JUDGMENT OF THE COURT
23 May 2024*

(*Directive 2008/48/EC – Consumer credit agreements – Consumer protection – Annual percentage rate of charge – Variable interest rates – Pre-contractual information – Information in the credit agreement – Transparency – Clear and concise information – Comparing different offers – SECCI standard form*)

In Case E-4/23,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Court of Appeal (*Landsréttur*), in the case between

Neytendastofa (the Icelandic Consumer Agency)

and

Íslandsbanki hf.,

concerning the interpretation of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers, in particular Article 5(1)(f), (g), (i), and (l) and Article 10(2)(f) and (k),

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann, and Michael Reiertsen (Judge-Rapporteur), Judges,

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

* Language of the request: Icelandic. Translations of national provisions are unofficial and based on those contained in the documents of the case.

– the Icelandic Consumer Agency (*Neytendastofa*), represented by Ásta Sóllilja Sigurbjörnsdóttir, acting as Agent;

– Íslandsbanki hf. ("Íslandsbanki"), represented by Áslaug Árnadóttir, advocate;

– the EFTA Surveillance Authority ("ESA"), represented by Marte Brathovde, Ingibjörg Ólöf Vilhjálmsdóttir and Melpo-Menie Joséphidès, acting as Agents; and

– the European Commission ("the Commission"), represented by Inese Rubene and Petr Ondrůšek, acting as Agents;

having regard to the Report for the Hearing,

having heard the oral arguments of the Consumer Agency, represented by Ásta Sóllilja Sigurbjörnsdóttir; Íslandsbanki, represented by Áslaug Árnadóttir; ESA, represented by Marte Brathovde and Ingibjörg Ólöf Vilhjálmsdóttir; and the Commission, represented by Inese Rubene and Petr Ondrůšek, at the hearing on 7 November 2023,

gives the following

Judgment

1 This request for an advisory opinion concerns the interpretation of Directive 2008/48/EC on credit agreements for consumers. The request has been made in proceedings between the Icelandic Consumer Agency and the Icelandic bank, Íslandsbanki, concerning the adequacy of the information provided by the bank to consumers in its standard form and credit agreement on (i) the conditions for adjusting the borrowing rate (ii) the annual percentage rate of charge (iii) the applicable charges under the credit agreement and (iv) the applicable borrowing rate in the case of late payment, the arrangements applying to adjustment of the late payment rate and to costs in the event of payment default. At issue in the case is the Consumer Agency's decision of 26 November 2019 finding that Íslandsbanki had violated Article 7(4)(f), (g), (i) and (l) and Article 12(2)(f) and (k) of the Icelandic Consumer Credit Act No 33/2013, which, inter alia, implements Articles 5 and 10 of Directive 2008/48/EC.

I Legal background

EEA law

2 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 (OJ 2008 L 133, p. 66; and EEA Supplement 2012 No 54, p. 36) ("the Directive" or "the Consumer Credit Directive") was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 16/2009 of 5 February 2009 (OJ 2009 L 73, p. 53; and

EEA Supplement 2009 No 16, p. 24). The Consumer Credit Directive is referred to at point 7h of Annex XIX (Consumer protection) to the EEA Agreement. Constitutional requirements were indicated by Iceland, Liechtenstein and Norway. The requirements were fulfilled by 1 September 2011 and the decision entered into force on 1 November 2011.

3 Recitals 7, 8, 9, 10, 18, 19, 20, 31 and 32 of the Consumer Credit Directive read, in extract:

> *(7) In order to facilitate the emergence of a well-functioning internal market in consumer credit, it is necessary to make provision for a harmonised Community framework in a number of core areas. In view of the continuously developing market in consumer credit and the increasing mobility of European citizens, forward-looking Community legislation which is able to adapt to future forms of credit and which allows Member States the appropriate degree of flexibility in their implementation should help to establish a modern body of law on consumer credit.*
>
> *(8) It is important that the market should offer a sufficient degree of consumer protection to ensure consumer confidence. Thus, it should be possible for the free movement of credit offers to take place under optimum conditions for both those who offer credit and those who require it, with due regard to specific situations in the individual Member States.*
>
> *(9) Full harmonisation is necessary in order to ensure that all consumers in the Community enjoy a high and equivalent level of protection of their interests and to create a genuine internal market. Member States should therefore not be allowed to maintain or introduce national provisions other than those laid down in this Directive. However, such restriction should only apply where there are provisions harmonised in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation. ...*
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> *(10) The definitions contained in this Directive determine the scope of harmonisation. The obligation on Member States to implement the provisions of this Directive should therefore be limited to its scope as determined by those definitions. ...*
>
> *(18) Consumers should be protected against unfair or misleading practices, in particular with respect to the disclosure of information by the creditor, in line with 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 ('Unfair Commercial Practices Directive). However, this Directive should contain specific provisions on advertising concerning credit agreements as well as certain items of standard information to be provided to consumers in order to enable them, in particular, to compare different offers. Such information should be given*

in a clear, concise and prominent way by means of a representative example.

…

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

(20) The total cost of the credit to the consumer should comprise all the costs, including interest, commissions, taxes, fees for credit intermediaries and any other fees which the consumer has to pay in connection with the credit agreement, except for notarial costs. Creditors' actual knowledge of the costs should be assessed objectively, taking into account the requirements of professional diligence.

(31) 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.

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

4 Article 1 of the Consumer Credit Directive, entitled "Subject matter", reads:

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

5 Article 3 of the Consumer Credit Directive, entitled "Definitions", reads, in extract:

For the purposes of this Directive, the following definitions shall apply:

(a) 'consumer' means a natural person who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession;

(b) 'creditor' means a natural or legal person who grants or promises to grant credit in the course of his trade, business or profession;

(c) 'credit agreement' means an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments;

...

(g) 'total cost of the credit to the consumer' means all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for notarial costs; costs in respect of ancillary services relating to the credit agreement, in particular insurance premiums, are also included if, in addition, the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed;

(h) 'total amount payable by the consumer' means the sum of the total amount of the credit and the total cost of the credit to the consumer;

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

(j) 'borrowing rate' means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;

...

(l) 'total amount of credit' means the ceiling or the total sums made available under a credit agreement;

...

6 Article 5(1) of the Consumer Credit Directive, entitled "Pre-contractual information", reads, in extract:

> *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;

...

7 Article 10(2) of the Consumer Credit Directive, entitled "Information to be included in credit agreements", reads, in extract:

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;

...

8 Article 19(1) of the Consumer Credit Directive, entitled "Calculation of the annual percentage rate of charge", reads:

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

9 Article 22(1) of the Consumer Credit Directive, entitled "Harmonisation and imperative nature of this Directive", reads:

Insofar as this Directive contains harmonised provisions, Member States may not maintain or introduce in their national law provisions diverging from those laid down in this Directive.

National law

10 The Consumer Credit Directive was incorporated into Icelandic law by the Consumer Credit Act No 33/2013 ("the Consumer Credit Act").

11 Article 7 of the Consumer Credit Act, entitled "Information to be provided prior to conclusion of an agreement", reads, in extract:

> *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 information shall contain the following:*
>
> *…*
>
> *f. the borrowing rate, the conditions for its application and, if appropriate, any index or reference interest rate that may affect the initial borrowing rate, and also the 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;*
>
> *g. the annual percentage rate of charge and the total amount payable by the consumer, illustrated by means of a representative example mentioning all the assumptions used in order to calculate the percentage rate; if the consumer has informed the creditor of one or more components of his preferred credit, such as the duration of the credit agreement and the total amount of credit, the creditor shall take those components into account; if a credit agreement provides different ways of drawdown with different charges or borrowing rates, the creditor shall use shall use the highest charges and the [highest] rate applying to the most common credit agreements and state that other assumptions could result in a higher annual percentage rate of charge;*
>
> *…*

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

…

12 Article 12(2) of the Consumer Credit Act, entitled "Information which shall be specified in the credit agreement", reads, in extract:

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 appropriate, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedures for changing the borrowing rate and, if different borrowing rates apply in different circumstances, the abovementioned information in respect of all the applicable rates;

…

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.

II Facts and procedure

13 By letter of 12 March 2019, the Consumer Agency requested a copy of Íslandsbanki's standard form and credit agreement. The Consumer Agency received the documents on 18 March 2019.

14 In a letter of 28 June 2019, the Consumer Agency criticised the information presented to the consumer at the pre-contractual stage in the standard form. Íslandsbanki rebutted the criticism in a letter of 19 July 2019.

15 In its decision of 26 November 2019, the Consumer Agency concluded that Íslandsbanki had violated Article 7(4)(f), (g), (i) and (l) and Article 12(2)(f) and (k) of the Consumer Credit Act by providing inadequate information in the standard form and the credit agreement on (i) the conditions for adjusting the borrowing rate (ii) the annual percentage rate of charge (iii) the applicable charges under the credit agreement and (iv) the applicable borrowing rate in the case of late payment, the arrangements applying to adjustment of the late payment rate and to costs in the event of payment default.

16 Íslandsbanki referred the decision to the Consumer Affairs Appeals Committee (*Áfrýjunarnefnd neytendamála*) ("the Appeals Committee") on 19 December 2019. By its ruling of 13 October 2020, the Appeals Committee upheld the decision.

17 It follows from the request that Íslandsbanki's standard information form described the conditions under which the bank may adjust the borrowing rate as follows:

> *The borrowing rate, and adjustments thereto, shall be based, amongst other things, on changes in the bank's financing costs (credit terms), its operating costs, public levies and/or other unforeseen costs, the prime rate of the Central Bank of Iceland, changes in the consumer price index, etc. Decisions on adjustments of the borrowing rate are taken by a professional committee within the bank, acting on behalf of the governing board. The committee looks at, in particular, trends in the cost factors listed above and assesses whether changes in them constitute grounds for adjustment of the borrowing rate. The weighting of the factors listed above in decisions on adjustments of the borrowing rate is variable, being determined by, amongst other things, decisions of public bodies and circumstances on the market at any given time. When adjustments are made to the borrowing rate, all these factors are assessed, collectively and/or individually. Changes in any of these factors may result in an adjustment of the borrowing rate, either raising it or lowering it. Adjustments to the borrowing rate are announced with 30 days' notice.*

18 According to the request, the terms of the credit agreement concerning the adjustment of the borrowing rate were, in the main, worded in the same manner.

19 From the request it further follows that the bank's information form provided the following description of how the annual percentage rate of charge was to be calculated:

> *The APR sets out the total cost of credit as an annual percentage of the total amount of the credit. The total cost of the credit consists of the total cost, including interest, inflation adjustment, commission, taxes and other levies that are to be paid in connection with the credit agreement and of which the creditor is aware at the time of conclusion of the contract, with the exception of the cost of registration of the contract. The APR shall be based on the assumption that price levels, the borrowing rate and other charges will remain unchanged until the end of the credit period. If the credit agreement permits price-level indexation, then the calculation of the APR shall be based on the annual inflation rate according to the change in the consumer price index over a twelve-month*

period and the assumption that the inflation rate will remain unchanged until the end of the credit period. In all cases, it shall be assumed when the APR is calculated that the credit agreement will remain in force throughout the credit period agreed and that the creditor and the borrower honour their obligations under the terms of the agreement.

20 The request further indicates that the Consumer Agency and Íslandsbanki disagreed as to whether the references to other charges deriving from the credit agreement in Article 7(4)(i) and Article 12(2)(k) of the Consumer Credit Act applied generally or only to credit agreements which concerned "credit lines" or in connection with using a means of payment. The bank's schedule of charges, which could be accessed online, listed six components referred to as initial costs, and four cost components entitled "notification and payment charges".

21 The request further explains that the Appeals Committee found that Íslandsbanki had not provided consumers with adequate information prior to the conclusion of the credit agreement regarding the applicable borrowing rate in the case of late payment and the arrangements applying to adjustment of the rate and to costs in the event of payment default.

22 On 8 January 2021, Íslandsbanki brought an action before Reykjavík District Court (*Héraðsdómur Reykjavíkur*) seeking to have the Appeals Committee's ruling set aside. In its judgment in Case E-127/2021 the District Court held that the Appeals Committee's ruling was vitiated by material flaws and that the procedure had been so deficient, in some aspects, that the District Court had to set aside the ruling in its entirety.

23 An appeal was lodged with the Court of Appeal on 24 February 2022.

24 The Court of Appeal requested an Advisory Opinion from the Court in a letter of 1 June 2023, registered at the Court on the same day.

25 The Court of Appeal has referred the following questions to the Court:

1. *Must Articles 5 and 10 of Directive 2008/48/EC, and particularly Article 5(1)(f) and Article 10(2)(f) thereof, be interpreted as meaning that the creditor is to specify, in an exhaustive listing in a standard form and in the credit agreement, the conditions on which its 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 [annual percentage rate] 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?*

26 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

III Answer of the Court

Introductory remarks

27 The Court observes that the Directive was introduced in order to ensure that all consumers in the EEA 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

(compare the judgment in *Pohotovost'*, C-331/18, EU:C:2019:665, paragraph 41, and case law cited).

28 Article 5 of the Directive seeks to empower the consumer, by ensuring that the creditor provides the consumer with all the necessary information before the contract is concluded. As stated by recital 19 of the Directive, the objective of providing this pre-contractual information is to empower and enable consumers to make their decisions in full knowledge of the facts. To this end, consumers should receive adequate information on their obligations and the conditions and cost of the credit prior to the conclusion of the credit agreement.

29 According to Article 5(1) of the Directive, the creditor shall 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. For this purpose, the Directive establishes a standard format for the provision of that information, the Standard European Consumer Credit Information ("SECCI"), included in Annex II to the Directive.

30 Pursuant to Article 22, as also expressed in recital 9, the Directive is a full harmonisation directive. Consequently, the Directive also fully harmonises the format for providing consumers with information about the credit agreement. Indeed, the SECCI format is, as such, fully harmonised and must be used by creditors. In short, the creditor is obliged to provide the mandatory pre-contractual information by using the SECCI standard form.

31 Article 10 of the Directive, as also expressed in recital 31, aims at enabling the consumer "to know his rights and obligations under the credit agreement". Article 10 specifically establishes that the credit agreement must contain all the necessary information laid down in paragraph 2 of that Article in a clear and concise manner, and which must imperatively be included in the credit agreement (compare the judgments in *Pohotovost'*, cited above, paragraph 50, and *Mikrokasa*, C-779/18, EU:C:2020:236, paragraph 45). Knowledge and good understanding, on the part of the consumer, of the information that must be mandatorily included in the credit agreement, in accordance with Article 10(2), are necessary for the proper performance of the agreement (compare the judgment in *Volkswagen Bank*, C-33/20, EU:C:2021:736, paragraph 71).

32 Such a requirement is justified by the consideration that the system of protection is based on the idea that the consumer is in a weak position vis-à-vis the creditor, both with regard to the consumer's bargaining power and his or her level of knowledge, which leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of those terms. Information on the terms of the contract and the consequences of concluding it, both before and at the time of concluding the contract, is, therefore, of fundamental importance for the consumer. It is on the basis of that information that the consumer decides whether he or she wishes to be bound by the conditions drafted in advance by the seller or supplier (compare the judgment in *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraphs 63 and 64). Further, as follows from Article 5(1) of the Directive, and also stated in recital 18, such information, provided in a clear, concise and standardised manner, is essential

in order to place the consumer in a position in which he or she effectively may compare different offers.

33 It should be noted that it is apparent from Article 22(1) of the Directive, interpreted in the light of recitals 9 and 10 thereof, that, as regards credit agreements falling within its scope, that directive provides for full harmonisation and, as is apparent from the heading of Article 22, is imperative in nature. It follows that, in the matters specifically covered by that harmonisation, the EEA States are not authorised to maintain or introduce national provisions other than those laid down by that directive (compare the judgment in *BMW Bank and Others*, C-38/21, C-47/21 and C-232/21, EU:C:2023:1014, paragraph 295 and case law cited).

34 The fact that the Directive fully harmonises the information that must be provided to consumers makes it mandatory to include the information listed in Articles 5 and 10 thereof. Indeed, both Article 5 and Article 10 of the Directive contribute to attaining the objective of full and mandatory harmonisation which is necessary to ensure that all consumers in the EEA 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 (compare the judgments in *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraph 42, and *Volkswagen Bank*, cited above, paragraph 72).

Question 1

35 By Question 1, the referring court asks, in essence, whether Articles 5(1)(f) and 10(2)(f) of the Directive must be interpreted as meaning that a creditor must specify, in an exhaustive list in both the SECCI standard form and in the credit agreement, the conditions on which its decision to adjust the borrowing rate on credit that bears variable interest is based.

36 According to Article 10(2)(f) of the Directive, the credit agreement must specify in a clear and concise manner 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.

37 As noted above, it follows from Article 10(2) of the Directive, read in the light of recital 31 of the Directive, that the requirement to include the information referred to in Article 10(2) in a credit agreement drawn up on paper or on another durable medium in a clear and concise manner is necessary in order to ensure that the consumer is aware of his or her rights and obligations. More specifically, knowledge and good understanding, on the part of the consumer, of the information that must be mandatorily included in the credit agreement are necessary for the proper performance of the agreement and, in particular, for the exercise of the consumer's rights (compare the judgment in *BMW Bank and Others*, C-38/21, C-47/21 and C-232/21, EU:C:2023:1014, paragraph 263 and case law cited).

38 To enable a good understanding of that information in compliance with the requirement for clarity laid down in Article 10(2) of the Directive, the information provided in a credit agreement must therefore be devoid of any contradiction that objectively may be liable to mislead an average consumer who is reasonably well informed and reasonably observant and circumspect as to the extent of his or her rights and obligations under that agreement (compare the judgment in *BMW Bank and Others*, cited above, paragraph 235).

39 Pursuant to Article 5(1)(f) of the Directive, creditors must, in good time before a consumer is bound by any credit agreement, provide consumers with the information needed to compare different offers so that the consumer may take an informed decision on whether to conclude a credit agreement or not. This includes information on 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 and, if different borrowing rates apply in different circumstances, the abovementioned information in respect of all the applicable rates.

40 The obligation to specify in a clear and concise manner the borrowing rate is not only included among the information to be provided in the contract, but is also among the information to be provided at the pre-contractual stage, in accordance with Article 5 of the Directive. Consequently, the requirement that consumers must be informed of all the conditions for adjusting the borrowing rate of a credit agreement must be interpreted in such a manner as to satisfy the objectives pursued by both Article 10(2)(f) and Article 5(1)(f). As noted by the Commission, Article 5(1)(f) and Article 10(2)(f) in essence mandate the provision of identical information concerning the borrowing rate to the consumer, both at the pre-contractual stage and when the credit agreement is concluded in order to ensure full transparency, as set out in recital 32. Consequently, given the wording of Article 5(1)(f) and Article 10(2)(f), and that the two provisions facilitate transparency to the consumer, those provisions must be interpreted in the same manner.

41 Accordingly, consumers must be informed of all the conditions for adjusting the borrowing rate of a credit agreement. In order to attain full transparency, allow the consumer to compare different offers and genuinely apprise himself or herself of his or her rights and obligations under the credit agreement, all the conditions governing the adjustment of the borrowing rate need to be exhaustively specified. Pursuant to Article 5 of the Directive, that information must further be provided, on paper or on another durable medium, by means of the SECCI standard form set out in Annex II to the Directive.

42 Consequently, in order to ensure full transparency and that the objectives of Article 5 and Article 10 of the Directive are achieved, all of the conditions need to be specified in both the SECCI standard form and the credit agreement. Were it otherwise, in cases involving a variable borrowing rate, such as in the case at issue, it would be difficult for the consumer to compare offers, thereby frustrating the objective of Article 5 and the SECCI standard form, and equally, it would be difficult to ensure that a consumer was

genuinely apprised of his or her rights and obligations under the credit agreement, which in turn, would frustrate the objective of Article 10.

43 Indeed, the Court observes that where a creditor does not specify all the conditions on which its decision to adjust the borrowing rate on credit that bears variable interest is based, the consumer is not in a position, on the basis of the agreement, to determine the scope of his or her contractual obligations and to put the consumer in a position where he or she may assess whether all the required information, in accordance with Article 10 of the Directive, is included in the contract that he or she has concluded. Accordingly, the answer to Question 1 must be that Article 5(1)(f) and Article 10(2)(f) of the Directive must be interpreted as meaning that a creditor is to specify, in an exhaustive list in both the SECCI standard form and in the credit agreement, the conditions on which the decision to adjust the borrowing rate on credit that bears variable interest is based.

Questions 2 and 3

44 By Question 2, the referring court asks, in essence, whether the information requirements mandated by Article 5(1)(f) and Article 10(2)(f) of the Directive are met if, among the conditions for changing the borrowing rate that are specified both on the SECCI standard form and in the credit agreement, there is a general reference to an unforeseen increase in the creditor's costs or other conditions that are not known to the creditor. By Question 3, the referring court asks, in essence, whether the requirement of Article 5, 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 met if the wording of a provision in the standard form includes general and open-ended references such as "etc." absent adequate additional contextual information. The Court finds it appropriate to address these questions together.

45 It should be recalled that, as with other directives concerning consumer protection, the system of protection established by the Directive is based on the idea that the consumer is in a weak position vis-à-vis the creditor, as regards both his or her bargaining power and his or her level of knowledge, which leads to the consumer agreeing to terms drawn up in advance by the creditor without being able to influence the content of those terms (see joined Cases E-13/22 and E-1/23, *Gylfason and Gröndal* v *Landsbankinn* and *Sverrisdóttir and Sigurðsson* v *Íslandsbanki*, E-13/22 and E-1/23, judgment of 23 May 2024, paragraph 71, and compare the judgment in *BMW Bank and Others*, cited above, paragraph 259 and the case law cited).

46 In that regard, information, before and at the time of concluding a contract, on the terms of the contract and the consequences of concluding it is of fundamental importance for a consumer. It is, in particular, on the basis of that information that the consumer decides whether he or she wishes to be bound by the conditions drafted in advance by the creditor (compare the judgment in *BMW Bank and Others*, cited above, paragraph 260 and case law cited).

47 The Court recalls that information about the borrowing rate is of fundamental importance. In order for a consumer to compare credit agreements, and to apprise himself or herself of his or her rights and obligations under a credit agreement, the information made available to him or her, both at the pre-contractual stage and at the contractual stage, must be exhaustive and provided in a clear and concise manner. Where the conditions for adjusting the rate are not sufficiently clear, for example because they are referred to in a too generic or open-ended manner, they will not provide the transparency which is necessary for the consumer to be able to compare different offers and take an informed decision on whether to conclude a credit agreement. Indeed, the consumer must be placed in a position whereby he or she genuinely can apprise himself or herself of all his or her rights and obligations (see *Gylfason and Gröndal* v *Landsbankinn* and *Sverrisdóttir and Sigurðsson* v *Íslandsbanki*, cited above, paragraph 124, and compare the judgment in *Home Credit Slovakia,* C-42/15, EU:C:2016:842, paragraph 34).

48 Further, the requirement to provide information in a clear and concise manner does not only require that the term in question is formally and grammatically intelligible, but that the method of calculation is 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 borrowing rate based on the information provided in the pre-contractual information and in the credit agreement. The consumer must, therefore, be provided with sufficient information to enable him or her to apprise himself or herself of the specific functioning of the method used for calculating the rate, and, where appropriate, the relationship between that mechanism and that provided for by other contractual terms (see *Gylfason and Gröndal* v *Landsbankinn* and *Sverrisdóttir and Sigurðsson* v *Íslandsbanki*, cited above, paragraphs 77 to 79, and compare the judgments in *Volkswagen Bank*, cited above, paragraph 94 and case law cited; *Gómez del Moral Guasch*, C-125/18, EU:C:2020:138, paragraphs 51 to 53; *Kiss and CIB Bank*, C-621/17, EU:C:2019:820, paragraph 36; and *BNP Paribas*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 65).

49 The Court notes that the contractual term in dispute, reproduced in the request, states that the borrowing rate and adjustments thereto are to be based "amongst other things, on changes in the bank's financing costs (credit terms), its operating costs, public levies and/or other unforeseen costs, the prime rate of the Central Bank of Iceland, changes in the consumer price index, etc." Moreover, "decisions on adjustments of the borrowing rate are taken by a professional committee within the bank, acting on behalf of the governing board". Finally, the weighting of the factors taken into account in decisions on adjustments of the borrowing rate "is variable, being determined by, amongst other things, decisions of public bodies and circumstances on the market at any given time". While the term "other unforeseen costs" is employed in the contractual term in question, many of the other terms referred to may also be viewed as unforeseen or unknowable to the consumer, depending upon how the term is construed.

50 The Court notes that similar contractual terms for adjusting a variable interest rate are addressed in paragraphs 94 to 99 of the judgment in *Gylfason and Gröndal* v

Landsbankinn and *Sverrisdóttir and Sigurðsson* v *Íslandsbanki*, cited above, which was delivered on the same date as the present judgment.

51 Firstly, the variable interest rate on the credit agreement in question will not automatically correlate to changes in an objective and determinable interest rate, such as that set by a central bank. Rather, decisions regarding the adjustment of the interest rate are taken by a professional committee within the bank based on one or more factors, and the factors upon which it is based may differ, in addition to the weighting of these factors, which may be determined by, "amongst other things", decisions of public bodies. The Court notes that if that is the case, this could lead to uncertainty on the part of the consumer as to the result of the method employed for calculating the rate (compare, to that effect, the judgment in *Constructora Principado*, C-226/12, EU:C:2014:10, paragraph 26).

52 Secondly, the variable interest rate clause refers to changes relating to "operating costs", "public levies" and "other unforeseen costs". The Court observes that such general references to unforeseen potential increases in the creditor's costs are, by definition, unverifiable by an average consumer, as further emphasised by the reference to "etc." at the end of the sentence in question. The inclusion of such elements will render it impossible for a consumer to determine the scope of his or her contractual obligations.

53 Thirdly, the Court observes that the inclusion of terms such as "decisions of public bodies and circumstances on the market at any given time" are prima facie not transparent, even if such formulations are in themselves grammatically plain and intelligible (compare the judgment in *Matei*, C-143/13, EU:C:2015:127, paragraph 76 and case law cited).

54 Fourthly, as noted by the Commission, the doubts as to the lack of clarity of the terms at issue are aggravated by the inclusion of the term "amongst other things". This allows for the inclusion of factors not known by the consumer when the contract is concluded.

55 Such considerations concerning Article 10 of the Directive apply equally in respect of Article 5 at the pre-contractual stage. With respect to the term "etc.", the Court observes, as noted by the Commission, that it is important to determine whether the level of detail and specificity of the information provided to the consumer is such that the objective of Article 5 is achieved, namely that the consumer is provided with the relevant information allowing a number of different offers to be compared. As such, well-articulated and exhaustive conditions may contain a provision that uses a less precise term, such as "etc.", as long as the objective of Article 5 is achieved. That is, the use of the term "etc." is not entirely precluded, as in certain circumstances, the term may, for example, be used to refer to the remaining items in a closed list, which would be obvious to an average consumer, who is reasonably well-informed and reasonably observant and circumspect.

56 However, in circumstances where there is an absence of adequate additional contextual information as to what other elements should be contained in the list, a term such as "etc." will contribute to rendering it excessively difficult, if not impossible, for the

consumer to compare different offers. As argued by the Commission, this is particularly the case where it is used in the context of a contractual term, provided at the pre-contractual stage, that contains a large number of generic references and a large number of conditions, as well as open-ended weighting, such as in the case in the main proceedings.

57 It is for the referring court to assess whether the pre-contractual information and the terms of the credit agreement, respectively, are sufficiently clear and concise to achieve full transparency, place an average consumer, who is reasonably well informed and reasonably observant and circumspect, in a position in which he or she is able to compare different offers and, more generally, genuinely apprise himself or herself of his or her rights and obligations under the credit agreement.

58 Accordingly, the answer to Question 2 must be that the information requirements mandated by Article 5(1)(f) and Article 10(2)(f) of the Directive are not met if, among the conditions for changing the borrowing rate that are specified both on the SECCI standard form and in the credit agreement, there is a general reference to an unforeseen increase in the creditor's costs or other conditions that are not known to the creditor. The answer to Question 3 must be that the requirement of Article 5 of the 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 includes general and open-ended references such as "etc." absent adequate additional contextual information.

Question 4

59 By Question 4, the referring court asks, in essence, whether it follows from Article 5(1)(g) of the Directive that the annual percentage rate of charge must be illustrated in the SECCI 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.

60 The Court observes that Article 3(i) of the Directive defines the annual percentage rate of charge as the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of the credit. As such, it requires a precise percentage to be fixed (compare the judgment in *RN* v *Home Credit Slovakia*, C-290/19, EU:C:2019:1130, paragraph 25).

61 Pursuant to the wording of Article 5(1)(g) of the Directive, the pre-contractual information shall specify 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 or her preferred credit, such as the duration and the total amount of the credit, the creditor shall take those components into account.

62 As noted by the Commission, the representative example plays a very important role at the pre-contractual stage, in particular at the very early stage where not all components of the credit are known. This is reflected also in recital 19 of the Directive, which states that 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 EEA. However, as the annual percentage rate of charge at the pre-contractual stage can only be indicated through an example, such an example "should be representative". The representative example therefore serves as one of the key elements of comparability for consumers when comparing offers.

63 The position of the bank in the main proceedings is based on the argument that, although it had not provided a representative example on the standard form, it had provided the assumptions upon which the annual percentage rate of charge was calculated in other parts of the SECCI standard form and that those assumptions were already based on the information provided by the consumer. This would have allowed the creditor to calculate the specific annual percentage rate of charge that the consumer would be offered, rather than a representative example.

64 However, while Article 5 of the Directive indeed requires the separate specification of individual assumptions, such as, for example, the "total amount of credit" in Article 5(1)(c), the amount, number and frequency of payments, in Article 5(1)(h), and the charges for maintaining a credit account in Article 5(1)(i), it also explicitly obliges, in Article 5(1)(g), creditors to identify such individual constituents as assumptions used in order to calculate the annual percentage rate of charge. Providing the consumer with clear information on all of the specific elements used to calculate the total amount payable by the consumer does not remove the obligation to provide a representative example in which all the assumptions used to calculate the annual percentage rate of charge are stated, but rather means that the creditor is, in addition, obliged to take those elements into account when providing the consumer with such a representative example.

65 This is supported by the objectives pursued by the pre-contractual information requirements set out in Article 5(1) of the Directive. It is apparent from recital 18 of the Directive that those objectives are, inter alia, to instil confidence in consumers, by providing for specific provisions on advertising concerning credit agreements as well as certain items of standard information to be provided to consumers in order to enable them, in particular, to compare different offers. Such information should be given in a clear, concise and prominent way by means of a representative example (compare the Opinion of Advocate General Hogan in *Volkswagen Bank*, C-33/20, C-155/20 and C-187/20, EU:C:2021:629, point 66).

66 Reference to the various assumptions used in order to calculate the annual percentage rate of charge makes it possible to implement the objective referred to in Article 5(1) of the Directive relating to the information needed to compare different offers in order to enable the consumer to make an informed decision on whether to conclude a credit agreement, where that comparison must be made taking into account the annual

percentage rate of charge according to the different durations of the offers at his or her disposal (compare the judgment in *Soho Group*, C-686/19, EU:C:2020:582, paragraph 48).

67 In that regard, it must be borne in mind that it follows from recital 19 of the Directive that it seeks, inter alia, to ensure that consumers receive adequate information, prior to the conclusion of the credit agreement, in particular on the annual percentage rate of charge throughout the EEA, in order to ensure the fullest possible transparency and comparability of offers (compare the judgment in *Soho Group*, cited above, paragraph 49 and case law cited).

68 The annual percentage rate of charge, which sets out the price (total cost) of the credit on the basis of a mathematical formula, which is the same across the EEA, is a crucial part of that comparison. That rate enables the consumer to assess, from a financial point of view, the extent of the commitment associated with the conclusion of the credit agreement. The obligation to provide information on the annual percentage rate of charge in a clear and concise manner clearly contributes to the attainment of the objective pursued by the Directive, in particular, the objective of a high level of protection of consumers' interests, and is essential for the consumers to be able to know their rights and obligations under credit agreements (compare the judgment in *RN* v *Home Credit Slovakia*, cited above, paragraphs 29 to 31).

69 As the annual percentage rate of charge at the pre-contractual stage can be indicated only through an example, as also stated in recital 19 of the Directive, the example needs to be representative. In addition, it should be noted that, while setting out the various elements upon which the annual percentage rate of charge is based satisfies the criterion of clarity, the representative example better satisfies the separate criterion of conciseness.

70 Accordingly, the answer to Question 4 must be that Article 5(1)(g) of the Directive requires that the annual percentage rate of charge is illustrated in the SECCI 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. In such cases the creditor shall take the known components into account when providing the example.

Question 5

71 By Question 5, the referring court asks, in essence, whether Article 5(1)(i) and Article 10(2)(k) of the Directive require 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.

72 Pursuant to Article 5(1)(i) and Article 10(2)(k) of the Directive, the information provided to the consumer at the pre-contractual stage and in the credit agreement, respectively, shall include, 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.

73 By its wording, the provisions thus require that when any of the charges referred to in Article 5(1)(i) and Article 10(2)(k) of the Directive apply, the requisite information about those charges, as well as the conditions under which those charges can be changed, have to be included in the SECCI standard form. As further described in the instructions to the SECCI standard form, the creditor must fill in the information relevant to the credit agreement wherever "if applicable" is indicated.

74 The Court recalls in this regard that the SECCI is a fully harmonised format, which may not be amended or deviated from. The rationale for the harmonisation of the SECCI standard form is that a uniform format throughout the EEA permits the consumer to easily compare offers. Any omission of the mandatory pre-contractual information in the SECCI standard form would be contrary to Article 5 of the Directive. As such, whenever any of the charges referred to in Article 5(1)(i) are applicable, the requisite information concerning those charges, in addition to the conditions under which those charges may be changed must be included in the SECCI standard form. This is irrespective of whether or not the credit is of such a type that both payment transactions and drawdowns of the credit are recorded. The need to state such charges and how they may change relates to the fact that such charges are imposed, and not to the type of credit agreement at issue. Insofar as such charges derive from credit agreements within the meaning of Article 3(c), they must be stated.

75 As noted by the Commission, taking account of the fact that, at the pre-contractual stage the consumer must be in a position to know the exact extent of his or her obligations, and given the identical wording of Article 5(1)(i) and Article 10(2)(k) of the Directive, the same conclusion should apply *mutatis mutandis* also in the context of the credit agreement itself.

76 Further, it follows from the wording of both Article 5(1)(i) and Article 10(2)(k) of the Directive that those provisions refer to "any other charges deriving from the credit agreement and the conditions under which those charges may be changed". Moreover, Article 10(2)(u) also states that the credit agreement is to specify, in a clear and concise manner, where applicable, the "other contractual terms and conditions". Those considerations thus make it possible to implement the objective, set out in recital 43 of the Directive, that the Directive should clearly and comprehensively define the total cost of the credit for the consumer, and to preserve the effectiveness of that directive (compare the judgment in *Soho Group*, cited above, paragraph 50).

77 Accordingly, the answer to Question 5 must be that Article 5(1)(i) and Article 10(2)(k) of the Directive require that all "other charges deriving from the credit agreement" are always to be specified in both the SECCI standard form and in the credit agreement regardless of whether the credit is of such a type that both payment transactions and drawdowns of the credit are recorded.

Question 6

78 By Question 6, the referring court asks, in essence, whether the requirement to provide information on charges deriving from the credit agreement pursuant to Articles 5(1)(i) and 10(2)(k) of the Directive may be met by referring to the creditor's schedule of charges, which may undergo changes. More specifically, the referring court asks whether it is necessary to specify clearly in the SECCI standard form itself what the charges are and what they will be in the future.

79 The Court has already found that the required information to be provided to the consumer pursuant to Article 5, including information concerning "other charges deriving from the credit agreement", shall be provided by means of the SECCI standard form as set out in Annex II to the Directive. The Court recalls that the Directive, pursuant to Articles 5 and 22, fully harmonises the manner in which the information referred to in Article 5 is to be provided to the consumer. Thus, information may not be omitted from the SECCI standard form by a reference to the creditor's schedule of charges which may undergo a change. All the necessary information on the charges pertinent to the credit agreement, including the conditions applicable for changing those charges, must be included in a clear and concise manner in the SECCI standard form.

80 The Court underlines that this does not mean that the creditor's schedule of charges may not contain some additional information concerning "other charges deriving from the credit agreement". However, the information in the SECCI standard form needs to be sufficiently clear, in and of itself, to inform the consumer what the charges are and, in case they may change in the future, the conditions for such a change. Only in such circumstances may the consumer be put in a position to understand, from the SECCI standard form itself, what these other charges are and, therefore enable the consumer to compare different offers.

81 The Court observes that, unlike Article 5 of the Directive, Article 10 does not prescribe a format in which the information, which is to be included in the credit agreement, is to be provided to the consumer, but requires that the information is provided in a clear and concise manner.

82 The credit agreement need not necessarily be drawn up in a single document. Nevertheless, Article 10(1) of the Directive requires that all the information listed in Article 10(2) must be set out on paper or on another durable medium and be incorporated into the credit agreement. Further, insofar as the information referred to in Article 10(2) must be included in a clear and concise manner, a credit agreement must contain a clear and precise cross-reference to other paper, or other durable media containing the information that was actually given to the consumer prior to the conclusion of the agreement so as to give him or her the opportunity to be genuinely apprised of all his or her rights and obligations (compare the judgments in *Home Credit Slovakia* v *Klára Bíróová*, cited above, paragraphs 33 and 34, and *Volkswagen Bank*, cited above, paragraphs 84 and 85).

83 Thus, even though Article 10(2) of the Directive does not preclude a separate schedule of charges, which may undergo changes, in order to comply with the requirement of Article 10(2)(k), the information listed in that provision must be stated in a clear and concise manner, and must, as a minimum, be stated in the credit agreement itself. Only in such circumstances may any cross-references to the paper or any other durable medium, which is not included in the same document as the credit agreement, be considered sufficiently clear and precise (compare the Opinion of Advocate General Sharpston in *Home Credit Slovakia* v *Klára Bíróová*, C-42/15, EU:C:2016:431, point 52). In addition, any information in the annexed or cross-referenced schedule must be specific and sufficiently clear to allow the consumer to understand what the charges are and what they will be in the future. Only in this manner may the objectives of transparency, consumer protection and placing the consumer in a position where he or she can compare different offers and genuinely apprise himself or herself of his or her rights and obligations under the credit agreement be fulfilled.

84 Accordingly, the answer to Question 6 must be that Article 5(1)(i) of the Directive requires that the SECCI standard form contains all information on charges deriving from the credit agreement, and the conditions under which those costs can be changed, that is necessary to allow the consumer to compare different offers and genuinely apprise himself or herself of his or her rights and obligations under the credit agreement. Article 10(2)(k) requires that where information on charges deriving from the credit agreement, and the conditions under which those charges can be changed, is not provided in the credit agreement itself, the agreement must specify that such charges apply, that they may be changed, and contain a clear and precise cross-reference to other paper, or other durable media containing further information on those aspects.

Question 7

85 By Question 7, the referring court asks, in essence, whether it follows from Article 5(1)(l) of the Directive that the charges to be paid in the case of late payment are to be specified in the SECCI standard form or whether it is sufficient that the creditor make a general reference to its schedule of charges, which may undergo changes.

86 As the Court has already held in respect of other charges deriving from the credit agreement, Article 5 of the Directive requires that the necessary pre-contractual information must be provided by means of the SECCI standard form. Pursuant to Article 5(1)(l), that information includes information on the interest rate applicable in the case of late payments and the arrangements for its adjustment, and, where applicable, any charges payable for default.

87 The Court recalls, in this regard, that the SECCI standard form is a measure of full harmonisation, intended to ensure transparency and comparability of different consumer credit offers to consumers throughout the EEA. In this regard, a sufficient degree of transparency with respect to costs that could arise in the case of late payments is essential to ensure consumer protection. As noted by the Commission, the relevant box in the SECCI standard form includes an explicit explanation designed to draw the consumer's attention to this issue. Costs that could arise in the case of late payments

have the potential to have severe consequences for the consumer. The absence of information on those costs being included in the SECCI standard form would frustrate the objective of Article 5 of the Directive. The information on the costs that could arise in the case of late payment, and any conditions applicable to changes in such costs, must, therefore, be provided in the SECCI standard form. The requirement to state the specific rate of late-payment interest and any charges payable for default in the credit agreement enables consumers to be aware of the consequences of any delay in payment, and is necessary to ensure that the consumer is aware of his or her rights and obligations under the agreement (compare the judgment in *Volkswagen Bank*, cited above, paragraphs 91 to 94).

88 Accordingly, the answer to Question 7 must be that Article 5(1)(l) of the Directive requires that the SECCI standard form contains all information on charges to be paid in the case of late payment, and the conditions under which those costs can be changed, that is necessary to allow the consumer to compare different offers and genuinely apprise himself or herself of his or her rights and obligations under the agreement.

IV Costs

89 Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds,

THE COURT

in answer to the questions referred to it by the Court of Appeal hereby gives the following Advisory Opinion:

1. **Article 5(1)(f) and 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 and repealing Council Directive 87/102/EEC require a creditor to specify in an exhaustive listing in the Standard European Consumer Credit Information ("SECCI") standard form and in the credit agreement, respectively, the conditions on which the decision to adjust the borrowing rate on credit that bears variable interest is based.**

2. **The information requirements mandated by Articles 5(1)(f) and 10(2)(f) of Directive 2008/48/EC are not met if, among the conditions for changing the borrowing rate that are specified on the SECCI standard form and in the credit agreement itself, respectively, there is a general reference to an unforeseen increase in the creditor's costs or other conditions that are not known to the creditor.**

3. **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, is not met if the wording of a provision in the standard form includes general and open-ended references such as "etc." absent adequate additional contextual information.**

4. **Article 5(1)(g) of Directive 2008/48/EC requires that the annual percentage rate of charge is illustrated in the SECCI 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. In such cases the creditor shall take the known components into account when providing the example.**

5. **Article 5(1)(i) and Article 10(2)(k) of Directive 2008/48/EC require that all "other charges deriving from the credit agreement" are always to be specified in the SECCI standard form and in the credit agreement, respectively, regardless of whether the credit is of such a type that both payment transactions and drawdowns of the credit are recorded.**

6. **Article 5(1)(i) of Directive 2008/48/EC requires that the SECCI standard form contains all information on charges deriving from the credit agreement, and the conditions under which those costs can be changed, that is necessary to allow the consumer to compare different**

offers and genuinely apprise himself or herself of his or her rights and obligations under the credit agreement. Article 10(2)(k) of Directive 2008/48/EC requires that where information on charges deriving from the credit agreement, and the conditions under which those charges can be changed, is not provided in the credit agreement itself, the agreement must specify that such charges apply, that they may be changed, and contain a clear and precise cross-reference to other paper, or other durable media containing further information on those aspects.

7. **Article 5(1)(l) of Directive 2008/48/EC requires that the SECCI standard form contains all information on charges to be paid in the case of late payment, and the conditions under which those costs can be changed, that is necessary to allow the consumer to compare different offers and genuinely apprise himself or herself of his or her rights and obligations under the agreement.**

Páll Hreinsson Bernd Hammermann Michael Reiertsen

Delivered in open court in Luxembourg on 23 May 2024.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President