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ORIGINAL

IN THE EFTA COURT

WRITTEN OBSERVATIONS

submitted, pursuant to Article 20 of the Statute of the EFTA Court, by

THE EFTA SURVEILLANCE AUTHORITY

represented by
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Department of Legal & Executive Affairs,
acting as Agents,

IN CASE E-13/22

Birgir Þór Gylfason and Jórunn S. Gröndal

v

Landsbankinn hf.

in which the District Court of Reykjavik (“Héraðsdómur Reykjavíkur”) requests the EFTA Court to give 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, concerning the interpretation and application of Article 24 of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 *on credit agreements for consumers relating to residential immovable property* and of Article 10(2)(f) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 *on credit agreements for consumers*.

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1. INTRODUCTION OF THE CASE

1. The Agreement on the European Economic Area (“**the EEA Agreement**”) sets out several objectives for the European Economic Area (“**the EEA**”), one of which is “*to promote the interests of consumers and to strengthen their position in the market place, aiming at a high level of consumer protection*”.¹
2. This high level of consumer protection is ensured, *inter alia*, through the incorporation into the EEA Agreement of numerous acts concerning consumer protection,² including, as is the subject of the present case, Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 *on credit agreements for consumers relating to residential immovable property and amending Directives 2008/38/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (“MCD”),*³ 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 (“CCD”)*⁴ and Council Directive 93/13/EEC of 5 April 1993 *on unfair terms in consumer contracts (“UCTD”).*⁵
3. As set out in the fifteenth recital, the objective of the Contracting Parties is “*to arrive at, and maintain, a uniform interpretation and application [...] of the EEA Agreement and those provisions of the European Union (“the EU”) legislation which are substantially reproduced in it [...] and to arrive at an equal treatment of individuals and economic operators as regards the four freedoms and the conditions of competition*”.⁶
4. Furthermore, the need for uniform interpretation of EEA law and the principle of equality requires that the terms of a provision of EEA law which makes no specific reference to national law concerning the meaning to be given to it, for the purposes of determining the meaning and scope of that provision, must normally be given an autonomous and **uniform interpretation throughout the EEA**, which must take

¹ See recital twelve of the Preamble to the EEA Agreement.

² The provisions on consumer protection are contained in Annex XIX to the EEA Agreement, cf. Article 72 of the EEA Agreement.

³ Incorporated into the EEA Agreement by Joint Committee Decision No 125/2019 of 8 May 2019, in points 31g and 31j of Chapter IX and in point 7h of Chapter XIX. (OJ L 60, 28.2.2014, p. 34).

⁴ Incorporated into the EEA Agreement by Joint Committee Decision No 16/2009 of 5 February 2009, in point 7h of Chapter XIX (OJ L 133, 22.05.08, p. 66).

⁵ Incorporated into the EEA Agreement by Joint Committee Decision No 7/94 of 21 March 1994 in point 7a of Chapter XIX (OJ L 95, 21.4.1993, p. 29).

⁶ See recital fifteen of the Preamble to the EEA Agreement. See also the judgment of the EFTA Court of 26 July 2016 in Case E-28/15 *Yankuba Jabbi v the Norwegian Government, represented by the Immigration Appeals Board*, [2016] EFTA Ct. Rep. 575, paragraph 70.

into account the context of that provision and the purpose of the legislation in question.⁷

5. It is against this background that the EFTA Court is asked to answer the question of whether a particular contractual term concerning a variable rate mortgage credit agreement offered to consumers by Landsbankinn hf. (“**the Defendant**”), is compatible with Article 24 of MCD and, as appropriate, Article 10(2)(f) of CCD. ESA furthermore considers that UCTD is also of relevance to the present case.
6. The term in question provides that the calculation of the borrowing rate should take account of, amongst other things, the Central Bank of Iceland’s (“**the CBI’s**”) interest rate, interest rates on the market and other terms of finance available to the creditor.

2. THE FACTS OF THE CASE

7. Mr. Birgir Þór Gylfason and Ms. Jórunn S. Gröndal (“**the Plaintiffs**”) signed a mortgage credit agreement relating to an immovable property with the Defendant on terms prepared by the Defendant. The Defendant granted a variable rate mortgage loan (non-indexed) in the principal amount of ISK 6 500 000, to be repaid in monthly instalments over a period of 15 years.⁸
8. At the signing of the mortgage credit agreement the interest rate was 6,60%. On the first repayment,⁹ the interest rate was 6,4%.¹⁰ The mortgage credit agreement contained special provisions allowing the Defendant to adjust the interest rate, which read *inter alia*:

*“Variable mortgage interest shall be paid on this loan in accordance with the **interest determined by Landsbankinn on non-indexed bridge loans**¹¹ at any given time. Interest shall be paid retrospectively, on the same dates as the repayment instalments, unless another arrangement is agreed.*

Landsbankinn may, at any time during the loan period, raise or lower the aforementioned interest rate in accordance with Landsbankinn’s interest-rate decisions at any given time. Interest-rate decisions shall

⁷ See judgment of the Court of Justice of the European Union (“**CJEU**”) of 19 December 2013, Case C-279/12, *Fish Legal and Shirley*, EU:C:2013:853, paragraph 42 and judgment of the EFTA Court of 14 December 2021 in Case E-2/21 *Norep AS v Haugen Gruppen AS*, paragraphs 30 and 31.

⁸ A request for an advisory opinion (“**the Request**”), page 1.

⁹ *Ibid.* The principal bore interest as from 22 July 2019.

¹⁰ *Ibid.*

¹¹ ESA elaborates on the translation of this term in paragraph 35.

take account, amongst other things, of the Central Bank of Iceland's interest rate, interest rates on the market and other financing terms available to Landsbankinn. Changes to the interest rate shall be announced on paper or via another durable medium, e.g. in an on-line bank, and shall take effect 30 days after the date of the announcement. The aforementioned 30-day notice period may be changed in accordance with the relevant provisions of law. An adjustment involving a lowering of the interest rate may be scheduled to take effect on the date of the announcement, but this is not obligatory."¹²

9. The dispute in the main proceedings concerns the interpretation of the above provisions and whether the Defendant's term in the mortgage credit agreement regarding the calculation of variable interest is compatible with the provisions of the Icelandic Consumer Property Mortgage Act No 118/2016 ("**Act 118/2016**")¹³ interpreted in conformity with the MCD, and with those of the Consumer Credit Act No 33/2013 ("**Act 33/2013**")¹⁴ as they are to be applied and interpreted in conformity with CCD and UCTD.
10. The Request was submitted by the Plaintiffs to the District Court ("**the Referring Court**") which delivered its ruling on 23 June 2022 to the effect that the question stated in its ruling was to be referred to the EFTA Court.
11. The Defendant did not accept this decision and brought an appeal against it before the Court of Appeal (Landsréttur) which delivered its ruling on 31 October 2022 upholding the ruling reached by the Referring Court.¹⁵ The Referring Court sent the Request to the EFTA Court on 4 November 2022.

3. THE QUESTION REFERRED

12. An advisory opinion of the EFTA Court is sought by the Referring Court on the following question:

"Is it compatible with Directive 2014/17/EU, in particular, Article 24 of the Directive, and, as appropriate, Article 10(2)(f) of Directive 2008/48/EC (cf. recital 19 of the Preamble to Directive 2014/17/EU), that the terms of a consumer property mortgage, in which the interest rate is variable, state that

¹² The Request, page 2. Emphasis made by ESA.

¹³ Lög nr. 118/2016 um fasteignarlán til neytenda.

¹⁴ Lög nr. 33/2013 um neytendalán.

¹⁵ The Request, page 16.

adjustments of the interest rate are to take account of, amongst other things, the Central Bank of Iceland's interest rate, interest rates on the market and other terms of finance available to the creditor?"

4. EEA LAW

4.1 The UCTD

13. The UCTD lays down provisions on effective consumer protection by adopting uniform rules of law in the matter of unfair terms, allowing the Member States to have the option to afford consumers a higher level of protection through national provisions.¹⁶ Articles 3, 4, 5 and 6 UCTD read as follows:

“Article 3

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

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

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

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

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

Article 4

1. Without prejudice to Article 7, the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion

¹⁶ See recitals ten and twelve of the UCTD.

of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.

2. Assessment of the unfair nature of the terms shall relate neither to the definition⁷ of the main subject matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as these terms are in plain intelligible language.

Article 5

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

Article 6

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

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

4.2 The CCD

14. 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*¹⁷ was one of the acts which entered into force at the same time as the EEA Agreement. That directive was the predecessor to the CCD, which stated that, in order to facilitate the emergence of a well-functioning internal market in consumer credit, it is necessary to make provisions for a harmonised framework in a number of core areas.¹⁸

15. Article 2(2)(a) CCD states that the CCD does not apply to credit agreements which are secured either by a mortgage or by another comparable security commonly used in an EEA State on immovable property or secured by a right related to immovable property.

16. Article 10(2)(f) provide for information to be included in credit agreements, and states that:

*“[t]he credit agreements 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;”*

4.3 The MCD

17. The MCD provides protection for consumers relating to credit agreements to residential immovable property and lays down provisions subject to **maximum harmonisation** in relation to the provisions of pre-contractual information through the European Standardised Information Sheet (“**ESIS**”).¹⁹

18. Recital nineteen of the Preamble states:

“For reasons of legal certainty, the [EEA] legal framework in the area of credit agreements relating to residential immovable property should be consistent with and complementary to other [EEA] acts, particularly in the areas of consumer protection and prudential supervision. Certain essential definitions including the definition of ‘consumer’, and ‘durable medium’, as well as key concepts used in standard information to designate the financial

¹⁷ 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.

¹⁸ See recital seven of the CCD.

¹⁹ See recital seven of the MCD. Emphasis made by ESA.

*characteristics of the credit, including ‘total amount payable by the consumer’ and ‘borrowing rate’ should be in line with those set out in Directive 2008/48/EC so that the same terminology refers to the same type of facts irrespective of whether the credit is a consumer credit or a credit relating to residential immovable property. Member States should therefore ensure, in the transposition of this Directive, that there is consistency of application and interpretation in relation to those **essential definitions and key concepts**.”²⁰*

19. Article 2(1) describes the level of harmonisation:

“This Directive shall not preclude Member States from maintaining or introducing more stringent provisions in order to protect consumers, provided that such provisions are consistent with their obligations under Union law.”

20. Article 7(1) states the conduct of business obligations when providing credit to consumers:

“1. Member States shall require that when manufacturing credit products or granting, intermediating or providing advisory services on credit and, where appropriate, ancillary services to consumers or when executing a credit agreement, the creditor, credit intermediary or appointed representative acts honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers. In relation to the granting, intermediating or provision of advisory services on credit and, where appropriate, of ancillary services the activities shall be based on information about the consumer’s circumstances and any specific requirement made known by a consumer and on reasonable assumptions about risks to the consumer’s situation over the term of the credit agreement. In relation to such provision of advisory services, the activity shall in addition be based on the information required under point (a) of Article 22(3).”

21. Article 17(6) describes the information that must be provided to the consumer with regards to mortgage credit agreements with variations in the borrowing rate:

“6. Where the credit agreement allows for variations in the borrowing rate, Member States shall ensure that the consumer is informed of the possible impacts of variations on the amounts payable and on the APRC at least by

²⁰ Emphasis made by ESA.

means of the ESIS. This shall be done by providing the consumer with an additional APRC which illustrates the possible risks linked to a significant increase in the borrowing rate. Where the borrowing rate is not capped, this information shall be accompanied by a warning highlighting that the total cost of the credit to the consumer, shown by the APRC, may change. This provision shall not apply to credit agreements where the borrowing rate is fixed for an initial period of at least five years, at the end of which a negotiation on the borrowing rate takes place in order to agree on a new fixed rate for a further material period, for which an additional, illustrative APRC is provided for in the ESIS.”

22. Article 24 concerns variable rate credits:

“Where the credit agreement is a variable rate credit, Member States shall ensure that:

- (a) any indexes or reference rates used to calculate the borrowing rate **are clear, accessible, objective and verifiable** by the parties to the credit agreement and the competent authorities; and*
- (b) historical records of indexes for calculating the borrowing rates are maintained either by the providers of these indexes or the creditors.”²¹*

23. Article 27(1) and (2) provide for information concerning changes in the borrowing rate:

“1. Member States shall ensure that the creditor informs the consumer of any change in the borrowing rate, on paper or another durable medium, before the change takes effect. The information shall at least state the amount of the payments to be made after the new borrowing rate takes effect and, in cases where the number or frequency of the payments changes, particulars thereof.

2. However, the Member States may allow the parties to agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically where the change in the borrowing rate is correlated with a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is kept available in the premises of the creditor and

²¹ Emphasis made by ESA.

communicated personally to the consumer together with the amount of new periodic instalments.”

5. NATIONAL LAW

5.1 Act on Interest and Indexation No 38/2001

24. The Act on Interest and Indexation No 38/2001²² sets out the way interest rates are calculated, the frequency of changes as well as the indexation of savings and loans.

25. Chapter II provides for rules regarding general interest rates. Article 4 states that when interest is payable according to Article 3, but the percentage or interest reference is otherwise not specified, the interest rate is at all times to be equal to the interest rate determined by the CBI, taking into account the lowest interest rate on new general non-indexed loans from credit institutions and published in accordance with Article 10.

26. Chapter V provides for several provisions on interest. Article 10 states:

“A Credit Institution must inform the Central Bank of Iceland of offering of interest rates and changes to them with such a form and notice as decided by the Central Bank. The Central Bank shall before the end of each month publish in the Legal Gazette information on interests of unindexed and indexed loans in accordance with Article 4 and interests of damage claims in accordance with Article 8 and shall each notification be used as a base rate in accordance with this Act for the next month or until the next notification is published.”²³

5.2 Act 33/2013

27. Act 33/2013 transposed CCD into the Icelandic legal order and entered into force 1 November 2013. The Act was initially extended to apply also to credit agreements for immovable property.

28. Article 7(4)(f) transposed Article 10(2)(f) of the CCD. Article 7(4)(f) states what information is to be provided before a credit agreement is made:

“The information shall contain the following:

²² Lög nr. 38/2001 um vexti og verðtryggingu.

²³ ESA's translation of: “Lánastofnunum ber að tilkynna Seðlabanka Íslands um öll vaxtakjör og breytingar á þeim í því formi og með þeim fyrirvara sem Seðlabankinn krefst. Seðlabankinn skal fyrir lok hvers mánaðar birta í Lögbirtingablaði vexti af óverðtryggðum og verðtryggðum útlánunum skv. 4. gr. og vexti af skaðabótakröfum skv. 8. gr. og skal hver tilkynning lögð til grundvallar í samræmi við lög þessi næsta mánuðinn eða uns næsta tilkynning birtist.[.]”.

[...]

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

5.3 Act 118/2016

29. Act No 118/2016 transposed MCD into Icelandic law. When it entered into force on 1 April 2017, Act No 33/2013 was amended to no longer apply to mortgages.²⁴ ESA notes that Iceland decided to implement the MCD into the Icelandic legal order before it was incorporated into the EEA Agreement on 1 November 2021.²⁵
30. The second sentence of Article 34(1) has a similar provision as stated in point f of Article 7(4) of Act 33/2013. Article 34(1) of Act No 118/2016 is based on Article 24 MCD, and provides:

*"If a property mortgage agreement contains a provision stating that reference values, indexes or reference index rates are to be used for determining variable interest rates, the creditor may only use reference values, indexes or reference interest rates that are **clear, accessible, objective and verifiable**, both by the parties to the agreement and by the Consumers' Agency. In case the decision of variable interest rate does not take into account reference values, indexes or reference index the property mortgage agreement shall provide the condition and the procedure concerning the change of interest."*²⁶

²⁴ See Article 64(1) of Act No 118/2016 and Article 3(1)k of Act 33/2013.

²⁵ The EFTA Court stated in its judgment of 2 October 2015 in Case E-3/15, *Liechtensteinische Gesellschaft für Umweltschutz and Gemeinde Vaduz (Municipality of Vaduz)*, [2015] EFTA Ct. Rep. 512, paragraph 74: "When interpreting national law, national courts will consider any relevant element of EEA law, whether implemented or not. [...] These obligations arise on the day the respective legal act is made part of the EEA Agreement." ESA submits that even though the MCD was not incorporated into the EEA Agreement at the time of it being implemented into the national legal order in Iceland, the provisions of the MCD as implemented must be interpreted in a uniform manner throughout the EEA and the fact that Iceland decided to implement it earlier does not alter that conclusion. See to that effect Judgment of the EFTA Court of 28 August 2014 in Case E-25/13, *Gunnar V. Engilbertsson v Íslandsbanki hf.*, [2014] EFTA Ct. Rep. 524, paragraph 54.

²⁶ The preparatory works states: "This article is based on Article 24 of the Directive, which addresses variable credit interest. It is not expected that this provision will have great effect in Iceland, as it states that, in mortgage agreements, only reference values, indexes or reference interest rates that are clear, accessible, objective, and verifiable, both by the parties to the agreement and by the Consumers' Agency (*Neytendastofa*), may be used. It should be stated that this provision does not

6. LEGAL ASSESSMENT

6.1 Preliminary considerations

31. The dispute in the main proceedings raises the question of the compatibility with EEA law of a term on the calculation of the borrowing rate in a variable mortgage credit agreement, in particular as regards whether these terms are “*clear, accessible, objective and verifiable*” for the purpose of Article 24 of the MCD, interpreted in light of both the CCD and the UCTD.²⁷
32. The contract term of the mortgage credit agreement at issue before the Referring Court states that the Defendant, for the calculation of the variable borrowing rate shall take account of, “*amongst other things, [...] the Central Bank of Iceland’s interest rate,²⁸ interest rates on the market and other financing terms available to Landsbankinn*”.²⁹
33. ESA submits that when summarising the main objectives of the MCD, certain principles should be highlighted: the aim of the MCD is a **high level of consumer protection**. It must be borne in mind that the **consumer is in a weaker position vis a vis the seller/supplier** both with regards to knowledge and access to information. ESA furthermore submits that one of the core elements of high consumer protection is the principle of **transparency**, which is at the core of the present case, and which Article 24 MCD must be seen as an expression of.
34. All of the terms in a mortgage credit agreement should be interpreted individually and together in light of these principles, and, specifically, it needs to be assessed

prevent creditors from being able to state, in the property mortgage agreement, that adjustment of the interest rate is to be decided by the creditor with reference, e.g., to its financing costs or operating costs. If an interest-rate adjustment is based on such factors, the creditor is obliged to state this clearly and to explain under what circumstances the interest rate may be adjusted. Thus, the final sentence of the first paragraph states that the conditions and procedure for changing the interest rate shall be stated if decisions on interest-rate adjustment are not based on a reference interest rate. This sentence is based on point f of Article 7(4) of the Consumer Credit Act, No 33/2013. For this reason, it is proposed here that the same rules should apply as apply under current law regarding information that creditors are to give consumers about circumstances in which interest rates may be adjusted.” See link to the preparatory works: <https://www.althingi.is/altext/145/s/0519.html>. Note that it was initially proposed as Article 33 but adopted as Article 34 of Act 118/2016.

²⁷ As noted in the introductory section above, even though the UCTD is not explicitly referred to in the question from the Referring Court, ESA considers that, in accordance with settled case-law, the Court is not precluded from providing the Referring Court with “*all the elements of interpretation of EEA law which may be of assistance in adjudicating in the case pending before it, whether or not the referring court has referred to them in the wording of its questions.*” See judgment of the EFTA Court of 23 November 2021 in Case E-16/20, Q and Others, paragraph 35.

²⁸ ESA notes that the Icelandic term for interests (“*vextir*”) is a plural noun and it is not used in the singular form to refer to interest. Therefore, the term could also be translated as the “CBI’s interest rates”.

²⁹ The Request, page 2.

whether the contract term at issue puts the consumer in a position to understand its specific functioning, and, furthermore, in a position to evaluate the potential economic consequences of the specific term for his or her financial obligations.

35. ESA notes that the mortgage credit agreement at issue in the present case is described in the English translation of the Request as a “*non-indexed bridge loan*” (“viðbótarlán”) with variable interest.³⁰ ESA submits that this translation of the Icelandic word “viðbótarlán” as a “bridge loan” is inaccurate. The Icelandic “viðbótarlán” must be distinguished from a “bridging loan” as defined in Article 4(23) of the MCD. Indeed, the loan in question is an *additional mortgage* concluded for a fixed period of 15 years.³¹ As such, it cannot be considered as a bridging loan within the meaning of Article 4(23) MCD, which defines bridging loans as being either of no fixed duration or due to be repaid within 12 months used as a temporary financing solution while transitioning to another financial arrangement for the immovable property. ESA submits that **this distinction is important** since an EEA State may exempt bridging loans from the scope of the MCD, subject to Article 3(3)(d).³²
36. In the following sections, ESA will set out, first, how these three Directives relate to one another (Section 6.2), second, the proper interpretation of Article 24 MCD, in light of both the CCD and the UCTD (Section 6.3), and third, the compatibility of the individual elements of the term in the mortgage credit agreement with the transparency requirements of Article 24 of the MCD (Section 6.4).

6.2 The interrelation between the MCD, the CCD and the UCTD

37. ESA notes that the MCD, the CCD and the UCTD all apply to credit agreements. The MCD was adopted to cater to the particularities of mortgage credit agreements relating to immovable property and is as such complementary to the CCD.³³ It follows from recital nineteen of the MCD that:

³⁰ The Request, page 1.

³¹ *Ibid.*

³² The exemptions of Article 3 of Act 118/2016 do not include exemption for bridging loans.

³³ See page 4 of the proposal for the directive from the Commission under the heading “*Consistency with the EU’s other policies and objectives of the Union*”: “*This proposal complements the Consumer Credit Directive by creating a similar framework for mortgage credit. The proposal largely draws on the conduct of business provisions in the Consumer Credit Directive; however, where appropriate the specific features of mortgage credit have been taken into account, for example by introducing risk warnings in the pre-contractual information provisions and by strengthening creditworthiness assessment provisions*”.

See link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2011%3A0142%3AFIN> .

*“[f]or reasons of legal certainty, the [EEA] legal framework in the area of credit agreements relating to immovable property should be **consistent with and complementary** to other [EEA] acts, particularly in the areas of consumer protection and prudential supervision. [...]”³⁴*

38. It is clear that the mortgage credit agreement in the present case needs to be assessed under the MCD.³⁵
39. ESA submits that, on the basis of recital nineteen of to the MCD, and the common objective of the MCD, the CCD and the UCTD to protect consumers *vis-à-vis* sellers,³⁶ the transparency requirements enshrined in Article 24 of the MCD must be interpreted and applied in the same way as the transparency requirements set out in Article 10(2)(f) CCD³⁷ and Article 5 UCTD,³⁸ notwithstanding the differences in wording between the three provisions. Case-law concerning the interpretation of Article 10(2)(f) CCD and Article 5 UCTD is therefore relevant also for the interpretation of Article 24 MCD.
40. Before the MCD entered into force, credit agreements for mortgages were addressed under the UCTD.³⁹ The UCTD is worded more generally⁴⁰ to require that the EEA States provide that unfair terms shall not bind the consumer,⁴¹ and as stated in Article 1(1), to approximate the laws, regulations and administrative provisions of the EEA States relating to unfair terms in contracts concluded between a seller or supplier and a consumer. The CJEU has noted that the UCTD is “a

³⁴ Furthermore, as stated in recital nineteen of the MCD, certain essential definitions in the MCD, such as “borrowing rate”, must be interpreted in line with the same definitions in the CCD, in order for the consumer to enjoy the same high level of protection, irrespective of whether the credit is credit relating to residential immovable property or a consumer credit covered instead by the CCD. Emphasis made by ESA.

³⁵ The CCD applies to credit agreements *in general*, (see Article 2(1)). In accordance with its Article 2(2)(a), it does not apply to “*credit agreements which are secured either by a mortgage or by another comparable security commonly used in [an EEA State] on immovable property or secured by a right related to immovable property.*” Such mortgage credit agreements as in the present case, are instead covered by the MCD, in accordance with Article 3(1)(a) of the MCD.

³⁶ See e.g. on UCTD judgment of the CJEU of 3 March 2020 in Case C-125/18, *Gómez del Moral Guasch*, EU:C:2020:138, paragraph 50 and on both UCTD and CCD, judgment of the CJEU of 21 April 2016 in Case C-377/14, *Radlinger and Radlingerová*, EU:C:2016:283, paragraph 63.

³⁷ Recital thirty-two thereto explains that: “[i]n 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. [...]”. It furthermore states: “[...] During the contractual relationship, the consumer should further be informed of changes to the variable borrowing rate and changes to the payments caused thereby. [...]”

³⁸ See Case C-125/18, *Gómez del Moral Guasch*, cited above, paragraphs 48–50.

³⁹ See e.g. judgment of the CJEU of 3 March 2020 in Case C-125/18, *Gómez del Moral Guasch*, cited above.

⁴⁰ See recitals eight, ten and eleven of the UCTD.

⁴¹ See e.g. Article 6(1) of the UCTD.

*general directive for consumer protection, intended to apply in all sectors of economic activity”.*⁴²

41. Article 5 UCTD provides that “[...] *contract terms must always be drafted in plain, intelligible language* [...]”, a provision which has been interpreted by the CJEU in particular regarding variable borrowing rate terms in credit agreements.⁴³ For the purpose of complying with the requirement of transparency it is of fundamental importance to determine whether the loan agreement sets out transparently the reasons, and the particularities of the mechanism, for altering the interest rate.⁴⁴ As regards the requirement of transparency of contractual terms laid down by the UCTD, the CJEU has held that it is of fundamental importance for the consumer⁴⁵ and held that these cannot be reduced merely to being formally and grammatically intelligible, but must be understood in a broad sense.⁴⁶

42. The European Courts have used the UCTD to clarify and interpret the CCD.⁴⁷ Advocate General Hogan has held, as regards the relationship between the UCTD and the CCD, that:

“[...] case-law to date with regard to information requirements laid down by other EU legislative measures designed to protect consumer rights [cannot] necessarily be transposed simply by analogy to Directive 2008/48. Indeed, in accordance with the methods of interpretation recognised by the Court, such solutions can really only be transposed if the wording, the context and the objectives of the legislative provisions in question are identical or, at least, very nearly so. In this case, particular attention must be paid, in my opinion, to the fact that Directive 2008/48 prescribes more extensive

⁴² See judgment of the CJEU of 6 July 2017 in Case C-290/16, *Air Berlin*, EU:C:2017:523, paragraph 44.

⁴³ See e.g. Section 3.3.2 of the Commission Guidance on Directive 93/13 where the Commission states in a more general comment on the transparency requirement that: “[...] *for instance, in relation to EU consumer credit legislation, the Court has stressed the importance of borrowers having to hand in all information which could have a bearing on the extent of their liability and, thereby, of presenting the total cost of the credit in the form of a single mathematical formula. Therefore, the failure to indicate the annual percentage rate of charge (APR) as required under EU consumer credit rules is ‘decisive evidence’ as to whether the term of the agreement relating to the total cost of the credit is drafted in plain intelligible language*”. See also judgment of the CJEU of 26 February 2015 in Case C-143/13, *Matei*, EU:C:2015:127, paragraphs 74 and 76.

⁴⁴ See Case C-143/13, *Matei*, cited above, paragraph 74.

⁴⁵ See Case C-125/18, *Gómez del Moral Guasch*, cited above, paragraph 49.

⁴⁶ See judgment of the CJEU of 30 April 2014 in Case C-26/13, *Kásler and Káslerné Rábai*, EU:C:2014:282, paragraphs 71 and 72.

⁴⁷ There are cases where the CJEU has dealt with the UCTD and the CCD together, see e.g. Case C-377/14, *Radlinger and Radlingerová*, cited above.

*information requirements than those contained, for example, in Directive 93/13/EEC.*⁴⁸

43. Furthermore, the European Commission has developed its understanding of the interplay between the UCTD and other EEA legislation in a 2019 Guidance document on the UCTD. The Commission comments, *inter alia*, that, given that the UCTD applies to contracts between traders and consumers in all economic sectors:

*"[...] also other provisions of EU law, including other consumer protection rules, may apply to a given contract, depending on the type of contract in question". [...] Similarly, rules relating to particular types of contracts may apply in addition to the UCTD, for instance, Directive 2008/48/EC on credit agreements for consumers, [...] Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property, [...].*⁴⁹

44. In the light of the above ESA submits that case-law concerning the interpretation of provisions of the UCTD and CCD can be transposed by analogy to the MCD insofar as the wording, context and objectives of the legislative provisions in question are nearly identical. However, to the extent that the MCD prescribes more extensive consumer protection than the UCTD⁵⁰ and the CCD, the level of protection of the MCD must go beyond the protection provided by the UCTD and CCD in the field of mortgage credit agreements. ESA notes that this is consistent with the nature of mortgage credit agreements, which run for a longer time and involve higher amounts of money. If anything, the duration of mortgage credit agreements increases the importance of transparency requirements of a variable borrowing rate.

6.3 Article 24 of the MCD, interpreted in light of the CCD and the UCTD

45. Article 24(1)(a) MCD states that, where the credit agreement is a variable rate credit, EEA States shall ensure that:

⁴⁸ See Opinion of Advocate General Hogan of 15 July 2021 in Joined Cases C-33/20, *Volkswagen Bank*, C-155/20, *Volkswagen Bank and Skoda Bank* and C-187/20, *BMW Bank and Volkswagen Bank*, EU:C:2021:629, paragraph 94. The Court did not go into this assessment like the Advocate General did.

⁴⁹ See Section 1.2.4 of the Guidance document on the interpretation and application of Council Directive 93/13/EEC on unfair terms in consumer contracts. See link: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0927\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0927(01)).

⁵⁰ See also e.g. recital twelve to the UCTD, where it is explicitly stated that the EEA States can afford consumers a higher level of protection than that provided by the UCTD.

“(a) any indexes or reference rates used to calculate the borrowing rate are clear, accessible, objective and verifiable by the parties to the credit agreement and the competent authorities;”.⁵¹

46. The present case concerns a term in a mortgage credit agreement with a variable, but not indexed, rate.⁵² “*Variable rate*” is not defined in the MCD, but must, in line with the ordinary meaning to be given to the words, be interpreted as covering any rate that varies or changes, as opposed to fixed rates.⁵³
47. ESA notes that the mortgage credit agreement at issue in the present case is a variable rate credit falling within the scope of Article 24 MCD. The mortgage credit agreement provides that the calculation of the borrowing rate should take account of the following four elements: i) amongst other things, ii) the CBI’s interest rate, iii) interest rates on the market and iv) other terms of finance available to the creditor.
48. ESA furthermore submits that each of the individual elements constitutes “*reference rates*”, because they can be used to calculate and change the borrowing rate. Each element therefore falls within the scope of Article 24 MCD. Any other interpretation of the scope of Article 24 would go against the normal meaning of its wording and would impede the MCD’s broader objectives of providing high consumer protection, and providing “[...] *clarity for consumers on the nature of the commitments* [...]”, as stated in recital sixty-seven of the MCD. Such an interpretation could also open for circumvention⁵⁴ of the provisions of MCD and leave the consumer without legal certainty,⁵⁵ which are both core principles of EEA law.
49. In the case of a variable borrowing rate which is adjusted in accordance with multiple indexes, reference rates or other elements used to calculate the borrowing rate, such as the ones at issue before the Referring Court, ESA submits that these elements must be “*clear, accessible, objective and verifiable*” both individually, and in the way they are applied together.
50. The interpretation of the words “*clear, accessible, objective and verifiable*”, for the purpose of Article 24 MCD, must be uniform throughout the EEA. In accordance

⁵¹ Emphasis made by ESA.

⁵² The Request, page 1.

⁵³ Cf. also e.g. Article 11(2)(c) of the MCD, that distinguishes between variable and fixed borrowing rates.

⁵⁴ See e.g. the judgment of the EFTA Court in Case E-16/20, *Q and Others*, cited above, paragraph 61 with further references.

⁵⁵ See judgments of the EFTA Court of 23 November 2004 in Case E-1/04 *Fokus Bank* [2004] EFTA Ct. Rep. 11, paragraph 37; and of 16 July 2012 in Case E-09/11 *ESA v Norway* [2012] EFTA Ct. Rep. 442, paragraph 99.

with settled case-law in interpreting autonomous concepts of EEA law, the Court must take into account the context of the provision and the purpose of the legislation of which it forms part.⁵⁶ Furthermore, as stated in Section 6.2 above, ESA considers that even though there is no case-law concerning the interpretation of Article 24 MCD itself the case-law concerning the interpretation of the parallel provisions in the CCD and the UCTD are relevant for the interpretation of Article 24.

51. First, the **objective** of the MCD is a high level of consumer protection for consumers concluding mortgage credit agreements and protecting the ability of consumers to make informed choices.⁵⁷ The MCD relies on the assumption that the consumer is in a weaker position in relation to the seller particularly with regard to the level of information and as regards experience with legal matters.⁵⁸
52. Second, Article 24 MCD must be interpreted in the **context** of the other provisions in the MCD. Article 7(1) provides *inter alia* that when manufacturing credit products or granting, or when executing a credit agreement, the creditor is to act honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers and the activities are *inter alia* to be based on information on reasonable assumptions about risks to the consumer's situation over the term of the credit agreement.⁵⁹
53. In addition, Article 17(6) MCD sets out clear rules on information that is to be provided for the consumer regarding credit agreements with variations in the borrowing rate such as possible impacts of variations on the amounts payable and on the APRC⁶⁰ at least by means of the ESIS⁶¹. This is to be done with an additional APRC illustrating the possible risks linked with a significant increase in the borrowing rate and, where the borrowing rate is not capped, the information is to be accompanied by a warning highlighting that the total cost of the credit to the consumer, shown by APRC, may change.

⁵⁶ See, specifically as regards the MCD, judgment of the CJEU of 15 October 2020 in Case C-778/18, *Association française des usagers de banques*, EU:C:2020:831, paragraph 49.

⁵⁷ *Ibid*, paragraph 51.

⁵⁸ See by analogy to the UCTD the judgment of the CJEU of 20 September 2017 in Case C-186/16, *Andriuc and Others*, EU:C:2017:703, paragraph 44 and by analogy to 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 EFTA Court judgment of 14 December 2019 in Case E-1/19, *Andreas Gyrre v the Norwegian Government*, paragraph 66.

⁵⁹ See judgment of the CJEU of 15 July 2021 in Case C-911/19, *FBF*, EU:C:2021:599, paragraphs 117 and 118.

⁶⁰ The annual percentage rate of charge, see recital one of the MCD.

⁶¹ The European Standardised Information Sheet, see paragraph 17 above.

54. Furthermore, Article 27(1) MCD requires the EEA States to ensure that the creditor informs the consumer of any change in the borrowing rate on paper or another durable medium before the changes take effect.
55. ESA submits that, assessed in light of the MCD's objective of high consumer protection, and in the context of other provisions of the MCD, such as Articles 7(1), 17(6) and 27(1), the criteria of providing "*clear, accessible, objective and verifiable*" reference rates in Article 24 must be interpreted in light of the objective of providing a high standard of consumer protection, meaning that the consumer is to be given all relevant information of risk in order to be able to determine, access and verify any potential changes in the borrowing rate.
56. ESA notes that this Court has previously held, when assessing Articles 3(3) and 5 UCTD, that the clarity and quality of the information which the seller provides the consumer with at the time when the contract is concluded is particularly relevant for the assessment.⁶²
57. With regard to the transparency requirements in Article 5 UCTD, the CJEU has consistently held that the term in question must not only be "*formally and grammatically intelligible to the consumer*", but also that:
- "[...] an average consumer, who is reasonably well informed and reasonably observant and circumspect, is in a position to understand the specific functioning of that term and thus evaluate, on the basis of clear, intelligible criteria, the potentially significant economic consequences of such a term for his or her financial obligations [...]"*.⁶³
58. This means, in particular, that the contract should:
- "[...] set out transparently the specific functioning of the mechanism to which the relevant term relates and, where appropriate, the relationship between that mechanism and that provided for by other contractual terms, so that the consumer is in a position to evaluate, on the basis of clear, intelligible criteria, the economic consequences for him or her which derive from the contract [...]"*.⁶⁴
59. Specifically with regard to a contractual term setting a variable interest rate under a mortgage credit agreement, the CJEU has held that information that is particularly

⁶² See Case E-25/13, *Gunnar V. Engilbertsson v Íslandsbanki hf.*, cited above, paragraph 98.

⁶³ See judgment of the CJEU of 10 June 2021 in Joined Cases C-776/19 to C-782/19, *BNP Paribas Personal Finance*, EU:C:2021:470, paragraph 64 with further references.

⁶⁴ *Ibid*, paragraph 65 with further references.

relevant for the purposes of carrying out the assessment of whether a contract term complies with these transparency requirements as set out above, includes:

“[...] (i) the fact that essential information relating to the calculation of that rate is easily accessible to anyone intending to take out a mortgage loan, on account of the publication of the method used for calculating that rate, and (ii) the provision of data relating to past fluctuations of the index on the basis of which that rate is calculated.”⁶⁵

60. In a case concerning, *inter alia*, a contract term allowing a bank to alter a variable interest rate in cases of “*significant changes in the money market*”, the CJEU noted that:

“[...] the question arises as to the foreseeability for the consumer of increases in that rate which may be made by the lender according to the criterion, which is prima facie not transparent, relating to ‘significant changes in the money market’, even if that formulation is in itself grammatically plain and intelligible.”⁶⁶

61. Furthermore, as regards the obligation laid down in Article 10(2)(f) CCD to include in the credit agreement in a clear and concise manner the arrangements for adjusting the rate of late-payment interest, the CJEU has held that a reference in a credit agreement to a base rate set by the central bank of a Member State and published in its easy-to-access Official Journal is such as to enable an average consumer who is reasonably observant and circumspect to ascertain and understand the arrangements for varying the rate of late-payment interest, provided that the method of calculating the rate of late-payment interest is set out in the credit agreement. In that regard, two conditions must be met: **First**, that method of calculation must be set out in a way which is readily understood by an average consumer, who does not have specialist knowledge in the finance field and which enables him or her to calculate the rate of late-payment interest based on the information provided in the credit agreement. **Secondly**, the frequency with which the base rate may be varied, which is determined by national provisions, must also be set out in that agreement.⁶⁷

⁶⁵ See Case C-125/18, *Gómez del Moral Guasch*, cited above, paragraph 56.

⁶⁶ Case C-143/13, *Matej*, cited above, paragraph 76.

⁶⁷ See the judgment of the CJEU of 9 September 2021 in Joined Cases C-33/20, *Volkswagen Bank*, C-155/20, *Volkswagen Bank and Skoda Bank* and C-187/20, *BMW Bank and Volkswagen Bank*, EU:C:2021:736, paragraph 94.

62. ESA submits, on the basis of the above considerations, that the terms “*clear, accessible, objective and verifiable*” for the purposes of Article 24 MCD must be interpreted as requiring that the mortgage credit agreement must set out a transparent mechanism for altering the interest rate which puts the consumer in a position to understand the specific functioning of the term, and, furthermore, puts the consumer in a position to evaluate the potential economic consequences of the specific term for his or her financial obligations.⁶⁸

6.4 The compatibility of the elements of the term in the mortgage credit agreement with Article 24 of the MCD

63. The term on calculation of the borrowing rate in the mortgage credit agreement in the current case breaks the mechanism down to the following four elements:

- “*amongst other things*”;
- “*the Central Bank of Iceland’s interest rate*”;
- “*interest rates on the market*”; and
- “*other financing terms available to Landsbankinn*”.

64. ESA submits that these elements have to be assessed both individually and collectively against the words, “*clear, accessible, objective and verifiable*” in Article 24 MCD. Importantly, in line with paragraph 62 above, these elements must individually and collectively put the consumer in a position to understand its specific functioning, and, furthermore, put the consumer in a position to evaluate the potential economic consequences of the specific term for his or her financial obligations.

65. ESA also notes that the burden of proof with regard to whether the contractual terms are clear, accessible, objective and verifiable **should not** be borne by the Plaintiffs.⁶⁹

66. ESA furthermore submits that the meaning of each element of the term should be considered by the general meaning of the words, namely that each of the elements should be clear and readily understood by an average consumer, the relevant information should be easily accessible to an average consumer, the term should

⁶⁸ See, in particular, Joined Cases C-776/19 to C-782/19, *BNP Paribas Personal Finance*, cited above, paragraphs 64 and 65.

⁶⁹ See by analogy Joined Cases C-776/19 to C-782/19, *BNP Paribas Personal Finance*, cited above, paragraph 89.

be objective and not be left for the creditor to unilaterally decide, and finally the consumer should be able to verify it, using the available information.⁷⁰

67. While it is for the Referring Court ultimately to make an assessment of the facts of the case before it, it is appropriate for the EFTA Court to offer guidance in the interpretation of EEA law to assist the national court.⁷¹

68. Accordingly, ESA will in the following paragraphs submit its considerations as regards the compatibility of each of the elements of the term with Article 24 MCD, interpreted in light of the UCTD and the CCD, in line with the case-law considered in Section 6.3 above.

69. ESA submits that the term in the mortgage credit agreement does not meet the required standard established in Article 24 of the MCD.

70. The first element, “**amongst other things**”, in ESA’s view, fails the test of both putting the consumer in a position to understand the specific functioning of the term and of putting the consumer in a position to evaluate the potential economic consequences of the specific term for his or her financial obligations. The term is open ended, allowing the Defendant to unilaterally decide which factors to take into account for calculating the borrowing rate in a non-transparent manner. This makes the element neither clear, accessible, objective or verifiable to the consumer. ESA adds that this element alone would have the effect of making the term in the mortgage credit agreement incompatible with the requirements of Article 24 MCD.

71. The second element, “**the Central Bank of Iceland’s interest rate**”, seems, at the outset, to be clear and accessible at the CBI website.⁷² However, the CBI publishes different interest rates, and it does not seem to be specified *which one* of these should be taken into account. Moreover, the frequency with which the CBI interest rate might be varied is not clear to the consumer.⁷³ Furthermore, the element is silent on the method of calculation and therefore seems to fail the test of being verifiable, in that it does not put the consumer in a position to understand its functioning and its potential financial consequences.

⁷⁰ This can also be drawn from the case law, see Joined Cases C-33/20, *Volkswagen Bank*, C-155/20, *Volkswagen Bank and Skoda Bank* and C-187/20, *BMW Bank and Volkswagen Bank*, cited above, paragraph 94.

⁷¹ See by analogy Case C-143/13, *Matei*, cited above, paragraph 78, and Case C-125/18, *Gómez del Moral Guasch*, cited above, paragraph 55.

⁷² See the CBI’s website, link: <https://www.cb.is/other/key-interest-rate/>.

⁷³ To ESA’s understanding, in accordance with Article 10 of the Icelandic Act on Interest and Indexation, the interest rate is advertised by the CBI in the Legal Gazette on a monthly basis.

72. As regards the third element, “**interest rates on the market**”, ESA submits that at the outset it seems clear what the interest rates on the market is. It is however not clear to the average consumer which interest rates on the market are available for a comparable credit agreement and/or what interest rates are available in general. Moreover, that information is not accessible to the average consumer. Consequently, this element does not seem to fulfil the criteria of being verifiable, because it does not put the consumer in a position to understand its functioning or its potential financial consequences.
73. The fourth element, “**other financing terms available to Landsbankinn**”, seems be open to interpretation. ESA submits that it does not fulfil the criteria of being clear or objective for the consumer to be subject to having their variable rate changed according to *other financing terms* available to the Defendant, and it is questionable how the consumer should be able to verify or even access such information.
74. To conclude, the terms “clear, accessible, objective and verifiable” for the purposes of Article 24 of the MCD must be interpreted as requiring that the mortgage credit agreement sets out a transparent mechanism for altering the interest rate which puts the consumer in a position to understand the specific functioning of the term, and, furthermore, puts the consumer in a position to evaluate the potential economic consequences of the specific term for his or her financial obligations.
75. On this basis, ESA submits that, while it is for the Referring Court to ascertain the legal and factual circumstances, it would appear that none of the elements in the mortgage credit agreement disputed in the current proceedings seem to fulfil the obligation laid out in Article 24 MCD.⁷⁴

⁷⁴ See similarly, as quoted in paragraph 60 above, the CJEU in Case C-143/13, *Matej*, cited above, paragraph 76, where it noted with regard to a contract term allowing the bank to alter the interest rate in cases of “[...] *significant changes in the money market*” that “[...] *the question arises as to the foreseeability for the consumer of increases in that rate which may be made by the lender according to the criterion, which is prima facie not transparent, relating to ‘significant changes in the money market’, even if that formulation is in itself grammatically plain and intelligible.*”.

7. CONCLUSION

Accordingly, ESA respectfully requests the Court to answer the question from the Referring Court in the following way:

- 1. The terms “clear, accessible, objective and verifiable” for the purposes of Article 24 of the Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property must be interpreted as requiring that the mortgage credit agreement sets out a transparent mechanism for altering the interest rate which puts the consumer in a position to understand the specific functioning of the term, and, to evaluate the potential economic consequences of the specific term for his or her financial obligations.**
- 2. While it is for the national court to determine the facts of the case before it, in principle the terms of a consumer property mortgage in which the interest rate is variable, which state that adjustments of the interest rate are to take account of, amongst other things, the Central Bank of Iceland’s interest rate, interest rates on the market and other terms of finance available to the creditor, cannot be considered to be “clear, accessible, objective and verifiable” as set out in Article 24 of Directive 2014/17/EU.**

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