Reports of Cases

ORDER OF THE COURT (Sixth Chamber)

12 October 2016 * [1]

[Text rectified by order of 15 December 2016]

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Agreements concerning credit for consumers — Directive 2008/48/EC — Credit agreement for immovable property — Variable interest rates — Obligations on the creditor — National legislation applicable to agreements existing at the date on which that legislation comes into force — Inapplicability of Directive 2008/48)

In Joined Cases C-511/15 and C-512/15,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Prekršajni sud u Bjelovaru (Criminal Court, Bjelovar, Croatia), made by decisions of 15 September 2015, received at the Court on 25 September 2015, in the proceedings

Renata Horžić (C-511/15),

Siniša Pušić (C-512/15)

v

Privredna banka Zagreb d.d.,

Božo Prka

THE COURT (Sixth Chamber),

composed of E. Regan (Rapporteur), President of the Chamber, J.-C. Bonichot and A. Arabadjiev, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

— the Republic of Croatia, by A. Metelko-Zgombić, acting as Agent,

— the Czech Republic, by M. Smolek and J. Vláčil, acting as Agents,

* Language of the cases: Croatian.

1 — The operative part of this document has been amended since it was first put online.

— the European Commission, by G. Goddin and M. Mataija, acting as Agents,

having regard to the decision taken, after hearing the Advocate General, to give a decision by way of reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

Order

1 [As rectified by order of 15 December 2016] The present requests for a preliminary ruling concern the interpretation of Articles 23 and 30(1) 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 in OJ 2009 L 207, p. 14, OJ 2010 L 199, p. 40, OJ 2011 L 234, p. 46, and OJ 2015 L 36, p. 15).

2 The requests have been made in criminal proceedings instituted following complaints filed by Ms Renata Horžić and Mr Siniša Pušić, who have claimed damages in civil actions brought against Privredna banka Zagreb d.d. and Mr Božo Prka, the head of that company, (together 'the defendants') because of their alleged infringement of certain consumer-credit obligations.

Legal context

European Union law

3 Recitals 9 and 10 of Directive 2008/48 state:

'(9) Full harmonisation is 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 create a genuine internal market. Member States should therefore not be allowed to maintain or introduce national provisions other than those laid down in this Directive. However, such restriction should only apply where there are provisions harmonised in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation. ...

(10) The definitions contained in this Directive determine the scope of harmonisation. The obligation on Member States to implement the provisions of this Directive should therefore be limited to its scope as determined by those definitions. However, this Directive should be without prejudice to the application by Member States, in accordance with [EU] 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 ...'

4 Recital 14 of that directive is worded as follows:

'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. …'

5 Article 2 of Directive 2008/48, entitled 'Scope', provides:

'1. This Directive shall apply to credit agreements.

2. This Directive shall not apply to the following:

...

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

...'

6 Under Article 11 of that directive, entitled 'Information concerning the borrowing rate':

'1. Where applicable, the consumer shall be informed of any change in the borrowing rate, on paper or another durable medium, before the change enters into force. The information shall state the amount of the payments to be made after the entry into force of the new borrowing rate and, if the number or frequency of the payments changes, particulars thereof.

2. However, the parties may agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically in cases where the change in the borrowing rate is caused by a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is also kept available in the premises of the creditor.'

7 Paragraph 1 of Article 22 of Directive 2008/48, 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.'

8 Article 23 of that directive, headed 'Penalties', provides:

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

9 Article 30 of the directive, headed 'Transitional measures', states:

'1. This Directive shall not apply to credit agreements existing on the date when the national implementing measures enter into force.

2. However, Member States shall ensure that [Article] 11 ... [is] applied also to open-end credit agreements existing on the date when the national implementing measures enter into force.'

Croatian law

10 The Zakon o potrošačkom kreditiranju (Law on consumer credit) (*Narodne novine*, br. 75/09), which came into force on 1 January 2010, is designed to transpose into national law the provisions of Directive 2008/48.

11 Article 3 of that law lists the types of credit agreements to which that law does not apply, amongst which neither credit agreements secured either by a mortgage or by another comparable security nor credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building are included.

12 Article 11 of that law, headed 'Information on the interest rate', provides:

'(1) Where variable interest rates are agreed, the creditor shall inform the consumer of any changes in those rates, on paper or another durable medium, at least 15 days before the change enters into force. The information shall state the amount of the payments to be made after the entry into force of the new interest rate and, if the number or frequency of the payments changes, particulars thereof.

(2) The parties may agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically in cases where the change in the interest rate is caused by a change in a reference rate, under the condition that the new reference rate is made publicly available, inter alia in the premises of the creditor.'

13 The Law on consumer credit was amended with effect from 1 January 2014 by the Zakon o izmjenama i dopunama Zakona o potrošačkom kreditiranju (Law amending and supplementing the Law on consumer credit, *Narodne novine*, br. 143/13).

14 Article 11a of the Law on consumer credit, as amended, inserted by Article 3 of that amending law, headed 'Variable rate of interest', provides:

'(1) If variable rates of interest are agreed, the creditor must:

(a) define parameters that are clear and known to consumers for adopting decisions regarding changes to those rates;

(b) set out qualitatively and quantitatively the causal link between fluctuations in the parameters referred to in point (a) and their impact on the variable interest rates; and,

(c) fix the periods to which the adoption of the decision to change the variable interest rates apply (what the base period is and what the reference period is).

(2) The parameter referred to in paragraph 1 of this article shall be one of following variables: Euribor, LIBOR, NRR (national reference rate), treasury bond yield or average interest rate on deposits by private individuals in a given currency. The variable rate is fixed by adding a fixed margin to the agreed parameter which banks are prohibited from exceeding during the repayment period and which must be agreed at the same time as the parameter.

(3) The interest rate fluctuations within a reference period may not be greater, or less in the case of a fall, than the fluctuation of the parameter referred to in paragraph 1 expressed in percentage points.

(4) If the lender offers variable interest rates, it must clearly and unequivocally communicate to the consumer the elements referred to in paragraph 1 before the loan agreement is concluded. Additionally, it must warn the consumer of all the risks attached to the variability and set out, clearly and unequivocally, in the contract the variable elements on the basis of which the interest rate is calculated.

(5) In respect of all ongoing credit agreements concluded up to the date of the entry into force of the present law without the parameter having been fixed or the causal link established, the creditor must, in accordance with this article, define the parameter by one of the following variables:

— a reference interest rate (Euribor, LIBOR) or

— the NRR or

— the rate of the Finance Ministry treasury bond yield or

— the average interest rate on deposits by private individuals in a given currency;

it must also state the fixed part of the interest rate and the frequency at which interest rates are changed. ...

...'

15 Article 26(1).28 of the Law on consumer credit, as amended, provides for the imposition of a fine on the lender or intermediary for the loan which does not comply with its obligations under Article 11a(5) of that law.

16 Under Article 13 of the Law amending and supplementing the Law on consumer credit:

'(1) Inasmuch as it relates to Article 11a(5) of the Law on consumer credit ..., Article 3 of the present law shall apply to all consumer credit agreements, irrespective of the date on which they were concluded.

(2) As regards ongoing credit agreements that were concluded up until the date on which the present law entered into force without the parameters or a causal link being established, the creditors must agree on an interest rate with the debtor, setting out the parameters, the fixed margin and the duration of application of the variable interest rate, by 1 January 2014 at the latest.'

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

17 Ms Horžić and Mr Pušić each concluded with the defendants, on 12 October 2005 and 21 September 2006 respectively, credit agreements for immovable property with variable interest rates set at 4.03% and 4.25%, respectively. Those interest rates were subsequently raised several times until they reached 5.95% and 6.00%, respectively.

18 At the time of the last increases in the rates, the applicants in the main proceedings received a notice from Privredna banka Zagreb which stated that those increases were attributable to changes within the group of banking products marketed and the stability of the business. That notice, however, did not provide any information as to the parameters applied to calculate the amount of those increases.

19 The applicants then brought proceedings before the Prekršajni sud u Bjelovaru (Criminal Court, Bjelovar, Croatia) against the defendants on the basis that the latter had infringed the Law on consumer credit, as amended, by failing to draw up, by 1 January 2014, an annex to their respective credit agreements defining the parameters and the fixed part of the interest rates and the application period for those rates, in accordance with Article 11a(5) of that law.

20 The defendants argued, however, that that law is not consistent with Directive 2008/48, in particular Article 30(1) thereof, since it imposes obligations on the creditor concerning the definition of the variable interest rate in respect of credit agreements which were ongoing on the date on which that law came into force, namely 1 January 2014, and thus has retroactive effect contrary to that provision, and this even though that directive brought about full harmonisation.

21 In those circumstances, the Prekršajni sud u Bjelovaru (Criminal Court, Bjelovar) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) May the retrospective application of the Law [on consumer credit, as amended] be interpreted and determined exclusively in accordance with the provisions of that law, and is such an application of [that] law … consistent with European Union law, in particular Article 30 of Directive 2008/48 … ,

the first paragraph of which expressly states that that directive does not apply to credit agreements concluded before the entry into force of national legislation that transposed [that] directive into national law?

(2) May the criminal provision of Article 26(1).28 of the Croatian law on consumer credit [as amended], in the context described above, be interpreted consistently with Article 23 of Directive [2008/48] and in the light of the transitory provisions in Article 30 thereof, as meaning that the penalties laid down for breach of a national provision adopted on the basis of the directive in question may not be applied to breaches that may be found in respect of credit agreements ongoing at the date of the implementation of the national implementing measures?'

22 By decision of the President of the Court of 28 October 2015, Cases C-511/15 and C-512/15 were joined for the purposes of the written procedure and the present order.

Consideration of the questions referred

23 By its questions, which it is appropriate to consider together, the referring court asks, in essence, whether Articles 23 and 30(1) of Directive 2008/48 must be interpreted as precluding national provisions, such as those at issue in the main proceedings, which require the creditor, on pain of criminal penalties, to comply with obligations concerning the variable interest rate as regards credit agreements which are ongoing at the date on which those provisions enter into force.

24 Pursuant to Article 99 of the Rules of Procedure of the Court of Justice, where the reply to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

25 That provision should be applied in the present cases. As the Croatian and Czech Governments and the European Commission argue, in essence, the reply to the questions posed by the referring court may be clearly deduced from the Court's case-law, in particular the judgment of 12 July 2012, *SC Volksbank România* (C-602/10, EU:C:2012:443), and the order of 3 July 2014, *Tudoran* (C-92/14, EU:C:2014:2051).

26 In that regard, it must be borne in mind that it is true that, as the defendants indeed argue, it follows from Article 22(1) of Directive 2008/48, interpreted in the light of recitals 9 and 10 thereof, that, so far as concerns credit agreements which come within the scope of the directive, the latter provides for full harmonisation and — as is evident from the heading of Article 22 — is imperative in nature, factors which must be understood as meaning that, as regards the matters specifically covered by that harmonisation, the Member States are not authorised to maintain or introduce national provisions other than those provided for by that directive (judgment of 12 July 2012, *SC Volksbank România*, C-602/10, EU:C:2012:443, paragraph 38).

27 The fact remains, however, that, by reason of the clear wording of Article 2(2)(b) of Directive 2008/48 and having regard to recital 14 of that directive, credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building are excluded from the material scope of that directive (see, to that effect, judgment of 12 July 2012, *SC Volksbank România*, C-602/10, EU:C:2012:443, paragraph 42, and order of 3 July 2014, *Tudoran*, C-92/14, EU:C:2014:2051, paragraph 30).

28 It follows that, in so far as it is clear from the orders for reference that the credit agreements at issue in the main proceedings are credit agreements for 'immovable property', Directive 2008/48 does not apply to the facts at issue in the main proceedings (see, to that effect, judgment of 12 July 2012, *SC Volksbank România*, C-602/10, EU:C:2012:443, paragraphs 41 and 42, and order of 3 July 2014, *Tudoran*, C-92/14, EU:C:2014:2051, paragraph 31).

29 However, as is also clear from recital 10 of that directive, the Member States may, in accordance with EU law, apply provisions of that directive to areas not covered by its scope. The Court has thus already held that Member States may, in respect of credit agreements not coming within the directive's scope, maintain or introduce national measures corresponding to the provisions of the directive or to some of them (judgment of 12 July 2012, *SC Volksbank România*, C-602/10, EU:C:2012:443, paragraph 40).

30 Consequently, with regard to credit agreements such as those at issue in the main proceedings, the harmonisation for which Directive 2008/48 provides does not preclude a Member State from including such agreements within the scope of a national measure designed to transpose that directive, in order to apply all or some of the directive's provisions to those agreements (judgment of 12 July 2012, *SC Volksbank România*, C-602/10, EU:C:2012:443, paragraphs 40 and 43).

31 As is apparent from recitals 9 and 10 of Directive 2008/48, it is in principle for the Member States to determine the conditions in which they propose to extend their national set of rules transposing that directive to credit agreements, such as those at issue in the main proceedings, which do not fall within one of the areas for which the European Union legislature sought to lay down harmonised provisions (judgment of 12 July 2012, *SC Volksbank România*, C-602/10, EU:C:2012:443, paragraph 52).

32 It follows that whilst, for those agreements, the Member States may introduce in their national legislation designed to transpose Directive 2008/48 a rule corresponding specifically to the transitional measure laid down in Article 30(1) of that directive, they may in principle also, in compliance with the rules of the FEU Treaty and without prejudice to other measures of secondary law that may be relevant, lay down a different transitional measure the consequence of which is that that legislation also applies to agreements existing on the date of its entry into force (judgment of 12 July 2012, *SC Volksbank România*, C-602/10, EU:C:2012:443, paragraph 53).

33 The same applies with regard to the system of penalties laid down by Article 23 of Directive 2008/48. Thus, that article does not preclude a Member State from applying, in its national legislation concerning ongoing credit agreements not coming within the material scope of Directive 2008/48, provisions in respect of penalties in the event of infringement of the provisions of that legislation.

34 That interpretation is all the more necessary in the present case since, unlike Article 11 of the Law on Consumer Credit, which is a measure implementing Article 11 of Directive 2008/48 concerning the borrowing rate, the national provisions at issue in the disputes in the main proceedings, concerning the definition of variable interest rates as laid down, in particular, in Article 11a of the Law on Consumer Credit, as amended, do not correspond to any of the provisions of Directive 2008/48 and, therefore, cannot be considered to be intended to transpose that directive.

35 In the light of all of the foregoing considerations, the answer to the questions referred is that Articles 23 and 30(1) of Directive 2008/48 must be interpreted as not precluding national provisions, such as those at issue in the main proceedings, which require the creditor, on pain of criminal penalties, to comply with obligations concerning variable interest rates in respect of credit agreements existing at the date on which those provisions came into force, since those credit agreements fall outside the material scope of that directive and, furthermore, those obligations do not constitute an implementation of that directive.

Costs

36 Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national court, the decisions on costs are 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:

Articles 23 and 30(1) 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 not precluding national provisions, such as those at issue in the main proceedings, which require the creditor, on pain of criminal penalties, to comply with obligations concerning variable interest rates in respect of credit agreements existing at the date on which those provisions came into force, since those credit agreements fall outside the material scope of that directive and, furthermore, those obligations do not constitute an implementation of that directive.

[Signatures]