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Provisional text

JUDGMENT OF THE COURT (Sixth Chamber)

19 December 2019 (*)

(Reference for a preliminary ruling — Consumer protection — Directive 2008/48/EC — Consumer credit agreements — Article 10(2) — Information to be included in credit agreements — Annual percentage rate of charge — Lack of indication of the exact percentage of that rate of charge — Rate of charge expressed as a range between 21.5% and 22.4%)

In Case C-290/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Krajský súd v Trnave (Regional Court, Trnava, Slovakia), made by decision of 12 March 2019, received at the Court on 9 April 2019, in the proceedings

RN

v

Home Credit Slovakia a.s.,

THE COURT (Sixth Chamber),

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

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Slovakian Government, by B. Ricziová, acting as Agent,
- the European Commission, by G. Goddin and A. Tokár, acting as Agents,

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

Judgment

1 This request for a preliminary ruling concerns the interpretation of 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 corrigendum OJ 2015 L 36, p. 15), as amended by Commission Directive 2011/90/EU of 14 November 2011 (OJ 2011 L 296, p. 35) ('Directive 2008/48').

2 The request has been made in proceedings between RN, a consumer, and Home Credit Slovakia a.s. ('Home Credit') regarding a consumer credit agreement concluded by the consumer with that credit provider, in which the annual percentage rate of charge ('APRC') is not set at a single rate.

Legal context

EU law

3 Recitals 9, 19 and 31 of Directive 2008/48 read as follows:

'(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. ...

...

(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. To ensure the fullest possible transparency and comparability of offers, such information should, in particular, include the annual percentage rate of charge applicable to the credit, determined in the same way throughout the Community. As the annual percentage rate of charge can at this stage be indicated only through an example, such example should be representative. Therefore, it should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement under consideration and, if applicable, to the goods purchased. When determining the representative example, the frequency of certain types of credit agreement in a specific market should also be taken into account. As regards the borrowing rate, the frequency of instalments and the capitalisation of interest, creditors should use their conventional method of calculation for the consumer credit concerned.

...

(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 Article 1 of that directive states that its purpose is to harmonise certain aspects of Member States' rules on consumer credit agreements.

5 Article 3(i) of that directive provides:

'For the purpose of this Directive:

...

(i) "[APRC]" means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable including the costs referred to in Article 19(2).'

6 Article 4 of Directive 2008/48 concerns the standard information to be included in the advertising of credit agreements. It provides that any advertising concerning such agreements which indicates an interest rate or figures relating to the cost of credit to the consumer must include standard information, specified in a clear, concise and prominent way, by means of a representative example. That information includes, inter alia, the APRC.

7 Article 10 of that directive, entitled 'Information to be included in credit agreements', provides in paragraph 2(g):

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

...

(g) the [APRC] 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.'

8 Under Article 19 of that directive, entitled 'Calculation of the [APRC]':

1. The [APRC], equating, on an annual basis, to the present value of all commitments (drawdowns, repayments and charges), future or existing, agreed by the creditor and the consumer, shall be calculated in accordance with the mathematical formula set out in Part I of Annex I.

2. For the purpose of calculating the [APRC], the total cost of the credit to the consumer shall be determined, with the exception of any charges payable by the consumer for non-compliance with any of his commitments laid down in the credit agreement and charges other than the purchase price which, for purchases of goods or services, he is obliged to pay whether the transaction is effected in cash or on credit.

The costs of maintaining an account recording both payment transactions and drawdowns, the costs of using a means of payment for both payment transactions and drawdowns, and other costs relating to payment transactions shall be included in the total cost of credit to the consumer unless the opening of the account is optional and the costs of the account have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.

3. The calculation of the [APRC] shall be based on the assumption that the credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the credit agreement.

4. In the case of credit agreements containing clauses allowing variations in the borrowing rate and, where applicable, charges contained in the [APRC] but unquantifiable at the time of calculation, the [APRC] shall be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the initial level and will remain applicable until the end of the credit agreement.

5. Where necessary, the additional assumptions set out in Annex I may be used in calculating the [APRC].

If the assumptions set out in this Article and in Part II of Annex I do not suffice to calculate the [APRC] in a uniform manner or are not adapted any more to the commercial situations in the market, the Commission may determine the necessary additional assumptions for the calculation of the annual percentage rate of charge, or modify the existing ones. ...'

9 Part I of Annex I to Directive 2008/48 sets out the basic equation that defines the APRC. It states that the result of the calculation of that equation is to be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to five, the figure at that particular decimal place is to be increased by one.

10 Part II of Annex I sets out the additional assumptions for the calculation of the APRC, as follows:

'(a) If a credit agreement gives the consumer freedom of drawdown, the total amount of credit shall be deemed to be drawn down immediately and in full.

(b) If a credit agreement gives the consumer freedom of drawdown in general but imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit and period of time, the amount of credit shall be deemed to be drawn down on the earliest date provided for in the credit agreement and in accordance with those drawdown limits.

(c) If a credit agreement provides different ways of drawdown with different charges or borrowing rates, the total amount of credit shall be deemed to be drawn down at the highest charge and borrowing rate applied to the most common drawdown mechanism for this type of credit agreement.

...

(f) In the case of credit agreements other than overdrafts and open-end credits as referred to in the assumptions set out in points (d) and (e):

...

(ii) if the date of conclusion of the credit agreement is not known, the date of the initial drawdown shall be assumed to be the date which results in the shortest interval between that date and the date of the first payment to be made by the consumer.

...'

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 granted to consumers, amending certain other laws), in the version applicable to the dispute in the main proceedings, transposes Directive 2008/48 into Slovak law.

12 Article 9(2)(j) of that law provides:

‘The credit agreement must state:

...

(j) the [APRC] 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 indicated.’

13 Article 11(1) of that law provides:

‘Any consumer credit granted shall be deemed to be free of interest and charges if:

...

(b) the consumer credit agreement does not contain the information referred to in Article 9(2)(a) to (k), (r) and (y),

...

(d) the [APRC] is stated incorrectly, to the detriment of the consumer, in the consumer credit agreement.’

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

14 On 4 March 2013, RN and Home Credit concluded a consumer credit agreement for the amount of EUR 3 359.14. The agreement stated the monthly repayments (EUR 89.02), the interest rate (19.62%) and the APRC (between 21.5% and 22.4%). The contract also specified that the APRC depended on the date on which loan was granted to RN and that the APRC would be communicated to him after that date.

15 Moreover, the agreement set out the dates on which the loan repayments fell due and stipulated that the first instalment was to be made within one month of the date on which the loan was granted, that the other repayments were due on the 15th day of each calendar month and that the repayment period of the loan was 60 months.

16 On 2 July 2017, Home Credit informed RN that he had repaid the loan in full, namely the sum of EUR 5 291.24.

17 However, RN brought an action against Home Credit for repayment of sums paid but not due, on the ground that the credit should have been considered to be free of interest and charges, since the APRC had been set in the contract not as a single rate, but as a range referring to a minimum and a maximum rate. Thus, taking the view that he should have been obliged to pay only the capital part of the loan, namely EUR 3 359.14, RN requested repayment, on the ground of unjust enrichment, of the sum of EUR 1 932.10.

18 That claim was dismissed by the court of first instance. In particular, that court found that the loan granted to RN by Home Credit was consumer credit and that the agreement contained all the information required under Article 9(2) of Law No 129/2010. That court also held that the agreement did not have to expressly indicate the APRC by reference to a single rate and that it would be disproportionate to penalise the lender by taking the view that no interest or charges were payable in respect of the loan on the sole ground that the APRC was expressed as a rate within a range of two figures (from-to).

19 RN brought an appeal before the referring court and the latter questions whether fixing the APRC by means of such a range is contrary to Directive 2008/48.

20 That court states that Home Credit argued that the credit agreement had been concluded by telephone and that the applicant had 35 days to accept or refuse the credit agreement offer. For that reason, Home Credit was not able to give a precise indication of the date on which the loan would be granted, on which the APRC was dependent.

21 However, the referring court considers that that argument seems unconvincing in the light of the assumptions set out in Part II of Annex I to Directive 2008/48, in particular those set out in point (a), (c) or (f) of Part II. The referring court takes the view that the lack of knowledge of the date on which the loan would be granted does not exempt the lender from indicating the APRC by reference to a specific percentage, expressed as a single figure.

22 In those circumstances, the Krajský súd v Trnave (Regional Court, Trnava, Slovakia) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 10[(2)](g) of Directive [2008/48] to be interpreted as meaning that a consumer credit agreement satisfies the requirement laid down in that provision if the [APRC] is indicated in the agreement, not as a specific percentage, but as a range between two figures (from-to)?’

Consideration of the question referred

23 By its question, the referring court asks, in essence, whether Article 10(2)(g) of Directive 2008/48 must be interpreted as precluding, in a consumer credit agreement, the APRC from being expressed not as a single rate but as a range referring to a minimum and a maximum rate.

24 It should be noted that the indication of the APRC in the form of a range of two figures is not consistent with the wording of several provisions of Directive 2008/48, in particular Articles 3 and 19, nor with the general scheme of that directive. It follows from those provisions that the APRC must be expressed as a percentage, by reference to a precise figure.

25 Thus, first, Article 3(i) of Directive 2008/48, which defines the APRC as ‘the total cost of credit to the consumer, expressed as an annual percentage of the total amount of credit’, requires a precise percentage to be fixed.

26 Second, it is apparent from Article 19(1) of Directive 2008/48, read in conjunction with Part I of Annex I to that directive, that the APRC is calculated in accordance with the mathematical formula set out in that annex and should reflect, to one decimal place, all existing or future commitments agreed by the creditor and the consumer. In addition, the second subparagraph of Article 19(5) states that the APRC must be calculated in a uniform manner. As the Slovak

Government rightly pointed out in its written observations, compliance with those requirements can lead only to a precise result, expressed to one decimal place.

27 That interpretation is also supported by the objective pursued by Directive 2008/48 and by the function performed by the APRC in the system established by that directive.

28 In that regard, it must be borne in mind that Directive 2008/48 was adopted in order both 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 5 September 2019, *Pohotovost'*, C-331/18, EU:C:2019:665, paragraph 41 and the case-law cited). It is clear from recital 19 of that directive that it seeks, inter alia, to ensure that consumers receive adequate information, prior to the conclusion of the credit agreement, in particular on the APRC throughout the European Union, to enable them to compare those rates.

29 The Court has had the opportunity to point out that, for a consumer, the total cost of credit, presented in the form of an APRC calculated according to a single mathematical formula, is of critical importance. That rate enables the consumer to assess, from a financial point of view, the extent of the commitment associated with the conclusion of the credit agreement (see, to that effect, judgments of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 90 and the case-law cited; of 9 November 2016, *Home Credit Slovakia*, C-42/15, EU:C:2016:842, paragraph 66 and the case-law cited; and of 20 September 2018, *EOS KSI Slovensko*, C-448/17, EU:C:2018:745, paragraph 64).

30 Considered from that perspective, the obligation to provide information set out in Article 10(2) of Directive 2008/48, under which the credit agreement is to specify in a clear and concise manner, the APRC, contributes to the attainment of the objective pursued by that directive (see, to that effect, judgment of 5 September 2019, *Pohotovost'*, C-331/18, EU:C:2019:665, paragraph 42 and the case-law cited), in particular, the objective of a high level of protection of consumers' interests.

31 It should be noted that, if it were permissible to provide in a credit agreement that the APRC can be expressed by reference not to a single rate but to a range referring to a minimum and a maximum rate, the criterion of clarity and conciseness laid down in Article 10(2) of Directive 2008/48 would not be met. That criterion is essential for the consumer to be able, as stated in recital 31 of that directive, to know his rights and obligations under the credit agreement. The use of such a range may not only make it more difficult to assess the total cost of credit, but may also mislead the consumer as to the actual extent of his commitment.

32 It should be added that, as noted by the referring court, the fact that certain information, in particular the date of drawdown of the credit or the date of conclusion of the credit agreement, is not known by the lender when it makes a credit agreement offer to the consumer, is of no consequence in that regard.

33 Part II of Annex I to Directive 2008/48 provides for additional assumptions to facilitate the calculation of the APRC in cases where certain information is not known or where it is not possible, for other reasons, to determine it.

34 Thus, where the date of drawdown of the credit is not known, the lender has at its disposal the additional assumptions provided for, in particular, in Part II(a) to (c) of Annex I to Directive 2008/48 in order to calculate the APRC accurately. Similarly, where the date of conclusion of the credit agreement is not known, Part II(f)(ii) of Annex I to that directive provides that the date of the

initial drawdown is assumed to be the date which results in the shortest interval between that date and the date of the first payment to be made by the consumer.

35 Consequently, in particular because of those assumptions aimed at facilitating the calculation of the APRC in a uniform manner, it cannot be claimed that fixing the APRC as a single rate would not be possible or would be excessively difficult when such information is not known.

36 In the light of the foregoing considerations, the answer to the question referred is that Article 10(2)(g) of Directive 2008/48 must be interpreted as precluding, in a consumer credit agreement, the APRC from being expressed not as a single rate but as a range referring to a minimum and a maximum rate.

Costs

37 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby rules:

Article 10(2)(g) 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, as amended by Commission Directive 2011/90/EU of 14 November 2011, must be interpreted as precluding, in a consumer credit agreement, the annual percentage rate of charge from being expressed not as a single rate but as a range referring to a minimum and a maximum rate.

[Signatures]

* Language of the case: Slovakian.
