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Judgment in Case E-27/13 *Sævar Jón Gunnarsson v Landsbankinn hf.*

LOAN INDEXATION – INCORRECT INFORMATION REGARDING TOTAL COST OF CREDIT INCOMPATIBLE WITH THE CONSUMER CREDIT DIRECTIVE

In a judgment delivered today, the EFTA Court answered the questions referred to it by *Héraðsdómur Reykjavíkur* (Reykjavík District Court) concerning the interpretation of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (“the Consumer Credit Directive”) and of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (“the Unfair Terms Directive”).

In 2008, Sævar Jón Gunnarsson took a loan from Landsbankinn hf. The bond issued for the debt contained standardised contractual terms prepared by Landsbankinn and stated that the loan was linked to the consumer price index, with a variable interest rate and indexation adjustments. Gunnarsson also signed an annex containing an itemisation of the scheduled repayments of the loan. The schedule was based on a 0% rate of inflation. This assumption did not correspond to the actual rate of inflation. As a result, the nominal repayment burden of the loan in this case turned out to be considerably higher than was indicated in the repayment schedule.

Gunnarsson brought proceedings against Landsbankinn. He argued that the indexation in the loan agreement violated both the Consumer Credit Directive and the national implementing legislation. Landsbankinn rejected this view. Reykjavík District Court made a reference to the Court on the proper interpretation of the Consumer Credit Directive and the Unfair Terms Directive.

The Court found that the term “total cost of the credit” in the Consumer Credit Directive comprises all the cost that the consumer is liable to pay under the credit agreement, including both interest charges and charges resulting from the price indexation of the principal. An assumed 0% rate of inflation indicated in a loan agreement, at a time when the actual rate of inflation was considerably higher, did not correctly represent the charges resulting from the price indexation and thus the total cost of credit.

The Court found that it is for the national court to assess, taking account of all the circumstances of the case, the legal consequences and the remedies for such incorrect information, provided that the level of protection established by the Consumer Credit Directive, as interpreted by the Court, is not thereby compromised.

The Court also held that a failure by a credit institution to provide the consumer with full information regarding the total cost of credit and annual percentage rate of charge specified in the Consumer Credit Directive may also qualify as an unfair business-to-consumer commercial practice under Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

The questions concerning the interpretation of the Unfair Terms Directive were in substance identical to the questions examined in Case E-25/13 *Engilbertsson*. With respect to the substance of these questions, the Court found that there was no reason to make a distinction between a mortgage credit, as in *Engilbertsson*, and a consumer credit loan, as in the present case. The answers were therefore substantially identical, and references were made to *Engilbertsson*.

The full text of the judgment may be found on the Internet at: www.eftacourt.int.

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