



Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 9 June 2016¹

Case C-42/15

Home Credit Slovakia a.s.

v

Klára Bíróová

(Request for a preliminary ruling from the Okresný súd (District Court) Dunajská Streda, Slovakia)

(Consumer Protection — Consumer credit agreements — Directive 2008/48/EC — Meaning of the expression ‘drawn up on paper or on another durable medium’ — National requirement for a document to be ‘in writing’ and that it must be signed — Validity of a consumer credit agreement — Compulsory information under Article 10(2) of Directive 2008/48/EC — Credit agreement not containing the compulsory information but referring to a separate document — National penalties for failure to provide the compulsory information — Proportionality)

1. In this reference from the Okresný súd (District Court) Dunajská Streda (Slovakia), the referring court seeks guidance on the interpretation of Directive 2008/48/EC,² which governs credit agreements for consumers. It asks a number of inter-related questions concerning the scope of harmonisation under that directive and the extent to which Member States are precluded from, in particular, introducing or maintaining provisions concerning the formalities of concluding a credit agreement. The referring court wishes to know: (i) whether the requirement that the credit agreement must be drawn up ‘on paper or another durable medium’ is an autonomous concept of EU law; (ii) whether that obligation means that the agreement must also be signed by the parties and whether the compulsory information that the lender must give to the borrower must be contained in the same document as the credit agreement; (iii) whether the lender must indicate the exact dates on which payments under the agreement fall due and provide a table indicating the reduction in the principal sum as payments are made during the course of the loan; and (iv) whether certain penalties that apply under national law where the lender has failed to supply the compulsory information are proportionate.

¹ — Original language: English.

² — Directive 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) (‘Directive 2008/48’).

European Union law

Directive 2008/48

2. The two overriding aims of Directive 2008/48 are to provide a high and equivalent level of consumer protection in order to ensure consumer confidence and to create a genuine internal market. In order to achieve those aims, a fully harmonised EU framework in a number of core areas has been established.³ Prior to the conclusion of a credit agreement, consumers should receive adequate information which they may consider in order to enable them to make their decisions in full knowledge of the facts.⁴ The Member States may maintain or introduce national provisions which are in conformity with EU law in relation to contract law issues concerning the validity of credit agreements.⁵ The credit agreement should contain, in a clear and concise manner, all necessary information to enable the consumer to know his rights and obligations.⁶ Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to the directive and ensure that they are implemented. Any penalties should be effective, proportionate and dissuasive.⁷

3. Article 1 states that the purpose of Directive 2008/48 is to harmonise certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers.

4. Under Article 2, Directive 2008/48 applies to credit agreements unless they are expressly excluded from its scope.

5. The following definitions in Article 3 are relevant:

- (a) “consumer” means a natural person who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession;
- (b) “creditor” means a natural or legal person who grants or promises to grant credit in the course of his trade, business or profession;
- (c) “credit agreement” means an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments;

...

- (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;

...’

3 — Recitals 7, 8, 9 and 10.

4 — Recital 19.

5 — Recital 30.

6 — Recital 31.

7 — Recital 47.

6. The information and practices preliminary to the conclusion of a credit agreement are contained in Chapter II. Article 5(1), which is part of that chapter, states that pre-contractual information must be provided on paper or on another durable medium.⁸

7. The obligation to give consumers information on paper or another durable medium is also reiterated in a number of other provisions in Directive 2008/48.⁹

8. Article 10(1) states:

‘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.’

9. Article 10(2) contains a list of 22 items of information that must be specified in the credit agreement in a clear and concise manner (‘the compulsory information’). That list includes, inter alia:

- ‘(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;

...’

10. Article 10(3) states: ‘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’.

11. Article 22 provides that in so far as the directive contains harmonised provisions, Member States may not maintain or introduce in their national law provisions diverging from those laid down therein.

12. In accordance with Article 23, Member States must provide for effective, proportionate and dissuasive penalties to apply to infringements of the national provisions adopted pursuant to the directive.

8 — See also Annex II entitled ‘Standard European Consumer Credit Information’.

9 — Those provisions deal respectively with: credit agreements in the form of an overdraft facility (Articles 6 and 12); the borrowing rate (Article 11(1)); open-end credit agreements (Article 13(1) and (2)); the right of withdrawal (Article 14(3)(a)); overrunning (Article 18(1) and (2)); and certain obligations of credit intermediaries vis-à-vis consumers (Article 21(b)).

Directive 97/7/EC

13. Directive 97/7/EC¹⁰ contains provision designed to protect consumers entering into distance contracts. Under Article 4, the consumer must be provided with certain information before concluding any distance contract.¹¹ Article 5 of that directive is entitled ‘Written confirmation of information’. Paragraph 1 is worded as follows:

‘The consumer must receive written confirmation or confirmation in another durable medium available and accessible to him of the information referred to in Article 4(1)(a) to (f), in good time during the performance of the contract, and at the latest at the time of delivery where goods not for delivery to third parties are concerned, unless the information has already been given to the consumer prior to conclusion of the contract in writing or on another durable medium available and accessible to him.

...’¹²

National law

14. Pursuant to the Slovak Civil Code,¹³ a legal act in written form is valid only if it is signed by the person(s) bound by it.¹⁴ Where a legal act is not executed in the form required by law (or by agreement of the parties) it is invalid.

15. In accordance with the Slovak Commercial Code,¹⁵ an organisation’s general terms of business may be incorporated in a credit agreement as part of that agreement by means of cross references.

16. A consumer credit agreement must be in writing and each party to the agreement must receive at least one copy either in documentary form or another durable medium.¹⁶ A consumer credit agreement must contain, inter alia, the amount, number and dates of repayments of capital, interest and other charges, and if appropriate the order in which payments will be allocated to individual outstanding balances with differing rates of interest of the consumer credit for the purposes of its repayment.¹⁷ Consumers have a right to request a statement of account in the form of an amortisation table (if the capital is amortised)¹⁸ at any time throughout the duration of the credit agreement.¹⁹

10 — Directive 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) (‘the Distance Selling Directive’). That directive has since been repealed and replaced by Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64).

11 — A range of information is set out in Article 4 concerning, in particular, the identity of the supplier, the characteristics of the goods or services, the price, the delivery costs, the arrangements for payment and the existence of a right of withdrawal.

12 — Article 7 of Directive 2011/83 (the successor to Directive 97/7) sets out the requirement that information must be provided ‘... on paper or, if the consumer agrees, on another durable medium’.

13 — Zákon č. 40/1964 Zb. Občiansky zákonník v znení neskorších predpisov (Law No 40/1964 Civil Code, as later amended).

14 — Paragraph 40(3) of the Slovak Civil Code.

15 — Zákon č. 513/1991 Zb. Obchodný zákonník v znení neskorších predpisov (Law No 513/1991 Commercial Code, as later amended). See Paragraph 273 of the Slovak Commercial Code.

16 — 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 credits and loans for consumers and amending and supplementing certain laws (‘the Law on consumer credit’). See Paragraph 9 of the Law on consumer credit.

17 — Paragraph 9(2)(k) of the Law on consumer credit.

18 — I understand ‘amortisation’ in this context to refer to the reduction of debt through periodic payments of principal and interest.

19 — Paragraph 9(2)(l) of the Law on consumer credit.

17. Where the credit agreement is not in writing and does not contain the information required pursuant to the Law on consumer credit, any credit is deemed to be interest-free and free of any charges.²⁰

Facts, procedure and questions referred

18. On 29 June 2011 the applicant in the main proceedings, Home Credit Slovakia a.s ('the lender') concluded a consumer credit agreement with the defendant, Ms Klára Bíróová ('the borrower') on a pre-printed standard form which had to be completed in writing. The borrower obtained EUR 700 in credit. She agreed to repay a total amount of EUR 1087.56 in monthly instalments of EUR 32.50. The loan was to be repaid over a period of 36 months from provision of the credit.

19. The borrower signed the credit agreement, confirming that she had received the credit terms and that she agreed and consented to being bound by them. Attached to the credit agreement were the 'Credit agreement terms of Home Credit Slovakia, a.s. — cash credit' ('the general terms of business'), which were identified on every page by the code ISH111 in the top corner. The borrower's signature on the credit agreement confirmed that she had received and agreed with the general terms of business, that all their provisions were comprehensible and that she consented to being bound by them. The text of the general terms of business was not signed by either the lender or the borrower. Those terms state, *inter alia*, that the borrower is obliged to repay the credit granted correctly and on time, in regular monthly instalments, whose number, amount and due dates are determined in the agreement. The borrower is entitled to demand, free of charge at any time throughout the duration of the agreement, a statement of account in the form of an amortisation table, setting out the instalments which are to be paid and the period and conditions of their repayment, including a breakdown of each instalment showing the amortisation of capital, interest and (if appropriate) additional charges.

20. The credit terms do not contain more detailed rules for calculating interest on the capital, or provisions specifying which part of the monthly instalment (EUR 32.50) is to be used as repayment of interest and charges and which part as amortisation of the capital of the credit.

21. The borrower paid only two instalments under the agreement. On 26 April 2012 the lender requested repayment of the full sum of the credit due. It sought payment of: (i) the capital owed; (ii) interest; (iii) default interest; and (iv) contractual penalties for default. The borrower did not make any payment. The lender then brought proceedings for EUR 1155.52 and default interest of 0.024% daily on the sum of EUR 778.34 from 11 February 2014 until payment of the outstanding debt.

22. The referring court explains that under national rules a consumer credit agreement must be in writing and that it must contain certain information concerning, *inter alia*, the amount, number and dates of repayments of capital, interest and other charges, and, if appropriate, information concerning amortisation.²¹ A credit agreement that is not signed by the parties does not fulfil the national rules and is consequently invalid.²² In the main proceedings that information (part of the compulsory information) is contained in the unsigned general terms of business. Thus, the question arises whether the consumer credit agreement concluded on 29 June 2011 is valid. Against that background the referring court requests a preliminary ruling on seven questions which are perhaps more easily understandable in summary form:

Questions 1 and 2

20 — Paragraph 11 of the Law on consumer credit.

21 — See points 14 and 15 above.

22 — See point 17 above.

- What is the meaning of the expression ‘on paper or on another durable medium’ in Article 10(1) read together with Article 3(m) of Directive 2008/48? — Does that expression cover only the physical document signed by the parties to the credit agreement? — Must that document contain the compulsory information laid down in Article 10(2)? — Where the compulsory information is in a separate document, such as the general terms of business, that is not signed by the parties to the credit agreement and the credit agreement cross refers to that document, does that comply with the requirements of Article 10(1) of Directive 2008/48?
- To what extent does Directive 2008/48 fully harmonise the rules relating to the information to be included in the credit agreement for the purposes of Article 10(1) and (2), so that those provisions preclude national rules: (i) requiring the compulsory information to be contained in a single document signed by the parties to the credit agreement or (ii) meaning that the credit agreement cannot have full legal effect because some of the compulsory information is in a separate document, such as the general terms of business?

Questions 3 and 4

- Does the ‘frequency of payments’ in Article 10(2)(h) of Directive 2008/48 mean that the lender is required to indicate in the credit agreement the exact date on which each payment must be made, or is it sufficient to indicate when each payment is due by reference to objectively ascertainable criteria? — If the latter, may that information be contained in a separate document to which the credit agreement refers, such as the ‘general terms of business’ which is not signed by the parties?

Questions 5 and 6

- Do Article 10(2)(h) and (i) of Directive 2008/48 read together mean that an amortisation table does not have to be included in a credit agreement for a fixed period, where the capital is repaid by individual instalments, and that such information may instead be provided by the lender to the borrower upon his request? Or is the lender required to provide an amortisation table in the credit agreement from the date that the agreement begins and does the borrower also have the right to request an amortisation table during the term of the credit agreement indicating the schedule of payments from the date of that request? Are the information requirements in Article 10(2)(h) fully harmonised in accordance with Article 22(1) of Directive 2008/48 so that Member States are precluded from requiring that an amortisation table must be included in the credit agreement?

Question 7

- Where the lender fails to provide most of the information laid down in Article 10(2) of Directive 2008/48, is a penalty imposed under national law, by which the credit agreement is deemed to be interest-free and free of charges (meaning that the borrower is obliged solely to repay the principal sum), proportionate for the purposes of Articles 1 and 23 of that directive?

23. Written observations have been submitted by the German and Slovakian Governments and by the European Commission. At the hearing on 24 February 2016, the Republic of Slovakia and the Commission presented oral argument.

Assessment

Questions 1 and 2 — degree of harmonisation of the formalities relating to the conclusion of a consumer credit agreement

24. The regulatory technique of providing information to consumers is based on the principle that a well-informed consumer is better placed to choose the most advantageous offer of credit and also seeks to ensure that he is aware of rights and obligations under a consumer credit agreement. To fulfil those objectives, the information provided must not be ephemeral — rather, it must remain available to the consumer on a lasting basis.

25. Against that background Directive 2008/48 defines the term ‘durable medium’ in Article 3(m) as: ‘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’. However, there is no definition of the words ‘on paper’. Those words must therefore be interpreted by considering their usual meaning in everyday language whilst also taking into account the legislative context and the purposes of Directive 2008/48.²³

26. In the context of Article 10(1), the words ‘on paper’ refer to the medium on which the credit agreement is drawn up and given to the consumer. It is implicit from the words ‘*or on another durable medium*’ that ‘on paper’ is regarded as being a particular form of durable medium or means by which the credit agreement is communicated to the consumer for the purposes of Directive 2008/48. The second subparagraph of Article 10(1) states that all contracting parties must receive a copy of the credit agreement. That also suggests that Article 10(1) is concerned with the medium on which that agreement is made available to the consumer.

27. A credit agreement on paper has the following characteristics which meet the requirements of Article 3(m) of Directive 2008/48 (the definition of a ‘durable medium’): it enables the consumer to store the information which has been addressed to him personally, and ensures that the content of the credit agreement is not altered and that the information is accessible for an adequate period. That is consistent with attaining a high level of consumer protection, in particular by ensuring that the consumer is aware of his rights and obligations under any credit agreement.

28. The same approach is reflected in other provisions of Directive 2008/48 concerning consumers’ rights to receive information pertaining to the credit agreement.²⁴

29. Thus, the requirement that the credit agreement must be drawn up on paper implies that it must also be in writing — that accords with the everyday meaning of the requirement in Article 10(1) to draw up the credit agreement on paper.

30. The referring court states in its order for reference (and this was confirmed by the Slovak Government and by the Commission) that in the Slovak version of Article 10(1), ‘on paper’ is expressed as ‘*písomne*’ which translates literally as ‘in writing’ in English. However, it appears that the words chosen may reflect the requirement under national law that the document must be signed by the parties to the agreement, rather than being strictly equivalent to the words ‘on paper’ that are used in certain other language versions of Directive 2008/48.²⁵

23 — See judgment of 5 July 2012, *Content Services*, C-49/11, EU:C:2012:419, paragraph 32.

24 — See point 7 and footnote 9 above.

25 — For example, the English and French versions. See further point 34 below.

31. It is settled case-law that where there is a divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part.²⁶

32. Within the context of Article 10(1) the expression ‘on paper or on another durable medium’ is a concept of EU law and must therefore have the same meaning throughout the Member States. It follows from points 24 and 26 above that those words refer to the means by which the credit agreement is given to the consumer.

33. I add that the expression ‘in writing’ has been interpreted as a synonym for ‘on paper’ in the context of Article 5(1) of the Distance Selling Directive.²⁷ In *Content Services*, the Court considered whether by following a business practice of making pre-contractual information of the kind set out in Article 4(1) of that directive available to consumers only via a hyperlink on a website, the undertaking concerned met the requirement of ensuring that the consumer received written confirmation of the compulsory information. The Court considered that the words ‘in writing’ constituted an alternative to ‘another durable medium’.²⁸

34. Thus, even though the Slovak version of the directive refers to the obligation in Article 10(1) to draw up the credit agreement as being ‘in writing’ rather than ‘on paper’, I regard those two expressions as having the same meaning for the purposes of that provision.

35. The term ‘credit agreement’ is defined in Article 3(c) of Directive 2008/48. It follows from the express wording of Article 10(2) that the information set out therein must be included in any credit agreement. Whilst that information and the credit agreement itself do not necessarily have to be contained in a single document, any agreement must nonetheless be drawn up on paper or another durable medium in order to comply with Article 10(1).

36. That view is reinforced by the scheme of Directive 2008/48. The pre-contractual information governed by Article 5 does not have to be provided in the same document as that which comprises the offer (Article 5(1)). That information is provided in a bespoke document — ‘the Standard European Consumer Credit Information’.²⁹ It is therefore not inconsistent with the legislative scheme of Directive 2008/48 for the compulsory information to be provided in a document which is separate from the credit agreement itself.

37. Nothing in Article 10 indicates that the credit agreement must be signed by the parties or that it must comprise of a single document.³⁰ The words indicating that Article 10 is ‘without prejudice to any national rules regarding the validity of the conclusion of credit agreements’, read together with recital 30, which states that Directive 2008/48 does not regulate contract law issues related to the validity of credit agreements, suggest that matters concerning the formality of concluding a contract are not governed by that provision.

38. The degree to which Member States retain a discretion to maintain or introduce national rules relating to consumer credit agreements is a contentious issue. It is difficult to identify with precision the point where the harmonised rules eliminate such discretion — yet that is precisely the issue on which the referring court seeks guidance.

26 — Judgment of 3 April 2008, *Endendijk*, C-187/07, EU:C:2008:197, paragraphs 22 to 24.

27 — See point 13 above.

28 — See judgment of 5 July 2012, *Content Services*, C-49/11, EU:C:2012:419, paragraphs 39 to 42. The Commission states in its original proposal of 11 September 2002 (COM(2002) 443 final; OJ 2002 C 331E, p. 200) for what became Directive 2008/48 that the definition of a ‘durable medium’ is the same as that used in the Distance Selling Directive, see point 13 above.

29 — Annex II to Directive 2008/48.

30 — The sole reference to a signature in Directive 2008/48 is in recital 37, in relation to the customer’s signature of linked credit agreements. The present reference does not, however, relate to such an agreement and thus recital 37 is not relevant here.

39. It follows from Article 22(1) of Directive 2008/48 interpreted in the light of recitals 9 and 10 that the directive provides for full harmonisation concerning credit agreements which fall within its scope. Thus, Member States are not authorised to maintain or introduce national provisions other than those provided for by Directive 2008/48 as regards the matters that *are* harmonised.³¹

40. However, it is clear from Article 1 that Directive 2008/48 harmonises only *certain aspects* of Member States' rules concerning consumer credit agreements. Where there is no harmonisation, Member States remain free to maintain or introduce national rules.

41. Here, it is common ground that the credit agreement at issue in the main proceedings is within the scope of Directive 2008/48. It is therefore necessary to ascertain the scope of harmonisation under the EU rules.

42. It follows from the wording of Article 10(1) and (2) that Directive 2008/48 harmonises the type of information to be included in credit agreements; all 22 elements listed in the latter provision must be given to the consumer in the credit agreement. Directive 2008/48 also governs how the information laid down in Article 10(2) must be provided (on paper or on another durable medium) and requires that it be specified '... in a clear and concise manner ...'.

43. Whilst it is true that EU law lays down formal requirements in other sectors, such as for the European order for payment,³² such matters of formality relating to the conclusion of contracts are outside the scope of Directive 2008/48. Thus, whether the credit agreement is signed or whether the compulsory information and the terms on which credit is granted are contained in a single document are not harmonised by Directive 2008/48.

44. The exact position under Slovak national law is not wholly clear. On the one hand, the Slovak Civil Code specifies that a legal act in written form is valid only if it is signed by the person(s) bound by it.³³ On the other hand, the Slovak Commercial Code appears to allow an organisation's general terms of business to be incorporated in a credit agreement as part of that agreement by means of cross references.³⁴ The Law on consumer credit prescribes what must be contained in a consumer credit contract.³⁵ But the Court does not know exactly how these various provisions of national law interact.

45. The facts narrated in the order for reference indicate that the credit agreement itself (which the borrower did sign) contained certain elements of the compulsory information specified by Article 10(2) of Directive 2008/48. The lender's general terms of business, which appear to have included some (perhaps, not all) of the other elements of the compulsory information, were *not* signed by the borrower and by the lender. It is unclear whether — and, if so, to what extent — the signed credit agreement drew the borrower's attention to precisely where, within the general terms of business, the elements of the compulsory information not included in the signed credit agreement were to be found.

46. In seeking to assist the Court in offering guidance to the national court, I therefore approach the problem as follows.

47. First, would a national rule that required all the compulsory information to be supplied in writing within a single, signed document be precluded by Directive 2008/48?

31 — See judgment of 12 July 2012, *SC Volksbank România*, C-602/10, EU:C:2012:443, paragraph 38. The credit agreement at issue in that case fell outside the scope of Directive 2008/48.

32 — See, for example Article 7(5) and (6) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ 2006 L 399, p. 1). The objective of the regulation is, inter alia, to simplify, speed up and reduce the costs of litigation in cross border cases concerning uncontested pecuniary claims.

33 — See point 14 above.

34 — See point 15 above.

35 — See point 16 above.

48. In my view, the answer to that question is ‘no’. The compulsory information would be on paper and would all be provided to the consumer, thus satisfying the requirements of Article 10(1) and (2). The consumer’s attention would readily be directed to all the information necessary to enable him to make an informed choice, because that information would be contained within a single document. Such a requirement in national law would therefore further the directive’s aim of ensuring a high level of consumer protection and would not, so far as I can see, impede the other objective of the directive, namely the promotion of the single market.³⁶ Whilst Directive 2008/48 contains no *requirement* that all the compulsory information should be in a single signed document, nor does it prohibit such an arrangement.

49. That is not to say that Member States remain entirely free to impose additional formalities on the conclusion of a consumer credit contract. To take one illustration: at the hearing the Court asked whether it would be acceptable to insist that every consumer credit contract should be signed by both parties in the presence of notary. Such an arrangement might indeed enhance consumer protection. It would, however, significantly alter the balance struck by the directive between the twin aims of a high level of consumer protection and promoting the operation of the single market, to the obvious detriment of the latter. It would oblige both parties (but the burden would probably fall primarily on lenders) to respect formalities that resulted in significantly greater expense; and it might well operate to the detriment of lenders based in a different Member State from the consumer. For that reason, I would consider such a requirement to fall outwith the margin of discretion still enjoyed by Member States in formulating the national law requirements for the conclusion of such contracts.

50. Second, would a national rule permitting elements of the compulsory information to be supplied on paper in the lender’s general terms of business, rather than in the (signed) consumer credit agreement itself, be precluded by Directive 2008/48?

51. In my view, the answer to that question is again ‘no’, *subject to certain additional conditions*. As before, the compulsory information would be on paper and would all be provided to the consumer (albeit split between two documents), thus still satisfying the requirements of Article 10(1) and (2). So far, so good. However, where information is split between two documents, there is an obvious risk that the consumer will not in fact be placed in a position where he can make a full, informed and timely assessment of the deal that is being proposed to him, as envisaged by Directive 2008/48.

52. I would therefore consider that the following *minimum additional conditions* would need to be in place — that is, laid down by national law — in order for such an arrangement to be acceptable: (i) the separate documents which together contained all the compulsory information would need to be provided to the consumer at the same time and *before* the conclusion of the contact (so as to permit the consumer to assess the proposed arrangement before he or she agreed to be bound by it); (ii) the credit agreement itself would need to contain clear and precise cross references to the correct specific sections of the lender’s general terms of business, thus enabling the consumer to identify exactly where to find each of the elements of the compulsory information that was not in the credit agreement;³⁷ (iii) there would need to be some clear proof that the consumer had in fact been provided in due time (and in any event *before* the conclusion of the consumer credit agreement) with the totality of the compulsory information.

³⁶ — See recitals 8 and 9 of Directive 2008/48.

³⁷ — Lord Denning once said, of a wide-ranging ‘general condition’ purporting to exclude statutory liability for damages for personal injury displayed on a notice board in a car park and that was purportedly ‘incorporated’ into the contract of parking by some words in tiny print on the ticket issued by an automatic machine, that it was ‘so wide and so destructive of rights that the court should not hold any man bound by it unless it is drawn to his attention in the most explicit way ... In order to give sufficient notice, it would need to be printed in red ink with a red hand pointing to it — or something equally startling’: *Thornton v Shoe Lane Parking Ltd* (C.A.) [1971] 2 Q.B. 163 at 170 C-D per Lord Denning M.R. The dictum has given joy to succeeding generations of students of English law. It is also an eminently sound observation as to the need to ensure that the weaker party to a contract has his attention drawn to important conditions that will bind him if he enters into the contract.

53. It is for the national court, which alone is both the judge of fact and competent to interpret how national law operates, to assess whether the national rules comply with this guidance and whether, therefore, they are or are not precluded by Directive 2008/48.

54. I therefore conclude that the words ‘on paper or on another durable medium’ in Article 10 of Directive 2008/48 cover both the terms of the credit agreement concluded by the parties and the items of information listed in Article 10(2) of Directive 2008/48 which comprise part of the credit agreement. It is not a requirement of Article 10 that the credit agreement must be signed by the parties or that the information listed in Article 10(2) must be provided in a single document. A national rule that requires all the compulsory information to be supplied in writing within a single, signed document is not precluded by Directive 2008/48. A national rule that permits elements of the compulsory information to be supplied on paper or on another durable medium in the lender’s general terms of business, rather than in the (signed) consumer credit agreement itself, is likewise not precluded by Directive 2008/48, provided that at least the following conditions are in place: (i) the separate documents containing the compulsory information should be given to the consumer at the same time and prior to conclusion of the agreement; (ii) the credit agreement should contain clear and precise cross references to the compulsory information and indicate where it can be found in the lender’s general terms of business; and (iii) the lender should be able to prove that he has given the compulsory information to the consumer prior to the conclusion of the agreement. It is for the national court to assess whether the national rules comply with those conditions and whether, therefore, they are or are not precluded by Directive 2008/48.

Questions 3 and 4 – compulsory information concerning the frequency of payments (Article 10(2)(h))

55. Article 10(2)(h) of Directive 2008/48 provides that ‘the amount, number and frequency of payments to be made by the consumer’ is an item of compulsory information that must be provided to the consumer. It does not state that the credit agreement must specify each date on which a payment is due. There is some overlap between the information to be given to consumers as pre-contractual information (Article 5) and at the time that the contract is concluded (Article 10).³⁸ That tallies with the consumer protection objective of Directive 2008/48. The consumer needs to know when repayments of the credit are due. However, provided that the lender uses objectively ascertainable criteria, that aim is achieved. An obvious method is to refer to a calendar and to use a formulation such as the referring court suggests — for example, ‘monthly instalments are due at the latest by the 15th day of each calendar month’.

56. The history of the legislation shows that the obligation to state the amount, number and frequency or dates of payments was first introduced by Directive 90/88/EEC,³⁹ which inserted it into Article 4(2)(c) of Directive 87/102/EEC.⁴⁰ Creditors were expressly given the choice of specifying either the number and frequency of payments *or* the dates. I do not regard the current wording as having somehow introduced a (new) requirement making it compulsory to specify dates.

57. I therefore conclude that the expression ‘frequency of payments’ in Article 10(2)(h) of Directive 2008/48 does not require the lender to indicate the exact date on which each payment in the credit agreement must be made.

38 — See COM(2002) 443 final, p. 16.

39 — Council Directive of 22 February 1990 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1990 L 61, p. 14).

40 — Council Directive 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).

Questions 5 and 6 – compulsory information concerning an amortisation table (Article 10(2)(i))

58. Where the principal sum is reduced under a credit agreement of fixed duration, a consumer has a right to receive upon 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. The referring court wishes to know whether such a table must also be included in the credit agreement concluded by the parties.

59. In my view it does not.

60. Article 10(2)(i) harmonises certain aspects of Member States' laws, regulations and administrative provisions relating to the requirement to provide an amortisation table and the content of that table. Thus, the rules on when a table may be requested and the information that it must contain are fully harmonised.

61. It follows from the wording of Article 10(2)(i) that the consumer has the right to request an amortisation table at any time throughout the duration of the credit agreement. If lenders were obliged to provide a table only when the credit agreement is signed, the words '... 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' would be rendered otiose and the right that the consumer enjoys in consequence would be significantly less useful. An amortisation table provided at the start of the credit agreement is little more than a statement of intent as to what will happen. It does not help the consumer to see how he is getting on with repaying the credit. For that, he needs to request an updated table.

62. That reading is confirmed by Article 10(3) which, read together with Article 10(2)(i), suggests that the lender is required to give the borrower an updated amortisation table following the latter's request.

63. I therefore conclude that Article 10(2)(i) of Directive 2008/48 should be interpreted as meaning that an amortisation table must be provided where capital amortisation of a credit agreement with a fixed duration is involved and the consumer has requested an amortisation table. In the absence of those two conditions lenders are not obliged to provide such information under Directive 2008/48. However, I cannot see that a national rule providing for an additional table to be supplied at the start of the credit agreement undermines either objective of Directive 2008/48. I do not therefore consider that Member States are precluded from introducing a rule obliging lenders to do so.

Question 7 – proportionality of national penalty

64. By its final question, the referring court essentially asks whether Paragraph 11 of the Law on consumer credit, which penalises an infringement of the lender's obligation to provide the information listed in Article 10(2) of Directive 2008/48 (transposed by the Law on consumer credit) by deeming the credit provided to be interest-free and free of any charges⁴¹ (so that the borrower is required only to repay the capital), satisfies the proportionality test in Article 23 of Directive 2008/48.

65. The question is posed in very general and abstract terms. That is to some extent inevitable. The national court has not yet had the necessary guidance from the Court to enable it to decide whether the requirements of Article 10 of Directive 2008/48 governing the content of a credit agreement, as transposed into national law, have been satisfied. And unless there is an infringement of the national provisions transposing those compulsory requirements, there is no call to apply sanctions. The question is nevertheless clearly not hypothetical or irrelevant to the outcome of the proceedings before the national court. If the national court decides that there has been an infringement, it will need to apply an 'effective, proportionate and dissuasive' penalty.

⁴¹ — The order for reference does not specify, and the Court therefore does not know, anything more about the scope of this provision.

66. Article 23 of the directive provides that the system of penalties applicable where the national provisions specifying the compulsory information to be included in credit agreements are infringed should be effective, proportionate and dissuasive; and Member States are to take all necessary measures to ensure that those penalties are implemented. Within those limits, the choice of penalties remains within the discretion of the Member States.⁴² The Court has also 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 dissuasive effect, while respecting the general principle of proportionality.⁴³

67. The sanction described by the national court has the effect of removing all profit from the transaction from the lender (or, put slightly differently, it obliges him to forgo the income that the sum lent would otherwise have earned) and of requiring him to bear the charges associated with servicing the credit and collecting repayment of the capital from the borrower. It seems intuitively plausible to think that such a sanction will be likely to be both effective and dissuasive.

68. What of the proportionality of such a sanction?

69. Here, the Court does not really have before it the factual or legal material necessary to give a useful answer.⁴⁴ The order for reference says merely (in the wording of Question 7 itself) that the provision of national law is one ‘under which *the absence of most of the elements of a credit agreement required by Article 10(2) of the directive has the consequence that the credit granted is regarded as interest-free and free of charges*’ (emphasis added). However, it is not clear what ‘most of the elements’ really means, or whether national law treats some of the 22 items of compulsory information listed in Article 10(2) of the directive as more critical than others (so that their omission is more serious), or what the precise point is (in terms of the seriousness of the infringement) at which the penalty is triggered.

70. I therefore suggest that, in answer to the seventh question referred, the Court should invite the national court to assess, in any particular case, whether the items of compulsory information listed in Article 10(2) of Directive 2008/48 that were omitted from the consumer credit agreement were such as significantly to jeopardize the consumer’s ability to assess the desirability of entering into the credit transaction in order to determine whether a sanction whose effect is to require the lender to forgo all interest and to bear all charges associated with the credit agreement is proportionate, or whether a lesser sanction would be appropriate.

Conclusion

71. In the light of all the foregoing considerations, I am of the opinion that the Court should answer the questions raised by the Okresný súd (District Court) Dunajská Streda, Slovakia, to the following effect:

- The words ‘on paper or on another durable medium’ in Article 10 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 refer to the medium on which the credit agreement is drawn up and given to the consumer. Those words cover both the terms of the credit agreement concluded by the parties and the items of information listed in Article 10(2) of Directive 2008/48 which comprise part of the credit agreement. It is not a requirement of Article 10 that the credit agreement must be signed by the parties or that the information listed in Article 10(2) of Directive 2008/48 must be provided in a single document. A national rule that requires all the compulsory

42 — Recital 47; see also judgment of 27 March 2014, *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraph 43.

43 — See judgment of 27 March 2014, *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraph 44 and the case-law cited.

44 — See judgment of 27 March 2014, *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraph 37.

information to be supplied in writing within a single, signed document is not precluded by Directive 2008/48. A national rule that permits elements of the compulsory information to be supplied on paper or on another durable medium in the lender's general terms of business, rather than in the (signed) consumer credit agreement itself, is likewise not precluded by Directive 2008/48, provided that at least the following conditions are in place: (i) the separate documents containing the compulsory information should be given to the consumer at the same time and prior to conclusion of the agreement; (ii) the credit agreement should contain clear and precise cross references to the compulsory information and indicate where it can be found in the lender's general terms of business; and (iii) the lender should be able to prove that he has given the compulsory information to the consumer prior to the conclusion of the agreement. It is for the national court to assess whether the national rules comply with those conditions and whether, therefore, they are or are not precluded by Directive 2008/48.

- The expression 'frequency of payments' in Article 10(2)(h) of Directive 2008/48 does not require the lender to indicate the exact date on which each payment in the credit agreement must be made.
- Article 10(2)(i) of Directive 2008/48 should be interpreted as meaning that an amortisation table must be provided where capital amortisation of a credit agreement with a fixed duration is involved and the consumer requests an amortisation table. However, Directive 2008/48 does not preclude Member States from requiring lenders to provide an additional amortisation table at the start of the credit agreement.
- It is for the national judge to assess, in any particular case, whether the items of compulsory information listed in Article 10(2) of Directive 2008/48 that were omitted from the consumer credit agreement were such as significantly to jeopardize the consumer's ability to assess the desirability of entering into the credit transaction in order to determine whether a sanction whose effect is to require the lender to forgo all interest and to bear all charges associated with the credit agreement is proportionate, or whether a lesser sanction would be appropriate.