Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

26 March 2020*

(Reference for a preliminary ruling — Consumer protection — Directive 2008/48/EC — Credit agreements for consumers — Right of withdrawal — Time limit for the exercise of that right — Requirements concerning the information to be included in a credit agreement — Information notice merely referring to a series of national provisions)

In Case C-66/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Saarbrücken (Regional Court, Saarbrücken, Germany), made by decision of 17 January 2019, received at the Court on 29 January 2019, in the proceedings

JC

v

Kreissparkasse Saarlouis,

THE COURT (Sixth Chamber),

composed of M. Safjan (Rapporteur), President of the Chamber, L. Bay Larsen and N. Jääskinen, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– JC, by T. Röske, Rechtsanwalt,

– Kreissparkasse Saarlouis, by G. Rohleder, Rechtsanwalt,

– the German Government, by J. Möller, M. Hellmann, E. Lankenau and A. Berg, acting as Agents,

– the Czech Government, by M. Smolek, J. Vláčil and S. Šindelková, acting as Agents,

– the European Commission, by G. Goddin and B.-R. Killmann, acting as Agents,

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

* Language of the case: German.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 10(2)(p) 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; and corrigenda OJ 2009 L 207, p. 14; OJ 2010 L 199, p. 40; and OJ 2011 L 234, p. 46).

2 The request has been made in proceedings between JC, a consumer, and the Kreissparkasse Saarlouis, concerning JC's exercise of his right of withdrawal from the credit agreement concluded with the Kreissparkasse Saarlouis.

Legal context

European Union law

3 Recitals 8 to 10, 14 and 31 of Directive 2008/48 state:

'(8) It is important that the market should offer a sufficient degree of consumer protection to ensure consumer confidence. …

(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. …

(10) … this Directive should be without prejudice to the application by Member States, in accordance with Community law, of the provisions of this Directive to areas not covered by its scope. A Member State could thereby maintain or introduce national legislation corresponding to the provisions of this Directive or certain of its provisions on credit agreements outside the scope of this Directive, for instance on credit agreements involving amounts less than EUR 200 or more than EUR 75 000. Furthermore, Member States could also apply the provisions of this Directive to linked credit which does not fall within the definition of a linked credit agreement as contained in this Directive. …

…

(14) Credit agreements covering the granting of credit secured by real estate should be excluded from the scope of this Directive. That type of credit is of a very specific nature. Also, credit agreements the purpose of which is to finance the acquisition or retention of property rights in land or in an existing or projected building should be excluded from the scope of this Directive. However, credit agreements should not be excluded from the scope of this Directive only because their purpose is the renovation or increase of value of an existing building.

…

(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.'

4 Under Article 2 of that directive, headed ‘Scope’:

‘1. This Directive shall apply to credit agreements.

2. This Directive shall not apply to the following:

(a) credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on immovable property or secured by a right related to immovable property;

(b) credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building;

(c) credit agreements involving a total amount of credit less than EUR 200 or more than EUR 75 000;

…’

5 Article 10 of that directive, headed ‘Information to be included in credit agreements’, provides, in paragraph 2(p) thereof:

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

…

(p) the existence or absence of a right of withdrawal, the period during which that right may be exercised and other conditions governing the exercise thereof, including information concerning the obligation of the consumer to pay the capital drawn down and the interest in accordance with Article 14(3)(b) and the amount of interest payable per day.’

6 Article 14(1) of that directive, that article being headed ‘Right of withdrawal’, provides:

‘The consumer shall have a period of 14 calendar days in which to withdraw from the credit agreement without giving any reason.

That period of withdrawal shall begin

(a) either from the day of the conclusion of the credit agreement, or

(b) from the day on which the consumer receives the contractual terms and conditions and information in accordance with Article 10, if that day is later than the date referred to in point (a) of this subparagraph.’

7 Article 22(1) of Directive 2008/48, that article being headed ‘Harmonisation and imperative nature of this Directive’, provides:

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

German law

8 Paragraph 492 of the Bürgerliches Gesetzbuch (German Civil Code), in the version applicable to the dispute in the main proceedings ('the BGB'), provided:

'1. Provided that no stricter formal requirements apply, consumer credit agreements must be concluded in writing. …

2. The agreement must include the information required for each consumer credit agreement under Article 247(6) to (13) of the Einführungsgesetz zum Bürgerlichen Gesetzbuch [(Introductory Law to the Civil Code), in the version applicable to the dispute in the main proceedings ('the EGBGB')].

…'

9 Paragraph 495 of the BGB stated:

'1. In the case of consumer credit agreements, the borrower shall have a right of withdrawal under Paragraph 355.

2. Paragraphs 355 to 359a shall apply provided that:

(1) the mandatory information referred to in Article 247(6)(2) of the EGBGB replaces the information notice about the withdrawal;

(2) the period of withdrawal does not begin
   (a) before the conclusion of the agreement, and
   (b) before the borrower has received the mandatory information in accordance with Paragraph 492(2); and

(3) the borrower … also reimburses any expenditure that the creditor has incurred vis-à-vis public authorities and which the creditor cannot recover.'

10 Under Paragraph 503(1) of the BGB:

'Paragraph 497(2) and the first, second, fourth and fifth sentences of Paragraph 497(3), as well as Paragraphs 499, 500 and 502, shall not apply to agreements for which the provision of the loan is contingent upon being secured on immovable property and takes place under conditions customary for agreements secured on immovable property and for the interim financing thereof.'

11 Article 247(6)(1) of the EGBGB listed the information that must be included in a consumer credit agreement. The further information to be mandatorily included in the agreement was laid down in the first and second sentences of Article 247(6)(2), Article 247(7), Article 247(8)(2) (as regards agreements with additional benefits), point 2 of the second sentence of Article 247(12)(1) (as regards linked agreements and financial aid in return for payment), and Article 247(13)(1) (where a loan broker is involved) of the EGBGB.

12 Article 247(9) of the EGBGB provided that, in respect of the agreements referred to in Paragraph 503 of the BGB, by way of derogation from subparagraphs 3 to 8, 12 and 13, the information referred to in paragraph 3(1), points 1 to 7, 10 and 13, and paragraph 3(4) and paragraph 8 of Article 247 of the EGBGB must mandatorily be included in the pre-contractual information and in the credit agreement entered into by the consumer. That provision stated that the agreement must also include information relating to the right of withdrawal under Article 247(6)(2).

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

13 In 2012, JC, in his capacity as consumer, concluded a credit agreement secured by a mortgage for EUR 100 000 with a credit institution, namely the Kreissparkasse Saarlouis, with a borrowing rate of 3.61% per annum fixed until 30 November 2021 ('the agreement at issue').

14 Article 14 of that agreement, headed 'Information regarding withdrawal', was worded as follows:

'Right of withdrawal

The borrower may withdraw from the contractual obligation, without having to provide any reasons, within 14 days and in writing (for example, by letter, fax or email). The period begins after conclusion of the agreement, but not before the borrower has received all mandatory information referred to in Paragraph 492(2) of the [BGB] (for example, information concerning the type of loan, information relating to the net loan amount, information concerning the contractual term). …'

15 By email of 30 January 2016, JC made a declaration to the Kreissparkasse Saarlouis to the effect that he was withdrawing from his contractual obligation under the credit agreement.

16 Subsequently, JC brought an action before the Landgericht Saarbrücken (Regional Court, Saarbrücken, Germany) seeking a declaration, first, that the claim of the Kreissparkasse Saarlouis under the agreement at issue does not exceed EUR 66 537.57, calculated as of 30 April 2018; secondly, that the Kreissparkasse Saarlouis had failed in good time to accept payment of that sum; and, thirdly, that the Kreissparkasse Saarlouis is liable to compensate JC for all damage arising from the refusal to accept the settlement of the claim. In the alternative, JC claimed that, as from the time of receipt of the declaration of withdrawal, the Kreissparkasse Saarlouis was no longer entitled to the interest due under the agreement at issue and the repayment of the loan according to the terms of that agreement.

17 The Kreissparkasse Saarlouis sought to have the action brought by JC dismissed, on the ground that it had properly informed JC of his right of withdrawal and that the period for the exercise of that right had expired when JC sought to rely on it.

18 The referring court states that, under Article 2(2)(a) of Directive 2008/48, that directive does not apply to credit agreements secured by a mortgage. According to that court, the German legislature nevertheless took up the option, provided in recital 10 of that directive, to apply the rules laid down by that directive to areas not covered by its scope, similar to the rules applicable to such agreements. In those circumstances, it considers that the interpretation of the provisions of that directive is necessary for the resolution of the dispute in the main proceedings and that the Court has jurisdiction to make that interpretation in the present case, relying in that regard on the judgment of 17 July 1997, *Giloy* (C-130/95, EU:C:1997:372).

19 As regards the substance of the case, the referring court has doubts as to whether the reference to Paragraph 492(2) of the BGB in the agreement at issue in respect of the information to be mandatorily provided to the borrower satisfies the requirement under Article 10(2)(p) of Directive 2008/48 that the credit agreement specify, in a 'clear and concise' manner, the existence or absence of a right of withdrawal, and the arrangements for the exercise of that right.

20 In particular, the referring court states that that provision of the BGB also refers to another national provision, namely Article 247(6) to (13) of the EGBGB, and that article in turn makes reference to other provisions of the BGB. In those circumstances, the consumer must, in order to identify all the mandatory information whose disclosure determines the starting point of the period during which he or she may withdraw from the agreement, have recourse to national provisions contained in various legislative acts.

21 Furthermore, the consumer must determine, in accordance with Article 247(9) of the EGBGB, whether the agreement concluded with the seller or supplier concerns a loan secured on immovable property within the meaning of Paragraph 503 of the BGB, and that matter, according to the referring court, cannot be resolved by an average consumer who has no legal training.

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

'(1) Is Article 10(2)(p) of [Directive 2008/48] to be interpreted as meaning that the mandatory information in relation to the "period during which the right of withdrawal may be exercised" or "other conditions governing the exercise thereof" must also include the requirements governing the start of the withdrawal period?

(2) If the answer to the first question is in the affirmative:

Does Article 10(2)(p) of [Directive 2008/48] preclude an interpretation to the effect that withdrawal information is "clear" and "concise" if it does not itself include in full the mandatory information to be provided with regard to the start of the withdrawal period, but in this respect refers to a provision of national law — in the present case, Paragraph 492(2) of the [BGB] in the version valid up to 12 June 2014 — which in turn refers to further national provisions — in the present case, Article 247(6) to (13) of the [EGBGB] in the version valid up to 12 June 2014 — and the consumer is therefore obliged to read numerous legislative provisions in a variety of legislative texts so as to gain clarity as to what mandatory information must be provided in order for the withdrawal period to start to run in the case of his or her loan agreement?

(3) If Question 2 is answered in the negative (and there are no concerns in principle against a reference to provisions of national law):

Does Article 10(2)(p) of [Directive 2008/48] preclude an interpretation to the effect that withdrawal information is "clear" and "concise" if the reference to a provision of national law — in the present case, Paragraph 492(2) of the [BGB] in the version valid up to 12 June 2014 — and the further reference — in the present case, to Article 247(6) to (13) of the [EGBGB] in the version valid up to 12 June 2014 — necessarily means that the consumer has to carry out a process of legal inference beyond simply reading the provisions — for instance, as to whether the loan was granted to him or her under conditions customary for contracts secured by mortgage and the interim financing thereof or whether linked agreements exist, so that he or she can gain clarity as to what mandatory information must be provided in order for the period of withdrawal to start to run in the case of his or her loan agreement?'

Admissibility of the request for a preliminary ruling

23 In its written observations, the German Government submits that the Court does not have jurisdiction to answer the questions referred on the ground that Directive 2008/48 does not apply to credit agreements secured by mortgages and that the German legislature has not decided, despite the option provided to it by the EU legislature, to apply the rules provided by that directive to areas outside of its scope, such as those of consumer credit agreements secured by mortgages, at issue in the main proceedings.

24 The German Government also states that, before the adoption of Directive 2008/48, German law already provided for rules governing such agreements. Since those were considered to correspond to the provisions of that directive, the national legislature merely deemed it appropriate to consolidate the provisions concerning consumer agreements and agreements secured by a mortgage.

25 In that regard, it must be recalled that, pursuant to Article 2(2)(a) of Directive 2008/48, that directive does not apply to credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on immovable property or secured by a right related to immovable property.

26 However, the EU legislature provided, as is clear from recital 10 of that directive, that a Member State is allowed to maintain or introduce national legislation corresponding to the provisions of that directive or certain of its provisions on credit agreements outside the scope of that directive.

27 It is apparent from the order for reference that the German legislature decided to apply the rules provided for by Directive 2008/48 to agreements such as the one at issue.

28 The Court has held on a number of occasions that it has jurisdiction to give preliminary rulings on questions concerning provisions of European Union law in situations where the facts at issue in the main proceedings were outside the scope of European Union law and therefore fell within the competence of the Member States alone, but where those provisions of European Union law had been rendered applicable by domestic law due to a reference made by that law to the content of those provisions (judgment of 12 July 2012, *SC Volksbank România*, C-602/10, EU:C:2012:443, paragraph 86 and the case-law cited).

29 The Court has stated, inter alia, that where, in regulating situations outside the scope of the EU measure concerned, national legislation adopts the same solutions as those adopted in that measure, it is clearly in the interest of the European Union that, in order to forestall future differences of interpretation, provisions taken from that measure should be interpreted uniformly (judgment of 19 October 2017, *Solar Electric Martinique*, C-303/16, EU:C:2017:773, paragraph 26 and the case-law cited).

30 In addition, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual and legal material necessary to give a useful answer to the questions submitted to it (judgment of 3 July 2019, *UniCredit Leasing*, C-242/18, EU:C:2019:558, paragraph 46 and the case-law cited).

31 Furthermore, the Court has repeatedly held that it is not for it, in the context of a reference for a preliminary ruling, to rule on the interpretation of national provisions and rule whether the interpretation of the national courts is correct, as such an interpretation falls within the exclusive jurisdiction of the national courts (judgment of 3 July 2019, *UniCredit Leasing*, C-242/18, EU:C:2019:558, paragraph 47 and the case-law cited).

32 In those circumstances, the request for a preliminary ruling must be held to be admissible.

Consideration of the questions referred

The first question

33 By its first question, the referring court asks, in essence, whether Article 10(2)(p) of Directive 2008/48 must be interpreted as meaning that the information to be specified, in a clear and concise manner, in a credit agreement in accordance with that provision includes information on how the period of withdrawal, provided for in the second subparagraph of Article 14(1) of that directive, is to be calculated.

34 Under Article 10(2)(p) of that directive, the credit agreement must specify, in a clear and concise manner, not only 'the existence or absence of a right of withdrawal' and 'the period during which that right may be exercised', but also 'conditions governing the exercise thereof'.

35 As is apparent from Article 10(2) of Directive 2008/48, read in the light of recital 31 of that directive, 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 9 November 2016, *Home Credit Slovakia*, C-42/15, EU:C:2016:842, paragraph 31).

36 That requirement contributes to attaining the objective pursued by Directive 2008/48, which consists in providing, as regards consumer credit, full and mandatory harmonisation in a number of key areas, which is regarded as necessary in order to ensure that all consumers in the European Union enjoy a high and equivalent level of protection of their interests and to facilitate the emergence of a well-functioning internal market in consumer credit (judgment of 9 November 2016, *Home Credit Slovakia*, C-42/15, EU:C:2016:842, paragraph 32).

37 Bearing in mind the importance of the right of withdrawal for consumer protection, the information concerning that right is of fundamental importance for that consumer. In order to benefit fully from that information, the consumer must be aware of the conditions, time limit and procedures for exercising the right of withdrawal beforehand (see, by analogy, judgment of 23 January 2019, *Walbusch Walter Busch*, C-430/17, EU:C:2019:47, paragraph 46).

38 Furthermore, the effectiveness of the right of withdrawal provided for in Article 14 of Directive 2008/48 would be seriously diminished if information on how to calculate that period of withdrawal were not encompassed within the conditions governing the exercise of that right that must be mandatorily included in the credit agreement, for the purpose of Article 10(2) of that directive.

39 In the light of all of the foregoing, the answer to the first question is that Article 10(2)(p) of Directive 2008/48 must be interpreted as meaning that the information to be specified, in a clear and concise manner, in a credit agreement in accordance with that provision includes information on how the period of withdrawal, provided for in the second subparagraph of Article 14(1) of that directive, is to be calculated.

The second question

40 By its second question, the referring court asks, in essence, whether Article 10(2)(p) of Directive 2008/48 must be interpreted as precluding a credit agreement from making reference, as regards the information referred to in Article 10 of that directive, to a national provision which itself refers to other legislative provisions of the Member State in question.

41 As a preliminary point, it must be noted that, in the dispute in the main proceedings, the agreement at issue provides that the period of withdrawal begins after the conclusion of the contract but not before the borrower has received all the mandatory information referred to in Paragraph 492(2) of the BGB. That provision itself refers to Article 247(6) to (13) of the EGBGB, and that latter article in turn refers to other provisions of the BGB.

42 The referring court states that the mandatory information whose disclosure to the consumer determines the starting point of the period of withdrawal, in accordance with Article 10(2)(p) of Directive 2008/48 and the second subparagraph of Article 14(1) thereof, is not included, as such, in the agreement at issue. It considers that the consumer therefore has, in order to identify that information, to refer to numerous national provisions contained in various legislative acts.

43 It must be noted that, as is apparent from point (b) of the second subparagraph of Article 14(1) of Directive 2008/48, the period of withdrawal does not begin until the information referred to in Article 10 of that directive is provided to the consumer, if that day is later than the day of the conclusion of the credit agreement. Article 10 lists the information that must be included in credit agreements.

44 Where an agreement concluded by a consumer refers to certain provisions of national law as regards information which must be provided pursuant to Article 10 of Directive 2008/48, the consumer is not in a position, on the basis of the agreement, to determine the scope of his or her contractual obligations, check whether all the required information, in accordance with that provision, is included in the contract that he or she has concluded, or a fortiori verify whether the period of withdrawal open to him or her has begun.

45 Furthermore, 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 the agreement and in particular the exercise of the rights of the consumer, which include his or her right of withdrawal.

46 In that regard, it must be noted that the Court has held that, where a directive in the area of consumer protection provides for an obligation on the part of the seller or supplier to inform the consumer of the substance of the contractual obligation proposed to him or her, certain aspects of which are specified by mandatory statutory or regulatory provisions of a Member State, that seller or supplier is required to inform the consumer of the contents of those provisions (see, to that effect, judgment of 26 April 2012, *Invitel*, C-472/10, EU:C:2012:242, paragraph 29).

47 A mere reference, in the general terms and conditions of an agreement, to a legislative or regulatory act determining the rights and obligations of the parties is insufficient (see, to that effect, judgment of 21 March 2013, *RWE Vertrieb*, C-92/11, EU:C:2013:180, paragraph 50).

48 In a situation such as that in the main proceedings, it must therefore be stated that referring, in the agreement at issue, to national legal provisions such as those mentioned in paragraph 41 of the present judgment does not satisfy the requirement, referred to in paragraphs 43 to 47 of the present judgment, of informing the consumer, in a clear and concise manner, of the period during which he or she may exercise his or her right of withdrawal and the other conditions governing the exercise of that right, in accordance with Article 10(2)(p) of Directive 2008/48.

49 In the light of all of the foregoing, the answer to the second question is that Article 10(2)(p) of Directive 2008/48 must be interpreted as precluding a credit agreement from making reference, as regards the information referred to in Article 10 of that directive, to a provision of national law which itself refers to other legislative provisions of the Member State in question.

The third question

50 In view of the answer given to the second question, there is no need to answer the third question.

Costs

51 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 (Sixth Chamber) hereby rules:

1. **Article 10(2)(p) 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 information to be specified, in a clear and concise manner, in a credit agreement in accordance with that provision includes information on how the period of withdrawal, provided for in the second subparagraph of Article 14(1) of that directive, is to be calculated.**

2. **Article 10(2)(p) of Directive 2008/48 must be interpreted as precluding a credit agreement from making reference, as regards the information referred to in Article 10 of that directive, to a provision of national law which itself refers to other legislative provisions of the Member State in question.**

[Signatures]