation of the domestic judiciary. Regarding the interpretation by the courts of rules of Icelandic legislation that originate in the EEA Agreement, Article 3 of Act No 2/1993 states that Icelandic courts are to interpret laws and regulations, as far as is appropriate, in conformity with the EEA Agreement and the rules based thereon. The Supreme Court has ruled, repeatedly, that such

interpretation will, by definition, entail that to the fullest extent possible, the wording of Icelandic legislation is to be accorded a meaning, which can be accommodated within its wording, that corresponds as closely as possible to the common rules applying in the European Economic Area; on the other hand, the interpretation may not entail that the wording of Icelandic legislation be given a meaning other than that which follows from a textual interpretation.

## **2. *The defendant's provision of information was in conformity with Act No 33/2013***

The defendant argues that the provision of information by the bank was in complete conformity with the law and regulations. The defendant considers that there were flaws in the Consumer Affairs Appeals Committee's procedure, and in its conclusions, which had an impact on the substance of its ruling, and that consequently the ruling ought to be set aside.

### **a. *Provision of information on the conditions for changing the borrowing rate***

The conclusion reached in the judgment against which the appeal is brought was that there were material flaws in that part of the Consumer Affairs Appeals Committee ruling which concerned the provision of information on the conditions for changing the borrowing rate, both in the standard information form and in the credit agreement. The defendant argues that this conclusion should be upheld.

The defendant used the same text in both the standard information form and in the credit agreement. This text states that the borrowing rate, and adjustments thereto, are based, amongst other things, on changes in the bank's financing costs (credit terms), its operating costs, public levies and/or other unforeseen costs, the prime rate of the Central Bank of Iceland, changes in the consumer price index, etc. Then follows an explanation of how decisions on changes to the borrowing rate are taken and further details of what determines the changes.

The Consumer Affairs Appeals Committee considered that the defendant's reference to unforeseen costs could not be regarded as adequate information on the conditions for changing the borrowing rate and that it did not ensure transparency or that consumers would be enabled to understand what changes to the borrowing rate would be based on. The committee's reasoning was that the interpretation, both by the Appeals Committee and by the Supreme Court, of the earlier Consumer Credit Act, No. No 121/1994, also applied to the interpretation of the provisions of Act No 33/2013 on the provision of information on the conditions for changes to the borrowing rate, even though the wordings of the later act and the earlier act are dissimilar. Furthermore, the committee considered that the listing by the defendant was inadequate because it was not exhaustive. The defendant argues that the conclusion of the judgment against which the appeal is brought, to the effect that this interpretation does not stand up, should be upheld.

Article 7(4)(f) and Article 12(2)(f) of Act No 33/2013, regarding the provision of information on changes to the borrowing rate, are worded identically. These provisions state that information is to be provided on the borrowing rate, the conditions governing its application and, where available, an index or reference rate that may influence the initial borrowing rate, and also the periods and conditions and procedure for changing the borrowing rate. The wording of the provision in the standard information form which is published as an annex to Regulation No 921/2013 is identical to that of the act.

Act No 121/1994 provided that when credit was granted with a variable borrowing rate, creditors were to provide consumers with information on how the rate could change and the circumstances under which changes could be made.

It is a fundamental principle of legal interpretation that words in Icelandic law are to be given, to the fullest extent possible, a meaning that is compatible with the words themselves. It is moreover recognised that words or terms in Icelandic law are to be interpreted in accordance with ordinary linguistic practice and day-to-day speech. The defendant considers it completely clear that the word '*conditions*' in Act No 33/2013 and the word '*circumstances*' in Act No 121/1994 do not have the same meaning in day-to-day speech. The defendant argues that the wording of the current Consumer Credit Act is dissimilar to the wording of the older act and that the background history of the provisions covering the provision of information is therefore not relevant; what must be taken into account is the literal meaning of the words. It cannot be seen that the interpretation of the provisions of Act No 33/2013 can entail that an obligation is to be laid on creditors to specify exactly, in an exhaustive manner, all possible circumstances that may result in a change in the borrowing rate.

If the preparatory works relevant to the interpretation of the law are examined, it can be seen from the preparatory works to Article 7 of the bill which was passed as Act No 33/2013 that this article, which covers pre-contractual information which creditors are to provide to consumers, was an innovation and that the legislation valid prior to its commencement contained no provisions on such an information obligation. The preparatory works to the bill did not contain any discussion of Article 7(4)(f) and Article 12(2)(f).

The defendant also points out that the Supreme Court, in its judgment in Case No 623/2016, to which the appellant refers in its observations, did not devote any discussion at all to the Appeals Committee's interpretation in Case No 6/2009, that the creditor is to be required to specify, in a manner that leaves no room for doubt, the circumstances under which changes to the borrowing rate may be made so as to enable the borrower to understand, in a satisfactory manner, how the rate was to be variable and under what circumstances the rate might change, and that the creditor was obliged to inform the borrower of all the factors that influence increases and decreases in the variable borrowing rate in the credit agreement.

As is stated above, Directive 2008/48/EC was transposed into Icelandic law by Act No 33/2013, and the directive involved the full harmonisation of rules. Accordingly, the



wording of provisions of Act No 33/2013 is almost identical to that of the directive, and the defendant considers that the provisions of the act should be interpreted in accordance with the provisions and application of the directive to the extent appropriate. In this context it points out that an examination of the versions of the standard information form in use in other countries reveals that nowhere are requirements made of the type which the Consumer Affairs Appeals Committee is making regarding the provision of information. Furthermore, it can be seen from the new document E that creditors in EU Member States use exactly the same wording as the defendant used in the information it provided on changes to the borrowing rate.

The defendant also rejects the Consumer Affairs Appeals Committee's conclusion that it was practically impossible for the ordinary consumer to form an idea of the circumstances in which the borrowing rate could undergo adjustment on the basis of the information in the standard form because the defendant referred there to unforeseen costs. Factors on which changes in the borrowing rate are based are listed in the standard form and in the credit contract. These are, on the one hand, the Central Bank's prime rate and the consumer price index; information on changes in these is easy to access in open sources and less stringent notification demands are placed on creditors when changes to the borrowing rate are made on this basis. On the other hand, there are factors that are not related to indices or reference interest rates and where changes are not related to publicly available reference values. These include changes in the bank's financing costs (credit terms), its operating costs, public levies and/or other unforeseen costs. 'Unforeseen costs' here refers to costs which the bank was not able to foresee, and which do not come under the bank's financing costs, its operating costs or public levies.

It is not disputed that changes to the borrowing rate on credit may be based on factors that are not related to an index or a reference index rate. It is not possible to see how a reference to unforeseen costs gives consumers less information than a reference to e.g. the bank's operating costs or credit terms. Consequently, the defendant considers that borrowers were informed of all the variables that could affect increases or reductions in the borrowing rate. This provision is part of the bank's efforts to give the most detailed and clearest information, as it is inevitable that unforeseen factors could influence the borrowing rate of credit. It cannot therefore be seen how the reasoning by the Appeals Committee on this point can stand up.

Furthermore, the defendant rejects the view that there are sufficient legal grounds for the Appeals Committee's conclusion that the listing by a creditor of the variables that may impact the borrowing rate is to be exhaustive. The defendant points out that nowhere in Article 7(4)(f) or Article 12(2)(f) is it specified that the listing of conditions must be exhaustive. The same can be said of Regulation No 921/2013 and the relevant preparatory works. Next, the defendant points out that the standard information form from Landsbankinn which the appellant submitted, and about which the Consumers' Agency made no criticisms, did not include an exhaustive listing of the factors that could impact borrowing rates.

Finally, the defendant has criticisms to make of the Appeals Committee's procedure. Firstly, it criticises the assertion in the ruling that it cannot be seen from the defendant's pleading "*that the defendant actually doubts that comparable requirements will be made regarding the provision of information by a creditor under the current act, No 33/2013, to those that were previously considered as applying under Act No 121/1994.*" The appellant, in its written observations to the district court, acceded that in this regard the Appeals Committee had been mistaken. The defendant considers it evident that this influenced the conclusion in the case, as this was one of the reasons on which the Appeals Committee based its conclusion. In this connection, the defendant points out that at issue was an onerous decision taken by a higher administrative authority; in such cases, more stringent procedural requirements are imposed on the authorities. The appellant has admitted that the defendant's right to be heard had not in fact been respected; this must be regarded as a serious breach of the procedural rules.

Secondly, the defendant argues that a further violation of its right to be heard took place when the Appeals Committee failed to request information from the defendant as to what was regarded as unforeseen costs. In its written observations to the Court of Appeal, the appellant seems to recognise that, in doing this, the Appeals Committee violated the right to be heard, yet considered that this had no consequences. The defendant rejects the view that this violation by a higher administrative authority of its right to be heard had no consequences, and argues that the conclusion of the judgment against which the appeal is brought should be upheld regarding this point.

Thirdly, the defendant considers that the Appeals Committee violated its right to be heard when the committee came to the conclusion that it was necessary to require that the listing by the creditor of the variables that could influence the borrowing rate must be exhaustive. This point of view was first expressed in the ruling by the Appeals Committee, and the defendant was not given an opportunity of expressing its objections regarding this point.

*b. Provision of information on the APR*

In the judgment against which the appeal has been brought, the court considered that there was a substantive flaw in the ruling by the Consumer Affairs Appeals Committee in that part of the ruling which covered the provision of information by the defendant on the APR in the standard information form. The defendant argues that this conclusion should be upheld.

Article 7(4)(g) of Act No 33/2013 states that the information on the form is to state the APR and the total amount payable by the consumer, illustrated by means of a representative example mentioning all the assumptions used in calculating the percentage rate. It also states that 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 the credit, the creditor shall take those components into account. Finally, it states that if the credit agreement provides for different methods with different charges or borrowing rates, then the creditor is to use the highest charges and borrowing rate applying to the most common credit agreements and state that other assumptions may result in a higher APR.

The conclusions reached by the Consumers' Agency and the Consumer Affairs Appeals Committee regarding this aspect of the case are very unclear and contradictory. In its written observations to the Court of Appeal, the appellant in fact recognises that the conclusion reached by the Consumer Affairs Appeals Committee is at variance with the appellant's understanding of the provision and that the requirements imposed by the Appeals Committee regarding the information to be provided by the defendant far exceed what the Consumers' Agency claims.

The APR is, in fact, a special method of presenting the total cost of the credit in which the total cost is shown as a percentage (*cf.* Article 5(1)(b) of Act No 33/2013). It is therefore not possible to set out a representative example of the APR otherwise than by presenting a percentage, and thus the percentage figure itself is the representative example.

The percentage figure that is set out in Section 3 of the defendant's standard information form is based on the numerical assumptions set out in Section 2 of the form. Thus, the rate is covered in the first part of the Section 3 of the form, and all fees that the borrower is required to pay are discussed in the fifth part of Section 3; there is no requirement to provide information on indexation adjustment as the credit is not index-linked. Thus, all the information needed by the borrower is stated in the form and then combined in the representative example which is the percentage figure; this is presented in the second column in Section 3. It cannot be seen that the consumer is done any additional favour by having all this information repeated in the column where the percentage figure is shown.

Discussion at EU level shows that the purpose of publishing the APR is to ensure transparency and comparability of credit types and credit offers (*cf.* Recital 19 to Directive 2008/48/EC). The Commission guidelines on the application of Directive 2008/48/EC in relation to costs and the Annual Percentage Rate of charge emphasise the importance of simple presentation to facilitate comparison by consumers. The document also states that when the contract is concluded, no representative example is needed because all assumptions are known [at that time]. If a prospective borrower's wishes are known to some extent when information is provided on the standard information form, those assumptions are to be used when the representative example is calculated.

Finally, the defendant points out that the standard form which was published as an annex to Regulation No 921/2013 indicates that the representative example is to be displayed as a percentage based on the assumptions used to calculate the APR.

The defendant considers that it has complied in all respects with Article 7(4)(g) of Act No 33/2013 and set out a representative example of the APR based on all the assumptions on which it is to be based, and that those assumptions appear clearly on the form. In addition, it is explained in detail in the form what the APR is and how it is calculated. The defendant considers it clear that the ordinary consumer was able easily

to understand the terms of the credit on the basis of the information provided by the defendant and that it was an easy matter for the ordinary consumer to compare the terms of this credit and of other sources of credit, including by comparing the APRs, which are crucial factors in any comparison. The defendant argues that the conclusion of the judgment against which the appeal has been brought should be upheld, to the effect that the Appeals Committee imposed more stringent requirements regarding the provision of information by the defendant than can be deduced from Article 7(4)(g) of the Act.

Finally, the defendant points out that the provision of information by the bank is in conformity with the provision made by financial undertakings within the European Union.

*c. Provision of information on the cost of having one or more credit lines*

The conclusion reached in the judgment against which the appeal has been brought is that the ruling by the Consumer Affairs Appeals Committee was seriously vitiated, in terms of substance, regarding that part of the case that concerned the provision of information by the defendant which is prescribed in Article 7(4)(i) and Article 12(2)(k) of Act No 33/2013. The defendant argues that the district court's conclusion should be upheld.

These provisions, which are worded identically, state that the information is to include, 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.

The Consumer Affairs Appeals Committee took the view that, under these provisions, the defendant had an obligation to provide information on other charges deriving from the credit agreement and the conditions under which those charges may be changed. The reasoning given for this conclusion was that the latter part of the provision is not restricted to the charges for credit lines and the utilisation of a means of payment, and thus that the information provided by the bank was not in conformity with the latter part of the provision.

The defendant argues that this decision by the Appeals Committee does not stand up and is at variance with the clear intention of the legislator. The preparatory works accompanying Article 7(4)(i) of the bill which was passed as Act No 33/2013 state that this provision covers the information to be provided in connection with the charges for a credit line and the utilisation of a means of payment. The preparatory works go on to say that the most common form of credit line in Iceland is the overdraft privilege, but that the provision covers any type of credit with similar characteristics, i.e. framework agreements on credit limits, credit periods and credit terms with variable utilisation of credit authorisations or credit lines. The notes to Article 12(2)(k) are comparable. The defendant considers, on this basis, that it is quite clear that the legislator only intended

these provisions to cover the provision of information in connection with the charges for credit lines and the utilisation of a means of payment.

The defendant considers that, by its interpretation of the law, the Appeals Committee violated the basic principle that, where two possible interpretations of a legal provision are possible, the authorities are to choose the one that is more advantageous to the party against whom the authority's decision is directed. It is clear from the wording of the ruling that the interpretation of the provision as adopted by the Appeals Committee cannot be ruled out; however, the committee's interpretation is highly onerous for the defendant. The defendant considers that this should entail the setting aside of this part of the administrative decision taken by the committee.

Moreover, the defendant argues that it may be deduced from the opening words of these alphabetically designated items, "where applicable", that creditors are only to provide information under these items in the case of credit of the types stated therein.

If the court takes the view that the defendant was under an obligation to provide information on "other charges deriving from the credit agreement" under Article 7(4)(i) and Article 12(2)(k), the defendant then argues that the information it provided was in conformity with these provisions, since such information is stated both in the standard form and in the credit agreement. Regarding the comment in the appellant's written observations to the Court of Appeal that it is important that the creditor provide the borrower with information on the total cost of the credit, the defendant points out that this information is stated, both in the standard form and in the credit agreement.

*d. Provision of information on interest applying to late payments*

The conclusion reached in the judgment against which the appeal has been brought is that the ruling by the Consumer Affairs Appeals Committee was vitiated, in terms of substance, regarding that part of it that concerned the provision of information by the defendant in the standard form on costs relating to default.

Article 7(4)(l) of Act No 33/2013 states that the standard form is to contain information on the interest rate applying in the case of late payments and the arrangements for its adjustment and, if appropriate, charges payable in the event of default. The defendant argues that the information provided in the standard form from the bank is adequate. This states that arrears interest is to be paid on the amount due and/or called in in accordance with the prevailing decision of the Central Bank of Iceland concerning the base for arrears interest and supplements for non-performance. In addition, the arrears interest rate applying at the time when the information is given is stated. It is also stated that costs of collection or collection by legal procedures will have to be paid on amounts due and/or called in in accordance with the bank's prevailing schedule of charges, the schedule of charges applicable to collection by legal procedures and the Debt Collection Act, No 95/2008. Then examples of costs relating to default are given. The costs of a warning of collection procedures and of special collection measures are stated. Next, it is stated that other collection costs will be added in accordance with the schedule of charges applicable to legal collection procedures, and examples of such costs are given.

Finally, it is stated that the amounts involved in costs relating to default may change in accordance with changes in the schedule of charges of Íslandsbanki hf. and the schedule of charges of the legal collection department of Íslandsbanki hf., which are accessible on [www.islandsbanki.is](http://www.islandsbanki.is) under “Interest and prices” (*Vextir og verðskrá*).

The defendant argues that the information described above is adequate. In support of this assertion, it points out that the preparatory works accompanying Article 7(4)(1) of the bill which was passed as Act No 33/2013 state that this provision means that the creditor is obliged to provide information on interest rates, and also costs, relating to default. The preparatory works say that this provision is to apply to, for example, arrears interest and the cost of primary and intermediary collection measures under the Debt Collection Act, No 95/2008.

In accordance with this, the defendant provides information on arrears interest and the cost of primary and intermediary collection measures in the information form. Regulation No 37/2009, which was issued under the Debt Collection Act, sets the maximum fee for a warning of collection measures at ISK 950. The maximum charge for intermediary collection letters depends on the principal of the claim and lies in the range ISK 1 300 to ISK 5 900. These are the same amounts as are set out in the defendant’s standard form. Clearly, as the charge depends on the principal of the claim, it is not possible to give more detailed information on the cost of intermediary collection letters than is done in the form. Moreover, it is clear that the defendant would be bound by any amendments that might be made to the aforementioned regulation, and consequently that these costs could undergo change during the credit period.

The defendant argues that the ordinary consumer is able, on the basis of the information stated in the form, to form an idea of the possible costs of primary and intermediary collection measures. Also, the defendant argues that it was not the wish or the intention of the legislator that financial undertakings publish, in the standard form, all the costs that could result from legal debt collection measures. In this connection, the defendant points out that many financial undertakings purchase such services from unrelated parties. It also points out that such costs may vary widely and that it is difficult to give exhaustive information on the cost of all measures falling under legal collection procedures. If all this information were published, it would run to about two pages, yet it would not be at all possible to assert that it would be exhaustive. This would not be in accordance with the aim of providing consumers with information that is clear and simple.

In this connection, the defendant refers to the standard form from Landsbankinn, which the appellant submitted. The information in it under Article 7(4)(1) of Act No 33/2013 is exactly comparable to that contained in the defendant’s form. The standard form from AUR, which the appellant submitted, contains far less information than the defendant’s form, and refers only to the provisions of the Debt Collection Act and the company’s schedule of charges, making no mention of the cost of debt collection by legal measures. It is clear that the Consumers’ Agency raised no objections regarding the provision of information in the forms referred to here.

Consequently, the defendant argues that the district court's conclusion, namely, that the defendant should be exonerated of the appellant's claims, should be upheld.

In other respects, the defendant refers to the grounds for action stated in the writ.”

## 7. QUESTIONS TO THE EFTA COURT

- (41) 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?
- (42) 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?
- (43) 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?
- (44) 4. Does it follow from Article 5(1)(g) of Directive 2008/48/EC 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?
- (45) 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?
- (46) 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?

- (47) 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?
- (48) The Court of Appeal wishes to draw attention to the fact that it is aware of two cases, Cases E-13/22 and E-1/23, which are currently under examination by the EFTA Court, in which the Icelandic courts have sought advisory opinions from the EFTA Court concerning, amongst other things, the interpretation of Article 10(2)(f) of Directive 2008/48/EC. The Court of Appeal nevertheless considers it appropriate to ask the above questions relating to the same provision of the directive.

Kópavogur, 1 June 2023

Arnfríður Einarsdóttir  
Judge of the Court of Appeal