

R Í K I S L Ö G M A Ð U R

The Office of the State Attorney General

Hverfisgata 6, 4th floor IS-101 Reykjavík Iceland

tel.: (354) 545 8400

e-mail: postur@rlm.is

website: <http://www.rikislogmadur.is>

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TO THE PRESIDENT AND MEMBERS OF THE EFTA COURT

WRITTEN OBSERVATIONS

submitted pursuant to Article 20 of the Statute and Article 90(1) of the Rules of Procedure of the EFTA Court by

NEYTENDASTOFA

(THE ICELANDIC CONSUMER AGENCY)

(The Appellant)

represented by Ásta Sóllilja Sigurbjörnsdóttir,

Appeal Court Attorney, Office of the Attorney General (Civil Affairs)

acting as Agent in

CASE E-4/23

Neytendastofa

v.

Íslandsbanki hf.

in which the Icelandic Court of Appeal (Landsréttur) 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 on the interpretation of certain provisions of Articles 5 and 10 of Directive 2008/48/EC of the European Parliament and of the Council on credit agreements for consumers and repealing council Directive 87/102/EEC (hereinafter the “Consumer Credit Directive” or the “CCD”).

The Icelandic Consumer Agency, on its own behalf, has the honour to submit the following written observations.

TABLE OF CONTENTS

I.	INTRODUCTION	2
II.	LEGAL BACKGROUND	3
1.	EEA Law	3
2.	National Law.....	4
III.	FACTS.....	6
IV.	LEGAL ARGUMENTS	7
1.	Introductory remarks	7
2.	Questions 1 – 3 – Changes to the Borrowing Rate	7
3.	Question 4 – Representative Example of APR	9
4.	Questions 5-6 – Other Charges Deriving from the Credit Agreement.....	10
5.	Question 7 – Cost of Late Payment.....	11
V.	CONCLUSION.....	12

I. INTRODUCTION

1. With application dated 1 June 2023, the Icelandic Court of Appeal requested 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 (SCA), on seven questions in a case before it. The seven questions are the following:
 1. *Must Articles 5 and 10 of Directive 2008/48/EC, and particularly Article 5(1)(f) and Article 10(2)(f) thereof, be interpreted as meaning that the creditor is to specify, in an exhaustive listing in a standard form and in the credit agreement, the conditions on which its decisions to raise or lower the borrowing rate on credit that bears variable interest may be based?*
 2. *First, is the requirement of Article 5 of Directive 2008/48/EC, that the consumer is to be provided with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement, met if, among the conditions for changing the borrowing rate that are specified on the standard form (cf. Article 5(1)(f)), there is a general reference to an unforeseen increase in the creditor's costs? Secondly, is the requirement of Article 10 of Directive 2008/48/EC, that a credit agreement is to specify in a clear and concise manner the conditions and procedures for changing the borrowing rate (cf. Article 10(2)(f)), met if, among those conditions, there is a general reference to an unforeseen increase in the creditor's costs?*
 3. *Is the requirement of Article 5 of Directive 2008/48/EC, that the consumer is to be provided with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement, met if the wording of a provision in the standard form (cf. Article 5(1)(f)) includes general and open-ended references such as "etc.", as is the case in the standard form involved in this case?*

4. *Does it follow from Article 5(1)(g) of Directive 2008/48/EC that the APR is to be illustrated in the standard form with a representative example in which all the assumptions used to calculate the percentage are stated even though all components of the credit which the consumer intends to take are known?*
5. *Does it follow from Article 5(1)(i) and Article 10(2)(k) of Directive 2008/48/EC that “other charges deriving from the credit agreement” are always to be specified, irrespective of whether or not the credit is of such a type that both payment transactions and drawdowns of the credit are recorded?*
6. *If the answer to Question 5 is such that it follows from Article 5(1)(i) and Article 10(2)(k) of Directive 2008/48/EC that, generally, information is to be provided in the standard form on charges deriving from the credit agreement, is this requirement met by referring to the creditor’s schedule of charges, which may undergo change? Is it necessary to specify clearly in the standard form itself what the charges are and what they will be in the future?*
7. *Does it follow from Article 5(1)(l) of Directive 2008/48/EC that the charges to be paid in the case of late payment are to be specified in the standard form or whether it is sufficient that the creditor make a general reference to its schedule of charges, which may undergo changes?*

II. LEGAL BACKGROUND

1. EEA Law

2. The Consumer Credit Directive is referred to in Annex XIX of the EEA Agreement. The Directive was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 16/2009 of 5 February 2009.
3. Article 5 of the Directive regards pre-contractual information and reads:

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

The information in question shall specify:

[...]

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

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

[...]

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

[...]

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

4. Article 10 of the Directive regards information to be included in credit agreements and reads:

1. Credit agreements shall be drawn up on paper or on another durable medium.

All the contracting parties shall receive a copy of the credit agreement. This Article shall be without prejudice to any national rules regarding the validity of the conclusion of credit agreements which are in conformity with Community law.

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

[...]

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

[...]

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

2. National Law

5. The Consumer Credit Directive is implemented in Icelandic legislation with the Act on Consumer Credit No 33/2013.

6. Article 7 of Act 33/2013 regards pre-contractual information and reads:

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

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

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

The following shall be stated in the information:

[...]

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

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

[...]

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

[...]

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

7. Article 12 of Act No 33/2013 regards information to be included in credit agreements and read at the time of this case:

Credit agreements shall be drawn up on paper or on another durable medium. All the contracting parties shall receive a copy of the credit agreement.

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

[...]

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

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

III. FACTS

8. The appellant is a public surveillance Authority for consumer protection that enforces the Act on Consumer Credit, among other Acts. It is an enforcement Authority and does not handle individual business-to-consumer contractual disputes. The appellant therefore makes binding administrative decisions if there is a breach of any of the Acts it enforces and prescribes a change in commercial practices, contracts or terms but does not have the power to decide remedies for each consumer or a group of consumers that have been affected by the breach of law.
9. The defendant is a commercial bank that provides consumers and businesses with variable financial products, including consumer credit. The defendant has a license from the Financial Supervisory Authority of the Central Bank of Iceland.
10. On 12 March 2019 the appellant sent a letter to the defendant requesting a copy of a consumer credit contract and a copy of a standard consumer credit information form (hereafter also "SECCI" or "standard form"), in accordance with Articles 7 and 12 of the Act on Consumer Credit. The same request was sent to other banks in Iceland who provide consumers with consumer credit that falls under the scope of Act No 33/2013, and the year before a request had been sent to creditors who provide consumer credit falling under the scope of the Act but are not supervised by the Financial Supervisory Authority. In all cases the appellant made comments that changes needed to be made to information in the credit contract and SECCI for it to be in accordance with Articles 7 and 12 of the Act. All creditors and banks, other than the defendant, made voluntary changes to the documents. The cases were therefore closed without further action from the appellant. The defendant did not make the same voluntary changes and the appellant took an administrative decision on 26 November 2019 with the conclusion that the defendant was in breach of Articles 7(4)(f), (g), (i) and (l) as well as Articles 12(2)(f) and (k) of the Act on Consumer Credit. The appellant ordered the defendant to make changes to the documents in accordance with the decision.
11. On 19 December 2019 the defendant appealed the appellant's decision to the Consumer Affairs Appeals Committee. The Appeals Committee delivered its ruling on 13 October 2020 in Case No 11/2019. In this ruling, the appellant's decision was confirmed with additional reasons. On 8 January 2021, the defendant brought an action before Reykjavík District Court seeking repealing of the ruling of the Appeals Committee.

12. In its judgment on 31 January 2022 in Case No E-127/2021, Reykjavík District Court took the view that the Appeals Committee's ruling in Case No 11/2019 had material flaws and had to be set aside in full.
13. The conclusions reached by the Consumer Affairs Appeals Committee and the Reykjavik District Court are described in the Court of Appeal's request for an advisory opinion (paras. 12-22).

IV. LEGAL ARGUMENTS

1. Introductory remarks

14. The Consumer Credit Directive aims to fully harmonize certain aspects of consumer credit agreements within the EU/EEA which is regarded as necessary in order to ensure that all consumers in the European Union enjoy a high and equivalent level of protection of their interests and to facilitate the emergence of a well-functioning internal market in consumer credit.
15. One of the main objectives of the Directive is to ensure that consumers are provided with clear and easily understandable information about the terms and conditions of credit agreements. This is necessary to ensure that the consumer is aware of his rights and obligations and for the proper performance of the credit agreement (see, judgement of 9 September 2021 in joint cases C-33/20, C-155/20 and C-187/20, *UK and Others v Volkswagen Bank GmbH and Others*, ECLI:EU:C.2021:736, paragraph 70-71 and the case-law cited.) Creditors are required to present key information, such as the total cost of credit, borrowing rates, and repayment schedules, in standardized format before conclusion of the contract enabling the consumer to compare different credit offers more effectively and thus empowering him to make informed decisions about his borrowing options.
16. The appellant has sought information from other enforcement Authorities for consumer credit within the Consumer Protection Cooperation in relation to this Case. To the appellants' best knowledge there is no case law or investigation from the other Authorities in similar cases.

2. Questions 1 – 3 – Changes to the Borrowing Rate

17. Questions 1-3 referred by the Court of Appeal all concern a creditor's obligation to provide the consumer with information in a clear and concise manner on i.a. the borrowing rate and the conditions under which it can be changed. The questions regard the provision of information both in a standard form before a credit agreement is concluded as well as in the credit agreement itself. Firstly, the Court of Appeal raises the question whether the conditions under which decisions concerning changes in the borrowing rate are based need to be exhaustively listed in the credit agreement and in the standard form, and secondly if the requirements of the Directive are met where that information has a general reference to an unforeseen increase in the creditor's costs or a general and open-ended reference such as "etc."
18. Articles 5(1)(f) and 10(2)(f) of the CCD both state that a creditor is to specify in a standard form (Article 5(1)(f)) and in a credit agreement (Article 10(2)(f)) i.a., *"the conditions governing the application of the borrowing rate"*. Furthermore, recital 31 of the Directive states that, *"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."* Recital 32 then states that *"in order to ensure full transparency, the consumer should be provided with information concerning the borrowing rate..."*

19. In light of recitals 31 and 32 the appellant maintains that, in order for the information received by the consumer to be sufficient according to Articles 5(1)(f) and 10(2)(f), it must leave the consumer capable of understanding what influencing factors come into play when a creditor changes the borrowing rates. Such an approach is specifically in line with the aim of the Directive described in recital 32, “to ensure full transparency”.
20. The requirement to provide information on the conditions under which the borrowing rate can be changed goes hand in hand with the obligation stipulated in Article 10(2) of the Directive, namely that the information listed in Article 10(2) points (a)-(v) shall be presented in a clear and concise manner.
21. Although the Articles in question do not explicitly require an exhaustive list of conditions under which a borrowing rate may change, they do emphasize the importance of providing clear and detailed information to consumers regarding the conditions under which borrowing rates can be changed. The intention behind the provisions is to ensure transparency and prevent misleading practices in the credit market. The appellant emphasizes that it is necessary to interpret the Articles in line with the objectives of the Directive. (see, judgement of 9 September 2021 in joint cases C-33/20, C-155/20 and C-187/20, *UK and Others v Volkswagen Bank GmbH*, paragraph 130 and the case-law cited.) The information provided to consumers according to the provisions must be sufficient to allow them to understand how the borrowing rate can change over the course of a credit agreement. This includes the conditions that might trigger changes.
22. Both in the standard form and in the credit agreement at issue in the referred case the creditor states that changes in the borrowing rate are “i.e.” subject to “and/or unforeseen costs”, without any clarification as to under what conditions such costs may occur. The appellant maintains that when providing information in a “clear and concise manner” as the Directive requires, the creditor must provide an exhaustive list of conditions governing the possible change in the borrowing rate. Without information on what can be considered an “unforeseen cost” and how likely it is to affect the determination of the borrowing rate the consumer has no means to understand what conditions could lead to the borrowing rate changing on the grounds of “unforeseen costs”. Such a conclusion would go against the transparency aim of the Directive. It is obvious that the listing of factors influential in decisions regarding changes to the borrowing rate of a credit becomes redundant if such a listing includes reference to “unforeseen costs” and/or general open-ended references such as “etc.” Hence, such a conclusion would not be in line with the Directive.
23. Furthermore, in light of Council Directive 93/13/EEC on unfair terms in consumer contracts (hereinafter the “UCTD”), the wording of the contract needs not only to be clear and concise but also in a plain and intelligible language. In that regard it should be noted that case-law confirms that for a term that allows a unilateral change in charges to be compliant with the UCTD it should set out in transparent fashion the reason for method of the variation of the charges, so the consumer can foresee the alterations that may be made to those charges (see, judgement of 21 March 2023 *RWE Vertrieb AG v. Verbraucherzentrale Nordrhein-Westfalen e.V.*, ECLI:EU:C:2013:180, paragraph 49 and the case-law cited).

3. Question 4 – Representative Example of APR

24. Article 5(1)(g) of the CCD pertains to the calculation and disclosure of the Annual Percentage Rate of Charge (APR) for consumer credit agreements. The APR is a standardized way to represent the total cost of a credit agreement, including interest and other charges, expressed as an annualized percentage rate. This allows consumers to compare different credit offers more easily.
25. According to Article 5(1)(g) the APR is to be illustrated in the standard form with a representative example. This example should include all the assumptions used to calculate the APR. The purpose of this requirement is to ensure transparency and comparability for consumers when evaluating different credit offers. The representative example helps consumers understand how the APR is calculated and gives them a clear picture of the overall cost of the credit.
26. Question 4 referred by the Court of Appeal concerns this requirement. The appellant points out that even if all components of the credit that the consumer intends to take are known, the Directive still mandates the provision of a representative example with all relevant assumptions. This is an important factor in ensuring consistency and standardization in the way the APR is presented across different credit agreements and lenders. Providing the assumptions used in the calculation of the APR enables consumers to make more informed decisions and understand the true cost of the credit.
27. The appellant maintains that this understanding of the obligation to provide information entailed in Article 5(1)(g) can be derived from the Commission's Guidelines on the application of the CCD in relation to costs and the Annual Percentage Rate of charge. It furthermore finds ground in recital 19 to the Directive which 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 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."

28. In no way does the Directive or the Commission's Guidelines suggest that it is sufficient for the information specified in the relevant representative example to appear as it does in the defendants SECCI, that is with the calculated APR and a text listing the names of the cost that form the total cost of credit. With the defendants representation the consumer cannot be sure that the APR has been calculated by taking into account his expressed preferences, even though the cost is listed in other places in the standard form.
29. The appellant emphasizes the importance of the representative example revealing the assumptions of the calculations along with the APR in order for the consumer to be better able to

understand whether the percentage is based on the assumptions provided by himself or if it contains assumptions beyond his wishes. Furthermore, such a presentation of the representative example is in line with the aim of the Directive since it leaves the consumer more aware of the costs of the credit increasing his capacity to compare different credit offers.

4. Questions 5-6 – Other Charges Deriving from the Credit Agreement

30. Article 5(1)(l) and Article 10(2)(k) of the Directive pertain to the provision of information to consumers regarding credit agreements with regards to charges connected to the credit. Thus, Article 5(1)(l) requires the creditor to provide in the SECCI, before an agreement is concluded, details about “other charges deriving from the credit agreement” in a standardized format. Article 10(2)(k) however specifies how the same information must be provided in the credit agreement itself.
31. In the referred case before the Court of Appeal, the defendant maintains that the above provisions only apply with regards to information related to charges for maintaining one or several lines of credit or using a means of payment. The appellant on the other hand maintains that it is clear from the wording of the provisions that a creditor is obligated to provide the consumer with information on all charges deriving from a credit agreement and the conditions under which those charges may be changed irrespective of whether the charges concern one or more lines of credit or using a means of payment. To further clarify, the appellant maintains that the provisions should be read to contain a fourfold disclosure obligation, namely, *“where applicable, 1) the charges for maintaining one or several accounts (above also “lines of credit”) recording both payment transactions and drawdowns, unless the opening of an account is optional, 2) together with the charges for using a means of payment for both payment transactions and drawdowns, and 3) any other charges deriving from the credit agreement and 4) the conditions under which those charges may be changed.”*
32. In light of the above, the answer to the referred question no 5 must be that *“other charges deriving from [a] credit agreement”* are always to be specified. A different conclusion would lead to creditors being able to claim unspecified charges from consumers without sufficiently disclosing information regarding those charges in the SECCI before the credit agreement is concluded or in the credit agreement itself. Such a result would be in complete opposition to the aim and purpose of the Directive.
33. With reference to that same purpose the requirement that follows from Article 5(1)(i) and Article 10(2)(k) of the Directive is not met by referring to a creditor’s schedule of charges, which may undergo change. For the creditor’s schedule of charges to be a part of the credit contract there must be a clear and concise cross-reference to the schedule and the schedule needs to be provided to the consumer along with the credit contract on paper or another durable medium. (see, judgement of 9 September 2021 in joint cases C-33/20, C-155/20 and C-187/20, *UK and Others v Volkswagen Bank GmbH*, paragraph 84-85 and the case-law cited.) Because of the different wording of Article 5 and Article 10 this does not apply to the SECCI. From the wording of Article 5 it is clear that all the relevant information is to be set out in the SECCI, which is a single standardized document. Therefore, it is not in line with the purpose and objective of the Directive to consider reference in the standard form to a creditor’s schedule of charges, as it is at any given time, as sufficient information. At the same time it is necessary to provide information, both in

the SECCI and the credit agreement or documents annexed to the agreement, on what might trigger changes to that schedule.

34. It is a fundamental factor in consumer protection that the consumer is provided with adequate information about the price of goods and services he is receiving. The Directive allows creditors to link certain charges to a credit agreement as well as allowing for those charges to be changed under the duration of the agreement. In light of this special situation, and with regards to the aim of the Directive, it must be considered important that the consumer is able to understand, before concluding a credit agreement, under what conditions changes might be made to a schedule of charges. With regards to the wording of the referred question no. 6, the appellant has not maintained that it is necessary to specify in the SECCI specifically what the charges may be in the future but rather how the charges may change and what may trigger those changes so that the consumer can foresee any alternations.

5. Question 7 – Cost of Late Payment

35. Article 5(1)(l) of Directive 2008/48/EC relates to the provision of information about the consequences of default on payments, including late payment charges, prior to concluding a credit agreement. As has been stated several times before, the Directive aims to ensure transparency and consumer protection. Sufficient information in the SECCI on all components of Article 5 are necessary for consumers to be able to compare different offers and to make an informed decision about a credit before the conclusion of a contract.
36. Article 10 of the Directive does not explicitly mandate that the credit contract should be drawn up as a single document. The creditors schedule of charges can therefore, if conditions are met, be a part of the contract. However, the appellant points out that this does not apply to the SECCI and information in accordance with Article 5 of the Directive. From the wording of the Article, it is clear that all the required information is to be set out in a single document, i.e. the SECCI. Information given in a separate document to the SECCI can only be additional to the information required by Article 5(1).
37. Article 5 does not prevent the creditor from making changes to the interest rate in the case of late payment or other charges payable for default. It does, however, protect the consumer from any unknown changes. Unlike possible changes to the borrowing rate, the Directive does not oblige the creditor to notify the consumer in advance, during the lifetime of the credit, about a change of the interest rate for late payments. The appellant therefore emphasizes that it is of the utmost importance that the consumer is well informed before the conclusion of a contract.
38. When assessing whether the consumer is provided with enough information in the SECCI about the arrangements for adjusting the interest rate for late payments, the appellant is of the opinion that the same requirements apply to Article 5(2)(l) as Article 10(1)(l). The Court of Justice of the European Union establishes in joint cases C-33/20, C-155/20 and C-187/20, *UK and others v Volkswagen Bank GmbH* what conditions the credit agreement needs to meet regarding a reference to change in the interest rate when a change in the interest rate for late payment is in step with a change in the base rate set by the central bank of a Member State. In paragraph 94 the CJEU states: *“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 financial 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.”

39. It is clear from the above-mentioned judgement that information requirements on arrangements for adjustment on the interest rate for late payment and any charges payable for default will not be met with a simple reference to the creditors schedule of charges as it is at any time.
40. The wording of Article 5(2)(l) and Article 10(1)(l) is the same and therefore the appellant stresses that the aforementioned applies when interpreting Article 5(2)(l). In that light the requirements of Article 5(1)(l) are not met with a reference to the creditors schedule of charges as it is at any time; neither the requirement on the adjustment of the borrowing rate in the case of late payment nor any other charges payable for default.

V. CONCLUSION

41. In view of the above the Icelandic Government respectfully submits that the EFTA Court answer the questions from the Appeals Court as follows:

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

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

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

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

5.-6. The fifth and sixth questions both regard Articles 5(1)(i) and 10(2)(k) of the Consumer Credit Directive and should be answered in conjunction, the answer being that indeed “other charges deriving from the credit agreement” are always to be specified, irrespective of whether the credit is of such a type that both payment transactions and drawdowns of the credit are recorded. That requirement is not met by referring to the creditor's schedule of charges, which may undergo

change. It is necessary to specify clearly in the standard form itself and in the credit agreement, what the charges are and the conditions under which those charges may be changed. With regards to the credit agreement the requirement on other charges deriving from the credit can be met with a clear and concise cross-reference in the agreement to the creditors schedule of charges which is provided to the consumer on paper or another durable medium with the credit contract. This however does not apply to the standard form.

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

On behalf of the Icelandic Consumer Agency



Ásta Sóllilja Sigurbjörnsdóttir

Agent