Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

14 March 2024*

(Reference for a preliminary ruling – Consumer protection – Directive 2014/17/EU – Article 25(3) – Credit agreements for consumers relating to residential immovable property – Early repayment – Compensation of the creditor – Loss of profit of the creditor – Method of calculating loss of profit)

In Case C-536/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Ravensburg (Regional Court, Ravensburg, Germany), made by decision of 8 August 2022, received at the Court on 10 August 2022, in the proceedings

**MW,**

**CY**

v

**VR Bank Ravensburg-Weingarten eG,**

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, Z. Csehi (Rapporteur), M. Ilešič, I. Jarukaitis and D. Gratsias, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– VR Bank Ravensburg-Weingarten eG, by T. Winter, Rechtsanwalt,

– the German Government, by J. Möller and M. Hellmann, acting as Agents,

– the European Commission, by C. Auvret, H. Tserepa-Lacombe and G. von Rintelen, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 28 September 2023,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 25(3) of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ 2014 L 60, p. 34).

2 The request has been made in proceedings between MW and CY, two consumers residing in Germany, on the one hand, and VR Bank Ravensburg-Weingarten eG, a credit institution established in Germany ('VR Bank'), on the other, concerning a claim for recovery of compensation paid on account of the early repayment of a consumer credit relating to residential immovable property.

### Legal context

#### *European Union law*

*Directive 2008/48/EC*

3 Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66) provides, in Article 16, entitled 'Early repayment':

'…

2. In the event of early repayment of credit the creditor shall be entitled to fair and objectively justified compensation for possible costs directly linked to early repayment of credit provided that the early repayment falls within a period for which the borrowing rate is fixed.

Such compensation may not exceed 1% of the amount of credit repaid early, if the period of time between the early repayment and the agreed termination of the credit agreement exceeds one year. If the period does not exceed one year, the compensation may not exceed 0.5% of the amount of credit repaid early.

…

4. Member States may provide that:

(a) such compensation may be claimed by the creditor only on condition that the amount of the early repayment exceeds the threshold defined by national law. That threshold shall not exceed EUR 10 000 within any period of 12 months;

(b) the creditor may exceptionally claim higher compensation if he can prove that the loss he suffered from early repayment exceeds the amount determined under paragraph 2.

If the compensation claimed by the creditor exceeds the loss actually suffered, the consumer may claim a corresponding reduction.

In this case, the loss shall consist of the difference between the initially agreed interest rate and the interest rate at which the creditor can lend out the amount repaid early on the market at the time of early repayment, and shall take into account the impact of early repayment on administrative costs.

…'

*Directive 2014/17*

4 Directive 2014/17 amended Directive 2008/48.

5 Recitals 5 to 7, 21 and 66 of Directive 2014/17 are worded as follows:

'(5) In order to facilitate the emergence of a smoothly functioning internal market with a high level of consumer protection in the area of credit agreements relating to immovable property and in order to ensure that consumers looking for such agreements are able to do so confident in the knowledge that the institutions they interact with act in a professional and responsible manner, an appropriately harmonised [EU] legal framework needs to be established in a number of areas, taking into account differences in credit agreements arising in particular from differences in national and regional immovable property markets.

(6) This Directive should therefore develop a more transparent, efficient and competitive internal market, through consistent, flexible and fair credit agreements relating to immovable property, while promoting sustainable lending and borrowing and financial inclusion, and hence providing a high level of consumer protection.

(7) In order to create a genuine internal market with a high and equivalent level of consumer protection, this Directive lays down provisions subject to maximum harmonisation in relation to the provision of pre-contractual information through the European Standardised Information Sheet (ESIS) standardised format and the calculation of the [annual percentage rate of charge (APRC)]. However, taking into account the specificity of credit agreements relating to immovable property and differences in market developments and conditions in Member States, concerning in particular market structure and market participants, categories of products available and procedures involved in the credit granting process, Member States should be allowed to maintain or introduce more stringent provisions than those laid down in this Directive in those areas not clearly specified as being subject to maximum harmonisation. Such a targeted approach is necessary in order to avoid adversely affecting the level of protection of consumers relating to credit agreements in the scope of this Directive. Member States should, for example, be allowed to maintain or introduce more stringent provisions with regard to knowledge and competence requirements for staff and instructions for completing the ESIS.

…

(21) … This Directive should not affect national general contract law such as the rules on the validity, formation or effect of a contract, in so far as general contract law aspects are not regulated in this Directive.

…

(66) A consumer's ability to repay the credit prior to the expiry of the credit agreement may play an important role in promoting competition in the internal market and the free movement of Union citizens as well as helping to provide the flexibility during the lifetime of the credit agreement needed to promote financial stability in line with the recommendations of the Financial Stability Board. However, substantial differences exist between the national principles and conditions under which consumers have the ability to repay their credit and the conditions under which such early repayment can take place. Whilst recognising the diversity in mortgage funding mechanisms and the range of products available, certain standards with regard to early repayment of credit are essential at Union level in order to ensure that consumers have the possibility to discharge their obligations before the date agreed in the credit agreement and the confidence to compare offers in order to find the best products to meet their needs. Member States should therefore ensure, whether through law or other means such as contractual clauses, that consumers have a right to early repayment. Nevertheless, Member States should be able to define the conditions for the exercise of such a right. These conditions may include time limitations on the exercise of the right, different treatment depending on the type of the borrowing rate or restrictions with regard to the circumstances under which the right may be exercised. Where the early repayment falls within a period for which the borrowing rate is fixed, exercise of the right may be made subject to the existence of a legitimate interest on the part of the consumer specified by the Member State. Such legitimate interest may for example occur in the event of divorce or unemployment. The conditions set by Member States may provide that the creditor is entitled to fair and objectively justified compensation for potential costs directly linked to early repayment of the credit. In the event where Member States provide that the creditor is entitled to compensation such compensation should be a fair and objectively justified compensation for potential costs directly linked to early repayment of the credit in accordance with the national rules on compensation. The compensation should not exceed the financial loss of the creditor.'

6 Article 1 of that directive, entitled 'Subject matter', provides:

'This Directive lays down a common framework for certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers secured by a mortgage or otherwise relating to residential immovable property …'

7 Article 2 of Directive 2014/17, entitled 'Level of harmonisation', provides, in paragraph 1:

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

8 Article 4 of that directive, entitled 'Definitions', provides:

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

…

(13) "Total cost of the credit to the consumer" means the total cost of the credit to the consumer as defined in point (g) of Article 3 of Directive [2008/48] including the cost of valuation of property where such valuation is necessary to obtain the credit but excluding registration fees for the transfer of ownership of the immovable property. It excludes any charges payable by the consumer for non-compliance with the commitments laid down in the credit agreement.

…'

9 Article 14 of Directive 2014/17, entitled 'Pre-contractual information', provides, in paragraphs 1 and 2:

'1. Member States shall ensure that the creditor and, where applicable, the credit intermediary or appointed representative, provides the consumer with the personalised information needed to compare the credits available on the market, assess their implications and make an informed decision on whether to conclude a credit agreement:

…

2. The personalised information referred to in paragraph 1, on paper or on another durable medium, shall be provided by means of the ESIS, as set out in Annex II.'

10 Article 25 of that directive, entitled 'Early repayment', provides:

'1. Member States shall ensure that the consumer has a right to discharge fully or partially his obligations under a credit agreement prior to the expiry of that agreement. In such cases, the consumer shall be entitled to a reduction in the total cost of the credit to the consumer, such reduction consisting of the interest and the costs for the remaining duration of the contract.

…

3. Member States may provide that the creditor is entitled to fair and objective compensation, where justified, for possible costs directly linked to the early repayment but shall not impose a sanction on the consumer. In that regard, the compensation shall not exceed the financial loss of the creditor. Subject to those conditions Member States may provide that the compensation may not exceed a certain level or be allowed only for a certain period of time.

4. Where a consumer seeks to discharge his obligations under a credit agreement prior to the expiry of the agreement, the creditor shall provide the consumer without delay after receipt of the request, on paper or on another durable medium, with the information necessary to consider that option. That information shall at least quantify the implications for the consumer of discharging his obligations prior to the expiry of the credit agreement and clearly set out any assumptions used. Any assumptions used shall be reasonable and justifiable.

…'

11 Annex II to Directive 2014/17, entitled 'European Standardised Information Sheet (ESIS)', includes, in Part A, an ESIS model. That model provides that that sheet is to contain, inter alia, the following information:

'…

9. Early repayment

You have the possibility to repay this loan early, either fully or partially.

…

(Where applicable) Exit charge: [insert amount or, where not possible, the method of calculation]

…'

12 Annex II also includes a Part B, entitled 'Instructions to complete the ESIS', worded as follows:

'In completing the ESIS, at least the following instructions shall be followed. Member States may however elaborate or further specify the instructions for completing the ESIS.

…

Section 9. Early repayment

…

(2) In the section on exit charges the creditor shall draw the consumer's attention to any exit charge or other costs payable on early repayment in order to compensate the creditor and where possible indicate their amount. In cases where the amount of compensation would depend on different factors, such as the amount repaid or the prevailing interest rate at the moment of the early repayment, the creditor shall indicate how the compensation will be calculated and provide the maximum amount that the charge might be, or where this is not possible, an illustrative example in order to demonstrate to the consumer the level of compensation under different possible scenarios.'

### *German law*

13 Paragraph 249 of the Bürgerliches Gesetzbuch (German Civil Code; 'the BGB'), entitled 'Nature and extent of compensation for damage', provides, in subparagraph 1:

'A person who is liable for compensation must restore the position that would exist if the circumstance giving rise to the obligation to pay compensation had not occurred.'

14 Under Paragraph 252 of the BGB, entitled 'Loss of profit':

'The damage to be compensated shall also comprise the loss of profit. "Profit" within the meaning of "loss of profit" is the profit which could reasonably be expected to be attained in the normal course of events or in the special circumstances, particularly due to the measures and precautions taken.'

15 Paragraph 490 of the BGB, entitled 'Extraordinary right to terminate the agreement', provides, in subparagraph 2:

'The borrower may give notice of early termination of a loan agreement under which the borrowing rate is fixed and the loan is secured by a mortgage or a charge on a ship, observing the notice periods laid down in the second sentence of Paragraph 488(3), if the borrower's legitimate interests so require and if six months have elapsed since the loan was received in full. Such an interest exists, in particular, where the borrower needs to put to a different use the property mortgaged as security for the loan. The borrower shall be required to compensate the creditor for the damage caused as a result of the early termination …'

16 Paragraph 500 of the BGB, entitled 'Borrower's right of termination; early repayment' provides, in subparagraph 2:

'The borrower may discharge his or her obligations under a consumer credit agreement early, and may do so at any time and in whole or in part. By way of derogation from the first sentence, the borrower of a consumer credit agreement relating to immovable property for which a fixed borrowing rate has been agreed may only discharge his or her obligations early, whether in whole or in part, in the course of the period in which the borrowing rate is fixed if he or she has a legitimate interest in doing so.'

17 Article 25 of Directive 2014/17 was transposed into German law by Paragraph 502 of the BGB, entitled 'Compensation for early repayment'. That provision provides:

'(1) In the event of early repayment, the creditor may require suitable compensation for the loss directly linked to the early repayment if, at the time of repayment, the borrower owes interest at a fixed borrowing rate. …

(2) The right to compensation for early repayment is excluded where:

…

2. in the agreement, the information concerning the term of the agreement, the borrower's right of termination or the calculation of the compensation for early repayment is insufficient.'

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

18 On 11 January 2019, the applicants in the main proceedings concluded with VR Bank a consumer credit agreement relating to immovable property concerning a net loan of EUR 236 000 for the purpose of purchasing an apartment. The interest rate of the loan was fixed until 30 January 2029. The credit agreement also contained provisions relating to early repayment of the loan and to compensation for early repayment. The clause relating to that compensation provided that the calculation of the financial loss sustained by the creditor as a result of early repayment was to be based on the 'asset/liability method', held to be permissible by the Bundesgerichtshof (Federal Court of Justice, Germany). That method is based on the principle that the creditor's loss of profit is calculated by taking into account the notional return that it could expect to obtain if it reinvested the funds released by the early repayment in mortgage bonds with maturities corresponding to the term of the loan.

19 Following the transfer of one of the applicants in the main proceedings by his employer, the applicants in the main proceedings sold the immovable property referred to in the preceding paragraph for a purchase price of EUR 255 000 in May 2020. They terminated the loan agreement with effect from 30 June 2020. By letter of 9 June 2020, VR Bank claimed compensation of EUR 27 614.17 from the applicants in the main proceedings for the early repayment of the loan. The applicants in the main proceedings paid that compensation, but, by letter of 19 April 2021, demanded that VR Bank repay it, taking the view that that compensation was not due. Since VR Bank refused to make that repayment, the applicants in the main proceedings brought an action before the Landgericht Ravensburg (Regional Court, Ravensburg, Germany), the referring court.

20 That court is uncertain whether Paragraph 502 of the BGB, pursuant to which VR Bank claims the right to payment of compensation for early repayment based on the 'asset/liability method' of calculation, is compatible with Article 25(3) of Directive 2014/17. In particular, it enquires, by its first two questions, whether the compensation of the creditor for costs linked to the early repayment of the loan, provided for in Article 25(3) of Directive 2014/17, also covers the creditor's loss of profit. As the case may be, that court would like to know the requirements of EU law for the purpose of calculating that loss of profit, in particular as regards the taking into account of income from reinvestment.

21 In that regard, the referring court takes the view, on the one hand, that the fact that, under the first sentence of Article 25(3) of Directive 2014/17, only possible costs directly linked to the early repayment of the credit may be claimed precludes the interest which the consumer would have had to pay if he or she had not given notice of early termination from being taken into account. In addition, under the second sentence of Article 25(1) of that directive, Member States must ensure that the consumer is entitled, in the event of early repayment, to a reduction in the total cost of the credit, such reduction consisting of the interest and the costs for the remaining duration of the contract, which might mean that the interest and the costs for the remaining duration of the contract are to cease to exist. On the other hand, according to the referring court, the possibility of limiting the compensation to a certain period of time might militate in favour of taking into account, for the purposes of the compensation of the creditor, the interest which the consumer would have had to pay if he or she had not given notice of early termination.

22 Furthermore, as regards the requirements of EU law for the purposes of the calculation of the loss of profit, the referring court observes that the wording of the first sentence of Article 25(3) of Directive 2014/17, according to which Member States may provide that the creditor is entitled to 'objective' compensation, implies that only actual costs specifically incurred may be taken into account in that calculation. By contrast, the second sentence of Article 25(4) of Directive 2014/17, pursuant to which, in the event of early repayment, the creditor is required to provide the consumer 'at least' with the information quantifying 'the implications for the consumer of discharging his obligations prior to the expiry of the credit agreement and clearly [setting] out any assumptions used', suggests that the creditor may take into account the flat-rate income from reinvestment of the sums derived from such repayment when calculating its loss of profit.

23 Lastly, the referring court asks whether the situation in which the consumer terminates a consumer credit agreement relating to residential immovable property on the basis of a right of termination provided for by national legislation before repaying the loan to the creditor early is also covered by the scope of Article 25 of Directive 2014/17. It is apparent from the request for a preliminary ruling that the referring court's question is explained by the coexistence in national law of two different methods of compensation of the creditor depending on whether early repayment is sought directly by the consumer, without notice of termination of the agreement

being given beforehand, on the basis of Paragraph 500 of the BGB, or takes place after the consumer exercises his or her extraordinary right to terminate the agreement, provided for in Paragraph 490 of the BGB.

24 In those circumstances, the Landgericht Ravensburg (Regional Court, Ravensburg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the concept of "fair and objective compensation … for possible costs directly linked to the early repayment" in Article 25(3) of [Directive 2014/17] be interpreted as meaning that the compensation also covers the creditor's loss of profit, in particular the future interest payments lost as a result of the early repayment?

(2) If Question 1 is answered in the affirmative:

Does EU law, specifically Article 25(3) of [Directive 2014/17], contain guidelines relating to the calculation of the creditor's loss of profit as regards the taking into account of the income stemming from the reinvestment of a consumer credit relating to immovable property which has been repaid early and if so, what are those guidelines?

In particular:

(a) Must the national rules for that calculation be linked to the manner in which the creditor actually uses the amount which was repaid early?

(b) May a national rule allow the creditor to calculate the compensation for early repayment on the basis of a notional reinvestment in safe capital market securities with maturities corresponding to the term of the credit agreement ("asset/liability method")?

(3) Is a situation in which the consumer first terminates a consumer credit agreement relating to immovable property on the basis of a right of termination provided for by the national legislature before repaying the loan to the creditor early also covered by the scope of Article 25 of [Directive 2014/17]?'

## Consideration of the questions referred

### *The third question*

25 By its third question, which it is appropriate to examine in the first place, the referring court seeks to ascertain, in essence, whether Article 25 of Directive 2014/17 is to be interpreted as meaning that it also applies where the consumer discharges his or her obligations early after terminating his or her consumer credit agreement relating to residential immoveable property under the conditions laid down by national legislation.

26 In so far as VR Bank contends, in essence, that that question is inadmissible on the ground that it is not relevant for the purposes of the resolution of the dispute in the main proceedings, it is sufficient to note that the issue of whether and to what extent Article 25 of Directive 2014/17

applies to a situation such as that at issue in the case in the main proceedings relates to the substance of that question and not to its admissibility, with the result that that objection of inadmissibility must be rejected.

27 It should be borne in mind that, in accordance with Article 25(1) of Directive 2014/17, Member States are to ensure that the consumer has a right to discharge fully or partially his or her obligations under a credit agreement prior to the expiry of that agreement.

28 However, in that regard, it should be noted that Directive 2014/17 does not contain any guidelines relating to the detailed rules and conditions for, and the legal consequences of, a borrower's extraordinary right to terminate an agreement. On the contrary, as is apparent from recital 21 thereof, that directive does not affect national general contract law, in particular the rules on the validity, formation or effect of a contract, in so far as general contract law aspects are not regulated in Directive 2014/17.

29 In addition, it should be borne in mind that, in accordance with Article 2(1) of Directive 2014/17, read in the light of recital 7 thereof, Member States are free, for the purposes of protecting consumers, to adopt more stringent provisions, in particular concerning market structure and market participants, categories of products available and procedures involved in the credit granting process.

30 However, when adopting those more stringent provisions, the Member States are obliged to ensure the effectiveness of Directive 2014/17 and, specifically, Article 25 of that directive, taking account of its aims (see, by analogy, judgment of 19 December 2019, *Rust-Hackner and Others*, C-355/18 to C-357/18 and C-479/18, EU:C:2019:1123, paragraphs 55 and 62).

31 In that regard, as is apparent from recital 66 of Directive 2014/17, Article 25 of that directive aims to enable consumers to discharge their obligations before the date agreed in the credit agreement so that they can make the best possible use of the single market, in particular by comparing offers in order to find the best products to meet their needs. In addition, it is apparent from recitals 5 and 6 of that directive that one of its objectives is to ensure a high level of consumer protection.

32 In those circumstances, as the Advocate General observed in points 82 and 83 of his Opinion, Article 25 of Directive 2014/17 grants the consumer a right of early repayment without specifying the detailed rules for the exercise of that right. Although, consequently, it is for national law to specify those detailed rules, it would, on the other hand, be contrary to the objective of that directive to take the view that the protection that it affords to the consumer depends on the choice that the consumer makes, as the case may be, of one or the other of the options provided for, namely to exercise his or her right to terminate the credit agreement, in accordance with national law, before early repayment.

33 In the light of the foregoing considerations, the answer to the third question is that Article 25 of Directive 2014/17 is to be interpreted as meaning that it also applies where the consumer discharges his or her obligations early after terminating his or her consumer credit agreement relating to residential immoveable property under the conditions laid down by national legislation.

***The first question***

34 By its first question, the referring court asks, in essence, whether the first sentence of Article 25(3) of Directive 2014/17 must be interpreted as precluding national legislation which, for the purposes of the fair and objective compensation for possible costs directly linked to the early repayment of the credit, to which the creditor is entitled under that provision, takes into account the creditor's loss of profit directly linked to that early repayment and, in particular, the loss of the remaining contractual interest that would have been paid on the loan.

35 According to settled case-law, for the purposes of interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgment of 24 October 2019, *Autorità Garante della Concorrenza e del Mercato (Direct award of a public service contract)*, C-515/18, EU:C:2019:893, paragraph 23).

36 In that regard, it should be borne in mind that, in accordance with Article 25(3) of Directive 2014/17, Member States may provide that the creditor is entitled to fair and objective compensation for possible costs directly linked to the early repayment of the credit, without, however, imposing a penalty on the consumer and with the compensation being limited to the financial loss of the creditor. In addition, Member States may provide that the compensation may not exceed a certain level or be allowed only for a certain period of time.

37 In the first place, as regards the concept of 'possible costs directly linked to the early repayment' of the credit, it should be noted that, although the content of the concept of 'costs' is somewhat ambiguous, the analysis of the context of the provision which refers to it provides useful guidance for its interpretation.

38 First of all, it should be noted that the second sentence of Article 25(3) of Directive 2014/17 limits the maximum amount of compensation payable to the creditor in the event of early repayment to the financial loss sustained by it. As the Advocate General observed, in essence, in point 29 of his opinion, such a maximum limit suggests that the EU legislature did not intend to preclude such a possible financial loss linked to the interest that the creditor will not receive as a result of early repayment from being taken into account in the calculation of that compensation.

39 Next, the possibility for Member States, as provided for in the third sentence of Article 25(3) of Directive 2014/17, to provide that the creditor may claim such compensation only for a certain period of time would be meaningless if only the additional administrative costs borne by the creditor as a result of early repayment could be taken into account in the calculation of the compensation, since those administrative costs arise only once and do not extend over a period of time.

40 Lastly, the reference made in the first sentence of Article 25(3) of Directive 2014/17 to 'possible' costs shows that the EU legislature did not authorise Member States to establish a compensation scheme solely for the administrative processing costs associated with early repayment actually borne by the creditor, but that that scheme may also cover the creditor's loss of profit, the amount of which is not yet established at the time of early repayment of the credit.

41 In the second place, that interpretation is confirmed by the scheme of Article 25 of Directive 2014/17. First, it is clear from the scope of the creditor's obligation to provide information that the EU legislature assumed that the creditor's right to compensation, left to the discretion of the Member States, may include the creditor's loss of profit.

42 Thus, Article 25(4) of Directive 2014/17 lays down the obligation for the creditor to provide the consumer with the necessary information to enable him or her to examine the possibility of repaying his or her loan early. Therefore, it cannot be ruled out that, in the event of such repayment, the consumer may have obligations vis-à-vis the creditor other than that of repaying it the balance of the loan. Similarly, the fact that that provision refers to 'any assumptions used' by the creditor shows that the calculation of the compensation due to the creditor in the event of early repayment is not limited solely to the situation in which the consumer pays the administrative processing costs associated with such repayment actually borne by the creditor.

43 In addition, it should be borne in mind that, in accordance with Article 14(1) and (2) of Directive 2014/17, the creditor is required to provide the consumer with pre-contractual information through the ESIS, a model of which is contained in Part A of Annex II to that directive. Section 9 of that ESIS model, entitled 'Early repayment', specifies the information to be provided to the consumer in this respect if such repayment requires the consumer to pay an 'exit charge'.

44 Section 9 of Part B of Annex II to Directive 2014/17 sets out the instructions to complete the ESIS as regards, specifically, early repayment. It is apparent from those instructions that the amount of compensation may depend on different factors, including 'the amount repaid or the prevailing interest rate at the moment of the early repayment'. Those elements show that the concept of 'compensation' may cover costs other than the additional administrative costs borne by the creditor as a result of early repayment, as those latter costs should not normally depend on the 'prevailing interest rate'. In addition, in accordance with Section 9 of Part B of Annex II, the creditor is required to draw the consumer's attention, in the section of the ESIS relating to the exit charge, to 'any exit charge or other costs payable on early repayment in order to compensate the creditor', which also shows that the concept of 'costs' in the case of early repayment may cover costs other than those additional administrative costs.

45 Secondly, Article 16(4)(b) of Directive 2008/48, which lays down the conditions under which Member States may allow the maximum limit for compensation provided for in Article 16(2) of that directive to be exceeded, states that those Member States may provide for the right of the creditor exceptionally to claim compensation in excess of that maximum limit if he or she can prove that the loss he or she suffered from early repayment exceeds the amount determined under that latter provision. That shows, as the Advocate General observed, in essence, in points 54 and 55 of his Opinion, that interest which will no longer be received following early repayment may be compensable and that the EU legislature regarded the financial loss of the creditor in the form of interest as being capable of being included in the potential costs that it incurs as a result of that repayment. There is nothing in the wording of Article 25(3) of Directive 2014/17 to indicate that the EU legislature intended to alter that position as regards credit agreements for consumers relating to residential immovable property.

46 In the third place, an interpretation which precludes the possibility for Member States to provide for compensation for loss of profit in the event of early repayment would be contrary to the objective of Directive 2014/17. Article 1 of that directive provides that that directive merely lays down a common framework to regulate certain aspects of credit agreements for consumers relating to residential immovable property and the penultimate sentence of recital 66 of that

directive states that compensation is to be calculated in accordance with the national rules on compensation. Thus, it follows from Article 1 and Article 25(3) of Directive 2014/17, read in the light of recital 66 thereof, that the EU legislature left to the Member States the choice of determining the permissible cost elements, provided that the compensation is fair and objectively justified compensation for potential costs directly linked to early repayment of the credit, that it does not constitute a penalty and that it does not exceed the creditor's financial loss.

47 As the Advocate General observed, in essence, in points 47 and 51 of his Opinion, the objectives of Directive 2014/17 are not limited to ensuring a high level of consumer protection, but also include the creation of an efficient and competitive internal market in credit agreements relating to residential immovable property. Therefore, the national legislature may, given the possibility left to it to determine the permissible cost elements, include as one of the heads of compensation the loss of profit sustained by the creditor where it considers it necessary to further the objectives of Directive 2014/17 in its own residential property market. In particular, as the Advocate General stated in point 50 of his Opinion, a scheme which does not allow creditors to be compensated for the loss of the remaining contractual interest that would have been paid on the loan may impel them to implement strategies with a potentially undesirable impact on the objectives of Directive 2014/17, such as limiting the range of credit products on offer or charging higher interest to consumers across the board.

48 In the light of the foregoing considerations, the answer to the first question is that the first sentence of Article 25(3) of Directive 2014/17 must be interpreted as not precluding national legislation which, for the purposes of the compensation of the creditor in the event of early repayment of a consumer credit relating to residential immovable property, takes into account the creditor's loss of profit borne directly by the creditor as a result of that early repayment and, in particular, the financial loss sustained by that creditor, as the case may be in connection with the remaining contractual interest that will no longer be received, provided that the compensation is fair and objective, that no penalty is imposed on the consumer and that the compensation does not exceed that financial loss.

### *The second question*

49 By its second question, the referring court asks, in essence, whether Article 25(3) of Directive 2014/17 must be interpreted as meaning that is contains guidelines relating to the calculation of the return resulting from the reinvestment by the creditor of the funds derived from a consumer credit relating to residential immovable property which has been repaid early, which are to be taken into account for the purpose of determining the creditor's loss of profit; and, if so, whether, under those guidelines, the national rules must be linked, inter alia, to the manner in which the creditor actually uses the amount repaid early; and, if so, whether a national rule may allow the creditor to calculate that loss of profit by taking into account the difference between the loss of the remaining contractual interest that would have been paid on the loan and the flat-rate return on the sum repaid early if it were reinvested in safe securities on the capital market with maturities corresponding to the term of that loan.

50 In the first place, it should be recalled that, as stated in paragraph 46 of the present judgment, the fact that recital 66 of Directive 2014/17 expressly refers to the national rules on compensation indicates that the first and second sentences of Article 25(3) of Directive 2014/17 merely provide that compensation is to be fair and objective, that it is to cover only direct loss, that it is not to constitute a penalty for the consumer and that it is not to exceed the creditor's financial loss.

Moreover, that directive does not contain any other specific information relating to the calculation of possible compensation, the details of that calculation thus being left to the discretion of the Member States.

51 That finding is confirmed, first, by the first and third sentences of Article 25(3) of Directive 2014/17, from which it is apparent, inter alia, that Member States 'may provide' conditions for compensation. Secondly, it is apparent from Section 9 of the ESIS model set out in Part A of Annex II to Directive 2014/17 that the creditor is to insert the amount or, where this is not possible, the method of calculation of any exit charge due, which presupposes the potential existence of several methods of calculating compensation for early repayment.

52 In the second place, as regards the question whether the national rules must be linked to the manner in which the creditor actually uses the amount repaid early, it has already been stated, in paragraph 40 of the present judgment, that the reference, in Article 25(3) of Directive 2014/17, to 'possible' costs borne by the creditor shows that the calculation of those costs need not necessarily be based on the actual use of the amount repaid early, but that the method of calculating those costs may also take into account the creditor's loss of profit, the amount of which is not yet established at the time of early repayment of the credit. As the Advocate General observed, in essence, in points 60 to 62 of his Opinion, provided that the requirements laid down in the first and second sentences of Article 25(3) of Directive 2014/17 are complied with, calculating the compensation payable using a method incorporating a hypothetical element is consistent with Directive 2014/17.

53 In the third place, as regards the permissibility of the 'asset/liability method', it is for the referring court to verify whether the calculation of the return resulting from the reinvestment of the funds derived from a credit which has been repaid early on the basis of a flat-rate reinvestment in safe securities on the capital market with identical maturities complies with the requirements laid down in Article 25(3) of Directive 2014/17, namely that the compensation is fair and objective, that no penalty is imposed on the consumer and that the compensation does not exceed the creditor's financial loss.

54 In the light of the foregoing considerations, the answer to the second question is that Article 25(3) of Directive 2014/17 must be interpreted as meaning that, in the event of early repayment of a consumer credit relating to residential immovable property, Member States must ensure that the calculation by the creditor of its loss of profit, taking into account the flat-rate return on the sum repaid early, has the result that the compensation is fair and objective, that it does not exceed the creditor's financial loss and that no penalty is imposed on the consumer. Directive 2014/17 does not require such a calculation to be linked to the manner in which the creditor actually uses the amount repaid early.

## Costs

55 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Fifth Chamber) hereby rules:

1. **Article 25 of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010**

   **must be interpreted as meaning that it also applies where the consumer discharges his or her obligations early after terminating his or her consumer credit agreement relating to residential immoveable property under the conditions laid down by national legislation.**

2. **The first sentence of Article 25(3) of Directive 2014/17**

   **must be interpreted as not precluding national legislation which, for the purposes of the compensation of the creditor in the event of early repayment of a consumer credit relating to residential immovable property, takes into account the creditor's loss of profit borne directly by the creditor as a result of that early repayment and, in particular, the financial loss sustained by that creditor, as the case may be in connection with the remaining contractual interest that will no longer be received, provided that the compensation is fair and objective, that no penalty is imposed on the consumer and that the compensation does not exceed that financial loss.**

3. **Articles 25(3) of Directive 2014/17**

   **must be interpreted as meaning that, in the event of early repayment of a consumer credit relating to residential immovable property, Member States must ensure that the calculation by the creditor of its loss of profit, taking into account the flat-rate return on the sum repaid early, has the result that the compensation is fair and objective, that it does not exceed the creditor's financial loss and that no penalty is imposed on the consumer. Directive 2014/17 does not require such a calculation to be linked to the manner in which the creditor actually uses the amount repaid early.**

[Signatures]