Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

27 February 2025*

(Reference for a preliminary ruling – Consumer protection – Credit agreements for consumers relating to residential immovable property – Directive 2014/17/EU – Article 13(1)(g) – General information on home loan products – Obligation to provide a 'representative example' – Directive 2005/29/EC – Article 7 – Banking institution offering different variants of loans – Information sheet including only examples of variable rate credit agreements)

In Case C-85/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 23 January 2024, received at the Court on 2 February 2024, in the proceedings

Verein für Konsumenteninformation

v

BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG,

THE COURT (First Chamber),

composed of F. Biltgen, President of the Chamber, T. von Danwitz, Vice-President of the Court, acting as Judge of the First Chamber, A. Kumin, I. Ziemele and S. Gervasoni (Rapporteur), Judges,

Advocate General: D. Spielmann,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Verein für Konsumenteninformation, by S. Langer, Rechtsanwalt,

– BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG, by M. Kellner and F. Liebel, Rechtsanwälte,

– the European Commission, by B.-R. Killmann and P. Vanden Heede, acting as Agents,

* Language of the case: German.

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 13(1)(g) 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 Verein für Konsumenteninformation, an Austrian consumer protection association ('VKI'), and BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG ('BAWAG'), an Austrian bank, regarding the failure to state, in the general information provided by the latter to consumers, representative examples of a fixed rate credit agreement and a credit agreement with alternating fixed interest rate and variable interest rate.

Legal context

European Union law

Directive 2014/17

3 Recitals 15, 20, 38 and 53 of Directive 2014/17 state:

'(15) The objective of this Directive is to ensure that consumers entering into credit agreements relating to immovable property benefit from a high level of protection. …

…

(20) In order to ensure a consistent framework for consumers in the area of credit as well as to minimise the administrative burden for creditors and credit intermediaries, the core framework of this Directive should follow the structure 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)] where possible, notably the notions that information included in advertising concerning credit agreements relating to residential immovable property be provided to the consumer by means of a representative example, that detailed pre-contractual information be given to the consumer by means of a standardised information sheet, that the consumer receives adequate explanations before concluding the credit agreement, a common basis be established for calculating the [annual percentage rate of charge ("the APRC")] excluding notary fees, and that creditors assess the consumer's creditworthiness before providing a credit. …

…

(38) Advertising tends to focus on one or several products in particular, while consumers should be able to make their decisions in full knowledge of the range of credit products on offer. In that respect, general information plays an important role in educating the consumer in relation to the broad range of products and services available and the key features thereof. Consumers should therefore be able at all times to access general information on credit products available. Where this requirement is not applicable to non-tied credit intermediaries, this should be without prejudice to their obligation to provide consumers with personalised pre-contractual information.

…

(53) As the APRC can at the advertising stage be indicated only through an example, such an 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. When determining the representative example, the prevalence of certain types of credit agreements in a specific market should be taken into account. It may be preferable for each creditor to base the representative example on an amount of credit which is representative of that creditor's own product range and expected customer base, as these may vary considerably among creditors. As regards the APRC disclosed in the [European Standardised Information Sheet ("the ESIS")], the preferences of and information provided by the consumer should where possible be taken into account and the creditor or credit intermediary should make it clear whether the information provided is illustrative or reflects the preferences and information given. In any event, the representative examples should not be contrary to the requirements of 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 and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ("Unfair Commercial Practices Directive") (OJ 2005 L 149, p. 22)]. …'

4 Article 13 of that directive, entitled 'General information', provides in paragraph 1 thereof:

'Member States shall ensure that clear and comprehensible general information about credit agreements is made available by creditors or, where applicable, by tied credit intermediaries or their appointed representatives at all times on paper or on another durable medium or in electronic form. In addition, Member States may provide that general information is made available by non-tied credit intermediaries.

Such general information shall include at least the following:

…

(e) types of available borrowing rate, indicating whether fixed or variable or both, with a short description of the characteristics of a fixed and variable rate, including related implications for the consumer;

…

(g) a representative example of the total amount of credit, the total cost of the credit to the consumer, the total amount payable by the consumer and the APRC;

…’

5 Article 14, paragraph 1, of that directive, entitled ‘Pre-contractual information’, provides:

‘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:

(a) without undue delay after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 20; and

(b) in good time before the consumer is bound by any credit agreement or offer.’

Directive 2005/29

6 Article 7 of Directive 2005/29, entitled ‘Misleading omissions’, provides, in paragraph 1 thereof:

‘A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.’

Austrian law

7 Paragraph 7(7) of the Bundesgesetz über Hypothekar- und Immobilienkreditverträge und sonstige Kreditierungen zu Gunsten von Verbrauchern (Hypothekar- und Immobilienkreditgesetz) (Federal law on mortgage and immovable property loans and other consumer credit agreements (Law on mortgage and immovable property loans)) of 26 November 2015 (BGBl. I, 135/2015), in its version applicable to the dispute in the main proceedings (‘Law on mortgage and immovable property loans’), transposes, in identical terms, point (g) of Article 13(1) of Directive 2014/17.

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

8 BAWAG is a banking institution and offers its services throughout Austria. That bank provides consumers with general information on the mortgage and immovable property credit agreements it offers in an ‘Information Sheet for Loans relating to Residential Immovable Property’.

9 Pages 2 to 4 of the information sheet deal with loans for the construction of a dwelling not secured by a mortgage and conclude with a ‘representative example’. Pages 5 to 7 of that information sheet deal with loans for the construction of a dwelling secured by a mortgage and also conclude with a representative example. The representative example provided for a loan for the construction of a dwelling not secured by a mortgage is a loan of EUR 35 000 with a term of 180 months, at a variable annual nominal interest rate of 4.58%. The representative example provided for a loan for the

construction of a dwelling secured by a mortgage is a loan of EUR 200 000 with a term of 240 months, at a variable annual nominal interest rate of 0.5%. Both examples state the amount of interest payable, the effective interest rate and the total cost of the loan.

10 Among its products, BAWAG offers, in addition to credit agreements with exclusively variable interest rates, credit agreements with exclusively fixed interest rates and credit agreements with alternating variable interest rate periods and fixed interest rate periods.

11 VKI brought an action seeking to prohibit BAWAG from including, in the information sheet referred to in paragraph 8 above, only an example of a variable rate credit agreement, without also providing an example of a fixed rate credit agreement and an example of a mixed rate credit agreement, since it offers those three types of interest rates for those credit agreements.

12 In its defence, BAWAG contends that that information sheet does not seek to provide consumers with detailed pre-contractual information tailored to individual cases and specific customers. In its view, it cannot be required that a separate example be included for every conceivable form of interest rate in that information sheet.

13 The court hearing the case at first instance found that an example of a fixed rate credit agreement should have appeared in that information sheet and granted, in part, the claims submitted by VKI.

14 In contrast, the appeal court found that Paragraph 7(7) of the Law on mortgage and immovable property loans required only one representative example in support of the information provided in the information sheet and that BAWAG was therefore not required to also provide an example of a fixed interest rate credit agreement in its information sheet.

15 VKI brought an appeal on a point of law against the judgment of the appeal court before the Oberster Gerichtshof (Supreme Court, Austria), which is the referring court.

16 The referring court asserts that the requirement to provide representative examples for each of the three types of credit agreements offered would go beyond the requirement of what general information must contain, but accepts that this interpretation of Article 13(1)(g) of Directive 2014/17 is not necessarily required.

17 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 13(1)(g) of Directive [2014/17] to be interpreted as meaning that there is no infringement thereof where a creditor who offers loans for the construction of a dwelling, whether or not secured by a mortgage, each in several variants ((a) loans with exclusively fixed interest rate periods, (b) loans with alternating variable interest rate and fixed interest rate periods, and (c) loans with exclusively variable interest rates), provides, in both instances, a (single) representative example for a loan for the construction of a dwelling not secured by a mortgage and for a loan for the construction of a dwelling secured by a mortgage, or does that provision require that a representative example be provided for each type of interest rate?’

Consideration of the question referred

18 By its question, the referring court asks, in essence, whether Article 13(1)(g) of Directive 2014/17 must be interpreted as meaning that a creditor who offers, for the purpose of financing the construction of a dwelling, credit agreements, whether or not secured by a mortgage, at a fixed interest rate, at a variable interest rate or with alternating variable interest rate and fixed interest rate periods, must provide a representative example for each of the three types of credit agreements offered.

19 As a preliminary point, it should be borne in mind that the purpose of Directive 2014/17, as is apparent from Article 1 thereof, is to lay down a common framework for consumer credit agreements relating to residential immovable property.

20 Article 13(1) of that directive, entitled 'General information', lists the general information relating to credit agreements concerning residential immovable property which Member States must ensure that creditors make permanently available to consumers.

21 As part of that general information, Article 13(1) provides, in point (g) thereof, that the creditor must, inter alia, provide 'a representative example of the total amount of credit, the total cost of the credit to the consumer, the total amount payable by the consumer and the APRC'.

22 According to the Court's 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 (judgment of 14 March 2024, *VR Bank Ravensburg-Weingarten*, C-536/22, EU:C:2024:234, paragraph 35 and the case-law cited).

23 In the first place, the wording of Article 13(1)(g) of Directive 2014/17 suggests, through the use of the indefinite article 'a', that creditors are only expected to provide one example to consumers in their general information. Furthermore, it states that that example must be 'representative', not of the different types of credit agreements offered by the creditor, but 'of the total amount of credit, the total cost of the credit to the consumer, the total amount payable by the consumer and the APRC'.

24 It follows that the purpose of the representative example to be provided does not appear to be illustrative of the diversity of credit agreements offered by the creditor, but to make consumers understand, for their general information, the meaning and structure of the various concepts relating to credit.

25 In the second place, the context in which Article 13(1)(g) of Directive 2014/17 occurs supports that literal interpretation.

26 First, while Article 13(1)(e) of that directive requires that the 'general information' include a reference to the 'types of available borrowing rate, indicating whether fixed or variable or both', point (g) of Article 13(1) contains no indication that the representative example must be provided for each type of credit agreement offered. It must be found that, if the EU legislature had intended to require creditors to provide a representative example for all types of interest rates offered, it would have expressly stated so.

27 Secondly, it follows from the reading of Directive 2014/17 as a whole that it establishes a two-level mandatory information system for consumers.

28 The first level consists of 'general information', referred to in Article 13 of that directive. According to the terms of recital 38 thereof, that information should enable consumers to make their decisions in full knowledge by 'educating [them] in relation to the broad range of products and services available and the key features thereof. Consumers should therefore be able at all times to access general information on credit products available'.

29 The second level of information that consumers must be entitled to consists of the 'pre-contractual information', referred to in Article 14 of that directive. Article 14 states in paragraph 1 thereof that they include 'the personalised information needed [by consumers] to compare the credits available on the market, assess their implications and make an informed decision on whether to conclude a credit agreement'.

30 Thus, as BAWAG and the European Commission state in their observations submitted to the Court, the purpose of 'general information' is not to provide consumers with detailed explanations tailored to each type of credit agreement offered by the creditor and to each individual case, although such explanations must be communicated to them under the 'pre-contractual information'. They are only intended to inform consumers in their search for credit at a preliminary stage of their thinking process. Consequently, it would be inappropriate to adopt an interpretation of Article 13(1)(g) of Directive 2014/17 requiring that that information be exhaustive. Such an interpretation would also call into question the distinction between general information and pre-contractual information made by the EU legislature.

31 In the third place, as regards the objectives pursued by Directive 2014/17, it should be recalled that that directive aims, as is apparent from recital 15 thereof, to ensure that consumers entering into credit agreements benefit from a high level of protection.

32 In that regard, recital 53 of Directive 2014/17 stresses, in particular, that the representative examples should not be contrary to the requirements of Directive 2005/29.

33 The latter directive, which aims to combat unfair commercial practices towards consumers, provides in Article 7(1) thereof that 'a commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.'

34 In the present case, the provision, for credit agreements secured by a mortgage, of a representative example, relating to a variable rate loan, and, for agreements not secured by a mortgage, of a representative example, also relating to a variable rate loan, does not appear to be such as to deprive the consumer of material information, within the meaning of Article 7(1) of Directive 2005/29.

35 In that regard, it should be noted that the general information that consumers need in order to make an informed decision about a fixed interest rate loan, a variable interest rate loan or a mixed interest rate loan does not lie in the information that the representative example must contain, namely the total amount of credit, the total cost of the credit to the consumer, the total amount payable by the consumer and the APRC, but in the fact that that information is certain in the first type of loan and uncertain in the other two.

36 Those essential features of credit agreements with fixed and/or variable interest rates must be included in the general information pursuant to Article 13(1)(e) of Directive 2014/17 and not under Article 13(1)(g) thereof in the representative example.

37 The representative example aims to ensure a high level of consumer protection in combination with, first, the other general information listed in Article 13(1) of Directive 2014/17 and, secondly, pre-contractual information tailored to the personal situation of each individual consumer.

38 In those circumstances, the fact that a creditor, who offers credit agreements with fixed, variable and mixed interest rates, provides, in its general information, only a representative example of a credit agreement with a variable interest rate secured by a mortgage and a representative example of a credit agreement with a variable interest rate not secured by a mortgage does not deprive the consumer of material information and cannot therefore be regarded as evidence of a misleading commercial practice by the creditor, within the meaning of Article 7(1) of Directive 2005/29. Consequently, the inclusion in the general information of a single representative example is consistent with the objective of Directive 2014/17.

39 Lastly, it should be pointed out that the example referred to in Article 13(1)(g) of Directive 2014/17 must, as stated in paragraph 23 of the present judgment, be 'representative'.

40 In that regard, recital 53 of Directive 2014/17 states that, 'when determining the representative example, the prevalence of certain types of credit agreements in a specific market should be taken into account. It may be preferable for each creditor to base the representative example on an amount of credit which is representative of that creditor's own product range and expected customer base, as these may vary considerably among creditors.'

41 Thus, it follows from that recital that, in assessing the representative nature of the example to be provided, some factors may be taken into consideration, namely, for example, the average duration and total amount of credit granted for the type of credit agreement under consideration and the prevalence of certain types of credit agreements in a specific market. As regards the APRC disclosed in the ESIS, the preferences of and information provided by the consumer should, where possible, be taken into account and the creditor or credit intermediary should make it clear whether the information provided is illustrative or reflects the preferences and information given. In any event, as noted in paragraph 32 of the present judgment, the representative examples should not be contrary to the requirements of Directive 2005/29.

42 It is for the referring court, in particular, in the light of that guidance, to assess whether the example provided by BAWAG in its general information, pursuant to Article 13(1)(g) of Directive 2014/17, is representative.

43 In the light of the foregoing, the answer to the question referred is that Article 13(1)(g) of Directive 2014/17 must be interpreted as meaning that a creditor who offers, for the purpose of financing the construction of a dwelling, credit agreements, whether or not secured by a mortgage, at a fixed interest rate, at a variable interest rate or with alternating variable interest rate and fixed interest rate periods, is required to provide, in the general information, only one example of the loans it offers, provided that that example is representative.

Costs

44 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 (First Chamber) hereby rules:

Article 13(1)(g) 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 a creditor who offers, for the purpose of financing the construction of a dwelling, credit agreements, whether or not secured by a mortgage, at a fixed interest rate, at a variable interest rate or with alternating variable interest rate and fixed interest rate periods, is required to provide, in the general information, only one example of the loans it offers, provided that that example is representative.

[Signatures]