

Reykjavík, 13 September 2023

TO THE PRESIDENT AND THE MEMBERS OF THE EFTA COURT

WRITTEN OBSERVATIONS

Submitted cf. Article 97 of the Rules of Procedure and Article 20 of the Statute, by

ÍSLANDBANKI HF.

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in EFTA Court Case No E – 4/23

Neytendastofa v Íslandsbanki hf.

in which the Court of Appeal (Landsréttur) has requested that the EFTA Court gives an advisory opinion pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice on seven questions regarding the interpretation of Directive 2008/48/EC on credit agreements for consumers.

I.

INTRODUCTION

1. By order of 1 June 2023 the Court of Appeal requested the EFTA Court to give an Advisory Opinion pursuant to Article 34 of the Surveillance and Court Agreement. The case before the Court of Appeal has been appealed by Neytendastofa (The Consumer Agency, hereinafter the Appellant) against Íslandsbanki hf. (hereinafter the Defendant).
2. The Appellant is a governmental agency in Iceland which enforces Icelandic legislation on market surveillance of business operators and good functioning and transparency of the markets in respect to safety and consumers legal rights. By decision No. 49/2019, from 26 November 2019, the Appellant concluded that the Defendant had, in seven instances, provided inadequate information both in the standardised format, which creditors are required to provide before a credit agreement with consumers is entered into, and in its credit agreements.
3. The Defendant appealed the decision to the Consumer Affairs Appeals Committee. In a decision in case No. 11/2019, from 13 October 2020, the Appeals Committee upheld the decision of Neytendastofa.
4. The Defendant brought an action before the Reykjavik District Court in January 2021 claiming that the Decision of the Consumer Affairs Appeals Committee should be annulled.
5. In its ruling in case E-127/2021 on 31 January 2022 the Reykjavik District Court concluded that there were significant defects in the decision of the Consumer Affairs Appeals Committee and that the decision should be annulled.
6. Neytendastofa appealed the ruling of the District Court to the Court of Appeals. To rule on the dispute, the Court of Appeals decided to refer the following questions to the EFTA Court:
 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 decision to raise or lower the borrowing rate on credit that bears variable interest may be based?*
 2. *First, is the requirement of Article 5 of Directive 2008/48/EC, that the consumer is to be provided with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement, met if, among the conditions for changing the borrowing rate that are specified on the standard form (cf. Article 5(1)(f)), there is a general reference to an unforeseen increase in the creditor's costs? Secondly, is the requirement of Article 10 of Directive 2008/48/EC, that a credit agreement is to specify in a clear and concise manner the conditions and procedures for changing the borrowing rate (cfr.*

Article 10(2)(f), met if, among those conditions, there is a general reference to an unforeseen increase in the creditor's costs?

3. *Is the requirement of Article 5 of Directive 2008/48/EC, that the consumer is to be provided with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement, met if the wording of a provision in the standard form (cf. Article 5(1)(f) includes general and open-ended references such as "etc.", as in the case in the standard form involved in this case?*
 4. *Does it follow from Article 5(1)(g) of Directive 2008/48/EC that the APR is to be illustrated in the standard form with a representative example in which all the assumptions used to calculate the percentage are stated even though all components of the credit which the consumer intends to take are known?*
 5. *Does it follow from Article 5(1)(i) and Article 10(2)(k) of Directive 2008/48/EC that "other charges deriving from the credit agreement" are always to be specified, irrespectively of whether or not the credit is of such a type that both payment transactions and drawdowns of the credit are recorded?*
 6. *If the answer to question 5 is such that it follows from Article 5(1)(i) and Article 10(2)(k) of Directive 2008/48/EC that, generally, information is to be provided in the standard form on charges deriving from the credit agreement, is the requirement met by referring to the creditor's schedule of charges, which may undergo change? Is it necessary to specify clearly in the standard form itself what the charges are and what they will be in the future?*
 7. *Does it follow from Article 5(1)(l) of Directive 2008/48/EC that the charges to be paid in the case of late payment are to be specified in the standard form or whether it is sufficient that the creditor make a general reference to its schedule of charges, which may undergo changes?*
7. Below in Section II the Defendant briefly sets out the relevant factual background to the case. In Section III relevant provisions of EEA law will be set out, and the relevant provisions of national law and regulations will be set out in Section IV. Discussions on the referred question are set out in Section V, and finally, conclusions are set out in Section VI.

II.

FACTS

8. On 12 March 2019 the Appellant requested that the Defendant send the Agency both a copy of the standard form containing consumer credit information (hereinafter the standard form) and a copy of a credit agreement. The Defendant sent the documents in question to the Appellant on 18 March 2019.
9. On 28 June 2019 the Appellant sent the Defendant a letter with comments on six points regarding the information given by the Defendant. The Defendant sent the Appellant the comments of the bank on 19 July 2019, claiming that the information given was sufficient.

10. By decision No. 49/2019, from 26 November 2019, the Appellant concluded that the Defendant had, in seven instances, provided inadequate information both in the standardised format and in its credit agreements and thereby not met the requirements in Article 7(4)(f), (g), (i) and (l) and Article 12(2)(f) and (k) of the Consumer Credit Act No. 33/2013.
11. The Defendant appealed the decision of the Appellant to the Consumer Affairs Appeals Committee (hereinafter the Appeals Committee) on 19 December 2019. In a decision in case No. 11/2019, from 13 October 2020, the Appeals Committee upheld the decision of Neytendastofa.
12. The Appeals Committee concluded that the Defendant had provided inadequate information in the following instances:

- *Information regarding the borrowing rate*

The Appeals Committee concluded that the information given by the Defendant on the borrowing rate had not been in line with Articles 7(4)(f) and 12(2)(f) of Act No. 33/2013 on Consumer Credit, implementing Articles 5(1)(f) and 10(2)(f) of Directive 2008/48/EC. The decision was based on the views of the Appeals Committee that it was practically impossible for an ordinary consumer to form an idea of the circumstances in which the borrowing rate could undergo adjustment on the basis of the reference to unforeseen costs and that the Defendant'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."

- *Information regarding the APR*

The Appeals Committee concluded that the information provided by the Defendant on the annual percentage rate of charge (hereinafter the APR) in the standard form was not in line with Article 7(4)(g) of Act No. 33/2013 on Consumer Credit, implementing Article 5(1)(g) of Directive 2008/48/EC, as it did not include "a representative example", in which all the assumptions used in the calculation of the rate appeared. The Appeals Committee observed that the relevant provision of Icelandic legislation 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 as this increases transparency and enables the consumer to arrive at an understanding of how offers can be compared with each other.

- *Information regarding other charges*

The Appeals Committee concluded that Articles 7(4)(i) and 12(2)(k) of Act No. 33/2013 on Consumer Credit, implementing Articles 5(1)(g) and 10(2)(k) of Directive 2008/48/EC bestowed on creditors to inform consumers of “any other charges deriving from the credit agreement” irrespective of whether the consumer has to pay charges for maintaining one or more accounts recording payments and drawdowns or charges for using a means of payment. Further, the Appeals Committee seems to have concluded the Defendant had not given sufficient information regarding other costs deriving from the credit agreement and the conditions under which those costs may be changed.

- *Information regarding the cost of late payment*

The Appeals Committee concluded that the information provided by the Defendant in the standard form regarding the cost of late payment had not been in line with Article 7(4)(l) of Act No. 33/2013 on Consumer Credit, implementing Article 5(1)(l) of Directive 2008/48/EC. This seems to have only been based on the fact that the standard form did not list up all costs that a consumer can have to pay if a claim is not paid during the primary or intermediary collection phase and therefore sent for legal collection.

13. The Defendant brought an action before the Reykjavik District Court on 8 January 2021 claiming that the Decision of the Consumer Affairs Appeals Committee should be annulled.

14. In its ruling in case E-127/2021 on 31 January 2022 the Reykjavik District Court concluded that there were significant defects in the decision of the Appeals Committee and that the decision should be annulled.

- *Information regarding the borrowing rate*

The District Court found that there were serious flaws in the decision of the Appeals Committee and overturned the decision of the Committee, stating that the information given by the Defendant regarding changes in the borrowing rate had been sufficient.

- *Information regarding the APR*

The District Court concluded that the decision of the Appellant and the Appeals Committee regarding the APR was a bit unclear and contradictory. Further, the Court concluded that the Appeals Committee demanded that the creditor gave the consumer more information than the legislation requires. Then the Court stated that the APR is a presentation of the total cost of credit, displaying the cost as a percentage rate. As it is based on the factors that are used in the granting of credit and are stated in the standard information form it constitutes a representative example. Therefore, the

District Court found that the information given by the Defendant in the standard information form was in line with Article 7(4)(g) of Act No. 33/2013 on Consumer Credit, implementing Article 5(1)(g) of Directive 2008/48/EC.

- *Information regarding other charges*

The District Court found that the interpretation of the Appeals Committee of Articles 7(4)(i) and 12(2)(k) of Act No. 33/2013 on Consumer Credit was not in line with neither a textual interpretation of the provisions nor was it supported in the preparatory works accompanying the legislation. The Court further found that when a provision of law is unclear, a higher administrative authority like the Appeals Committee cannot take a decision that is as onerous for the Defendant as the decision in question. Therefore, the Court found the decision of the Appeals Committee defected as regards information regarding other charges.

- *Information regarding the cost of late payment*

The District Court overturned the decision of the Appeals Committee and found that the Defendant had provided information regarding arrears interest and the cost of primary and intermediary collection in accordance with the Debt Collection Act in accordance with the requirements of Article 7(4)(l) of Act No. 33/2013 on Consumer Credit. The Court also concluded that the bank had clearly stated that the amounts could undergo change. Further, the Court stated that based on the Icelandic Act on Consumer Credit creditors are not obliged to provide details of costs of all points in the legal collection procedures in the standard information form.

15. Neytendastofa appealed the ruling of the District Court to the Court of Appeals which decided to refer seven questions to the EFTA Court.

III.

RELEVANT PROVISIONS OF EEA LAW

16. The relevant provisions of EEA law are mainly to be found in Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC on credit agreements for consumers (Consumer Credit Directive).

17. From recital 9 of the Consumer Credit Directive:

Full harmonisation is necessary in order to ensure that all consumers in the Community enjoy a high and equivalent level of protection of their interests and to create a genuine internal market. Member States should therefore not be allowed to maintain or introduce national provisions other than those laid down in this Directive. However, such restriction should only apply where there are provisions harmonised in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation. ...

18. From recital 10 of the Consumer Credit Directive:

The definitions contained in this Directive determine the scope of harmonisation. The obligation on Member States to implement the provisions of this Directive should therefore be limited to its scope as determined by those definitions. ...

19. Recital 19 of the Consumer Credit Directive reads:

In order to enable consumers to make their decisions in full knowledge of the facts, they should receive adequate information, which the consumer may take away and consider, prior to the conclusion of the credit agreement, on the conditions and cost of the credit and on their obligations. To ensure the fullest possible transparency and comparability of offers, such information should, in particular, include the annual percentage rate of charge applicable to the credit, determined in the same way throughout the Community. As the annual percentage rate of charge can at this stage be indicated only through an example, such example should be representative. Therefore, it should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement under consideration and, if applicable, to the goods purchased. When determining the representative example, the frequency of certain types of credit agreement in a specific market should also be taken into account. As regards the borrowing rate, the frequency of instalments and the capitalisation of interest, creditors should use their conventional method of calculation for the consumer credit concerned.

20. Recital 31 of the Consumer Credit Directive states:

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

21. Recital 32 of the Consumer Credit Directive reads:

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

22. Article 1 of the Consumer Credit Directive states:

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

23. Article 3(1)(i) of the Consumer Credit Directive reads:

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

24. From Article 5(1) of the Consumer Credit Directive:

In good time before the consumer is bound by any credit agreement or offer, the creditor and, where applicable, the credit intermediary shall, on the basis of the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer, provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement. Such information, on paper or on another durable medium, shall be provided by means of the Standard European Consumer Credit Information form set out in Annex II. The creditor shall be deemed to have fulfilled the information requirements in this paragraph and in Article 3, paragraphs (1) and (2) of Directive 2002/65/EC if he has supplied the Standard European Consumer Credit Information.

The information in question shall specify:

...

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

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

...

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

...

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

25. Article 10(2) of the Consumer Credit Directive states:

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;

26. Article 19(1) of the Consumer Credit Directive reads:

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

IV.

RELEVANT PROVISIONS OF NATIONAL LAW

Act No. 33/2013 on Consumer Credit

27. The Consumer Credit Directive was incorporated into Icelandic law by the Consumer Credit Act No 33/2013.

28. Points f, g, i and l of Paragraph 4 of Article 7 read:

The information shall contain the following:

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

g. the annual percentage rate of charge and the total amount payable by the consumer, illustrated by means of a representative example including 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 the highest charges and rates applying to the most common credit agreements and state that other assumptions could result in a higher annual percentage rate of charge;

...

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

...

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

29. Points f and k of Paragraph 2 of Article 12 read:

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

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

...

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

V.

DISCUSSION ON THE QUESTIONS RAISED BY THE COURT

30. The Court of Appeals referred seven questions to the EFTA Court. The Defendant will address questions one to three in the first part. In the second part question four will be addressed. Questions five and six will be addressed in the third part and finally question seven will be addressed in the fourth part of the discussions.

1. Information regarding the borrowing rate

31. The first, second and the third questions of the referring court all relate to Articles 5(1)(f) and 10(2)(f) of Directive 2008/48/EC and the information given by the creditor on the borrowing rate on credit that bears variable interest.

32. In essence the referring court asks if Articles 5(1)(f) and 10(2)(f) of Directive 2008/48/EC shall be interpreted as meaning that the creditor needs to exhaustively list all conditions for making changes in the borrowing rate that bears variable interest both in the standard form and the credit agreement and whether a creditor can list an unforeseen increase in the creditor's costs as an indication for changes in the borrowing rate.

33. According to Article 1 of Directive 2008/48/EC its objective is to harmonize certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers. The Directive aims to achieve its objective by providing for full harmonization to ensure that all consumers enjoy a high and equivalent level of protection of their interests. The scope of harmonization is determined by the provisions that are harmonized in the Directive and the definitions contained in Article 3 of the Directive. Outside the scope of harmonization, Member States remain free to maintain or introduce national legislation.

34. As can be seen from the definitions in Article 3 of the Consumer Credit Directive, the Directive mainly regulates the provision of information to consumers, at the pre-contractual stage, in the credit agreement and during the lifetime of the contractual relationship. However, the Directive does not regulate, except to a limited extent, the subject matter of credit agreements, creditor's operations, the credit products available, or the criteria, factors, or circumstances, that may be taken into account when creditors decide whether to grant a loan or the interest rates available.

35. Article 5(1)(f) states that information on conditions and procedure for changing the borrowing rate shall be specified in the standard form. Article 10(2)(f) states that conditions and procedure for changing the borrowing rate shall be specified in credit agreement in a clear and concise manner.

36. The Articles therefore only state that information shall be given on the conditions and procedures but do not in any way restrict, the criteria, factors, or circumstances, that

may be considered when adjusting the borrowing rate under a credit agreement with variable interest rates. Further, the Articles do not require that the consumer must be informed of all the factors that can possibly affect the borrowing rate, or the relative significance of each factor or restrict in any way the use of terms in mortgage credit agreements which allow the lender to adjust the borrowing rate based on an unforeseen increase in the creditor's costs.

37. Therefore, the Defendant submits that Directive 2008/48/EC does not regulate the method used for calculating interest charges but leaves that up to Member States and/or creditors, which are able to determine the calculation method used for those charges.¹

38. In both the standard form and in the credit agreement that the Defendant provided the Consumer Agency with, it is stated that a variable non-indexed mortgage interest rate applies to the loan, as determined at any given time, and published in the index chart of the Defendant. It is stated that adjustments of the interest rate are inter alia based on changes in the bank's financing costs, the operating costs of the bank, public levies and/or other unforeseen costs, the key interest rate of the Central Bank of Iceland, changes in the consumer price index etc. It is further stated that decisions on changes in interest rates are taken by a committee of the bank. The committee primarily looks at the development of the above-mentioned factors and assesses if changes call for changes in the interest rate. Then it is stated that the ratio of each of those factors is variable and will inter alia be defined by decisions of public entities and market conditions at each time. Changes in the interest rate will be based on an evaluation of all the factors together or individually. If any of those factors have changed when the interest rate is evaluated it can lead to changes of the interest rate, so that the rate is raised or lowered. Finally, it is stated that consumers will be informed of changes of the borrowing rate with 30 days' notice.

39. The Defendant submits that the term, in a clear and concise manner, informs consumers of conditions and procedure for changing the borrowing rate, and therefore is fully in line with Articles 5(1)(f) and 10(2)(f) of the Consumer Credit Directive.

40. Therefore, the Defendant submits that the first three questions should be answered as follows:

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

¹ See Commission staff working document with guidelines on the application of Directive 2008/48/EC in relation to costs and the APR.

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

2. Information regarding the annual percentage rate of charge

41. In the fourth question the referring court asks if it follows 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.
42. The aim of the APR is to provide a numerical and comparable representation of the cost of the credit to the consumer. The Consumer Credit Directive defines the APR in Article 3(i) as “*the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit [...]*”. The explanation of the APR is provided in Article 19(1), which describes the APR as equating, on an annual basis, to “*the present value of all commitments (drawdowns, repayments and charges), future or existing, agreed by the creditor and the consumer*”. The Directive also stipulates that the APR must be calculated in accordance with the mathematical formula set out in Part I of Annex I. The formula for calculating the APR is as follows:

$$\sum_{k=1}^m C_k (1 + X)^{-t_k} = \sum_{l=1}^{m'} D_l (1 + X)^{-s_l}$$

43. The mathematical formula, allowing the APR to be calculated as the only unknown value in the equation, can only be applied once the amounts and the dates of the payments to be made by consumer and drawdowns of the credit are known. When this information is not known the creditor must make an assumption for the calculation of the APR to give a representative example.
44. As can be seen from Recital 19 to Directive 2008/48/EC, it is considered of great importance that consumers receive information on the APR in the standard form in order to ensure the fullest possible transparency and comparability of offers.
45. Recital 19 further states that as the APR can only be indicated through an example in the standard form, such example should be representative and correspond to i.a. the average duration and total amount of credit granted for the type of credit agreement under consideration.
46. It is clear from the recital that the APR, the percentage rate itself, is the example, and that it is important that the percentage rate/the example is representative. If the creditor has no information about the preferences of the consumer average numbers should be used. However, it is clear from Article 5(1)(g) that when 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 when calculating the APR in the standard form.² The same can be seen from Article 5(1) where it is stated that the information given to the consumer by the creditor in a standard form should be in line with the preferences expressed and the information supplied by the consumer when possible.

47. In the standard form provided by the Defendant in the case before the referring court the APR is calculated based on components that the consumer had informed the bank he wanted for his credit agreement. The APR is presented as a percentage. All the assumptions on which the calculation of the percentage rate is based are available in the standard information form. Further, information is given regarding the APR setting 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 is 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 indexation, 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.

48. Therefore, the Defendant submits that the information given in the standard form presented by the Defendant was in line with the requirements of Article 5(1)(g) of Directive 2008/48/EC, and that if all components of the credit which the consumer intends to take are known, it follows from Article 5(1)(g) of Directive 2008/48/EC that the APR is to be illustrated in the standard form as a percentage, calculated based on all the known components.

49. Therefore, the Defendant submits that the fourth question of the referring court should be answered as follows:

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

² The same understanding is indicated in Chapter 2.5 in Commission staff working document with guidelines on the application of Directive 2008/48/EC in relation to costs and the APR.

3. Information regarding other charges

50. In questions five and six the referring court asks how to interpret Articles 5(1)(i) and Article 10(2)(k) of Directive 2008/48/EC. In essence the question is whether the words “*any other charges deriving from the credit agreement and the conditions under which those charges may be changed*” are to be viewed as standing alone or only referring to “*charges for maintaining one or several accounts*” and “*charges for using a means of payment for both payment transactions and drawdowns*”.
51. The Defendant submits that Articles 5(1)(i) and Article 10(2)(k) of Directive 2008/48/EC must be read in context and as a whole.
52. The preamble to the Directive does not give any indication of how to interpret the Articles. However, the preparatory works of the Icelandic Act on Consumer Credit are clear on that the Articles only apply to charges for maintaining one or more accounts recording payments and drawdowns or charges for using a means of payment. A further indication of this understanding is the fact that both Articles start with the words “where applicable”, indicating that they do not apply to all credit agreements.
53. If the Court finds that, based on Articles 5(1)(i) and 10(2)(k) of Directive 2008/48/EC, creditors are, generally obliged to inform the consumer of “*any other charges deriving from the credit agreement and the conditions under which those charges may be changed*” the Defendant submits that creditors can change the costs during the lifetime of the credit agreement, and that such changes can be made i.a. through changes in the schedule of charges of the bank.
54. Therefore, the Defendant submits that questions five and six from the referring court should be answered as follows:

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

4. Information regarding the cost of late payment

55. In the seventh and final question the referring court asks in essence whether all information on charges to be paid in case of late payment must be presented in the standard form, if a creditor can change those charges and if it is sufficient that a creditor refers to its schedule of charges in the standard form.
56. The Defendant submits that it is clear from the wording of Article 5(1)(l) that the creditor shall give the consumer information about the applicable rate of arrear interest and the arrangements for its adjustment.³

³ See Volkswagen Bank GmbH, joined cases C-33/20 , C-155/20 and C-187/20, where it is stated that based on Article 10(2)(l) of the Directive, which is comparable with Article 5(1)(l), creditors must state in credit

57. As regards “*default charges*” the preamble of the Consumer Credit Directive is silent on what is meant by default charges. Based on the preparatory works accompanying the Icelandic legislation implementing the Directive, and the common practice of European creditors the Defendant submits that creditors, at most, are required to inform the consumer of costs of primary and intermediary debt collection. The Defendant further submits that a creditor cannot be obliged to inform the consumer of all possible cost of legal debt collection in the standard form itself.
58. In relation to that it should be noted that costs of legal debt collection can vary greatly and that it is almost impossible to give conclusive information regarding such costs. Currently the list of prices for different steps in different legal actions at the Defendant’s home page is two pages, and the Defendant submits that it is not in line with the goal of giving the consumer relevant information in a clear and concise manner to put such a list in the standard form. In that regard it should also be noted that many creditors do not carry out legal debt collections themselves but buy such services from law firms.
59. In the standard form provided by the Defendant in the case before the referring court it is firstly stated what the conditions are for the Defendant to charge consumers with costs due to late payments.
60. Secondly, it is stated that the consumer will be charged arrears interest that were, at the issue of the standard form, 11,75%, in accordance with the prevailing decision of the Central Bank of Iceland concerning the base for arrear interest and supplements for non-performance, according to Article 6(1) of Act No. 95/2008 on interest and indexation. It is further stated that the Central Bank of Iceland takes decisions on arrear interests and publishes the decisions.
61. Thirdly, it is stated that the consumer can have to pay costs of primary and intermediary debt collection or legal debt collection in accordance with the bank’s prevailing schedule of charges, including the schedule of charges applicable to legal debt collection and Act No. 95/2008 on Debt Collection. Then it is explained what legal debt collection can entail. Further, information is given on the cost of primary and intermediary debt collection, including costs for a debt collection notice and costs for special debt collection. It should be noted that those costs are decided in the Maximum Debt Collection Fee Regulation. Also, some examples of types of cost which can stem from legal debt collections are given.
62. Finally, it is stated that the amounts may change in accordance with changes in the schedule of charges of Islandsbanki hf. and the schedule of charges for legal collection

agreements, in the form of a specific percentage, the rate of late-payment interest applicable at the time of conclusion of that agreement and must explain the specific arrangements for adjusting the rate of late-payment interest.

and that those schedules are available at www.islandsbanki.is under “Interest and prices” (Vextir og verðskrá).

63. The Defendant submits that the information in the standard form provided by the bank is in accordance with Article 5(1)(l) of Directive 2008/48/EC and that the average consumer can, based on the information given in the standard form, realise what costs he will be charged in case of late payments.

64. Therefore, the Defendant proposes that the final question should be answered as follows:

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

VI.

CONCLUSION

65. For the reasons set out above, the Defendant submits that the questions referred by the Order of the Court of Appeals, dated 1 June 2023, should be answered as follows:

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

Directive 2008/48/EC does not regulate the method used for calculating interest rates and Articles 5(1)(f) and 10(2)(f) do not in any way restrict, the criteria, factors, or circumstances, that may be considered when adjusting the borrowing rate under a credit agreement with variable interest rates. Further, the Articles do not require that the consumer must be informed of all the factors that can possibly affect the borrowing rate, or the relative significance of each factor or restrict in any way the use of terms in mortgage credit agreements which allow the lender to adjust the borrowing rate based on an unforeseen increase in the creditor's costs.

2. The answer to the fourth question should be:

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

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

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

4. Question seven should be answered as follows:

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

On behalf of Íslandsbanki hf.

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