Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

9 November 2016*

(Reference for a preliminary ruling — Directive 2008/48/EC — Consumer protection — Consumer credit — Article 1, Article 3(m), Article 10(1) and (2), Article 22(1) and Article 23 — Interpretation of the expressions 'on paper' and 'on another durable medium' — Contract referring to another document — Requirement for the agreement to be in 'written form' within the meaning of national law — Indication of information required by reference to objective criteria — Information to be included in a fixed-term credit agreement — Effect of failure to include mandatory information — Proportionality)

In Case C-42/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Okresný súd Dunajská Streda (District Court, Dunajská Streda, Slovakia), made by decision of 19 December 2014, received at the Court on 2 February 2015, in the proceedings

Home Credit Slovakia, a.s.

v

Klára Bíróová,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Vilaras, J. Malenovský, M. Safjan (Rapporteur) and D. Šváby, Judges,

Advocate General: E. Sharpston,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 24 February 2016,

after considering the observations submitted on behalf of:

— the Slovak Government, by B. Ricziová, acting as Agent,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

— the European Commission, by G. Goddin and A. Tokár, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 June 2016,

* Language of the case: Slovak.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1, Article 3(m), Article 10(1) and (2), Article 22(1) and Article 23 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66; corrigenda 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 request has been made in proceedings between Home Credit Slovakia, a.s. and Ms Klára Bíróová concerning a claim for payment of the outstanding amount of credit that that company had granted to Ms Bíróová in respect of which she was in default of payment.

Legal context

EU law

3 Recitals 7, 9, 10, 19, 30, 31 and 47 of Directive 2008/48 state:

‘(7) In order to facilitate the emergence of a well-functioning internal market in consumer credit, it is necessary to make provision for a harmonised Community framework in a number of core areas. …

…

(9) Full harmonisation is necessary in order to ensure that all consumers in the Community enjoy a high and equivalent level of protection of their interests and to create a genuine internal market. Member States should therefore not be allowed to maintain or introduce national provisions other than those laid down in this Directive. However, such restriction should only apply where there are provisions harmonised in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation. …

(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. …

…

(19) In order to enable consumers to make their decisions in full knowledge of the facts, they should receive adequate information, which the consumer may take away and consider, prior to the conclusion of the credit agreement, on the conditions and cost of the credit and on their obligations. …

…

(30) This Directive does not regulate contract law issues related to the validity of credit agreements. Therefore, in that area, the Member States may maintain or introduce national provisions which are in conformity with Community law. Member States may regulate the legal regime governing the offer to conclude the credit agreement, in particular when it is to be given and the period during which it is to be binding on the creditor. If such an offer is made at the same time as the

pre-contractual information provided for by this Directive is given, it should, like any additional information the creditor may wish to give to the consumer, be provided in a separate document which may be annexed to the Standard European Consumer Credit Information.

(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.

…

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

4 Under Article 1 of that directive, headed 'Subject matter':

'The purpose of this Directive is to harmonise certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers.'

5 Article 3 of the directive, headed 'Definitions', states in paragraph (m) thereof:

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

…

(m) "durable medium": means any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

…'

6 Article 10 of the directive, headed 'Information to be included in credit agreements', provides:

'1. Credit agreements shall be drawn up on paper or on another durable medium.

All the contracting parties shall receive a copy of the credit agreement. This Article shall be without prejudice to any national rules regarding the validity of the conclusion of credit agreements which are in conformity with Community law.

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

(a) the type of credit;

(b) the identities and geographical addresses of the contracting parties as well as, if applicable, the identity and geographical address of the credit intermediary involved;

(c) the duration of the credit agreement;

(d) the total amount of the credit and the conditions governing the drawdown;

(e) in case of a credit in the form of deferred payment for a specific good or service or in the case of linked credit agreements, that good or service and its cash price;

(f) the borrowing rate, the conditions governing the application of that rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedures for changing the borrowing rate and, if different borrowing rates apply in different circumstances, the abovementioned information in respect of all the applicable rates;

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

(h) the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement;

(i) where capital amortisation of a credit agreement with a fixed duration is involved, the right of the consumer to receive, on request and free of charge, at any time throughout the duration of the credit agreement, a statement of account in the form of an amortisation table.

The amortisation table shall indicate the payments owing and the periods and conditions relating to the payment of such amounts; the table shall contain a breakdown of each repayment showing capital amortisation, the interest calculated on the basis of the borrowing rate and, where applicable, any additional costs; where the interest rate is not fixed or the additional costs may be changed under the credit agreement, the amortisation table shall indicate, clearly and concisely, that the data contained in the table will remain valid only until such time as the borrowing rate or the additional costs are changed in accordance with the credit agreement;

(j) if charges and interest are to be paid without capital amortisation, a statement showing the periods and conditions for the payment of the interest and of any associated recurrent and non-recurrent charges;

(k) where applicable, the charges for maintaining one or several accounts recording both payment transactions and drawdowns, unless the opening of an account is optional, together with the charges for using a means of payment for both payment transactions and drawdowns, and any other charges deriving from the credit agreement and the conditions under which those charges may be changed;

(l) the interest rate applicable in the case of late payments as applicable at the time of the conclusion of the credit agreement and the arrangements for its adjustment and, where applicable, any charges payable for default;

(m) a warning regarding the consequences of missing payments;

(n) where applicable, a statement, that notarial fees will be payable;

(o) the sureties and insurance required, if any;

(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;

(q) information concerning the rights resulting from Article 15 as well as the conditions for the exercise of those rights;

(r) the right of early repayment, the procedure for early repayment, as well as, where applicable, information concerning the creditor's right to compensation and the way in which that compensation will be determined;

(s) the procedure to be followed in exercising the right of termination of the credit agreement;

(t) whether or not there is an out-of-court complaint and redress mechanism for the consumer and, if so, the methods for having access to it;

(u) where applicable, other contractual terms and conditions;

(v) where applicable, the name and address of the competent supervisory authority.

3. Where paragraph 2(i) applies, the creditor shall make available to the consumer, free of charge and at any time throughout the duration of the credit agreement, a statement of account in the form of an amortisation table.

4. In the case of a credit agreement under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement or in an ancillary agreement, the information required under paragraph 2 shall include a clear and concise statement that such credit agreements do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.

…'

7 Article 14(1) of Directive 2008/48, 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.'

8 Article 22 of that directive, headed 'Harmonisation and imperative nature of this Directive', is worded as follows:

'1. 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.

…

3. Member States shall further ensure that the provisions they adopt in implementation of this Directive cannot be circumvented as a result of the way in which agreements are formulated, in particular by integrating drawdowns or credit agreements falling within the scope of this Directive into credit agreements the character or purpose of which would make it possible to avoid its application.

…'

9 Article 23 of the 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.’

10 In Annex II of Directive 2008/48, concerning the ‘Standard European Consumer Credit Information’, section 2, entitled ‘Description of the main features of the credit product’, contains the heading ‘Instalments and, where appropriate, the order in which instalments will be allocated’. The following description is given under that heading:

‘You will have to pay the following:

(The amount, number and frequency of payments to be made by the consumer)

Interest and/or charges will be payable in the following manner: …’

Slovak law

11 The Zákon č. 129/2010 Z. z. o spotrebiteľských úveroch a o iných úveroch a pôžičkách pre spotrebiteľov a o zmene a doplnení niektorých zákonov (Law No 129/2010 on consumer credit and other forms of credit and loans for consumers, amending certain other laws, in the version applicable in the main proceedings) (‘Law No 129/2010’) was intended to transpose Directive 2008/48 into Slovak law.

12 Under Paragraph 9 of that law:

‘1. A consumer credit agreement must be drawn up in written form. Every party to the agreement shall receive at least one copy in documentary form or on another durable medium accessible to the consumer.

2. A consumer credit agreement must, in addition to the general requirements set out in the Civil Code …, contain the following:

…

(k) the amount, number and frequency of repayments of capital, interest and other charges and, if appropriate, the order in which payments will be allocated to individual outstanding balances charged at different borrowing rates for the purposes of reimbursement,

(l) where capital amortisation of a consumer credit agreement with a fixed duration is involved, the right of the consumer to request, free of charge, at any time throughout the duration of the credit agreement, a statement of account in the form of an amortisation table in accordance with paragraph 5.

…’

13 Paragraph 11(1) of that law provides:

‘Consumer credit granted shall be deemed to be interest-free and free of any charges if:

(a) the consumer credit agreement is not in writing in accordance with Paragraph 9(1) and does not contain the information specified in Paragraph 9(2)(a) to (k), (r) and (y) and Paragraph 10(1),

(b) the annual percentage rate of charge is stated incorrectly, to the detriment of the consumer, in the consumer credit agreement.'

14 Paragraph 40 of the Občiansky zákonník (Civil code) provides:

'1. A legal act shall be invalid if it is not drawn up in the form required by law or by agreement between the parties.

…

3. Any legal act in writing shall be valid if it is signed by the person responsible for drawing it up; where several persons are involved in drawing up a legal act, the signature of all those persons does not necessarily have to appear on the same document, unless otherwise required by law. A signature may be replaced by electronic means where such usage is permitted.

4. The requirement that the legal act be in writing shall be complied with if the legal act is communicated by telefax, telegram or by electronic means which make it possible to determine the content of the legal act and to identify the person who is responsible for it. The requirement that the legal act be in writing shall always be complied with where the act communicated by electronic means bears an advanced electronic signature.

…'

15 Paragraph 46(2) of the Civil code states as follows:

'For the conclusion of a contract in written form, it is sufficient for there to be a written offer and a written acceptance. …'

16 Paragraph 273 of the Obchodný zákonník (Commercial code) is worded as follows:

'1. Part of the terms of a contract may be determined by reference to general terms and conditions drawn up by professional organisations or interest groups or by reference to other terms and conditions which are known to the parties concluding the contract or submitted as proposals annexed to the offer.

…

3. Standard form contracts used in commercial practice may be employed for the conclusion of a contract.'

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

17 On 29 June 2011, Home Credit Slovakia, as lender, concluded a credit agreement with Ms Bíróová, the borrower, drawn up on the basis of a standard form completed on the date on which the loan was granted.

18 It is apparent from the order for reference that that form contained information concerning, inter alia, personal data relating to the borrower and her employment, including her income. In addition, information concerning the loan itself and its drawdown were specified, namely, inter alia, the total amount of the loan and the total amount payable by the consumer, the amount of the monthly instalments, the number of monthly payments and the dates when the instalments for reimbursement

of the loan were payable, the borrowing rate, and the date for the reimbursement of the loan in full, namely 36 months after it was granted. Since the estimated annual percentage rate of charge ranged between 35% and 37.5%, its exact amount was to be specified after the loan was granted.

19 The total amount of credit in question being EUR 700, the total amount payable by the borrower was set under the contract at EUR 1087.56.

20 In addition, the credit agreement provided that the document headed 'Credit agreement terms of Home Credit Slovakia, a.s. — cash credit' ('the general terms and conditions') was incorporated into the agreement.

21 The credit agreement thereby drawn up was signed by Home Credit Slovakia and Ms Bíróová. Furthermore, under that agreement, Ms Bíróová confirmed, by her signature, that she had received the general terms and conditions, that she had read them, that those general terms and conditions were comprehensible and sufficiently precise and that she agreed to be bound by them.

22 As to the actual general terms and conditions themselves, they were not signed by the parties to the credit agreement.

23 Under those general terms and conditions, the borrower could request the lender to make available, free of charge at any time throughout the duration of the credit agreement, a statement of account in the form of an amortisation table setting out the payments owing and the periods and conditions of re-payment, including a breakdown of each repayment showing capital amortisation, interest and, where applicable, any additional costs.

24 However, the general terms and conditions did not state the proportion of each monthly instalment paid by the borrower in repayment of the loan that was to be used to pay interest and charges and the proportion to be used to repay capital.

25 After paying two monthly instalments, Ms Bíróová stopped repaying the loan granted. Consequently, Home Credit Slovakia demanded early payment of the loan in full and requested Ms Bíróová to re-pay the capital, default interest and default penalties provided for in the credit agreement.

26 Not having obtained the payment sought, Home Credit Slovakia brought an action before the referring court seeking to recover the debt. In that regard, harbouring doubts as to the validity of the credit agreement in so far as its general terms and conditions were not signed by the parties, that court considers that the outcome of the proceedings before it depends on the interpretation of Directive 2008/48.

27 In those circumstances, the Okresný súd Dunajská Streda (District Court, Dunajská Streda, Slovakia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the terms "on paper" and "another durable medium" in Article 10(1), read in conjunction with Article 3(m), of Directive 2008/48, be interpreted as extending to: not only the text (physical, "hard copy") of the document signed by the parties to the agreement, which contains the details (information) required by Article 10(2)(a) to (v) of that directive, but also any other document to which that provision refers and which, under national law, forms an integral part of the agreement (for instance, a document containing the "general terms and conditions", "lending terms", "scale of charges" and "schedule of instalments" drawn up by the lender), even if such a document does not itself fulfil the requirement that it should be in "written form" within the meaning of the national law concerned (for example, because it has not been signed by the parties to the contract)?

(2) Following the answer to Question 1:

Must Article 10(1) and (2), read in conjunction with Article 1 of Directive 2008/48, in accordance with which the directive seeks full harmonisation in the relevant field, be interpreted as precluding national legislation or practice which requires that all the information specified in Article 10(2)(a) to (v) be contained in a single document which will fulfil the requirement of "written form" in accordance with the law of the relevant Member State (that is, in principle in a document signed by the parties to the agreement), and does not endow a consumer credit agreement with full legal effect merely because some of the information required is not contained in the signed document, even though all or part of that information is contained in a separate document (containing, for instance, the "general terms and conditions", "lending terms", "scale of charges" and "schedule of instalments" drawn up by the lender), where the written agreement itself refers to that document, the conditions for the incorporation of that document as part of the agreement in accordance with national law are fulfilled and the consumer credit agreement thus concluded complies as a whole with the requirement that an agreement be drawn up on "another durable medium" within the meaning of Article 10(1) of Directive 2008/48?

(3) Must Article 10(2)(h) of Directive 2008/48 be interpreted as meaning that the information required by that provision (specifically the "frequency of payments")

— must be individually tailored to show the terms of the specific agreement in question (in principle, by stating the precise dates (day, month, year) on which the individual instalments are due), or

— is it sufficient that the agreement contains general reference to objectively ascertainable criteria from which it is possible to ascertain that information (for example, by providing that "monthly instalments are due at the latest by the 15th day of each calendar month", "the first instalment is due one month from signature of the agreement and each subsequent instalment is always payable one month after the payment of the previous instalment" or by another similar form of words)?

(4) If the interpretation in the second indent of Question 3 is correct, must Article 10(2)(h) of Directive 2008/48 be interpreted as meaning that the information required by that provision (specifically the "frequency of payments") may also be contained in a separate document to which the agreement complying with the requirement that it should be in written form (within the meaning of Article 10(1) of the directive) refers, but which does not itself have to fulfil that requirement (that is, in principle it does not have to be signed by the parties to the agreement; it may, for example, be a document setting out the "general terms and conditions", "lending terms", "scale of charges" and "schedule of instalments" drawn up by the creditor)?

(5) Must Article 10(2)(i) read in conjunction with Article 10(2)(h) of Directive 2008/48, be interpreted as meaning that

— a credit agreement for a fixed period under which the capital is repaid/amortised by individual instalments does not necessarily have to state precisely, at the time of its conclusion, the part of each individual instalment that is to be used to repay capital and the part that is to be used to pay contractual interest and charges (that is, a precise schedule of instalments/amortisation table does not have to be incorporated into the agreement), and that information may instead be contained in a schedule of instalments/amortisation table which the lender provides to the borrower on request, or

— Article 10(2)(h) of the directive guarantees the borrower an additional right to demand an extract from the amortisation table at any time throughout the duration of the credit agreement, but that right does not relieve the parties to the agreement of the obligation to indicate in the agreement itself how the individual instalments (which, under the credit

agreement, must be paid throughout the term of the agreement) are to be allocated to repayment of capital and payment of contractual interest and charges, by a method individually tailored to the specific agreement concerned?

(6) If the interpretation in the first indent of Question 5 is correct, does that question fall within the field of full harmonisation pursued by Directive 2008/48, so that, in accordance with Article 22(1) thereof, a Member State may not require that a credit agreement should state precisely the part of each individual instalment that is to be used to repay capital and the part that is to be used to pay contractual interest and charges (that is, it cannot be required that a precise schedule of instalments/amortisation table be incorporated into the agreement)?

(7) Must the provisions of Article 1 of Directive 2008/48, under which the directive seeks full harmonisation in the field concerned, or Article 23 of the directive, which requires that penalties be proportionate, be interpreted as precluding provisions of national law under which failure to provide most of the information required in a credit agreement by Article 10(2) of the directive has the consequence that the loan granted is deemed to be interest-free and free of charges, so that the borrower is obliged to repay the lender only the capital sum received under the agreement?'

Consideration of the questions referred

The first and second questions

28 By its first and second questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 10(1) and (2) of Directive 2008/48, read in conjunction with Article 3(m) of the directive, must be interpreted as meaning that (i) all the information relating to a credit agreement referred to in Article 10(2) of the directive must be contained in a single document, (ii) a credit agreement drawn up on paper must be signed by the parties and (iii) the requirement that the agreement be signed applies to all the information that must be provided in connection with such an agreement.

29 In that regard, it must, in the first place, be borne in mind that, under the first subparagraph of Article 10(1) of Directive 2008/48, credit agreements are to be drawn up on paper or on another durable medium.

30 There is, however, nothing in the directive to indicate that the credit agreements referred to in that provision must be drawn up in a single document.

31 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 rights and obligations.

32 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 (see, to that effect, judgment of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 61).

33 Although, in the light of that objective, all the information referred to in Article 10(2) of Directive 2008/48 need not necessarily be included in a single document, attention must, nonetheless, be drawn to the fact that, having regard to Article 10(1) of the directive, all the information listed in Article 10(2) must be set out on paper or on another durable medium and be incorporated into the credit agreement.

34 In so far as the information referred to in Article 10(2) of Directive 2008/48 must be included in a clear and concise manner, a credit agreement must, as the Advocate General stated, in essence, in point 52 of her Opinion, contain a clear and precise cross-reference to other paper, or other durable, media containing the information that was actually given to the consumer prior to the conclusion of the agreement so as to give him the opportunity to be genuinely apprised of all his rights and obligations.

35 Referring, inter alia, to the definition of 'durable medium' in Article 3(m) of Directive 2008/48, the Court has held that that medium must enable the consumer, in a similar way to paper form, to be in possession of the relevant information to enable him to exercise his rights, where necessary. What is relevant for the consumer is that he should be able to store the information which has been addressed to him personally, to rest assured that its content will not be altered, that the information will be accessible for an adequate period and that it will be possible to reproduce it unchanged (see, to that effect, as regards Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ 1997 L 144, p. 19), judgment of 5 July 2012, *Content Services*, C-49/11, EU:C:2012:419, paragraphs 42 to 44).

36 As regards, in the second place, whether a credit agreement drawn up on paper must be signed by the parties in accordance with detailed rules laid down in the law of the particular Member State concerned, it should be noted that the first subparagraph of Article 10(1) of Directive 2008/48 makes no reference to national law and that, therefore, the terms 'paper' and 'durable medium' in that provision have an autonomous meaning. Those terms cannot be interpreted by reference to national law governing the form in which credit agreements must be drawn up.

37 Whereas the term 'paper' is not defined by that directive, Article 3(m) thereof provides that 'durable medium' means any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows for the unchanged reproduction of the information stored.

38 It is apparent from the wording of Article 10(1) of Directive 2008/48 that the term 'paper' refers to the medium on which a credit agreement is drawn up, without any requirement that such a medium be signed. That being the case, the referring court seeks to ascertain, more specifically, whether that directive precludes a Member State from imposing such a requirement under national law.

39 In that regard, it should be noted that, under the second subparagraph of Article 10(1) of Directive 2008/48, that article applies without prejudice to any national rules regarding the validity of the conclusion of credit agreements which are in conformity with EU law.

40 The requirement for a credit agreement drawn up on paper to be signed by the parties, imposed, as is apparent from, inter alia, paragraph 26 above, by the national legislation at issue in the main proceedings as a condition of the validity of the agreement, forms part of a national rule regarding the validity of the conclusion of credit agreements within the meaning of Article 10(1) of Directive 2008/48.

41 Neither Directive 2008/48, which aims to provide, as regards consumer credit, for full and mandatory harmonisation in a number of key areas, which is considered to be 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 (see, to that effect, judgments of 27 March 2014, *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraph 42; 18 December 2014, *CA Consumer Finance*, C-449/13, EU:C:2014:2464, paragraph 21, and 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 61), nor EU law in general preclude such a requirement.

42 As regards, in the third place, whether the requirement that the credit agreement be signed, laid down in national legislation, may apply to all the details of such agreements, it should be noted that a 'credit agreement', within the meaning of Article 3(c) of Directive 2008/48, drawn up, in accordance with Article 10(1) of the directive, on paper or on another durable medium must include, in a clear and precise manner, the information referred to in Article 10(2) of the directive.

43 Accordingly, as the Advocate General stated in point 35 of her Opinion, all that information must necessarily be included in such an agreement.

44 In those circumstances, where a Member State provides in its national legislation that the requirement that a credit agreement be signed applies to all the information to be provided in such an agreement, which is a matter for the referring court to ascertain, neither Directive 2008/48 nor EU law in general precludes such a requirement.

45 Having regard to all of the foregoing considerations, the answer to the first and second questions is that Article 10(1) and (2) of Directive 2008/48, read in conjunction with Article 3(m) of that directive, must be interpreted as meaning that:

— a credit agreement need not necessarily be drawn up in a single document, but all the information referred to in Article 10(2) of the directive must be set out on paper or on another durable medium;

— it does not preclude a Member State from providing in its national legislation, first, that a credit agreement falling within the scope of Directive 2008/48 which is drawn up on paper must be signed by the parties and, second, that the requirement that the agreement be signed applies to all the details of the agreement referred to in Article 10(2) of that directive.

The third and fourth questions

46 By its third and fourth questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 10(2)(h) of Directive 2008/48 must be interpreted as meaning that it is necessary for a credit agreement to indicate each payment to be made by the consumer by reference to a specific date, or whether a general reference in the agreement enabling the consumer to identify the payment dates is sufficient.

47 In that regard, it should be noted that, under that provision, a credit agreement is to include, in a clear and concise manner, the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement.

48 As the Advocate General observed in point 55 of her Opinion, the objective of that provision is to ensure that the consumer knows the date on which each payment to be made falls due.

49 Accordingly, where the terms of the agreement allow the consumer to ascertain the dates of those payments without difficulty and with certainty, that objective is attained.

50 In those circumstances, the answer to the third and fourth questions is that Article 10(2)(h) of Directive 2008/48 must be interpreted as meaning that a credit agreement need not indicate the specific date on which every payment to be made by the consumer falls due, provided that the terms of the agreement allow the consumer to ascertain the dates of those payments without difficulty and with certainty.

The fifth and sixth questions

51 By its fifth and sixth questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 10(2)(h) and (i) of Directive 2008/48 must be interpreted as meaning that a fixed-term credit agreement providing for amortisation of the capital in consecutive instalments must state, in the form of an amortisation table, the part of each instalment that will be allocated to repayment of the capital and, if not, whether, in the light of Article 22(1) of the directive, those provisions preclude a Member State from imposing such an obligation under national law.

52 For the purpose of answering those questions, it should be noted that, as stated in paragraph 47 above, Article 10(2)(h) of that directive provides that a credit agreement need include only the amount, number and frequency of the payments to be made by the consumer and, where appropriate, the order in which payments will be allocated different outstanding balances charged at different borrowing rates for the purposes of reimbursement.

53 It is apparent from Article 10(2)(i) and (3) of the directive that only on request by the consumer made at any time throughout the duration of the agreement is the creditor under an obligation to provide him, free of charge, with a statement of account in the form of an amortisation table.

54 In view of the clear wording of those provisions, it must be found that Directive 2008/48 does not impose an obligation to include in the credit agreement such a statement of account in the form of an amortisation table.

55 As regards the Member States' discretion to impose such an obligation in their national legislation, it must be noted that, so far as concerns credit agreements which fall within the scope of Directive 2008/48, Member States may not adopt obligations for the parties to the agreement which are not provided for in that directive where the directive contains provisions harmonised in the area covered by those obligations (see, by analogy, judgment of 12 July 2012, *SC Volksbank România*, C-602/10, EU:C:2012:443, paragraphs 63 and 64).

56 Article 10(2) of Directive 2008/48 provides for such harmonisation as regards the information which must imperatively be included in a credit agreement.

57 It is true that, under Article 10(2)(u) of that directive, a credit agreement must include, in a clear and concise manner, where applicable, the other contractual terms and conditions. However, the aim of that provision is to impose the obligation to include in a credit agreement, drawn up on paper or on another durable medium, every term and condition which has been agreed between the parties in the course of their contractual relationship concerning the credit.

58 That provision cannot, however, be interpreted as permitting the Member States to impose in their national legislation an obligation to include information in a credit agreement other than that required under Article 10(2) of Directive 2008/48.

59 Consequently, the answer to the fifth and sixth questions referred is that Article 10(2)(h) and (i) of Directive 2008/48 must be interpreted as meaning that a fixed-term credit agreement providing for amortisation of the capital in consecutive instalments need not state, in the form of an amortisation

table, the part of each instalment that will be allocated to repayment of capital. Those provisions, read in conjunction with Article 22(1) of that directive, preclude a Member State from imposing such an obligation under national law.

The seventh question

60 By its seventh question, the referring court asks, in essence, whether Article 23 of Directive 2008/48 must be interpreted as not precluding a Member State from providing, under national law, that, where a credit agreement does not include all the information required under Article 10(2) of the directive, the agreement is to be deemed interest-free and free of charges.

61 In that regard, it is appropriate to bear in mind from the outset that, under Article 23 of Directive 2008/48, Member States are to lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to that directive and take all measures necessary to ensure that they are implemented.

62 However, it is apparent from recital 47 of the directive that, while the choice of penalties remains within the discretion of the Member States, such penalties must be effective, proportionate and dissuasive (see, to that effect, judgment of 27 March 2014, *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraph 43).

63 The Court has previously held that the severity of penalties must be commensurate with the seriousness of the infringements for which they are imposed, in particular by ensuring a genuinely deterrent effect, while respecting the general principle of proportionality (see judgment of 27 March 2014, *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraph 45 and the case-law cited).

64 In that regard, in its judgment of 27 March 2014, *LCL Le Crédit Lyonnais* (C-565/12, EU:C:2014:190), the Court previously considered whether the rules on penalties laid down by a Member State had due regard for those limits, the penalty in that case being forfeiture by the creditor of his entitlement to interest, in principle in its entirety, in the event of breach of the creditor's obligation, prior to the conclusion of the agreement, to carry out an assessment of the consumer's creditworthiness, as provided for in Article 8 of Directive 2008/48.

65 Given the importance of the objective of consumer protection inherent in the lender's obligation to assess the borrower's creditworthiness, the Court has held that if the penalty of forfeiture of entitlement to interest were weakened, or even entirely undermined, it would necessarily follow that the penalty is not genuinely dissuasive (see, to that effect, judgment of 27 March 2014, *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraphs 52 and 53).

66 As regards the failure, in a credit agreement, to include certain information relating to the terms of repayment and charges linked to that credit, the Court has also held that, in the light of the objective pursued by Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48), as amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 (OJ 1998 L 101, p. 17) ('Directive 87/102'), of protecting the consumer against unfair credit terms and of enabling him to have full knowledge of the terms of the future performance of the agreement entered into at the time of concluding such an agreement, Article 4 of that directive, required that the borrower must have to hand all information which could have a bearing on the extent of his liability (see judgment of 9 July 2015, *Bucura*, C-348/14, not published, EU:C:2015:447, paragraph 57).

67 Thus, the inclusion of the annual percentage rate of charge in a credit agreement was held to be essential information in the context of Directive 87/102, in particular, in so far as it enables the consumer to assess the extent of his liability (see, to that effect, order of 16 November 2010, *Pohotovosť*, C-76/10, EU:C:2010:685, paragraphs 70 and 71).

68 Directive 87/102 has been interpreted as allowing national courts to apply of their own motion the provisions transposing Article 4 of that directive into national law and providing that failure to mention the annual percentage rate of charge in a consumer credit agreement meant that the credit granted was deemed to be interest-free and free of charges (see, to that effect, order of 16 November 2010, *Pohotovosť*, C-76/10, EU:C:2010:685, paragraph 76).

69 In the light of the case-law referred to in paragraphs 63 to 68 above, it must be found that a creditor's breach of a vitally important obligation in the context of Directive 2008/48 may be penalised, under national law, by the creditor's forfeiture of entitlement to interest and charges.

70 The obligation to include, in a credit agreement, inter alia, information such as the annual percentage rate of charge, referred to in Article 10(2)(g) of Directive 2008/48, the number and frequency of payments, in accordance with Article 10(2)(h) of that directive, and, where applicable, a statement that notarial fees will be payable and the sureties and insurance required, as provided for in Article 10(2)(n) and (o) of the directive, constitutes such a vitally important obligation.

71 In so far as failure to include such information in a credit agreement may compromise the ability of a consumer to assess the extent of his liability, the penalty laid down under national law of forfeiture by the creditor of entitlement to interest and charges must be considered to be proportionate within the meaning of Article 23 of Directive 2008/48 and the case-law cited in paragraph 63 above.

72 However, the imposition, in accordance with national law, of such a penalty, having serious consequences for the creditor in the event of failure to include those items of information referred to in Article 10(2) of Directive 2008/48 which, by their nature, cannot have a bearing on the consumer's ability to assess the extent of his liability, such as, inter alia, the name and address of the competent supervisory authority referred to in Article 10(2)(v) of that directive, cannot be considered to be proportionate.

73 In those circumstances, the answer to the seventh question referred is that Article 23 of Directive 2008/48 must be interpreted as not precluding a Member State from providing, under national law, that, where a credit agreement does not include all the information required under Article 10(2) of the directive, the agreement is deemed to be interest-free and free of charges, provided that the information covers matters which, if not included, may compromise the ability of the consumer to assess the extent of his liability.

Costs

74 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 (Third Chamber) hereby rules:

1. **Article 10(1) and (2) 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, read in conjunction with Article 3(m), thereof, must be interpreted as meaning that:**

   — **a credit agreement need not necessarily be drawn up in a single document, but all the information referred to in Article 10(2) of the directive must be set out on paper or on another durable medium;**

   — **it does not preclude a Member State from providing in its national legislation, first, that a credit agreement falling within the scope of Directive 2008/48 which is drawn up on paper must be signed by the parties and, second, that the requirement that the agreement be signed applies to all the details of that agreement referred to in Article 10(2) of that directive.**

2. **Article 10(2)(h) of Directive 2008/48 must be interpreted as meaning that a credit agreement need not indicate the specific date on which every payment to be made by the consumer falls due, provided that the terms of the agreement allow the consumer to ascertain the dates of those payments without difficulty and with certainty.**

3. **Article 10(2)(h) and (i) of Directive 2008/48 must be interpreted as meaning that a fixed-term credit agreement, providing for amortisation of the capital in consecutive instalments, need not state, in the form of an amortisation table, the part of each instalment that will be allocated to repayment of capital. Those provisions, read in conjunction with Article 22(1) of that directive, preclude a Member State from imposing such an obligation under national law.**

4. **Article 23 of Directive 2008/48 must be interpreted as not precluding a Member State from providing, under national law, that, where a credit agreement does not include all the information required under Article 10(2) of the directive, the agreement is deemed to be interest-free and free of charges, provided that the information covers matters which, if not included, may compromise the ability of the consumer to assess the extent of his liability.**

[Signatures]