Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

13 February 2025*

(Reference for a preliminary ruling – Consumer protection – Credit agreements for consumers – Directive 2008/48/EC – Article 10(2) – Duty to provide information – Annual percentage rate of charge – Modification of charges and commissions – Article 23 – National rules on penalties – Principle of proportionality)

In Case C-472/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy dla m.st. Warszawy w Warszawie (District Court for the City of Warsaw, Poland), made by decision of 21 June 2023, received at the Court on 25 July 2023, in the proceedings

Lexitor sp. z o.o.

v

A. B. S.A.,

THE COURT (Tenth Chamber),

composed of D. Gratsias, President of the Chamber, I. Jarukaitis, President of the Fourth Chamber, and Z. Csehi (Rapporteur) Judge,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Lexitor sp. z o.o., by K. Danielak, radca prawny,

– A. B. S.A., by M. Malciak, K. Trzaskowski and W.J. Wandzel, adwokaci,

– the Polish Government, by B. Majczyna and S. Żyrek, acting as Agents,

– the European Commission, by P. Ondrůšek and M. Owsiany-Hornung, acting as Agents,

* Language of the case: Polish.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 10(2)(g) and (k) and of Article 23 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 (OJ 2008 L 133, p. 66).

2 The request has been made in proceedings between Lexitor sp. z o.o., in its capacity as assignee of the rights of a consumer, and A. B. S.A. ('the bank') concerning an application for repayment of a sum representing the interest and charges paid by that consumer under a consumer credit agreement that the consumer had concluded with the bank.

Legal context

European Union law

Directive 2008/48

3 Recitals 6, 8, 9, 19, 31, 32 and 47 of Directive 2008/48 read as follows:

'(6) In accordance with the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The development of a more transparent and efficient credit market within the area without internal frontiers is vital in order to promote the development of cross-border activities.

…

(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. …

…

(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 [(APRC)] applicable to the credit, determined in the same way throughout the Community. …

…

(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. …

…

(47) Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. While the choice of penalties remains within the discretion of the Member States, the penalties thus provided for should be effective, proportionate and dissuasive.'

4 Article 3 of that directive, entitled 'Definitions', is worded as follows:

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

…

(g) "total cost of the credit to the consumer" means all the costs, including interest, commissions, taxes and any other kinds of charges 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;

…

(i) "[APRC]" 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 charges referred to in Article 19(2);

…'

5 Article 10 of that directive, entitled 'Information to be included in credit agreements', provides, in paragraph 2:

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

…

(g) the [APRC] and the total amount payable by the consumer, calculated at the time the credit agreement is concluded; all the assumptions used in order to calculate that rate shall be mentioned;

…

(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;

…'

6 Article 19 of that directive, entitled 'Calculation of the [APRC]', provides, in paragraphs 1 to 3:

'1. The [APRC], 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.

2. For the purpose of calculating the [APRC], the total cost of the credit to the consumer shall be determined, with the exception of any charges payable by the consumer for non-compliance with any of his commitments laid down in the credit agreement and charges other than the purchase price which, for purchases of goods or services, he is obliged to pay whether the transaction is effected in cash or on credit.

The costs of maintaining an account recording both payment transactions and drawdowns, the costs of using a means of payment for both payment transactions and drawdowns, and other costs relating to payment transactions shall be included in the total cost of credit to the consumer unless the opening of the account is optional and the costs of the account have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.

3. The calculation of the [APRC] shall be based on the assumption that the credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the credit agreement.'

7 Article 23 of Directive 2008/48, entitled 'Penalties', is worded as follows:

'Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.'

Directive 93/13/EEC

8 Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) provides:

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

Polish law

The Law on Consumer Credit

9 The ustawa o kredycie konsumenckim (Law on Consumer Credit) of 12 May 2011 (Dz. U. 2011, No 126, item 715), in the version applicable to the dispute in the main proceedings ('the Law on Consumer Credit'), transposed Directive 2008/48 into Polish law.

10 Article 30(1) of the Law on Consumer Credit provides:

'Subject to Articles 31 to 33, a consumer credit agreement must indicate:

…

(7) the [APRC] and the total amount payable by the consumer set on the date on which the consumer credit agreement is concluded, including all the assumptions used in order to calculate that charge.

…

(10) information on the other costs which the consumer is required to pay in connection with the consumer credit agreement, in particular charges, including charges for maintaining one or several accounts recording both payment transactions and drawdowns, together with charges for using a means of payment for those transactions and drawdowns, commissions, margins and the costs of ancillary services, in particular insurance, if known to the creditor, and the conditions under which those costs may change

…'

11 Article 45(1) of that law reads as follows:

'In the event of failure by the creditor to comply with Article 29(1), Article 30(1)(1) to (8), (10), (11) and (14) to (17), Articles 31 to 33, Article 33a and Articles 36a to 36c, the consumer shall, after submitting a written declaration to the creditor, repay the credit, without interest and any other credit charges due to the creditor, within the time limit and in the manner laid down in the agreement.'

The Law on the Civil Code

12 Under Article 385[1](1) and (2) of the ustawa – Kodeks cywilny (Law on the Civil Code) of 23 April 1964 (Dz. U. No 16, item 93), in the version applicable to the dispute in the main proceedings:

'(1) Terms of a contract concluded with a consumer which have not been individually negotiated shall not be binding on the consumer if his or her rights and obligations are set forth in a way that is contrary to good practice and grossly infringes his or her interests (unlawful terms). This shall not apply to terms setting forth the principal matters to be performed by the parties, including price or remuneration, provided they are worded clearly.

(2) If a contractual term is not binding on the consumer pursuant to paragraph 1, the contract shall otherwise continue to be binding on the parties.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

13 Lexitor, a debt collection agency, is the assignee of the rights of a consumer who had concluded a credit agreement with the bank for an amount of 40 000 zlotys (PLN) (approximately EUR 9 050) ('the agreement at issue'). In addition to the amount of the principal sum of that credit, the consumer was required to pay the bank capital interest, in the amount of PLN 19 985.07 (approximately EUR 4 520) and a commission in the amount of PLN 4 893.38 (approximately EUR 1 100). The APRC specified in the agreement at issue was 11.18%.

14 According to the terms of the agreement at issue, in respect of transactions connected with the processing of the credit and the amendment of the terms of that agreement, the bank could include charges and commissions, in accordance with the provisions of that agreement and of a document, which formed part of that agreement, entitled 'Tariff of [the bank's] charges and commissions for individual customers' ('the tariff'). Thus, first, under the agreement at issue, there could be an increase in charges and commissions in the event of the occurrence of at least one of the conditions listed in that agreement, such as a change in the minimum wage and the level of indicators published by the Główny Urząd Statystyczny (Central Statistics Office, Poland) concerning, inter alia, inflation, average monthly pay in the business sector or changes in the prices of energy, telecommunications, postal services, interbank settlements and interest rates set by the Narodowy Bank Polski (National Bank of Poland), changes in the prices of services and transactions used by the bank in carrying out various banking and non-banking activities, changes in the scope or form of the services provided by the bank (including changes to or the addition of a new functionality relating to the servicing of a particular product), changes to the tax and/or accounting rules applied by the bank, and modification or adoption of new court decisions, administrative decisions and recommendations of competent authorities, including the Komisja Nadzoru Finansowego (Financial Supervisory Commission, Poland), in so far as those changes would affect the costs incurred by the bank in connection with the performance of that agreement.

15 Second, the tariff set out, in the form of a table, the amounts of administrative charges, such as those relating to the issue of a bank notice, a certificate or the credit account history, in an amount of PLN 50 (approximately EUR 12), or charges for correspondence with the customer, including reminders and invitations, in an amount of PLN 4.20 per letter (approximately EUR 1), and charges for sending mail with acknowledgment of receipt, in an amount of PLN 6.20 (approximately EUR 1.50 per letter). The tariff also included a number of non-recurring charges

linked to the disbursement of the amount of the loan, which were payable only once and which were not levied (charges fixed at '0'), as well as charges for concluding an addendum, in an amount of PLN 50 (approximately EUR 12) and charges for failure to pick up cash ordered for a payment in zlotys, amounting to 0.3% of the amount not collected, at a minimum of PLN 100 (approximately EUR 24).

16 The tariff also stipulated, in addition, that charges or commissions could be amended at most four times a year and could not be increased by more than 200% of the current amount. Furthermore, the tariff stipulated that changes in the amount of charges or commissions concerned could take place only no later than six months after the condition for introducing such a change arose and that the setting of rates of charges or commissions for activities for which the bank had not yet received charges or commissions, as well as for new products or services, was to take place taking into account the degree of labour-intensiveness of the transactions carried out in that connection and the level of costs incurred by the bank.

17 It follows from the request for a preliminary ruling that, in the course of performing the credit agreement, the bank calculated the interest not only on the amount of the credit that was actually paid to the consumer, but also on the amounts borrowed pursuant to various costs relating to the credit. As the referring court points out, if the interest had been calculated solely on the amount of the credit paid, the APRC would have been lower than that stated in the credit agreement.

18 In that context, Lexitor claimed from the bank, on the basis of Article 45 of the Law on Consumer Credit, payment of PLN 12 905,80 (approximately EUR 2 900), representing the sum of the interest and charges paid by that consumer under the agreement at issue, together with interest. Since it was unsuccessful, it brought an action before the Sąd Rejonowy dla m.st. Warszawy w Warszawie (District Court for the City of Warsaw, Poland), which is the referring court.

19 In support of its request, Lexitor submits that, when concluding the agreement at issue, the bank infringed the provisions of the Law on Consumer Credit concerning the obligation to provide information to the consumer, in particular Article 30(1)(7) of that law, which transposes Article 10(2)(g) of Directive 2008/48 into Polish law, in so far as the APRC specified in the agreement at issue was too high. The bank also infringed Article 30(1)(10) of that law, which transposes Article 10(2)(k) of that directive into Polish law, on the ground that the agreement at issue merely indicated the conditions under which the charges associated with the performance of that agreement could be increased and certain mechanisms for increasing those charges.

20 The referring court raises two issues. First, by its first two questions, it asks, in essence, whether Article 10(2)(g) and (k) of Directive 2008/48 must be interpreted as meaning that the situation at issue in the case pending before it does in fact constitute a failure by the bank to fulfil its obligation to provide information under that provision. It considers that a term in a consumer credit agreement which allows the creditor to charge interest not only on the amount of credit actually paid but also on the credit costs for which the consumer is liable constitutes an unfair term within the meaning of Directive 93/13. Since, under Article 6(1) of that directive and Article 385^1 of the Law on the Civil Code, in the version applicable to the dispute in the main proceedings, such a term is not binding on the consumer, there is no need to take it into account when calculating the APRC, with the result that the rate stated in the agreement at issue was inaccurate, since it was calculated taking the view that interest also had to be calculated on the costs of the credit charged to the consumer.

21 Second, as regards Article 10(2)(k) of Directive 2008/48, the referring court asks whether the mere fact of listing the circumstances in which an increase in the costs associated with the performance of the loan agreement may take place and the reference to certain mechanisms for increasing those costs may be regarded as sufficient to satisfy the requirements of that provision and, if that is not the case, whether insufficient information may be regarded as a lack of information justifying the application of a penalty under Article 23 of that directive.

22 By its third question, the referring court asks whether a penalty introduced into national law on the basis of Article 23 of Directive 2008/48 may be regarded as proportionate if, irrespective of the type of infringement of the obligation to provide information, it renders the credit free of interest and charges fixed in the credit agreement and no other penalty, which is less onerous and possibly more proportionate, can be applied.

23 In those circumstances the Sąd Rejonowy dla m.st. Warszawy w Warszawie (District Court for the City of Warsaw) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 10(2)(g) of [Directive 2008/48], read in the context of recitals 6, 8 and 31 thereof, be interpreted as meaning that where, because some of the terms of a consumer credit agreement are deemed to be unfair, the [APRC] stated by the creditor on conclusion of the agreement is higher than if it is assumed that the unfair contractual term is not binding, the creditor has failed to fulfil its obligation under that provision?

(2) Must Article 10(2)(k) of [Directive 2008/48], read in the context of recitals 6, 8 and 31 thereof, be interpreted as meaning that it is sufficient to inform the consumer of how often, in what situations, and by what maximum percentage charges related to performance of the agreement may be increased, even if the consumer is unable to verify whether a particular situation arises and the charge[s] may consequently be doubled?

(3) Must Article 23 of [Directive 2008/48], read in the context of recitals 6, 8, 9 and 47 thereof, be interpreted as precluding national law which provides for only one penalty for failure to fulfil the obligation imposed on the creditor to provide information, irrespective of the degree of the failure to do so and the effect thereof on the consumer’s decision to conclude the credit agreement, where that penalty involves making the credit free of interest and charges?’

Consideration of the questions referred

The first question

24 By its first question, the referring court asks, in essence, whether Article 10(2)(g) of Directive 2008/48 must be interpreted as meaning that the fact that a credit agreement includes an APRC, which proves to be overstated because certain terms of that agreement are subsequently found to be unfair, within the meaning of Article 6(1) of Directive 93/13, and, therefore, are not binding on the consumer, constitutes an infringement of the obligation to provide information laid down in that provision of Directive 2008/48.

25 In order to answer that question, it must be borne in mind, first, that Article 10(2) of Directive 2008/48 provides for full harmonisation as regards the information which must imperatively be included in a credit agreement (judgment of 21 March 2024, *Profi Credit Bulgaria (Services ancillary to a credit agreement)*, C-714/22, EU:C:2024:263, paragraph 50 and the case-law cited).

26 In particular, Article 10(2)(g) of that directive provides that the credit agreement is to specify, in a clear and concise manner, the APRC and the total amount payable by the consumer, calculated at the time the credit agreement is concluded.

27 Pursuant to Article 3(i) of Directive 2008/48, the APRC 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)'. In accordance with Article 19(1) of that directive, the APRC is to be calculated in accordance with a mathematical formula set out in Part I of Annex I to that directive.

28 In that regard, it must be borne in mind that Directive 2008/48 was adopted in order both 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. It is clear from recital 19 of that 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 APRC throughout the European Union, to enable them to compare those rates (judgment of 19 December 2019, *Home Credit Slovakia*, C-290/19, EU:C:2019:1130, paragraph 28 and the case-law cited).

29 The Court has had the opportunity to point out that, for a consumer, the total cost of credit, presented in the form of an APRC calculated according to a single mathematical formula, is of critical importance. 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 (judgment of 19 December 2019, *Home Credit Slovakia*, C-290/19, EU:C:2019:1130, paragraph 29 and the case-law cited).

30 Having regard, in particular, to that vital importance of the APRC for the consumer, the Court has stated that an indication of an APRC that does not accurately reflect all the costs referred to in Article 3(g) of Directive 2008/48 deprives consumers of the possibility of assessing the extent of their liability in the same way as a failure to include that rate (see, to that effect, judgment of 21 March 2024, *Profi Credit Bulgaria (Services ancillary to a credit agreement)*, C-714/22, EU:C:2024:263, paragraph 55).

31 It follows from the considerations set out in paragraphs 26 to 30 of the present judgment that Article 10(2)(g) of Directive 2008/48 must be interpreted as meaning that the obligation to mention, in a clear and concise manner, the APRC in a credit agreement cannot be limited to not understating it, since an incorrect indication of the APRC may also consist, in principle, in its overstatement.

32 To accept that a credit agreement may include an overstated APRC would risk depriving that indication of its practical use for the consumer and, therefore, would undermine the attainment of the objective pursued by the obligation laid down in Article 10(2)(g) of Directive 2008/48, as that objective is apparent from the case-law cited in paragraphs 28 and 29 of the present judgment.

33 That said, it must be observed that, in the present case, it is apparent from the request for a preliminary ruling that the referring court starts from the premiss, the merits of which it does not ask the Court to confirm, that it is necessary to disapply, in accordance with Article 6(1) of Directive 93/13, some of the terms of the agreement at issue, on the ground that they are unfair, with the result that the APRC calculated in disregard of those terms is lower than that initially indicated in that agreement.

34 In that regard, it must be borne in mind that Article 19(3) of Directive 2008/48 provides that the calculation of the APRC is to be based on the assumption that the credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in that agreement.

35 It follows that the obligation to mention the APRC, laid down in Article 10(2)(g) of that directive, is satisfied if the APRC mentioned in the agreement concerned corresponds to that calculated, in accordance with the mathematical formula set out in Part I of Annex I to that directive, on the basis of the 'total cost of the credit to the consumer', within the meaning of Article 3(g) of that directive, which includes the costs which the consumer is required to pay under the terms of that agreement, including those which subsequently prove unfair and do not bind the consumer.

36 In the light of all the foregoing considerations, the answer to the first question is that Article 10(2)(g) of Directive 2008/48 must be interpreted as meaning that the fact that a credit agreement specifies an APRC which proves to be overstated because certain terms of that agreement are subsequently found to be unfair, within the meaning of Article 6(1) of Directive 93/13, and, therefore, are not binding on the consumer, does not constitute in itself an infringement of the obligation to provide information laid down in that provision of Directive 2008/48.

The second question

37 By its second question, the referring court asks, in essence, whether Article 10(2)(k) of Directive 2008/48 must be interpreted as meaning that the fact that a credit agreement lists a number of circumstances which may lead to an increase in the charges connected with the performance of the contract, without, however, the consumer being in a position to determine whether they have arisen and have had an impact on those charges, constitutes a breach of the obligation to provide information laid down in that provision.

38 In that regard, it must be borne in mind that, under Article 10(2)(k) of Directive 2008/48, a credit agreement must specify in a clear and concise manner, in addition to the charges for maintaining one or several accounts recording both payment transactions and drawdowns together with the charges for using a means of payment, any other charges deriving from the agreement and the conditions under which those charges may be changed.

39 It follows from Article 10(2) of Directive 2008/48, read in the light of recital 31 of that directive that the requirement to include the information referred to in that provision 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 (judgment of 21 December 2023, *BMW Bank and Others*, C-38/21, C-47/21 and C-232/21, EU:C:2023:1014, paragraph 233 and the case-law cited).

40 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) of Directive 2008/48, are necessary for the proper performance of that agreement and, in particular, for the exercise of the consumer's rights (judgment of 21 December 2023, *BMW Bank and Others*, C-38/21, C-47/21 and C-232/21, EU:C:2023:1014, paragraph 234 and the case-law cited).

41 To enable a good understanding of that information in compliance with the requirement for clarity laid down in Article 10(2) of Directive 2008/48, 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 (judgment of 21 December 2023, *BMW Bank and Others*, C-38/21, C-47/21 and C-232/21, EU:C:2023:1014, paragraph 235 and the case-law cited).

42 More specifically, in order to satisfy the requirement that contractual terms be drafted in plain, intelligible language, it is of fundamental importance whether the credit agreement sets out transparently the conditions for repayment of the credit or the means of determining them, so that such a consumer can foresee, on the basis of clear, intelligible criteria, the economic consequences which derive from it (see, to that effect, judgment of 9 July 2015, *Bucura*, C-348/14, EU:C:2015:447, paragraph 54).

43 Therefore, the terms of the credit agreement must, inter alia, in transparent fashion, set out the reason for and method of the variation of the charges for the service to be provided, so that the consumer can foresee, on the basis of clear, intelligible criteria, the alterations that may be made to those charges (see, to that effect, judgment of 9 July 2015, *Bucura*, C-348/14, EU:C:2015:447, paragraph 60).

44 It follows that Article 10(2)(k) of Directive 2008/48 must be interpreted as meaning that the conditions under which the charges connected with the performance of a credit agreement may be amended must be specified in a clear and concise manner in that agreement, so that, inter alia, read in conjunction with other information, they contain no imprecision objectively capable of misleading an average consumer who is reasonably well informed and reasonably observant and circumspect as to the existence of events capable of triggering the change, and the link between the change in charges and that event (see, by analogy, judgment of 21 December 2023, *BMW Bank and Others*, C-38/21, C-47/21 and C-232/21, EU:C:2023:1014, paragraph 238).

45 In the present case, as is apparent from the information provided by the referring court as summarised in paragraph 14 of the present judgment, it is apparent that the conditions for altering the costs of performance of the agreement at issue were defined on the basis of indicators which are difficult for the consumer to verify, both before the conclusion of that agreement and during its performance. This includes, inter alia, the variable economic indicators, including those controlled by the bank itself, and certain other indicators, described in vague terms, referring to legal developments in a broad sense. Furthermore, the fact that the increase in charges at issue in the main proceedings was capped as to the amount, at a maximum of 200%, and as to the frequency, up to a maximum of four times a year, no later than six months after the condition arose, cannot invalidate that finding.

46 It is therefore for the referring court, in the light of the foregoing information, to examine the extent to which, in the case in the main proceedings, an average consumer, who is reasonably well informed and reasonably observant and circumspect, was able, in the light of the wording of

the contractual terms concerning the increase in charges associated with the performance of the contract at issue, to identify clearly changes in the extent of his or her liability during the performance of that contract.

47 In the light of all the foregoing considerations, the answer to the second question is that Article 10(2)(k) of Directive 2008/48 must be interpreted as meaning that the fact that a credit agreement lists a certain number of circumstances justifying an increase in charges connected with the performance of the agreement, without, however, a reasonably well-informed and reasonably observant and circumspect consumer being in a position to ascertain whether they have arisen and their effect on those charges, constitutes an infringement of the obligation to provide information laid down in that provision, where that indication is liable to call into question the possibility for that consumer to assess the extent of his or her liability.

The third question

48 By its third question, the referring court asks, in essence, whether Article 23 of Directive 2008/48, read in the light of recital 47 thereof, must be interpreted as precluding national legislation which provides, in the event of an infringement of the obligation to provide information imposed on the creditor in accordance with Article 10(2) of that directive, for a uniform penalty consisting of depriving the creditor of its right to interest and charges, irrespective of the level of seriousness of that infringement and its effect on the consumer's decision to conclude the credit agreement.

49 It follows from the wording of Article 23 of Directive 2008/48 read in the light of recital 47 thereof, that Member States are to lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to that directive and take all measures necessary to ensure that they are implemented. While the choice of penalties remains within the discretion of the Member States, the penalties thus provided for should be effective, proportionate and dissuasive. Accordingly, the severity of those penalties must be commensurate with the seriousness of the infringements for which they are imposed, in particular by ensuring a genuinely deterrent effect, while respecting the general principle of proportionality (see, to that effect, judgment of 21 March 2024, *Profi Credit Bulgaria (Services ancillary to a credit agreement)*, C-714/22, EU:C:2024:263, paragraph 52 and the case-law cited).

50 While it is for the referring court, which alone has jurisdiction to interpret and apply national law, to ascertain whether, having regard to all the circumstances of the main proceedings, the penalties at issue before it satisfy the requirements set out in paragraph 49 of the present judgment, the Court, ruling on a reference for a preliminary ruling, may nevertheless provide clarification in order to guide it in its examination (see, by analogy, judgment of 11 January 2024, *Nárokuj*, C-755/22, EU:C:2024:10, paragraph 42 and the case-law cited).

51 In the present case, the referring court has doubts as to the proportionality of the penalty provided for by national law, namely the creditor's forfeiture of entitlement to interest and costs. That court considers, in particular, that the conditions justifying an increase in the costs associated with the performance of the credit agreement in question are not relevant for the consumer at the time the agreement is concluded, in so far as the initial amount of those charges is relatively low in relation to the amount of credit granted.

52 Thus, as has been pointed out in paragraphs 39 to 42 of the present judgment, in order to enable the consumer to have full knowledge of the terms to which the performance of the agreement he or she has entered into will be subject, Article 10(2) of Directive 2008/48 requires that, at the time

that agreement is concluded, that consumer must have to hand all information which could have a bearing on the extent of his or her liability (see, to that effect, judgment of 9 November 2016, *Home Credit Slovakia*, C-42/15, EU:C:2016:842, paragraph 66).

53 Furthermore, it is apparent from the Court's case-law that a creditor's breach of a vitally important obligation in the context of Directive 2008/48 may be penalised, under national law, by the creditor's forfeiture of entitlement to interest and charges (judgment of 9 November 2016, *Home Credit Slovakia*, C-42/15, EU:C:2016:842, paragraph 69).

54 Such a penalty, although having serious consequences for the creditor, can be regarded as disproportionate only in the event of the failure to include or incorrectly to include those items of information which, among those referred to in Article 10(2) of Directive 2008/48, by their nature, cannot have a bearing on the consumer's ability to assess the extent of his or her liability (see, by analogy, judgment of 9 November 2016, *Home Credit Slovakia*, C-42/15, EU:C:2016:842, paragraph 72).

55 The creditor's obligation, in accordance with Article 10(2)(k) of Directive 2008/48, to specify, in the credit agreement, the conditions under which a change in the costs of performance of that agreement may be made is also of essential importance for the consumer, since, in order to assess the extent of his or her liability, he or she must be able to foresee, as is apparent from paragraphs 41 and 42 of the present judgment, any amendments to those charges on the basis of clear and comprehensible criteria and, therefore, the economic consequences for him or her which derive from it, even if the initial amount of those charges is relatively low in relation to the amount of the credit at issue.

56 Furthermore, it is apparent from the case-law of the Court that the consequences of a failure to comply with the obligations to provide information may vary considerably according to the specific item of information in question, the seriousness of the breach depending, moreover, in practice on the number and significance of the missing items of information in that credit agreement. Such infringements may, in particular, make it difficult for the consumer to exercise the rights under the credit agreement (see, to that effect, judgment of 24 October 2024, *Horyzont*, C-339/23, EU:C:2024:918, paragraph 34).

57 Therefore, subject to the matters which it is for the referring court to verify, the principle of proportionality does not preclude a Member State from choosing to provide for a uniform penalty consisting of depriving the creditor of its right to interest and charges for infringement of the various information obligations laid down in Article 10(2) of Directive 2008/48, even though the individual seriousness of the infringement of each of those obligations and the resulting consequences for the consumer may vary from case to case.

58 In the light of the foregoing considerations, the answer to the third question is that Article 23 of Directive 2008/48, read in the light of recital 47 thereof, must be interpreted as not precluding national legislation which provides, in the event of infringement of the obligation to provide information imposed on the creditor in accordance with Article 10(2) of that directive, for a uniform penalty, consisting of depriving the creditor of its right to interest and charges, irrespective of the individual level of seriousness of such an infringement, where that infringement is capable of calling into question the possibility for the consumer to assess the extent of his or her liability.

Costs

59 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs 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 (Tenth Chamber) hereby rules:

1. **Article 10(2)(g) 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**

   must be interpreted as meaning that the fact that a credit agreement refers to an annual percentage rate of charge, which proves to be overstated because certain terms of that agreement are subsequently found to be unfair, within the meaning of Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and, therefore, are not binding on the consumer, does not constitute, in itself, an infringement of the obligation to provide information laid down in that provision of Directive 2008/48.

2. **Article 10(2)(k) of Directive 2008/48**

   must be interpreted as meaning that the fact that a credit agreement lists a certain number of circumstances justifying an increase in the costs connected with the performance of the agreement, without, however, a reasonably well-informed and reasonably observant and circumspect consumer being in a position to ascertain whether they have arisen and their effect on those costs, constitutes an infringement of the obligation to provide information laid down in that provision, where that indication is liable to call into question the possibility for that consumer to assess the extent of his or her liability.

3. **Article 23 of Directive 2008/48, read in the light of recital 47 of that directive,**

   must be interpreted as not precluding national legislation which provides, in the event of infringement of the obligation to provide information imposed on the creditor in accordance with Article 10(2) of that directive, for a uniform penalty, consisting of depriving the creditor of its right to interest and charges, irrespective of the individual level of seriousness of such an infringement, where that infringement is capable of calling into question the possibility for the consumer to assess the extent of his or her liability.

[Signatures]