



Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 2 May 2019¹

Case C-42/18

Finanzamt Trier

v

Cardpoint GmbH, successor in law to Moneybox Deutschland GmbH

(Request for a preliminary ruling from
the Bundesfinanzhof (Federal Finance Court, Germany))

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Sixth Directive 77/388/EEC — Exemptions — Article 13B(d)(3) — Payments — Transactions concerning payments — Concepts — Cash withdrawal from an automated teller machine (ATM) — Service supplied by an undertaking to a bank in circumstances in which the operation of ATMs has been outsourced)

I. Introduction

1. The present reference for a preliminary ruling from the Bundesfinanzhof (Federal Finance Court, Germany), arising from the refusal of the Finanzamt Trier (Tax Office, Trier, Germany)² to grant Cardpoint GmbH³ a tax exemption for a supply of services to a bank in connection with the operation of ATMs, asks the Court to rule on the interpretation of Article 13B(d)(3) of Sixth Directive 77/388/EEC.⁴

2. Under that provision, transactions concerning, inter alia, payments and transfers are exempt from VAT.

3. While the Court has already had occasion to interpret that provision, it is asked to do so here in a specific context. It must determine whether services relating to the operation of ATMs supplied to the banks that operate those ATMs may be exempt from VAT as transactions concerning payments. In a context in which banks are increasingly outsourcing the operation of ATMs, the interpretation provided by the Court is likely to have significant repercussions for the providers of such services.

¹ Original language: French.

² 'The tax authorities'.

³ As the successor in law to Moneybox Deutschland GmbH.

⁴ Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) ('the Sixth Directive'). I should say at the outset that Article 13B(d)(3) of the Sixth Directive was replaced by Article 135(1)(d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) ('the VAT Directive'), under which Member States are to exempt transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection, and that Article 135(1)(b) to (g) of the VAT Directive reproduces, without substantively amending, the exemptions that were previously laid down in Article 13B(d), points 1 to 6 respectively, of the Sixth Directive. In those circumstances, I consider that the case-law relating to that first provision is relevant for the purposes of interpreting the equivalent provisions of the Sixth Directive (on the converse approach, see judgment of 26 May 2016, *Bookit*, C-607/14, 'the judgment in *Bookit*', EU:C:2016:355, paragraph 32, and my Opinion in *A* (C-33/16, EU:C:2016:929, point 30)).

4. In this Opinion, I shall set out the reasons why I consider that, in circumstances in which a bank outsources activities to a third-party undertaking, the activities relating to the operation of ATMs carried out by the third-party undertaking, consisting in operating and maintaining the ATMs, replenishing them, installing computer hardware and software in them to enable them to read bank card data, sending a withdrawal authorisation request to the bank that issued the bank card used and registering withdrawal transactions, are not covered by the exemption laid down in Article 13B(d)(3) of the Sixth Directive.

II. Legal framework

A. *The Sixth Directive*

5. Under Article 2 of the Sixth Directive:

‘The following shall be subject to value added tax:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;

...’

6. Title X of that directive lays down exemptions from VAT that must be granted by the Member States. In that context, Article 13B(d)(3) and (4) of that directive is worded as follows:

‘Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse:

...

(d) the following transactions:

...

3. transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection and factoring;
4. transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors’ items; “collectors’ items” shall be taken to mean gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest.’

B. *German law*

7. Under Paragraph 4(8)(d) of the Umsatzsteuergesetz (Law on turnover tax), ‘transactions and the negotiation of transactions concerning deposit and current accounts, payments, transfers and the collection of negotiable instruments’ are exempt from VAT.

III. The facts in the main proceedings and the question referred for a preliminary ruling

8. Under its contractual obligations to a bank, Cardpoint supplied services in connection with the operation of ATMs. More specifically, Cardpoint installed in prescribed locations operational ATMs, equipped with computer software and hardware and bearing the logo of the bank operating those ATMs, and was responsible for ensuring the smooth running thereof. To do this, it was tasked, first of all, with transporting bank notes, made available by that bank, and replenishing the ATMs. Next, it was required to install computer hardware in the ATMs in question, together with any particular software necessary to keep the hardware running smoothly. Lastly, it provided advice on the day-to-day running of the ATMs.

9. When the ATMs were used for cash withdrawal transactions, special software would read particular data from the bank card as soon as this was inserted into the machine. First of all, Cardpoint would verify those data and send an electronic request to Bank-Verlag GmbH⁵ to authorise the transaction requested by the cardholder. Next, Bank-Verlag would forward the request to the interbank network, which would in turn pass it on to the bank that issued the bank card concerned. That bank would verify whether the account holder had sufficient funds in his account and send back, via the same channels, an approval or refusal of the withdrawal requested. Upon receipt of the reply, Cardpoint would generate a data file on the cash withdrawal and, if authorised, implement the requested transaction and generate a data file on the withdrawal. Lastly, that data file would be sent as a payment order to Cardpoint's contractual partner, that is to say, the bank operating the ATM in question. The latter would transmit the unedited data files to the records system of Deutsche Bundesbank (German Federal Bank).⁶ Cardpoint would also generate a daily, non-editable list of all the day's transactions, which would also be sent to the BBK.

10. Since only banks are entitled to hold settlement accounts with the BBK, it was they who transmitted the data files to the BBK's records system. That data transfer rendered legally binding the right of the bank operating the ATM in question to obtain reimbursement from the bank owning the account affected by the transaction and payment of any charges thereby incurred. Transfer of the data also had the immediate effect of recording in the accounts the clearing, as between the bank operating the ATM and the bank that issued the customer's card, of the amount paid out plus any charges incurred for using that ATM.

11. On 7 February 2007, taking the view that the services supplied should be exempt from VAT, Cardpoint submitted an amended VAT return for 2005 and requested that the existing tax assessment be amended.

12. That request was rejected by the tax authorities, but Cardpoint's action contesting that rejection was upheld by the Finanzgericht Rheinland-Pfalz (Finance Court, Rhineland-Palatinate, Germany).

13. The tax authorities brought before the referring court an appeal on a point of law (*Revision*), the proceedings in which were stayed pending delivery of the judgment in *Bookit*.

14. Having taken note of the fact that, according to that judgment, the exemption for transactions concerning payments and transfers is not applicable to a 'card handling' service performed by a taxable person who is the provider of that service, when an individual purchases, via that service provider, a cinema ticket which the service provider sells in the name of and on behalf of another entity, and which the individual pays for by debit card or by credit card, the referring court asks whether the same applies to the services supplied by Cardpoint.

⁵ Bank-Verlag thus acted, in those circumstances, as an intermediary between the bank operating the ATM and the bank that issued the bank card used to make the cash withdrawal.

⁶ 'The BBK'.

15. The referring court considers that the services supplied by Cardpoint are technical and administrative services that make it possible to withdraw cash from ATMs, since they constitute assistance similar to that at issue in the case which gave rise to the judgment in *Bookit*, and that Cardpoint simply gives technical effect to the instructions contained in an authorisation code.

16. In that regard, the referring court emphasises the similarities between the situation at issue in the main proceedings and that which gave rise to the judgment in *Bookit*. Thus, Cardpoint obtains the data from the account holder's bank card and transmits those data to the bank that issued that card. Moreover, Cardpoint is not responsible for verifying and approving individual orders, since it does not perform the requested withdrawal transaction until after it has been authorised to do so by the issuing bank.

17. While the referring court nonetheless notes that the judgment in *Bookit* concerned purchase and sales transactions, whereas the present case relates to services connected with the dispensing of cash by ATMs, the fact remains that such a difference does not justify a difference in the VAT treatment of the services supplied by Cardpoint, since, in both cases, the service consists, in essence, in an exchange of information and the provision of assistance of a technical and administrative nature.

18. The referring court therefore raises the question of the significance to be attached to the fact that the judgment in *Bookit* concerned a separate agreement for the sale of cinema tickets which is absent in the present case.

19. Lastly, the referring court refers to two circumstances which, in its view, militate against an exemption. Thus, as with the judgment in *Bookit*, the consideration for the supply is easy to determine. Furthermore, the services supplied by Cardpoint are open to classification as supplies of technical assistance, since Cardpoint's activities involve no more than an exchange of information and the implementation of an authorisation decision adopted by the bank. Cardpoint simply generates data files which it uploads to the banking system as an accounting instruction.

20. In those circumstances, the Bundesfinanzhof (Federal Finance Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is technical and administrative assistance provided by a supplier of services to a bank operating a cash point (ATM) for cash withdrawals from the bank exempt from [VAT] under Article 13B(d)(3) of [the Sixth Directive] in the case where technical and administrative assistance of the same nature provided by a supplier of services for payments by card in connection with the sale of cinema tickets is, in accordance with the judgment [in *Bookit*], not exempt from [VAT] under that provision?'

IV. My analysis

21. The referring court asks the Court, in essence, to determine whether Cardpoint's activities, consisting in operating and maintaining ATMs, replenishing them, installing computer hardware and software in them, sending a withdrawal authorisation request to the bank that issued the bank card used, dispensing money and registering withdrawal transactions, fall to be described as 'transactions concerning payments', which are exempt from VAT under Article 13B(d)(3) of the Sixth Directive.

22. It is apparent from the wording of the question referred for a preliminary ruling and the order for reference that the court hearing the dispute in the main proceedings is uncertain as to the applicability in the present case of the interpretation given by the Court in the judgment in *Bookit*, in which it held that the exemption for transactions concerning payments and transfers does not apply to a 'card handling' service performed by a taxable person who is the provider of that service, when an individual purchases, via that service provider, a cinema ticket which the service provider sells in the name of and on behalf of another entity, and which the individual pays for by debit card or by credit card.

23. Before we determine whether the approach taken in the judgment in *Bookit* may be transposed to the supply of services by Cardpoint to banks that operate ATMs, it is important to bear in mind a number of preliminary points.

24. First, it should be noted that services making it possible to withdraw cash from a payment account constitute payment services within the meaning of EU law⁷ and that, consequently, a withdrawal from an ATM is a payment.

25. Secondly, I would recall that it is clear from the Court's case-law that the considerations applicable to 'transactions concerning transfers' also hold good for 'transactions concerning payments',⁸ with the result that those two classes of transaction are treated in the same way for the purposes of the exemption laid down in Article 13B(d)(3) of the Sixth Directive.⁹

26. Thirdly, it is to be noted that, in accordance with settled case-law, the VAT exemptions laid down in Article 13 of the Sixth Directive constitute independent concepts of EU law whose purpose is to avoid divergences in the application of the VAT system as between one Member State and another¹⁰ and that the terms used to specify those exemptions must be interpreted strictly, given that they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person.¹¹

27. As to whether the approach taken in the judgment in *Bookit* is transposable to the activities carried on by Cardpoint at issue in the main proceedings, it is important to highlight the criterion applied by the Court in that judgment in order to differentiate supplies which are exempt from VAT from those which are not.

28. In that regard, I, like Cardpoint, take the view that, in that judgment, the Court did not depart from its previous case-law.

29. The Court found that the 'card handling' service at issue in that case could not be exempted, since the services supplied could not, taken individually or together, be regarded as performing a specific and essential function of a payment or transfer transaction for the purposes of EU law.¹²

30. In reaching that conclusion, the Court noted, in particular, that the supplier of that service did not itself directly debit or credit the accounts concerned, that it did not act by means of accounting entries, and that it did not instruct such debit or credit. The Court also held that the supplier of that service did not assume any liability as regards the achievement of the changes in the legal and financial situation that are characteristic of the existence of an exempted transfer or payment transaction.¹³

31. It should also be noted that, in its most recent case-law, the Court has confirmed that approach.

7 In accordance with the definitions set out by the EU legislature in Annex 1 to Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ 2015 L 337, p. 35). I see no reason why the concept of a 'payment service' should be understood any differently in the context of VAT, a position which is likely to be shared by the German Government, according to which transactions concerning payments 'are characterised by the transfer of means of payment'.

8 See judgment of 5 June 1997, *SDC* (C-2/95, EU:C:1997:278, paragraph 50).

9 See judgment of 25 July 2018, *DPAS* (C-5/17, EU:C:2018:592, paragraph 37).

10 See judgment of 25 July 2018, *DPAS* (C-5/17, EU:C:2018:592, paragraph 28 and the case-law cited).

11 See judgment of 25 July 2018, *DPAS* (C-5/17, EU:C:2018:592, paragraph 29 and the case-law cited).

12 See judgment in *Bookit* (paragraph 46).

13 See judgment in *Bookit* (paragraphs 44 to 51).

32. In the judgment of 25 July 2018, *DPAS* (C-5/17, EU:C:2018:592), the Court recalled that functional aspects are decisive for the purpose of determining whether a transaction is covered by the exemption for transactions concerning transfers or payments. Thus, a supply of services may be regarded as a ‘transaction concerning transfers’ or as a ‘transaction concerning payments’ only in the event that it fulfils the specific and essential functions of such transfers or payments, in so far as it has the effect of transferring funds and entails changes in the legal and financial situation resulting from that transfer. Consequently, in order to be exempt, a supply of services must have the effect of making the legal and financial changes which are characteristic of the transfer of a sum of money.¹⁴

33. The Court further recalled that, in order to distinguish supplies of services which are exempt under the VAT Directive from the supply of mere physical, technical or administrative services, it is relevant to examine, in particular, the extent of the liability of the supplier of the services in question and, inter alia, whether that liability is restricted to technical aspects or whether it extends to the specific, essential aspects characterising the transactions.¹⁵

34. More specifically, for the purposes of characterising the services exempt from VAT as transactions concerning transfers or payments, the Court has regard first and foremost to the nature of the services provided, in the sense that those services must relate to the sphere of financial transactions in order to be exempt.¹⁶ Accordingly, the services must be assessed against a functional criterion in order to determine whether they fulfil the specific and essential functions of such transfers or payments, in that they have the effect of transferring funds and entail changes in the legal and financial nature of that transfer. Among the other factors taken into account, the Court may also examine the extent of the liability borne by the service provider.

35. In the light of the previous case-law, there is in my view no reason why the Court should deviate from the approach it took in the judgment in *Bookit* in relation to the supply of services by Cardpoint.¹⁷

36. As regards the functional criterion, it should be noted at the outset that Cardpoint itself acknowledged in its observations that, in accordance with the judgment in *Bookit*, the capture of an ATM user’s bank card data, the transmission and verification of those data and the execution of the transaction requested by the cardholder following receipt of the authorisation message from the bank that issued the card concerned cannot fall within the scope of the exemption.

37. I share that point of view. It is clear that, in common with the transportation of money, the replenishment of ATMs, the installation and maintenance of the necessary software in the ATMs and the provision by Cardpoint of advice on the operation of those ATMs, none of those activities has the effect of transferring a sum of money or entail legal and financial changes resulting from or characterising that transfer.

38. More broadly, I consider that the foregoing analysis applies to all of the activities, taken together or individually, carried out by Cardpoint in connection with the operation of an ATM, inasmuch as they must be classified as ‘physical, technical or administrative services’.

¹⁴ See judgment of 25 July 2018, *DPAS* (C-5/17, EU:C:2018:592, paragraphs 33, 34 and 38 and the case-law cited).

¹⁵ See judgment of 25 July 2018, *DPAS* (C-5/17, EU:C:2018:592, paragraph 36 and the case-law cited).

¹⁶ See judgment of 25 July 2018, *DPAS* (C-5/17, EU:C:2018:592, paragraph 31 and the case-law cited). Consequently, the Court does not require the services to be provided by a particular type of institution or legal person.

¹⁷ I would point out here and now that, even though, as the referring court has noted, the case which gave rise to the judgment in *Bookit* involved a separate agreement for the sale of cinema tickets, the absence of such a separate agreement in the present case is irrelevant, given that, in that judgment, the Court did not take that factual circumstance into consideration in its assessment.

39. It thus follows from the information provided by the referring court, recalled in points 8 to 10 of this Opinion, that, as the German Government has emphasised, the service supplied by Cardpoint does not directly entail the act of debiting or crediting an account itself or acting by means of accounting entries in the accounts of the holder of the bank card used to make a withdrawal.¹⁸ Indeed, Cardpoint transmits the data from the user's card and the request for authorisation for the withdrawal sought by the user, but executes the transaction, in the sense of physically releasing bank notes, only if the request is approved.

40. Moreover, only the bank that operates the ATM transmits the data files to the BBK's records system. The daily non-editable data file containing all of the day's transactions which is generated by Cardpoint and sent to the BBK is intended to notify the BBK of the authorised transactions carried out and cannot therefore be regarded as fulfilling the specific and essential functions of a payment.

41. In the light of those considerations, I consider that the service supplied by Cardpoint constitutes not a transaction which has the effect of transferring funds or entails legal or financial changes, but a physical, technical or administrative service, given that that service does not have the effect of actually or potentially transferring ownership of the funds in question or of fulfilling the specific and essential functions of such a transfer.

42. The arguments based on the specific nature of Cardpoint's activities do not call that assessment into question.

43. The same is true of the argument based on the fact that Cardpoint physically dispenses bank notes and releases them to ATM users.

44. As has been emphasised by the German Government, ownership of the money is transferred from the bank, and not Cardpoint, to ATM users.

45. Like the German Government, I take the view that account is to be taken only of the legal, rather than physical, ownership of the money. While it cannot be disputed that the service supplied by Cardpoint has the effect of physically transferring bank notes, transfer of the legal ownership of the money is nevertheless contingent upon authorisation from the bank that issued the card and the transaction's subsequent entry in the accounts. It need hardly be pointed out in this regard that the services provided by Cardpoint are confined to forwarding the customer's request for payment and giving technical effect to that payment.

46. It makes no difference in this regard whether the activities carried on by Cardpoint in connection with the operation of ATMs on behalf of the banks are considered in their entirety. It is true that the banks that operate the ATMs have outsourced a large proportion of their ATM activity and that Cardpoint provides a very extensive service.

47. The fact remains, however, in my view, that the *ratio legis* of Article 13B(d)(3) of the Sixth Directive calls not for a quantitative approach but for a functional and qualitative approach based on the nature of the services. In other words, the fact that Cardpoint offers its service in the form of a package is irrelevant if none of the activities provided in that package has the effect of transferring funds or entails legal and financial changes resulting from or characterising that transfer.

¹⁸ It is true that, in paragraph 42 of the judgment in *Bookit*, the Court stated that such a circumstance does not automatically rule out the possibility that the service falls within the scope of the exemption at issue. However, it is also clear from that paragraph of the judgment in *Bookit* that, in principle, the fact that the service provider concerned directly debits and/or credits an account itself, or acts by means of entries in the accounts of the same account holder, supports both the view that that condition is satisfied and the conclusion that the service under consideration is exempt.

48. In that regard, while I agree with Cardpoint that some of its activities are essential to the payment transactions at issue in the main proceedings,¹⁹ this is not sufficient to exempt the service it supplies from VAT.

49. Indeed, the Court has already had occasion to state that, in view of the strict interpretation of the VAT exemptions, the mere fact that a service is essential for completing an exempt transaction does not warrant the conclusion that that service is to be exempted.²⁰

50. Moreover, the fact that Cardpoint operates in circumstances in which the operation of ATMs has been outsourced by a bank does not constitute sufficient grounds for the Court to reason by analogy with the case-law relating to Article 148 of the VAT Directive, in which the Court held that the exemption laid down in that article could be applied to services provided by intermediaries acting in their own name or by subcontractors.²¹

51. The specific features and purposes of each VAT exemption do not, to my mind, support an analogy based solely on the fact that Cardpoint supplies a service in circumstances in which the operation of ATMs has been outsourced.

52. I am also unconvinced by Cardpoint's argument based on the fact that it is responsible for the operability of the ATMs and is therefore liable for any possible malfunctions, such as under- or over-payments, damage caused by criminal activities by third parties, improper installation of the ATMs or incorrect accounting instructions.

53. In that regard, I would reiterate the need to assess the extent of the liability of the supplier of the services and, inter alia, whether that liability is restricted to technical aspects or whether it extends to the specific and essential aspects characterising the transactions.²²

54. While the information provided by Cardpoint confirms that it is liable to the bank that operates the ATM for any malfunctioning of that ATM, it shows above all that Cardpoint assumes no liability for the legal and financial changes involved in a payment transaction.

55. In particular, since the release of funds to the user of an ATM is not an essential and specific function of a payment, the fact that Cardpoint is liable to the bank that operates that ATM for any under- or over-payments cannot have the effect of extending its liability to the specific and essential functions of the payment transaction.

56. In short, since Cardpoint supplies only technical and administrative services, that supply cannot be exempted from VAT under Article 13B(d)(3) of the Sixth Directive.

57. Lastly, I would make the point that the purposes of the exemption laid down in that provision, namely to alleviate the difficulties connected with determining the tax base and the amount of VAT deductible and to avoid an increase in the cost of consumer credit,²³ do not invalidate my analysis.

58. Since the tax base for the supply of services by Cardpoint can easily be determined by reference in particular to the invoices for that supply, the first purpose cannot justify the exemption of that supply from VAT.

19 The capture and transmission of data by Cardpoint are steps which, like the creation of data files, are preliminary and essential to the exempt service because they lead to a withdrawal of cash from a payment account.

20 See judgment of 25 July 2018, *DPAS* (C-5/17, EU:C:2018:592, paragraph 43 and the case-law cited).

21 Judgments of 3 September 2015, *Fast Bunkering Klaipėda* (C-526/13, EU:C:2015:536), and of 4 May 2017, *A* (C-33/16, EU:C:2017:339).

22 See judgment of 25 July 2018, *DPAS* (C-5/17, EU:C:2018:592, paragraph 36 and the case-law cited).

23 See judgment in *Bookit* (paragraph 55 and the case-law cited).

59. Since the second purpose is not relevant in the present case, it cannot form the basis of an exemption of the supply of services by Cardpoint either. In that regard, Cardpoint is of the view that, in the event that a cardholder overdraws his account, that withdrawal immediately creates a credit relationship between the cardholder and the bank that issued the card, and that consumer credit cannot be subject to VAT.

60. It is true that, in a situation where a bank authorises a withdrawal despite the absence of sufficient funds in the bank account in question, the account holder effectively owes the bank money. This does not, however, constitute consumer credit but a short-term overdraft authorisation.²⁴

61. In the light of all the foregoing considerations, I consider that the exemption for transactions concerning payments and transfers laid down in Article 13B(d)(3) of the Sixth Directive does not apply to supplies of services such as those provided by Cardpoint in circumstances in which banks have outsourced the operation of ATMs.

V. Conclusion

62. In the light of the foregoing considerations, I propose that the Court should reply as follows to the question referred for a preliminary ruling by the Bundesfinanzhof (Federal Finance Court, Germany):

Article 13B(d)(3) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that the exemption from value added tax which is laid down in that provision for transactions concerning payments and transfers does not apply to supplies of services, such as those at issue in the main proceedings, consisting in operating and maintaining ATMs, replenishing them, installing computer hardware and software in them, sending a withdrawal authorisation request to the bank that issued the bank card used, dispensing money and registering withdrawal transactions, by a service provider to a bank operating an automated teller machine.

²⁴ In that regard, I would point out that, under Article 2(2)(e) 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), that directive is not to apply to credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month.