



C/2024/7017

2.12.2024

**Request for a preliminary ruling from the Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (Poland)
lodged on 21 August 2024 – Helpfind Recovery sp. z o.o. v Santander Bank Polska S.A.**

(Case C-566/24, Helpfind Recovery)

(C/2024/7017)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi

Parties to the main proceedings

Applicant: Helpfind Recovery sp. z o.o.

Defendant: Santander Bank Polska S.A.

Questions referred

1. Does Article 10(2)(f), read in conjunction with Article 3(j) and (l), read in conjunction with Annex I to 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, ⁽¹⁾ preclude an interpretation to the effect that the concept of the amount of credit drawn down, which is the basis for calculating the borrowing rate, refers not only to the amount actually transferred to the consumer in order to be used for any purpose, but also to the amount 'transferred' to the consumer in such a manner that it serves to immediately cover the non-interest costs of the credit in such a way that the bank transfers to the consumer the amount which, under the agreement, is to be immediately collected from the consumer on a set-off basis: in order to cover the non-interest costs of the credit, the bank disburses to the consumer the amount which, under the agreement, is to be used to cover the bank's commission, and that is effected by transferring it directly to the bank's account;
2. If the answer to the question presented in point I above is in the affirmative, must Article 10(2)(f), read in conjunction with Article 3(j) and (l) of Directive 2008/48/EC in the context of the principle of the effectiveness of EU law and the purpose of that directive, and in the light of Article 3(1) and (2) read in conjunction with Article 4(1) of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, be interpreted as precluding the practice of including in consumer credit agreements, ⁽²⁾ the content of which is not the result of individual arrangements between the undertaking (creditor) and consumer (borrower), provisions that provide for interest not only on the amount drawn down by the consumer, but also on the non-interest costs of the credit (that is to say, commissions or other fees) that are not components of the credit amount effectively drawn down by the consumer, and that are 'drawn down' on the terms indicated in Question I;
3. If the answer to the question presented in point II above is in the affirmative, must Article 10(2)(f) and (g) of Directive 2008/48/EC in the context of the principle of the effectiveness of EU law and the purpose of that directive, and in the light of Article 5 of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, be interpreted as precluding the practice of including in consumer credit agreements, the content of which is not the result of individual arrangements between the undertaking (creditor) and consumer (borrower), provisions disclosing only the borrowing rate and the total value of capitalised interest expressed in amounts that the consumer is required to pay in the performance of his or her obligation arising under that agreement, without at the same time clearly informing the consumer that the basis for calculating the capitalised interest (expressed as an amount) is an amount other than the credit amount actually drawn down by the consumer, and in particular, that it is the sum of the credit amount drawn down by the consumer and the non-interest costs of the credit (that is to say, commissions or other fees that are not components of the credit amount drawn down by the consumer, and that make up the total amount to be paid by the consumer in performance of his or her obligation under the consumer credit agreement);

⁽¹⁾ OJ 2008 L 133, p. 66.

⁽²⁾ OJ 1993 L 95, p. 29.

4. Must Article 10(2)(r) of Directive 2008/48/EC, in the context of the principle of the effectiveness of EU law and the purpose of that directive, and in the light of Article 5 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, be interpreted as requiring that the information provided by the creditor concerning the right to early repayment and the early repayment procedure also contains information on the possibility of receiving a partial refund of the commission charged by the creditor;
 5. Must Article 10(2)(p) of Directive 2008/48/EC, in the context of the principle of the effectiveness of EU law and the purpose of that directive, and in the light of Article 5 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, be interpreted as requiring that the information provided by the creditor concerning the right of withdrawal contains, in each case, explicit information about the right arising from Article 14(1)(b) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008;
 6. Must Article 23 of Directive 2008/48/EC and the principles of effectiveness, equivalence and proportionality be interpreted as precluding a judicial interpretation of national law according to which the penalty provided for in that article may be used by the consumer within a time limit of one year beginning from the date of performance by the creditor, that is to say, from the disbursement of the entire credit amount;
 7. Must Article 23 of Directive 2008/48/EC, in the context of the principles of effectiveness, equivalence and proportionality, be interpreted as meaning that where it is determined that the creditor infringed any of the obligations referred to in the questions above, this automatically results, in each case, in the application of the penalty provided for under national law (consisting in the consumer's right to submit a statement whereby the consumer's obligation to pay capital interest and other costs owed to the creditor is extinguished), or does the application of that penalty depend on a comprehensive assessment of the situation of both parties to the contract, and in particular, does the consumer's right to submit that statement not arise where the infringement by the creditor of its information obligations did not adversely affect the consumer's rights and obligations or was not relevant to the consumer from the point of view of the conclusion and performance of the consumer credit agreement, and the protection of consumer rights is ensured on the basis of other provisions, including provisions on the protection of consumers against unfair terms?
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