Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

21 December 2023*

(Reference for a preliminary ruling – Consumer protection – Leasing agreement for a motor vehicle without an obligation to purchase – Directive 2008/48/EC – Article 2(2)(d) – Concept of a leasing agreement without an obligation to purchase the object of the agreement – Directive 2002/65/EC – Article 1(1) and Article 2(b) – Concept of a contract for financial services – Directive 2011/83/EU – Article 2(6) and Article 3(1) – Concept of a service contract – Article 2(7) – Concept of a distance contract – Article 2(8) – Concept of an off-premises contract – Article 16(l) – Exception from the right of withdrawal in respect of the provision of car rental services – Credit agreement for the purchase of a motor vehicle – Directive 2008/48 – Article 10(2) – Requirements relating to the information that must be stated in the agreement – Presumption of compliance with the obligation to provide information in the case of use of a statutory information model – Absence of horizontal direct effect of a directive – Article 14(1) – Right of withdrawal – Start of the withdrawal period in the event of incomplete or incorrect information – Abusive nature of the exercise of the right of withdrawal – Time-barring of the right of withdrawal – Obligation to return the vehicle in advance in the event of exercise of the right of withdrawal in respect of a linked credit agreement)

In Joined Cases C-38/21, C-47/21 and C-232/21,

THREE REQUESTS for a preliminary ruling under Article 267 TFEU from the Landgericht Ravensburg (Regional Court, Ravensburg, Germany), made by decision of 30 December 2020, received at the Court on 22 January 2021 and supplemented by decision of 24 August 2021, received at the Court on 1 September 2021 (Case C-38/21), by decision of 8 January 2021, received at the Court on 28 January 2021 (Case C-47/21), and by decision of 19 March 2021, received at the Court on 12 April 2021 (Case C-232/21), in the proceedings

VK

v

BMW Bank GmbH (C-38/21),

and

F.F.

v

C. Bank AG (C-47/21),

* Language of the case: German.

and

CR,

AY,

ML,

BQ

v

Volkswagen Bank GmbH,

Audi Bank (C-232/21),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, K. Jürimäe, C. Lycourgos, E. Regan, F. Biltgen, N. Piçarra, Z. Csehi, Presidents of Chambers, M. Safjan (Rapporteur), S. Rodin, P.G. Xuereb, I. Ziemele, J. Passer, D. Gratsias and M.L. Arastey Sahún, Judges,

Advocate General: A.M. Collins,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 7 September 2022,

after considering the observations submitted on behalf of:

– CR, AY, ML and BQ by M. Basun, D. Er and A. Esser, Rechtsanwälte,

– BMW Bank GmbH, by A. Ederle and R. Hall, Rechtsanwälte,

– C. Bank AG, by T. Winter, Rechtsanwalt,

– Volkswagen Bank GmbH and Audi Bank, by I. Heigl, T. Winter and B. Zerelles, Rechtsanwälte,

– the German Government, by J. Möller, U. Bartl, M. Hellmann and U. Kühne, acting as Agents,

– the European Commission, by G. Goddin, B.-R. Killmann and I. Rubene, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 February 2023,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 2(a) and (b) of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ 2002 L 271, p. 16), Article 3(c), Article 10(2)(l), (p), (r) and (t) and Article 14(1) 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), Article 2(7), (9) and (12) and Article 16(l) of 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), and the second paragraph of Article 267 TFEU.

2 The requests have been made in proceedings between VK and BMW Bank GmbH (Case C-38/21), F.F. and C. Bank AG (Case C-47/21), and CR and Volkswagen Bank GmbH, and AY, ML and BQ, on the one hand, and Audi Bank, on the other (Case C-232/21) concerning the exercise, by VK, F.F., CR, AY, ML and BQ, of the right of withdrawal relating to agreements which they concluded, in their capacity as consumers, with those banks.

Legal context

European Union law

Directive 2002/65

3 Recitals 14, 15 and 19 of Directive 2002/65 read as follows:

‘(14) This Directive covers all financial services liable to be provided at a distance. However, certain financial services are governed by specific provisions of Community legislation which continue to apply to those financial services. However, principles governing the distance marketing of such services should be laid down.

(15) Contracts negotiated at a distance involve the use of means of distance communication which are used as part of a distance sales or service-provision scheme not involving the simultaneous presence of the supplier and the consumer. The constant development of those means of communication requires principles to be defined that are valid even for those means which are not yet in widespread use. Therefore, distance contracts are those the offer, negotiation and conclusion of which are carried out at a distance.

…

(19) The supplier is the person providing services at a distance. This Directive should however also apply when one of the marketing stages involves an intermediary. Having regard to the nature and degree of that involvement, the pertinent provisions of this Directive should apply to such an intermediary, irrespective of his or her legal status.’

4 Article 1 of Directive 2002/65, entitled 'Object and scope', provides, in paragraph 1:

'The object of this Directive is to approximate the laws, regulations and administrative provisions of the Member States concerning the distance marketing of consumer financial services.'

5 According to Article 2 of that directive, entitled 'Definitions':

'For the purposes of this Directive:

(a) "distance contract" means any contract concerning financial services concluded between a supplier and a consumer under an organised distance sales or service-provision scheme run by the supplier, who, for the purpose of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;

(b) "financial service" means any service of a banking, credit, insurance, personal pension, investment or payment nature;

…'

6 Article 6 of that directive, entitled 'Right of withdrawal', provides:

'1. The Member States shall ensure that the consumer shall have a period of 14 calendar days to withdraw from the contract without penalty and without giving any reason. …

…

2. The right of withdrawal shall not apply to:

…

(c) contracts whose performance has been fully completed by both parties at the consumer's express request before the consumer exercises his [or her] right of withdrawal.

…'

Directive 2008/48

7 Recitals 7 to 10, 31, 34 and 35 of Directive 2008/48 state:

'(7) In order to facilitate the emergence of a well-functioning internal market in consumer credit, it is necessary to make provision for a harmonised Community framework in a number of core areas. In view of the continuously developing market in consumer credit and the increasing mobility of European citizens, forward-looking Community legislation which is able to adapt to future forms of credit and which allows Member States the appropriate degree of flexibility in their implementation should help to establish a modern body of law on consumer credit.

(8) It is important that the market should offer a sufficient degree of consumer protection to ensure consumer confidence. Thus, it should be possible for the free movement of credit offers to take place under optimum conditions for both those who offer credit and those who require it, with due regard to specific situations in the individual Member States.

(9) Full harmonisation is necessary in order to ensure that all consumers in the Community enjoy a high and equivalent level of protection of their interests and to create a genuine internal market. Member States should therefore not be allowed to maintain or introduce national provisions other than those laid down in this Directive. However, such restriction should only apply where there are provisions harmonised in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation. Accordingly, Member States may, for instance, maintain or introduce national provisions on joint and several liability of the seller or the service provider and the creditor. Another example of this possibility for Member States could be the maintenance or introduction of national provisions on the cancellation of a contract for the sale of goods or supply of services if the consumer exercises his right of withdrawal from the credit agreement. …

(10) The definitions contained in this Directive determine the scope of harmonisation. The obligation on Member States to implement the provisions of this Directive should therefore be limited to its scope as determined by those definitions. However, this Directive should be without prejudice to the application by Member States, in accordance with Community law, of the provisions of this Directive to areas not covered by its scope. A Member State could thereby maintain or introduce national legislation corresponding to the provisions of this Directive or certain of its provisions on credit agreements outside the scope of this Directive, for instance on credit agreements involving amounts less than EUR 200 or more than EUR 75 000. Furthermore, Member States could also apply the provisions of this Directive to linked credit which does not fall within the definition of a linked credit agreement as contained in this Directive. Thus, the provisions on linked credit agreements could be applied to credit agreements that serve only partially to finance a contract for the supply of goods or provision of a service.

…

(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.

…

(34) In order to approximate the procedures for exercising the right of withdrawal in similar areas, it is necessary to make provision for a right of withdrawal without penalty and with no obligation to provide justification, under conditions similar to those provided for by Directive [2002/65] …

(35) Where a consumer withdraws from a credit agreement in connection with which he has received goods, in particular from a purchase in instalments or from a hiring or leasing agreement providing for an obligation to purchase, this Directive should be without prejudice to any regulation by Member States of questions concerning the return of the goods or any related questions.

…’

8 Article 1 of Directive 2008/48, entitled ‘Subject matter’, provides:

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

9 Article 2 of that directive, entitled ‘Scope’, provides:

‘1. This Directive shall apply to credit agreements.

2. This Directive shall not apply to the following:

…

(d) hiring or leasing agreements where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement; such an obligation shall be deemed to exist if it is so decided unilaterally by the creditor;

…’

10 Article 3 of that directive, entitled ‘Definitions’, provides:

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

…

(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;

…

(i) “annual percentage rate of charge” 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);

…

(n) “linked credit agreement” means a credit agreement where:
(i) the credit in question serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service, and

(ii) those two agreements form, from an objective point of view, a commercial unit; a commercial unit shall be deemed to exist where the supplier or service provider himself finances the credit for the consumer or, if it is financed by a third party, where the creditor uses the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement, or where the specific goods or the provision of a specific service are explicitly specified in the credit agreement.

…’

11 Article 10 of Directive 2008/48, entitled ‘Information to be included in credit agreements’, is worded as follows, in paragraph 2:

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

…

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

…

(p) the existence or absence of a right of withdrawal, the period during which that right may be exercised and other conditions governing the exercise thereof, including information concerning the obligation of the consumer to pay the capital drawn down and the interest in accordance with Article 14(3)(b) and the amount of interest payable per day;

…

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

…

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

…’

12 Article 14 of that directive, entitled ‘Right of withdrawal’, provides:

‘1. The consumer shall have a period of 14 calendar days in which to withdraw from the credit agreement without giving any reason.

That period of withdrawal shall begin

(a) either from the day of the conclusion of the credit agreement, or

(b) from the day on which the consumer receives the contractual terms and conditions and information in accordance with Article 10, if that day is later than the date referred to in point (a) of this subparagraph.

…

3. If the consumer exercises his right of withdrawal, he shall:

(a) in order to give effect to the withdrawal before the expiry of the deadline referred to in paragraph 1, notify this to the creditor in line with the information given by the creditor pursuant to Article 10(2)(p) by means which can be proven in accordance with national law. The deadline shall be deemed to have been met if that notification, if it is on paper or on another durable medium that is available and accessible to the creditor, is dispatched before the deadline expires; and

(b) pay to the creditor the capital and the interest accrued thereon from the date the credit was drawn down until the date the capital is repaid, without any undue delay and no later than 30 calendar days after the dispatch by him to the creditor of notification of the withdrawal. The interest shall be calculated on the basis of the agreed borrowing rate. The creditor shall not be entitled to any other compensation from the consumer in the event of withdrawal, except compensation for any non-returnable charges paid by the creditor to any public administrative body.

4. If an ancillary service relating to the credit agreement is provided by the creditor or by a third party on the basis of an agreement between the third party and the creditor, the consumer shall no longer be bound by the ancillary service contract if the consumer exercises his right of withdrawal from the credit agreement in accordance with this Article.

…'

13 Article 22 of that directive, entitled 'Harmonisation and imperative nature of this Directive', provides, in paragraph 1:

'In so far as this Directive contains harmonised provisions, Member States may not maintain or introduce in their national law provisions diverging from those laid down in this Directive.'

Directive 2011/83

14 Recitals 20 to 22, 37 and 49 of Directive 2011/83 read as follows:

'(20) The definition of distance contract should cover all cases where a contract is concluded between the trader and the consumer under an organised distance sales or service-provision scheme, with the exclusive use of one or more means of distance communication (such as mail order, Internet, telephone or fax) up to and including the time at which the contract is concluded. That definition should also cover situations where the consumer visits the business premises merely for the purpose of gathering information about the goods or services and subsequently negotiates and concludes the contract at a distance. By contrast, a contract which is negotiated at the business premises of the trader and finally concluded by means of distance communication should not be considered a distance contract. Neither should a contract initiated by means of distance

communication, but finally concluded at the business premises of the trader be considered a distance contract. … The notion of an organised distance sales or service-provision scheme should include those schemes offered by a third party other than the trader but used by the trader, such as an online platform. It should not, however, cover cases where websites merely offer information on the trader, his goods and/or services and his contact details.

(21) An off-premises contract should be defined as a contract concluded with the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader, for example at the consumer's home or workplace. In an off-premises context, the consumer may be under potential psychological pressure or may be confronted with an element of surprise, irrespective of whether or not the consumer has solicited the trader's visit. The definition of an off-premises contract should also include situations where the consumer is personally and individually addressed in an off-premises context but the contract is concluded immediately afterwards on the business premises of the trader or through a means of distance communication. The definition of an off-premises contract should not cover situations in which the trader first comes to the consumer's home strictly with a view to taking measurements or giving an estimate without any commitment of the consumer and where the contract is then concluded only at a later point in time on the business premises of the trader or via means of distance communication on the basis of the trader's estimate. In those cases, the contract is not to be considered as having been concluded immediately after the trader has addressed the consumer if the consumer has had time to reflect upon the estimate of the trader before concluding the contract. Purchases made during an excursion organised by the trader during which the products acquired are promoted and offered for sale should be considered as off-premises contracts.

(22) Business premises should include premises in whatever form (such as shops, stalls or lorries) which serve as a permanent or usual place of business for the trader. … The business premises of a person acting in the name or on behalf of the trader as defined in this Directive should be considered as business premises within the meaning of this Directive.

…

(37) … Concerning off-premises contracts, the consumer should have the right of withdrawal because of the potential surprise element and/or psychological pressure. …

…

(49) Certain exceptions from the right of withdrawal should exist, both for distance and off-premises contracts. … The right of withdrawal should neither apply to goods made to the consumer's specifications … The granting of a right of withdrawal to the consumer could also be inappropriate in the case of certain services where the conclusion of the contract implies the setting aside of capacity which, if a right of withdrawal were exercised, the trader may find difficult to fill. This would for example be the case where reservations are made at hotels or concerning holiday cottages or cultural or sporting events.'

15 Article 2 of that directive, entitled ‘Definitions’, provides:

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

…

(2) “trader” means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive;

…

(5) “sales contract” means any contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services;

(6) “service contract” means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof;

(7) “distance contract” means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;

(8) “off-premises contract” means any contract between the trader and the consumer:
(a) concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;
(b) for which an offer was made by the consumer in the same circumstances as referred to in point (a);
(c) concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer; or
(d) concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer;

(9) “business premises” means:
(a) any immovable retail premises where the trader carries out his activity on a permanent basis; or
(b) any movable retail premises where the trader carries out his activity on a usual basis;

…

(12) “financial service” means any service of a banking, credit, insurance, personal pension, investment or payment nature;

…’

16 Article 3 of that directive, entitled ‘Scope’, provides:

‘1. This Directive shall apply, under the conditions and to the extent set out in its provisions, to any contract concluded between a trader and a consumer. It shall also apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis.

…

3. This Directive shall not apply to contracts:

…

(d) for financial services;

…’

17 Article 6 of that directive, entitled ‘Information requirements for distance and off-premises contracts’, is worded as follows, in paragraph 1:

‘Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner:

(a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;

…

(e) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated …;

…

(g) the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader’s complaint handling policy;

…

(o) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;

…’

18 Article 9 of Directive 2011/83, entitled 'Right of withdrawal', provides:

'1. Save where the exceptions provided for in Article 16 apply, the consumer shall have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason, and without incurring any costs other than those provided for in Article 13(2) and Article 14.

2. Without prejudice to Article 10, the withdrawal period referred to in paragraph 1 of this Article shall expire after 14 days from:

(a) in the case of service contracts, the day of the conclusion of the contract;

…'

19 Under Article 16 of that directive, entitled 'Exceptions from the right of withdrawal':

'Member States shall not provide for the right of withdrawal set out in Articles 9 to 15 in respect of distance and off-premises contracts as regards the following:

…

(c) the supply of goods made to the consumer's specifications or clearly personalised;

…

(l) the provision of accommodation other than for residential purpose, transport of goods, car rental services, catering or services related to leisure activities if the contract provides for a specific date or period of performance;

…'

German law

The Basic Law

20 Article 25 of the Grundgesetz für die Bundesrepublik Deutschland (Basic Law for the Federal Republic of Germany) ('the Basic Law') is worded as follows:

'The general rules of public international law shall be an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory.'

The Civil Code

21 Paragraph 242 of the Bürgerliches Gesetzbuch (Civil Code) ('the BGB'), entitled 'Performance in good faith', provides:

'The obligor must perform in a manner consistent with good faith, taking into account accepted practice.'

22 Paragraph 247 of the BGB, entitled 'Base rate', provides:

'(1) The base rate shall be 3.62%. On 1 January and 1 July of each year, it shall be adjusted by the percentage points by which the reference value has increased or decreased since the last adjustment. The reference value shall correspond to the interest rate set by the European Central Bank for the most recent main refinancing operation carried out prior to the first calendar day of the relevant six-month period.

(2) The Deutsche Bundesbank [(German Central Bank)] shall publish the current base rate in the *Bundesanzeiger* [(German Federal Gazette)] immediately after the dates specified in the second sentence of the first subparagraph.'

23 Paragraph 273 of the BGB, entitled 'Right of retention', provides, in subparagraph 1:

'If the obligor has a claim that is due against the obligee under the same legal relationship as that on which the obligation is based, he or she may, unless the debt relationship provides otherwise, refuse the performance owed by him or her, until the performance owed to him or her is rendered (right of retention).'

24 Under Paragraph 274 of the BGB, entitled 'Effects of the right of retention':

'(1) As regards the obligee's action, the only effect of invoking the right of retention is that the obligor must be ordered to perform in return for receipt of the service due to him or her (simultaneous performance).

(2) On the basis of such an order, the obligee may apply for enforcement of his or her claim, without performance of the obligation incumbent on him or her, if the obligor is late in accepting it.'

25 Paragraph 288 of the BGB, entitled 'Late-payment interest and other compensation', is worded as follows, in subparagraph 1:

'Any debt of money shall accrue interest during the period of delay. The rate of late-payment interest shall be five percentage points per annum above the base rate.'

26 Paragraph 293 of the BGB, entitled 'Default in acceptance', provides:

'The obligee is in default if he or she does not accept the performance offered to him or her.'

27 Paragraph 294 of the BGB, entitled 'Actual offer', provides:

'The obligee must actually be offered performance exactly as it is to be rendered.'

28 Under Paragraph 295 of the BGB, entitled 'Verbal offer':

'A verbal offer made by the obligor shall be sufficient if the obligee has declared that he or she will not accept performance of the obligation, or if an action by the obligee is necessary for the performance of the obligation, in particular if he or she is to withdraw the goods. An offer to perform the service shall be equivalent to a request to the obligee to take the necessary steps.'

29 Paragraph 312b of the BGB, entitled 'Off-premises contracts', is worded as follows:

'(1) Off-premises contracts are contracts

1. concluded in the simultaneous physical presence of the consumer and the trader, in a place which is not the business premises of the trader,

2. for which an offer was made by the consumer under the circumstances referred to in point 1,

3. concluded on the business premises of the trader or through any means of distance communication, but where the consumer was, immediately beforehand, personally and individually addressed, in a place outside of the business premises of the trader in the simultaneous physical presence of the consumer and the trader, or

4. concluded during an excursion organised by the trader or with his or her assistance in order to promote and sell goods or services to the consumer and in order to conclude the corresponding contracts with that consumer.

Persons acting in the name or on behalf of the trader are to be treated in the same way as the trader.

(2) Business premises within the meaning of subparagraph 1 are any immovable retail premises where the trader carries out his or her activity on a permanent basis, and any movable retail premises where the trader carries out his or her activity on a usual basis. Retail premises where the person who is acting in the name or on behalf of the trader carries out his or her activity on a permanent or on a usual basis are equivalent to the premises of the trader.'

30 Paragraph 312c of the BGB, entitled 'Distance contracts', provides:

'(1) Distance contracts are contracts for which the trader, or a person acting in the name or on behalf of the trader, and the consumer make exclusive use of means of distance communication to negotiate and conclude the contract, except where the conclusion of the contract does not take place in the context of a sales or service-provision scheme organised for distance sales.

(2) Means of distance communication within the meaning of this Code are all means of communication which can be used to prepare the ground for or conclude a contract without the simultaneous physical presence of the parties to the contract, such as letters, catalogues, telephone calls, faxes, emails, text messages sent via the mobile telephone service (SMS) as well as broadcasting and telemedia.'

31 Paragraph 312g of the BGB, entitled 'Right of withdrawal', provides:

'(1) In the case of off-premises contracts and of distance contracts, the consumer has a right of withdrawal pursuant to Paragraph 355.

(2) Unless otherwise agreed by the parties, the right of withdrawal shall not exist for the following contracts:

1. contracts for the supply of non-prefabricated goods made on the basis of an individual choice of or specifications by the consumer, or that are clearly personalised for the consumer;

…

9. contracts for the provision of services in the fields of accommodation other than for residential purposes, transport of goods, motor vehicle rental and catering and for the provision of other services related to leisure activities, if the contract provides for a specific date or period of performance.

…'

32 Paragraph 322 of the BGB, entitled 'Order to perform concurrently', is worded as follows in subparagraph 2:

'If the party bringing the action must perform his or her part first, he or she may, if the other party is in default through non-acceptance, bring an action for performance after receipt of counter-performance.'

33 Under Paragraph 355 of the BGB, entitled 'Right of withdrawal in consumer contracts':

'(1) Where the law gives the consumer a right of withdrawal in accordance with this provision, the consumer and the trader shall cease to be bound by their declarations of intent to conclude the contract, if the consumer has withdrawn his or her declaration to that effect within the period specified. …

(2) The withdrawal period shall be 14 days. Unless otherwise provided, it shall begin at the time of conclusion of the contract.

…'

34 Paragraph 356b of the BGB, entitled 'Right of withdrawal in consumer credit agreements', provides in subparagraph 2:

'If, in the context of a general consumer credit agreement, the document delivered to the borrower under subparagraph 1 does not contain the mandatory information provided for in Paragraph 492(2), the time limit shall not begin to run until this deficiency is remedied in accordance with Paragraph 492(6). …'

35 Paragraph 357 of the BGB, entitled 'Legal consequences of withdrawing from agreements concluded away from business premises and at a distance, with the exception of agreements for financial services', provides:

'(1) Benefits received must be returned within 14 days.

…

(4) In the case of a sale of consumer goods, the trader may refuse to make repayment until he or she has received the returned goods or the consumer has provided proof that he or she has dispatched the goods. This does not apply if the trader has offered to collect the goods.'

36 Paragraph 357 of the BGB, in the version in force on 31 January 2012, applicable to BQ's situation in Case C-232/21, was worded as follows:

'(1) Save where otherwise provided, the provisions on statutory termination shall apply *mutatis mutandis* to the right of withdrawal and return.

…'

37 Paragraph 357a of the BGB, entitled 'Legal consequences of withdrawal of contracts for financial services', provides:

'(1) 'Benefits received must be returned within 30 days.

…

(3) Where a borrower withdraws from a consumer credit agreement, he or she shall pay the agreed interest for the period between the disbursement and repayment of the loan. …'

38 Paragraph 358 of the BGB, entitled 'Agreement linked to the agreement from which the consumer has withdrawn', provides:

'…

(2) If the consumer has validly withdrawn his or her declaration of intent to conclude a consumer credit agreement on the basis of Paragraph 495(1) or of the first sentence of Paragraph 514(2), he or she shall also cease to be bound by his or her declaration of intent to conclude an agreement for the supply of goods or the provision of another service linked to that consumer credit agreement.

(3) A contract for the supply of goods or the provision of other services and a credit agreement pursuant to subparagraph 1 or 2 shall be linked if the credit serves to finance the other agreement in whole or in part and if they both form an economic unit. An economic unit shall be deemed to exist, in particular, where the trader himself or herself finances the consumer's counter-performance or, in the case of financing by a third party, where the lender involves the trader in the preparation or conclusion of the credit agreement. …

(4) Paragraph 355(3) and, depending on the type of associated contract, Paragraphs 357 to 357b shall apply *mutatis mutandis* to the rescission of the associated contract, irrespective of the method of marketing. … The lender shall assume in dealings with the consumer the rights and obligations of the trader arising from the linked agreement as regards the legal consequences of withdrawal if, at the time when the withdrawal takes effect, the amount of the loan has already been paid to the trader.

…'

39 Paragraph 358 of the BGB, in the version in force on 31 January 2012, applicable to BQ's situation in Case C-232/21, was worded as follows:

'…

(2) If the consumer has validly withdrawn his or her declaration of intent to conclude a consumer credit agreement on the basis of Paragraph 495(1), he or she shall also cease to be bound by his or

her declaration of intent to conclude an agreement for the supply of goods or the provision of another service linked to that consumer credit agreement.

(3) A contract for the supply of goods or the provision of other services and a credit agreement pursuant to subparagraphs 1 and 2 shall be linked if the credit serves to finance the other agreement in whole or in part and if they both form an economic unit. An economic unit shall be deemed to exist, in particular, where the trader himself or herself finances the consumer's counter-performance or, in the case of financing by a third party, where the lender involves the trader in the preparation or conclusion of the credit agreement. …'

(4) Paragraph 357 shall apply *mutatis mutandis* to the linked agreement. … The lender shall assume in dealings with the consumer the rights and obligations of the trader arising from the linked agreement as regards the legal consequences of withdrawal or restitution if, at the time when the withdrawal takes effect, the amount of the loan has already been paid to the trader.'

40 Paragraph 492 of the BGB, entitled 'Written form, content of the agreement', provides:

'…

(2) 'The agreement must contain the information prescribed by Article 247(6) to 13 of the Einführungsgesetz zum Bürgerlichen Gesetzbuch [(Introductory Law to the Civil Code) of 21 September 1994 (BGBl. 1994 I, p. 2494, and corrigendum BGBl. 1997 I, p. 1061; 'the EGBGB')] for credit agreements with consumers.

…

(6) If the agreement does not contain the information under subparagraph 2, or if it does not contain it in full, that information may be provided subsequently on a durable medium after the agreement has been effectively entered into, or, in cases under the first sentence of Paragraph 494(2), after the agreement has become valid.

…'

41 Paragraph 495 of the BGB, entitled 'Right of withdrawal; cooling-off period', provides, in subparagraph 1:

'In the case of a credit agreement concluded with a consumer, the borrower has a right of withdrawal in accordance with Paragraph 355.'

42 Paragraph 495 of the BGB, in the version in force on 31 January 2012, applicable to BQ's situation in Case C-232/21, was worded as follows:

'(1) In the case of a credit agreement concluded with a consumer, the borrower has a right of withdrawal in accordance with Paragraph 355.

…

(2) Paragraphs 355 to 359a shall apply provided that:

1. the mandatory information referred to in point (2) of Article 247(6) of the EGBGB shall replace the information on withdrawal,

2. the period of withdrawal also does not begin to run
   (a) before the conclusion of the agreement
   (b) before the borrower has received the mandatory information referred to in Paragraph 492(2), …'

43 Paragraph 506 of the BGB, entitled 'Deferral of payment, other financial accommodation', provides, in paragraph 1, that, 'the provisions of Paragraphs 358 to 360, 491a to 502 and 505a to 505e applicable to general consumer credit agreements shall apply, with the exception of Paragraph 492(4) and subject to subparagraphs 3 and 4, to agreements by which a trader grants a consumer a non-gratuitous deferral of payment or other non-gratuitous financial accommodation …'.

The Introductory Law to the Civil Code

44 Article 247 of the EGBGB, entitled 'Information requirements for consumer loan agreements, paid financial assistance and credit intermediation agreements', provides:

'…

§ 3 Content of pre-contractual information in general consumer credit agreements

(1) The information provided prior to conclusion of the agreement shall include:

…

5. the borrowing rate;

…

11. the rate of late-payment interest and the arrangements for its adjustment and, where applicable, any charges payable for default,

…

§ 6 Content of the agreement

(1) The following information shall be included in the consumer credit agreement in a clear and understandable manner:

1. the information indicated in points 1 to 14 of Paragraph 3(1), and in Paragraph 3(4).

…

(2) Where a right of withdrawal exists under Paragraph 495 of the BGB, the agreement must contain information about the time limit and other conditions for declaring the withdrawal as well as a reference to the borrower's obligation to repay the loan that has already been disbursed and to pay interest. The agreement shall state the amount of interest to be paid per day. Where the consumer credit agreement contains a prominent, clearly formulated contractual term, which, in the case of general consumer credit agreements, corresponds to the model in Annex 7 and

Annex 8 for immovable consumer credit, that contractual term shall satisfy the requirements of the first and second sentences. … The lender may deviate from the model in terms of format and font size, taking into account the third sentence.

§ 7 Other information to be included in the agreement

(1) The following information shall be included in the consumer credit agreement in a clear and understandable manner, in so far as it is relevant to the agreement:

…

3. the method for calculating compensation for early repayment, to the extent that the lender intends to assert his or her right to such compensation in the event of early repayment of the loan by the borrower,

4. the borrower's access to an out-of-court complaint and redress procedure and, if applicable, the conditions for such access.

…

§ 12 Linked agreements and non-gratuitous financial accommodation

(1) Paragraphs 1 to 11 shall apply *mutatis mutandis* to agreements for non-gratuitous financial accommodation referred to in Paragraph 506(1) of the BGB. In the case of such agreements, as well as consumer credit agreements which are linked to another agreement in accordance with Paragraph 358 of the BGB or in which goods or services are specified in accordance with Paragraph 360(2) of the BGB:

1. the pre-contractual information must contain, including in the case under Paragraph 5, the subject matter and cash price,

2. the contract must contain
   (a) the subject matter and cash price
   (b) information about the rights arising under Paragraphs 358 and 359 or Paragraph 360 of the BGB and the conditions for exercising those rights.

Where the consumer credit agreement contains a prominent, clearly formulated contractual term, which, in the case of general consumer credit agreements, corresponds to the model in Annex 7 and Annex 8 for immovable consumer credit, that contractual term shall, in the case of linked agreements and transactions under the second sentence of Paragraph 360(2) of the BGB, satisfy the requirements set out in point 2(b) of the second sentence.

…'

The Code of Civil Procedure

45 Paragraph 348a of the Zivilprozessordnung (Code of Civil Procedure) provides:

'(1) If the initial jurisdiction of a single Judge in accordance with Paragraph 348(1) is unfounded, the Civil Chamber shall transfer the case by order to one of its members so that he or she may give judgment, where

1. the case does not present particular difficulties of fact or law,

2. the case is not of fundamental importance and

3. the merits of the case have not yet been examined before the Chamber in the main hearing, unless a provisional judgment, a partial judgment or an interim judgment has been delivered in the meantime.

(2) The single Judge shall refer the dispute to the Civil Chamber for re-examination, where

1. particular factual or legal difficulties in the case or the fundamental importance of the case result from a substantive change in the procedural situation, or

2. the parties unanimously request the judge to do so.

The Chamber shall take over the dispute if the requirements laid down in point 1 of the first sentence are fulfilled. It shall make its decision in that regard by order, after hearing the parties. A further transfer to the single Judge is precluded.

(3) An appeal may not be based on a transfer, submission or taking-over of the case that took place or was omitted.'

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

Case C-38/21

46 Acting as a credit intermediary for BMW Bank, an employee of a BMW car dealership the premises of which were visited by VK, the applicant in the main proceedings, offered VK a leased motor vehicle. That employee calculated the various elements of the lease and discussed with VK the duration of the lease, the amount of the initial payment and the monthly instalments that would have to be paid if the leasing agreement were concluded. The employee was authorised to provide information about the proposed agreement, the aspects of which were known to him, and to answer questions from potential customers. However, he was not authorised to conclude a leasing agreement between BMW Bank and consumers who came to him. VK submitted to that dealer a written application for the conclusion of a leasing agreement with BMW Bank concerning a motor vehicle for private use. That application was then sent to that bank, which studied it before accepting it.

47 Thus, on 10 November 2018, VK, by way of a means of distance communication, concluded a leasing agreement with BMW Bank concerning a motor vehicle for private use.

48 It is apparent from the file before the Court that BMW Bank acquired the vehicle with the specifications provided by VK and that BMW Bank remained the owner of the vehicle throughout the term of the agreement.

49 The leasing agreement was based on the grant, by BMW Bank, of a loan subject to contractual borrowing rate of 3.49% per year for the entire duration of the leasing agreement, the annual percentage rate of charge being 3.55%. In view of the fact that that agreement was concluded for a period of 24 months without VK being required to purchase the vehicle upon the expiry of the agreement, it was stipulated that VK was required to pay only a total sum of EUR 12 468.80, corresponding to an initial payment of EUR 4 760 which was to be paid at the beginning of the leasing period, at the latest when the vehicle was handed over, and to 24 monthly instalments of EUR 321.95. In addition, it was agreed that VK had to observe an annual flat-rate mileage allowance of 10 000 kilometres and that he would be required to pay, when returning the vehicle, the sum of 7.37 cents per additional kilometre driven, whereas he would be reimbursed 4.92 cents per kilometre not driven. Furthermore, VK was required to compensate for the loss of value of the vehicle if it were established, when the vehicle was returned, that its condition did not correspond either to its age or to the agreed mileage. Lastly, that agreement stipulated that VK was required to take out insurance in respect of all risks for that vehicle, to assert defect-related rights against third parties and to bear the risk of loss, damage and other depreciation.

50 VK made the payment on account and took possession of the vehicle before paying the monthly instalments stipulated in the leasing agreement from January 2019.

51 By letter of 25 June 2020, VK stated that he wished to withdraw from the leasing agreement in accordance with the provisions of German law.

52 Before the Landgericht Ravensburg (Regional Court, Ravensburg, Germany), the referring court, VK submits that, on the latter date, the 14-day withdrawal period provided for by that law had not yet started to run, arguing, inter alia, in that regard, that the mandatory information which had to be provided to him under that law was insufficient and illegible. In addition, VK considers that the leasing agreement must be classified as a distance and/or off-premises contract, with the result that he is, in any event, entitled to the right of withdrawal provided for that type of contract under German law. VK observes, in that regard, that it was not possible for him to seek clarification or to obtain the mandatory information from BMW Bank since no employee or representative of BMW Bank was present at the stage that prepared the ground for the conclusion of the agreement, which took place at the car dealer's premises.

53 For its part, BMW Bank disputes, inter alia, the existence of a right of withdrawal, on the ground that the withdrawal rules relating to consumer credit agreements do not apply to leasing agreements such as that at issue in the main proceedings. In addition, it duly communicated to VK, in the leasing agreement between it and VK, all of the mandatory information required under German law. In particular, the information relating to the right of withdrawal very accurately reproduces the statutory model containing the information on the right of withdrawal ('the statutory model'), with the result that that information must, in accordance with that law, be presumed to be correct. Furthermore, BMW Bank considers that the agreement cannot be classified as a distance contract, since VK had personal contact with a credit intermediary who was able to provide him with information on the service offered. Nor is it an off-premises contract, since the credit intermediary must be regarded as acting in the name or on behalf of the trader.

54 The referring court observes, in the first place, that, until recently, German case-law was based on the principle that, as regards leasing agreements such as that at issue in the main proceedings, there was a right of withdrawal under, by analogy, the national provisions relating to agreements by which a trader grants a consumer a non-gratuitous payment deferral or other financial accommodation.

55 However, by judgment of 24 February 2021, the Bundesgerichtshof (Federal Court of Justice, Germany) held that such an analogy could not be accepted because of the German legislature's intention not to recognise the existing right of withdrawal in respect of financial accommodation for leasing agreements such as that at issue in the main proceedings. According to that court, such an approach is supported by EU law, since, under Article 2(2)(d) of Directive 2008/48, the latter does not apply to hiring or leasing agreements in which there is no provision for the person hiring or the lessee to purchase the object of the agreement, whether in the agreement itself or in a separate agreement.

56 The referring court is uncertain, nevertheless, whether a leasing agreement relating to a motor vehicle, such as that at issue in the main proceedings, falls within the scope of Directive 2008/48 or, as the case may be, of Directives 2011/83 and 2002/65, and asks the Court, inter alia, in that regard, whether such an agreement may be classified as an agreement relating to 'financial services' within the meaning of one of the latter two directives.

57 In the second place, in the event that such a leasing agreement falls within the scope of Directive 2008/48, the referring court asks, first, whether national legislation establishing a statutory presumption that the trader is in compliance with its obligation to inform the consumer of his or her right of withdrawal when it refers, in the agreement, to national provisions which themselves refer to a statutory model is compatible with that directive. In addition, it asks whether, if that question is answered in the negative, that legislation must be disapplied.

58 Second, in the event that such legislation should not be disapplied, the referring court is uncertain as to the information that the trader is required to provide in credit agreements under Article 10(2)(p), (l) and (t) of Directive 2008/48 and as to when the withdrawal period starts to run in the event of such mandatory information being stated incorrectly.

59 As regards Article 10(2)(p) of Directive 2008/48, the Bundesgerichtshof (Federal Court of Justice) considers that, in so far as a leasing agreement such as that at issue in the main proceedings provides that, in the event of early repayment of the credit following the exercise of the right of withdrawal, a daily sum of interest of EUR 0.00 must be paid for the period between the delivery of the vehicle and its return, the consumer is sufficiently informed of the fact that the creditor waives its right to daily interest for that period. For its part, the referring court considers that, since the leasing agreement also refers to an annual borrowing rate of 3.49%, the wording thus used could be contrary to the requirement of clarity and conciseness referred to in that provision, particularly since Article 14(3)(b) of that directive provides that interest is to be calculated on the basis of the borrowing rate agreed between the parties.

60 As regards Article 10(2)(l) of Directive 2008/48, it is sufficient, according to the Bundesgerichtshof (Federal Court of Justice), for a term such as that used in the leasing agreement at issue in the main proceedings to indicate that the interest rate that is applicable in the event of late payment is determined on the basis of a certain percentage in relation to a reference interest rate stated in a

statutory provision to which that agreement refers. The referring court is uncertain, however, whether it is, rather, the applicable rate in absolute terms, that is to say in the form of a specific percentage, that should be indicated.

61 In addition, as regards Article 10(2)(t) of Directive 2008/48, the Bundesgerichtshof (Federal Court of Justice) takes the view that it is clearly not necessary, in the context of a term such as that set out in the leasing agreement at issue in the main proceedings, to state in that agreement all the conditions for the admissibility of a possible complaint by the customer, since a reference to the rules governing the mediation procedure is sufficient. The referring court, for its part, considers that it is necessary to set out all the formal conditions for access to the mediation procedure in the agreement itself.

62 Furthermore, as regards the withdrawal period, it is necessary to determine whether only the absence of mandatory information in a leasing agreement such as that at issue in the main proceedings prevents that period from starting to run or whether the presence of incorrect information in that agreement may also have such an effect.

63 Third, the referring court is uncertain whether the exercise of the right of withdrawal provided for in Article 14(1) of Directive 2008/48 may be classified as abusive or whether it may be subject to time-barring.

64 As regards, first, the question of time-barring, the referring court states that, in its view, it is doubtful whether the exercise of the right of withdrawal by the consumer may be time-barred, especially since there is no legal basis for that.

65 In particular, it follows from Article 14(1)(a) and (b) of Directive 2008/48 that the right of withdrawal is not limited in time where the consumer does not receive the information provided for in Article 10 of Directive 2008/48, since the trader does have the possibility of having the period for withdrawal start to run at any time by communicating that information. Furthermore, the right of withdrawal covers not only individual consumer protection, but also more general objectives such as the prevention of over-indebtedness and the strengthening of the stability of the financial markets.

66 As regards, second, the question of the abusive exercise of the right of withdrawal, the referring court states that, according to the recent case-law of the Bundesgerichtshof (Federal Court of Justice), it is necessary, in order to be able to conclude that there has been such an abuse, to take account, in the context of an overall assessment, of certain circumstances, namely, inter alia, that the consumer could clearly note that the incorrect information, which was not in accordance with the statutory model, was irrelevant to him or her, that he or she claimed for the first time at the stage of the appeal on a point of law that the information on the right of withdrawal did not comply with that model or that he or she exercised his or her right of withdrawal by taking the view that he or she was not required to pay compensation to the trader after having used the vehicle in accordance with its intended purpose.

67 For the same reasons, in essence, as those put forward with regard to the right of withdrawal being time-barred, the referring court is, however, of the view that that right cannot be limited on the ground that it was exercised in an abusive manner.

68 In the third place, in the event that a leasing agreement relating to a motor vehicle, such as that at issue in the main proceedings, constitutes a contract for financial services within the meaning of Directives 2002/65 and 2011/83, the referring court asks, in order to determine whether VK may have a right of withdrawal, whether, first, such an agreement must be classified as an off-premises contract, within the meaning of Directive 2011/83, in so far as it was concluded at the business premises of a person who was involved only when the ground was being prepared for the conclusion of that agreement, in this case the car dealer, without that person having the power to represent the creditor for the purposes of the conclusion of that agreement.

69 In that regard, the referring court observes that, while it is true that Directive 2011/83 does not apply to financial services by virtue of Article 3(3)(d) thereof, the interpretation of Paragraph 312b of the BGB, which concerns off-premises contracts, nevertheless depends on the interpretation of that directive. In so far as that directive was transposed beyond the framework laid down by EU law, it is in the clear interests of the European Union that it is interpreted uniformly. The question is therefore whether the contribution of persons who are merely involved in preparing the ground for the conclusion of the contract as intermediaries may be equated with acting in the name or on behalf of the trader, within the meaning of Article 2(2) of Directive 2011/83 and, consequently, of the second sentence of Paragraph 312b(1) of the BGB.

70 Second, in the event that a leasing agreement such as that at issue in the main proceedings does constitute an off-premises contract, the referring court asks whether the exception from the right of withdrawal set out in Article 16(l) of Directive 2011/83 in respect of the provision of car rental services is applicable to that agreement. It refers in that regard to a decision of a higher German court according to which car rental comprises only short-term car rental and not long-term leasing agreements.

71 Third, the referring court asks, again in order to determine whether VK has a right of withdrawal, whether a leasing agreement relating to a motor vehicle, such as the agreement at issue in the main proceedings, may be classified as a distance contract within the meaning of Directives 2002/65 and 2011/83, in so far as the consumer had personal contact only with a person who was merely preparing the ground for the conclusion of the agreement, in this case the car dealer, without that person having a power of representation for the purposes of the conclusion of that agreement and without, moreover, being authorised to conclude that agreement.

72 In that regard, the referring court states that persons who act merely at such a preparatory stage should not be able to be regarded as representatives of the trader offering such an agreement. However, the Bundesgerichtshof (Federal Court of Justice) has held that the condition of the exclusive use of means of distance communication, which is necessary for there to be distance sale within the meaning of Directives 2002/65 and 2011/83, is not satisfied where, during the stage preparing the ground for the conclusion of an agreement, the consumer has personal contact with a person who provides him or her with information on the agreement on behalf of the trader.

73 In those circumstances, the Landgericht Ravensburg (Regional Court, Ravensburg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Statutory presumption in accordance with Article 247(6)(2), third sentence, and Article 247(12)(1), third sentence, of the [EGBGB]:

(a) Inasmuch as they state that contract terms which conflict with the requirements of Article 10(2)(p) of Directive [2008/48] satisfy the requirements of Article 247(6)(2), first and second sentences, of the EGBGB, and the requirements laid down in Article 247(12)(1), second sentence, point 2(b), of the EGBGB, are Article 247(6)(2), third sentence, and Article 247(12)(1), third sentence, of the EGBGB incompatible with Article 10(2)(p) and Article 14(1) of Directive [2008/48]?

If so:

(b) Does it follow from EU law, in particular from Article 10(2)(p) and Article 14(1) of Directive [2008/48], that, inasmuch as they state that contract terms which conflict with the requirements of Article 10(2)(p) of Directive [2008/48] satisfy the requirements of Article 247(6)(2), first and second sentences, of the EGBGB, and the requirements laid down in Article 247(12)(1), second sentence, point 2(b), of the EGBGB, Article 247(6)(2), third sentence, and Article 247(12)(1), third sentence, of the EGBGB must be disapplied?

If the answer to Question 1(b) is in the negative:

(2) Mandatory information required under Article 10(2) of Directive [2008/48]:

(a) Is Article 10(2)(p) of Directive [2008/48] to be interpreted as meaning that the amount of interest payable per day, which must be specified in the credit agreement, must be calculated from the contractual borrowing rate specified in the agreement?

(b) Is Article 10(2)(l) of Directive [2008/48] to be interpreted as meaning that the interest rate applicable in the case of late payments as applicable at the time of the conclusion of the credit agreement must be specified as an absolute number or, at the very least, that the current reference interest rate (in this case, the base rate in accordance with Paragraph 247 of the [BGB]), from which the interest rate applicable in the case of late payments is obtained by adding a premium (in this case, a premium of five percentage points in accordance with Paragraph 288(1), second sentence, of the BGB), must be specified as an absolute number, and must the consumer be informed of the reference interest rate (base rate) and the variability of that rate?

(c) Is Article 10(2)(t) of Directive [2008/48] to be interpreted as meaning that the essential formal requirements for a complaint and/or redress in the out-of-court complaint and/or redress procedure must be specified in the text of the credit agreement?

If at least one of the above Questions 2(a) to (c) is answered in the affirmative:

(d) Is Article 14(1), second sentence, point (b), of Directive [2008/48] to be interpreted as meaning that the period of withdrawal does not begin until the information required under Article 10(2) of Directive [2008/48] has been provided fully and correctly?

If not:

(e) What are the relevant criteria for determining whether the period of withdrawal is to begin in spite of the fact that that information is incomplete or incorrect?

If the above Question 1(a) and/or at least one of Questions 2(a) to (c) is answered in the affirmative:

(3) Forfeiture of the right of withdrawal in accordance with Article 14(1), first sentence, of Directive [2008/48]:

(a) Is the right of withdrawal in accordance with Article 14(1), first sentence, of Directive [2008/48] subject to forfeiture?

If so:

(b) Is forfeiture a time limit on the right of withdrawal which must be regulated by an act of parliament?

If not:

(c) Does forfeiture depend, from a subjective standpoint, on the consumer knowing that his or her right of withdrawal continued to exist or, at least, on his or her ignorance being ascribed to gross negligence?

If not:

(d) Does the creditor's facility to provide the consumer subsequently with the information required under Article 14(1), second sentence, point (b), of Directive [2008/48] and thus trigger the period of withdrawal preclude the application of the rules of forfeiture in good faith?

If not:

(e) Is this compatible with the established principles of international law by which the German courts are bound under the [Basic Law]?

If so:

(f) How are German legal practitioners to resolve a conflict between the binding prescripts of international law and the prescripts of the Court of Justice of the European Union?

(4) Assumption of an abuse of the consumer's right of withdrawal under Article 14(1), first sentence, of Directive [2008/48]:

(a) Is it possible to abuse the right of withdrawal under Article 14(1), first sentence, of Directive [2008/48]?

If so:

(b) Is the assumption of an abuse of the right of withdrawal a limitation of the right of withdrawal which must be regulated by an act of parliament?

If not:

(c) Does the assumption of an abuse of the right of withdrawal depend, from a subjective standpoint, on the consumer knowing that his or her right of withdrawal continued to exist or, at least, on his or her ignorance being ascribed to gross negligence?

If not:

(d) Does the creditor's facility to provide the consumer subsequently with the information required under Article 14(1), second sentence, point (b), of Directive [2008/48] and thus trigger the period of withdrawal preclude the assumption of an abuse of rights in the exercise of the right of withdrawal in good faith?

If not:

(e) Is this compatible with the established principles of international law by which the German courts are bound under the Basic Law?

If so:

(f) How are German legal practitioners to resolve a conflict between the binding prescripts of international law and the prescripts of the Court of Justice of the European Union?

(5) Do mileage-based leasing agreements for motor vehicles with a term of approximately two to three years which are concluded using a standard form that excludes the right of ordinary termination, and under which the consumer has to take out fully comprehensive insurance for the vehicle, must also assert defect-related rights against third parties (in particular the vehicle dealer and manufacturer) and, moreover, bears the risk of loss, damage and other impairment, fall within the scope of Directive [2011/83] and/or Directive [2008/48] and/or Directive [2002/65]? Are they credit agreements within the meaning of Article 3(c) of Directive [2008/48] and/or contracts relating to financial services within the meaning of Article 2(12) of Directive [2011/83] and Article 2(b) of Directive [2002/65]?

(6) If mileage-based leasing agreements for motor vehicles (as described in point 5) are contracts relating to financial services:
(a) Are business premises of a person who prepares the ground for transactions with consumers on behalf of the trader but who does not himself [or herself] have any power of representation to conclude the contracts in question also to be regarded as immovable business premises for the purposes of Article 2(9) of Directive [2011/83]?

If so:
(b) Does that also apply where the person who prepares the ground for the contract carries out a business activity in another sector and/or is not authorised under supervisory and/or civil law to conclude contracts relating to financial services?

(7) If either Question 6(a) or Question 6(b) is answered in the negative:

Is Article 16(l) of Directive [2011/83] to be interpreted as meaning that mileage-based leasing agreements for motor vehicles (as described in point 5) are covered by that exception?

(8) If mileage-based leasing agreements for motor vehicles (as described in point 5) are contracts relating to financial services:
(a) Does a distance contract within the meaning of Article 2(a) of Directive [2002/65] and Article 2(7) of Directive [2011/83] exist also where the only personal contact during contractual negotiations was with a person who prepares the ground for transactions with consumers on behalf of the trader but does not personally have any power of representation to conclude the contracts in question?

If so:
(b) Does that also apply where the person who prepares the ground for the contract carries out a business activity in another sector and/or is not authorised under supervisory and/or civil law to conclude contracts relating to financial services?'

Case C-47/21

74 On 12 April 2017, F.F. concluded a loan agreement with C. Bank for a net amount of EUR 15 111.70, for the purchase of a second-hand motor vehicle for private use.

75 The car dealer from whom the vehicle was purchased acted as an intermediary for C. Bank in the preparation and conclusion of the loan agreement and used the loan agreement forms made available to him by C. Bank. According to the loan agreement, the purchase price for that vehicle was EUR 14 880.00. As a payment on account of EUR 2 000.00 had been made, the remaining sum to be paid was EUR 12 880.00 which was to be financed by the loan in question.

76 The agreement at issue provides for repayment of the loan by means of 60 monthly instalments of the same amount and a higher final payment. The vehicle purchased by F.F. was transferred to C. Bank as security. After the loan amount was released, F.F. regularly paid the agreed monthly instalments.

77 On 1 April 2020, F.F. withdrew from the loan agreement.

78 F.F. takes the view that, because of the lack of clarity in the information relating to the right of withdrawal set out in the loan agreement and the incorrect nature of several mandatory pieces of information which should have been indicated in that agreement under German law, the 14-day withdrawal period provided for by that law has not yet started to run. In those circumstances, he requests, inter alia, that he be reimbursed the monthly instalments which he has paid up to the date of withdrawal and the payment on account which he made to the dealer, that is to say, a total of EUR 10 110.11. He also seeks a declaration that C. Bank is late in taking back the vehicle, within the meaning of Paragraph 293 of the BGB.

79 C. Bank contends that the action should be dismissed, taking the view, in particular, that it duly provided F.F. with all the mandatory information, in particular by way of the statutory model.

80 The referring court is uncertain, first, as to the compatibility, with Directive 2008/48, of national legislation establishing a statutory presumption that the trader has complied with its obligation to inform the consumer of his or her right of withdrawal when the trader refers, in an agreement, to national provisions which themselves refer to a statutory model, or where it inserts, in that agreement, information taken from that model but contrary to the requirements of that directive. In addition, the referring court asks whether, in the event of a finding of incompatibility with that directive, such legislation must be disapplied.

81 In that regard, the referring court states that, even if C. Bank had used the statutory model incorrectly, F.F. would nevertheless not be justified in challenging the application of the abovementioned statutory presumption, since such a challenge would constitute an abuse of rights according to the criteria laid down by the Bundesgerichtshof (Federal Court of Justice).

82 Second, the referring court is uncertain as to the information which the trader is required to provide in credit agreements under Article 10(2)(l), (p), (r) and (t) of Directive 2008/48, and as to when the withdrawal period starts to run in the event of such mandatory information not being stated correctly.

83 First of all, as regards Article 10(2)(r) of Directive 2008/48, concerning information on the creditor's right to compensation and the way in which that compensation will be determined, the Bundesgerichtshof (Federal Court of Justice) considers that, faced with a term such as that in the agreement at issue in the main proceedings, the creditor may confine itself to referring, in broad terms, to the main parameters for calculating the compensation due in the event of early repayment of the credit. The referring court is uncertain, however, whether it is, rather, necessary to indicate in an agreement such as that at issue in the main proceedings a precise

arithmetical formula that can be understood by the consumer. Where appropriate, it is also necessary to determine whether the inadequacy of the information relating to the calculation of the compensation due in the event of early repayment of the credit set out in such an agreement may be penalised solely by the extinction of the right to compensation or whether such a situation must be treated as a lack of information, with the result that the withdrawal period does not begin to run.

84 Next, as regards Article 10(2)(l), (p) and (t) of Directive 2008/48, the referring court expresses the same doubts as those referred to in paragraphs 59 to 61 of the present judgment, it being noted that the agreement concluded by F.F. with C. Bank on 12 April 2017 contained terms similar to those stated in those paragraphs.

85 Finally, as regards the withdrawal period, the referring court raises the same questions as those set out in paragraph 62 of the present judgment.

86 Third, the referring court asks whether the right of withdrawal may be limited in time in the event of a breach of good faith. It asks in particular whether and, if so, according to which rules the right of withdrawal provided for in Article 14(1) of Directive 2008/48 may be subject to time-barring and whether the exercise of that right may be regarded as abusive in certain circumstances. In that regard, it relies on the same reasoning as that set out in paragraphs 63 to 67 of the present judgment.

87 Fourth, the referring court asks about the implementation of the consumer's right to obtain repayment of the monthly instalments paid, where the credit agreement from which he or she has withdrawn is linked to a contract of sale. It follows from the case-law of the Bundesgerichtshof (Federal Court of Justice) that, where a credit agreement is linked to a contract for the sale of a private vehicle, the creditor may refuse to repay the monthly instalments and, as the case may be, the payment on account, until that vehicle is returned to the creditor or until the consumer has furnished proof that he or she has dispatched it, or if the consumer has put the creditor in the position of taking back the vehicle late, within the meaning of Paragraph 293 of the BGB, following an effective offer for it to be taken back, sent to the trader's place of business.

88 The referring court notes that that repayment may be deferred, in the event of the creditor's challenge as regards the validity of the withdrawal, until the final outcome of the legal proceedings. That causes the referring court to have doubts as to whether such a requirement that the vehicle first be returned, and its procedural consequences, are compatible with the effectiveness of the right of withdrawal provided for in Article 14(1) of Directive 2008/48. The vehicle is, in most cases, necessary for the consumer to carry out his or her profession and takes up a significant amount of capital. If the consumer were to return the vehicle without knowing whether the withdrawal is actually effective and within what period, if any, he or she will receive the sums owed by the creditor, in order then to be able to purchase replacement goods, he or she would most often be deterred from exercising his or her right of withdrawal.

89 Furthermore, the referring court asks, if it were to be concluded that the obligation to return the vehicle beforehand is not compatible with Article 14(1) of Directive 2008/48, whether that provision has direct effect so that the relevant national provisions should be disapplied.

90 Fifth, the referring court asks whether national procedural rules governing the performance of the duties of a single Judge are compatible with Article 267 TFEU. That question is explained by the fact that the case before the referring court was transferred to a single Judge by the formation composed of several judges which was responsible for that case within that court and that the request for a preliminary ruling therefore comes from that single Judge alone.

91 In that regard, the referring court explains that the question of whether, under German law, a single Judge is entitled to make a reference for a preliminary ruling is a matter of dispute. More specifically, it is apparent from the case-law of the Bundesgerichtshof (Federal Court of Justice) that a single Judge infringes the principle of the lawful judge by making a reference for a preliminary ruling of his or her own motion, because he or she is required to refer the case back to the competent formation composed of several judges so that it may re-examine the case.

92 The referring court takes the view that the second paragraph of Article 267 TFEU precludes such an obligation to refer the case to the competent formation composed of several judges. Although the Court has already held that a reference for a preliminary ruling made by a single Judge is admissible from the perspective of EU law, irrespective of whether or not national procedural rules have been complied with, it has left open the question of whether a national provision which limits the power of a single Judge to make a reference for a preliminary ruling should be disapplied.

93 Furthermore, the referring court states that that question is relevant for the purposes of resolving the case before it, since, in parallel proceedings in which a single Judge has made a reference to the Court for a preliminary ruling, the defendants, relying on the abovementioned considerations of the Bundesgerichtshof (Federal Court of Justice), challenged the orders for reference or sought the recusal of the referring judge on the ground of bias, and such a situation may occur again in the present case.

94 In those circumstances, the Landgericht Ravensburg (Regional Court, Ravensburg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Statutory presumption in accordance with Article 247(6)(2), third sentence, and Article 247(12)(1), third sentence, of the EGBGB:

(a) Inasmuch as they state that contract terms which conflict with the requirements of Article 10(2)(p) of Directive [2008/48] satisfy the requirements of Article 247(6)(2), first and second sentences, of the EGBGB, and the requirements laid down in Article 247(12)(1), second sentence, point 2(b), of the EGBGB, are Article 247(6)(2), third sentence, and Article 247(12)(1), third sentence, of the EGBGB incompatible with Article 10(2)(p) and Article 14(1) of Directive 2008/48?

If so:

(b) Does it follow from EU law, in particular from Article 10(2)(p) and Article 14(1) of Directive [2008/48], that, inasmuch as they state that contract terms which conflict with the requirements of Article 10(2)(p) of Directive [2008/48] satisfy the requirements of Article 247(6)(2), first and second sentences, of the EGBGB, and the requirements laid down in Article 247(12)(1), second sentence, point 2(b), of the EGBGB, Article 247(6)(2), third sentence, and Article 247(12)(1), third sentence, of the EGBGB must be disapplied?

Independently of the answers to Questions 1(a) and 1(b):

(2) Mandatory information required under Article 10(2) of Directive [2008/48]:

(Question 2(a) has been withdrawn)

(b) Article 10(2)(r) of Directive [2008/48]:

(aa) Is that provision to be interpreted as meaning that the information in the credit agreement concerning the compensation payable in the event of early repayment of the loan must be sufficiently precise to enable the consumer to calculate at least approximately the compensation payable in the event of early termination?

(should the previous question be answered in the affirmative)

(bb) Do Article 10(2)(r) and the second sentence of Article 14(1) of Directive [2008/48] preclude national legislation pursuant to which, in the case of incomplete information within the meaning of Article 10(2)(r) of [Directive 2008/48], the period for withdrawal nevertheless commences on conclusion of the agreement and only the creditor's right to compensation for early repayment of the credit is lost?

(c) Is Article 10(2)(l) of Directive [2008/48] to be interpreted as meaning that the interest rate applicable in the case of late payments as applicable at the time of the conclusion of the credit agreement must be specified as an absolute number or, at the very least, that the current reference interest rate (in this case, the base rate in accordance with Paragraph 247 of the [BGB]), from which the interest rate applicable in the case of late payments is obtained by adding a premium (in this case, a premium of five percentage points in accordance with Paragraph 288(1), second sentence, of the BGB), must be specified as an absolute number, and must the consumer be informed of the reference interest rate (base rate) and the variability of that rate?

(d) Is Article 10(2)(t) of Directive [2008/48] to be interpreted as meaning that the essential formal requirements for a complaint and/or redress in the out-of-court complaint and/or redress procedure must be specified in the text of the credit agreement?

If at least one of the above Questions 2(a) to 2(d) is answered in the affirmative:

(e) Is Article 14(1), second sentence, point (b), of Directive [2008/48] to be interpreted as meaning that the period of withdrawal does not begin until the information required under Article 10(2) of Directive [2008/48] has been provided fully and correctly?

If not:

(f) What are the relevant criteria for determining whether the period of withdrawal is to begin in spite of the fact that that information is incomplete or incorrect?

If the above Question 1(a) and/or at least one of Questions 2(a) to 2(d) is answered in the affirmative:

(3) Forfeiture of the right of withdrawal in accordance with Article 14(1), first sentence, of Directive [2008/48]:

(a) Is the right of withdrawal in accordance with Article 14(1), first sentence, of Directive [2008/48] subject to forfeiture?

If so:

(b) Is forfeiture a time limit on the right of withdrawal which must be regulated by an act of parliament?

If not:

(c) Does forfeiture depend, from a subjective standpoint, on the consumer knowing that his or her right of withdrawal continued to exist or, at least, on his or her ignorance being ascribed to gross negligence?

If not:

(d) Does the creditor's facility to provide the consumer subsequently with the information required under Article 14(1), second sentence, point (b), of Directive [2008/48] and thus trigger the period of withdrawal preclude the application of the rules of forfeiture in good faith?

If not:

(e) Is this compatible with the established principles of international law by which the German courts are bound under the Basic Law?

If so:

(f) How are German legal practitioners to resolve a conflict between the binding prescripts of international law and the prescripts of the Court of Justice of the European Union?

(4) Assumption of an abuse of the consumer's right of withdrawal under Article 14(1), first sentence, of Directive [2008/48]:

(a) Is it possible to abuse the right of withdrawal under Article 14(1), first sentence, of Directive [2008/48]?

If so:

(b) Is the assumption of an abuse of the right of withdrawal a limitation of the right of withdrawal which must be regulated by an act of parliament?

If not:

(c) Does the assumption of an abuse of the right of withdrawal depend, from a subjective standpoint, on the consumer knowing that his or her right of withdrawal continued to exist or, at least, on his or her ignorance being ascribed to gross negligence?

If not:

(d) Does the creditor's facility to provide the consumer subsequently with the information required under Article 14(1), second sentence, point (b), of Directive [2008/48] and thus trigger the period of withdrawal preclude the assumption of an abuse of rights in the exercise of the right of withdrawal in good faith?

If not:

(e) Is this compatible with the established principles of international law by which the German courts are bound under the Basic Law?

If so:

(f) How are German legal practitioners to resolve a conflict between the binding prescripts of international law and the prescripts of the Court of Justice of the European Union?

(5) Irrespective of the answers to the first to fourth questions above:
(a) Is it compatible with EU law, in particular with the right of withdrawal under Article 14(1), first sentence, of Directive [2008/48] if, under national law, in the case of a credit agreement linked to a contract of sale, following the effective exercise of the consumer's right of withdrawal under Article 14(1) of Directive [2008/48],
(aa) a consumer's claim against the creditor for repayment of the loan instalments paid does not arise until he or she has in turn returned the object purchased to the creditor or provided proof that he or she has dispatched it to the creditor?
(bb) an action brought by the consumer for repayment of the loan instalments paid by the consumer, after having returned the object purchased, is to be dismissed as currently unfounded if the creditor has not delayed in accepting the object purchased?

If not:
(b) Does it follow from EU law that the national rules described in (a)(aa) and/or (a)(bb) must be disapplied?

Irrespective of the answers to the first to fifth questions above:

(6) Inasmuch as it also refers to orders for reference in accordance with the second paragraph of Article 267 TFEU, is Paragraph 348a(2), point 1, of the [Code of Civil Procedure] incompatible with the right conferred on the national courts to request a preliminary ruling pursuant to the second paragraph of Article 267 TFEU and must it therefore be disapplied to orders for reference?'

Case C-232/21

95 In accordance with their applications dated 30 June 2017, 28 March 2017, 26 January 2019 and 31 January 2012 respectively, CR, on the one hand, and AY, ML and BQ, on the other, concluded with Volkswagen Bank and Audi Bank respectively, in the cases before the referring court, loan agreements for the purchase of second-hand motor vehicles for private use. The net amount of the loan agreements were EUR 21 418.66, EUR 28 671.25, EUR 18 972.74 and EUR 30 208.10, respectively.

96 When preparing and concluding the loan agreements, the car dealers from which the vehicles were purchased acted as credit intermediaries for Volkswagen Bank and Audi Bank. The agreements at issue provided for the repayment of the loans by monthly instalments, the amount of the relevant loans being increased by an amount relating to insurance covering death, invalidity or unemployment. The agreements also provided for a final payment of a specific amount and, in some of those agreements, a payment on account by the consumer.

97 CR, AY, ML and BQ withdrew from the loan agreements on 31 March 2019, 13 June 2019, 16 September 2019 and 20 September 2020 respectively. As is apparent from the order for reference, the first three consumers offered to return the vehicle to Volkswagen Bank and Audi Bank, where applicable at the registered office of those banks, in return for the simultaneous reimbursement of the payments made. As regards BQ, on the date of his withdrawal, he had already, unlike the other three consumers, repaid in full the loan which he had received. He also sought, primarily, repayment of the monthly instalments paid, after the transfer of ownership and handing over of the vehicle.

98 Those four consumers consider that their withdrawals are valid on the ground that the 14-day withdrawal period provided for by German law had not started to run. They claim that they were not duly provided with the information on the right of withdrawal and the other mandatory information.

99 Volkswagen Bank and Audi Bank are of the opinion that they duly provided all the necessary information by using the statutory model. In two of the cases before the referring court, they contend, in the alternative, that the relevant consumers' withdrawal was time-barred and that they had abused their rights, in so far as the banks legitimately relied on the fact that the consumers would no longer exercise their right of withdrawal after actually using the vehicle and regularly paying the monthly instalments due under the loan agreements. In the other two cases before the referring court, Volkswagen Bank and Audi Bank maintain that they are not late in taking back the vehicle, within the meaning of Paragraph 293 of the BGB, since the consumers concerned did not make them an effective offer for the purposes of Paragraph 294 of the BGB.

100 In a factual and legal context very similar to that underlying Case C-47/21, the referring court asks questions that are almost identical to those referred in that case, putting forward reasoning which is essentially identical to that summarised in paragraphs 80 to 93 of the present judgment.

101 As regards questions relating to the plea alleging that the withdrawals were time-barred and the plea alleging there was an abuse of rights, the referring court states that, according to the case-law of the Bundesgerichtshof (Federal Court of Justice), it is above all for contracts which have already been performed in full by the parties that the application of those pleas should be envisaged.

102 In those circumstances, the Landgericht Ravensburg (Regional Court, Ravensburg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Statutory presumption in accordance with Article 247(6)(2), third sentence, and Article 247(12)(1), third sentence of the EGBGB:

(a) Inasmuch as they state that contract terms which conflict with the requirements of Article 10(2)(p) of Directive [2008/48] satisfy the requirements of Article 247(6)(2), first and second sentences, of the EGBGB, and the requirements laid down in Article 247(12)(1), second sentence, point 2(b), of the EGBGB, are Article 247(6)(2), third sentence, and Article 247(12)(1), third sentence, of the EGBGB incompatible with Article 10(2)(p) and Article 14(1) of Directive [2008/48]?

If so:

(b) Does it follow from EU law, in particular from Article 10(2)(p) and Article 14(1) of Directive [2008/48], that, inasmuch as they state that contract terms which conflict with the requirements of Article 10(2)(p) of Directive [2008/48] satisfy the requirements of Article 247(6)(2), first and second sentences, of the EGBGB, and the requirements laid down in Article 247(12)(1), second sentence, point 2(b), of the EGBGB[,] Article 247(6)(2), third sentence, and Article 247(12)(1), third sentence, of the EGBGB must be disapplied?

Irrespective of the answers to Questions 1(a) and 1(b):

(2) Mandatory information required under Article 10(2) of Directive [2008/48]:
   (a) Is Article 10(2)(p) of Directive [2008/48] to be interpreted as meaning that the amount of interest payable per day, which must be specified in the credit agreement, must be calculated from the contractual borrowing rate specified in the agreement?
   (b) Article 10(2)(r) of Directive [2008/48]:
      (aa) Is that provision to be interpreted as meaning that the information in the credit agreement concerning the compensation payable in the event of early repayment of the loan must be sufficiently precise to enable the consumer to calculate at least approximately the compensation payable in the event of early termination?

      (should Question (aa) above be answered in the affirmative)
      (bb) Do Article 10(2)(r) and the second sentence of Article 14(1) of Directive [2008/48] preclude national legislation pursuant to which, in the case of incomplete information within the meaning of Article 10(2)(r) of [Directive 2008/48], the period for withdrawal nevertheless commences on conclusion of the agreement and only the creditor's right to compensation for early repayment of the credit is lost?

   If at least one of the above Questions 2(a) and 2(b) is answered in the affirmative:
   (c) Is Article 14(1), second sentence, point (b), of Directive [2008/48] to be interpreted as meaning that the period of withdrawal does not begin until the information required under Article 10(2) of Directive [2008/48] has been provided fully and correctly?

   If not:
   (d) What are the relevant criteria for determining whether the period of withdrawal is to begin in spite of the fact that that information is incomplete or incorrect?

If the above Question 1(a) and/or one of Questions 2(a) and 2(b) is answered in the affirmative:

(3) Forfeiture of the right of withdrawal in accordance with Article 14(1), first sentence, of Directive [2008/48]:
   (a) Is the right of withdrawal in accordance with Article 14(1), first sentence, of Directive [2008/48] subject to forfeiture?

   If so:
   (b) Is forfeiture a time limit on the right of withdrawal which must be regulated by statute?

   If not:
   (c) Does forfeiture depend, from a subjective standpoint, on the consumer knowing that his or her right of withdrawal continued to exist or, at least, on his or her ignorance being ascribed to gross negligence? Does the same apply to agreements that have been terminated?

   If not:
   (d) Does the creditor's facility to provide the borrower subsequently with the information required under Article 14(1), second sentence, point (b), of Directive [2008/48] and thus trigger the period of withdrawal preclude the application of the rules of forfeiture in good faith? Does the same apply to agreements that have been terminated?

   If not:

(e) Is this compatible with the established principles of international law by which the German courts are bound under the [Basic Law]?

If so:

(f) How are German legal practitioners to resolve a conflict between the binding prescripts of international law and the prescripts of the Court of Justice of the European Union?

(4) Assumption of an abuse of the consumer's right of withdrawal under Article 14(1), first sentence, of Directive [2008/48]:

(a) Is it possible to abuse the right of withdrawal under Article 14(1), first sentence, of Directive [2008/48]?

If so:

(b) Is the assumption of an abuse of the right of withdrawal a limitation of the right of withdrawal which must be regulated by statute?

If not:

(c) Does the assumption of an abuse of the right of withdrawal depend, from a subjective standpoint, on the consumer knowing that his or her right of withdrawal continued to exist or, at least, on his or her ignorance being ascribed to gross negligence? Does the same apply to agreements that have been terminated?

If not:

(d) Does the creditor's facility to provide the consumer subsequently with the information required under Article 14(1), second sentence, point (b), of Directive [2008/48] and thus trigger the period of withdrawal preclude the assumption of an abuse of rights in the exercise of the right of withdrawal in good faith? Does the same apply to agreements that have been terminated?

If not:

(e) Is this compatible with the established principles of international law by which the German courts are bound under the Basic Law?

If so:

(f) How are German legal practitioners to resolve a conflict between the binding prescripts of international law and the prescripts of the Court of Justice of the European Union?

Irrespective of the answers to the first to fourth questions above:

(5) (a) Is it compatible with EU law if, under national law, in the case of a credit agreement linked to a contract of sale, following the effective exercise of the consumer's right of withdrawal under Article 14(1) of Directive [2008/48],

(aa) a consumer's claim against the creditor for repayment of the loan instalments paid does not arise until he or she has in turn returned the object purchased to the creditor or provided proof that he or she has dispatched it to the creditor?

(bb) an action brought by the consumer for repayment of the loan instalments paid by the consumer, after having returned the object purchased, is to be dismissed as currently unfounded if the creditor has not delayed in accepting the object purchased?If not:

(b) Does it follow from EU law that the national rules described in (a)(aa) and/or (a)(bb) must be disapplied?

Irrespective of the answers to the first to fifth questions above:

(6) Inasmuch as it also refers to orders for reference in accordance with the second paragraph of Article 267 TFEU, is Paragraph 348a(2), point 1, of the [Code of Civil Procedure] incompatible with the right conferred on the national courts to request a preliminary ruling pursuant to the second paragraph of Article 267 TFEU and must it therefore be disapplied to orders for reference?'

Procedure before the Court

103 By decision of the President of the Court of 22 April 2021, Cases C-38/21 and C-47/21 were joined for the purposes of the written and oral parts of the procedure and the judgment. By decision of the President of the Court of 31 May 2022, Case C-232/21 was joined to those cases for the purposes of the oral part of the procedure and the judgment.

104 By letter of 3 August 2021, the referring court informed the Court that, in Case C-47/21, an amicable settlement had been reached in one of the two cases in the main proceedings and that it was therefore withdrawing Question 2(a) in Case C-47/21, while maintaining all the other questions in that case.

105 Following a supplement to the request for a preliminary ruling in Case C-38/21 dated 24 August 2021, the written procedure in Joined Cases C-38/21 and C-47/21 was reopened.

106 In accordance with the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union, the German Government requested that the present cases be heard in the Grand Chamber, which was accepted by the Court on 31 May 2022.

Consideration of the questions referred

Admissibility

107 BMW Bank, C. Bank, Volkswagen Bank and Audi Bank, the German Government and the European Commission express doubts as to the admissibility of certain questions referred for a preliminary ruling in the three cases.

The first to fourth questions and the sixth question in Case C-38/21

108 BMW Bank submits that the first to fourth questions in Case C-38/21 are inadmissible in so far as it is clear that the facts at issue in the main proceedings do not fall within the scope of Directive 2008/48 referred to in those questions. That directive excludes from its scope leasing agreements which do not contain an obligation to purchase the leased goods. Furthermore, the sixth question in Case C-38/21, which is submitted in the event that a leasing agreement such as that at issue in the main proceedings should be classified as a contract for financial services, within the meaning of Directive 2011/83, is inadmissible in that contracts for financial services are expressly excluded from the scope of that directive.

109 In that regard, it should be noted that, according to settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume

responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 21 March 2023, *Mercedes-Benz Group (Liability of manufacturers of vehicles fitted with defeat devices)*, C-100/21, EU:C:2023:229, paragraph 52 and the case-law cited).

110 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 21 March 2023, *Mercedes-Benz Group (Liability of manufacturers of vehicles fitted with defeat devices*), C-100/21, EU:C:2023:229, paragraph 53 and the case-law cited).

111 In the present case, it must be noted that the referring court sent its request for a preliminary ruling to the Court in two stages, namely, first, on 30 December 2020 by sending the first to fourth questions on that occasion and then, subsequently, on 24 August 2021, by sending four other questions. In the context of that supplement to its initial request for a preliminary ruling, that court stated that it was uncertain whether, as follows from the fifth question, Directive 2008/48 was intended to govern a leasing agreement such as that at issue in the main proceedings. It also indicated in which scenarios, depending on the answer which the Court would give in that regard, it considered that it was still relevant for an answer to be given to the first to fourth questions referred on 30 December 2020.

112 Furthermore, while it is true that the referring court made the sixth question in Case C-38/21 subject to a finding, in the context of the answer to the fifth question in that case, that a leasing agreement such as that at issue in the main proceedings may be classified as a contract for financial services, within the meaning of Directive 2011/83, the fact remains that the relevance or non-hypothetical nature and, therefore, the admissibility of that sixth question can be assessed only in the light of the answer that the Court will give to the fifth question.

113 In those circumstances, the first to fourth questions in Case C-38/21, as with the sixth question in that case, cannot be regarded, at this stage, as hypothetical, since the need for, and the usefulness of, answering them depend on the answer to be given to the fifth question in that case.

114 In any event, it should be noted that where, as in the present case, it is not obvious that the interpretation of a provision of EU law bears no relation to the facts of the main action or its purpose, the objection alleging the inapplicability of that provision to the case in the main action does not relate to the admissibility of the request for a preliminary ruling, but concerns the substance of the questions raised (judgment of 24 July 2023, *Lin*, C-107/23 PPU, EU:C:2023:606, paragraph 66 and the case-law cited).

Question 3(e) and (f) and Question 4(e) and (f), referred in Cases C-38/21, C-47/21 and C-232/21

115 By Question 3(e) and (f) and Question 4(e) and (f) in Cases C-38/21, C-47/21 and C-232/21, the referring court asks, in essence, about the relationship between the right of withdrawal provided for in Article 14 of Directive 2008/48 and the rules of customary international law on time-barring and abuse of rights.

116 C. Bank, Volkswagen Bank, Audi Bank and the German Government express doubts as to the admissibility of those questions.

117 In that regard, it must be noted that, in order to allow the Court to provide an interpretation of EU law that will be of assistance to the national court, Article 94(c) of the Rules of Procedure of the Court of Justice requires that the request for a preliminary ruling contain a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings.

118 In the present case, it is true that, in accordance with settled case-law, the European Union is bound, when exercising its powers, to observe international law in its entirety, including not only the provisions of international conventions that are binding on it, but also the rules and principles of general customary international law (judgment of 6 October 2020, *Commission* v *Hungary (Higher education)*, C-66/18, EU:C:2020:792, paragraph 87 and the case-law cited).

119 However, the referring court merely states that, under the general principles of public international law, which are binding on the German courts in accordance with Article 25(2) of the Basic Law and of which the principles of time-barring and good faith form part, it is only where a consumer knows or is unaware due to gross negligence that he or she has a right of withdrawal that that right could be regarded as time-barred or that the exercise of that right could be regarded as contrary to good faith.

120 In so doing, the referring court has not sufficiently established to what extent the rules of customary international law on time-barring and abuse of rights could conflict with EU law in the context of disputes between private individuals relating to the right of withdrawal provided for in Article 14 of Directive 2008/48.

121 In those circumstances, Question 3(e) and (f) and Question 4(e) and (f) in Cases C-38/21, C-47/21 and C-232/21 do not meet the requirements of Article 94(c) of the Rules of Procedure and, therefore, are inadmissible.

The sixth question referred in Cases C-47/21 and C-232/21

122 By the sixth question in Cases C-47/21 and C-232/21, the referring court asks, in essence, whether the second paragraph of Article 267 TFEU must be interpreted as precluding national legislation under which a single Judge is required, inter alia because the case before him or her is of fundamental importance, to refer that case to a civil chamber composed of three judges and to refrain himself or herself from making a request for a preliminary ruling to the Court in that case.

123 C. Bank, Volkswagen Bank, Audi Bank, the German Government and the Commission submit that those questions are inadmissible, essentially on the ground that an answer to those questions is not necessary for the purposes of resolving the disputes in the main proceedings.

124 In the present case, in view of the case-law referred to in paragraphs 109 and 110 of the present judgment, it must be held that the sixth question referred in Cases C-47/21 and C-232/21 concerns the interpretation of the second paragraph of Article 267 TFEU, but that the referring court has not explained why the interpretation of that provision is necessary to enable it to resolve the disputes before it. It has merely stated that the jurisdiction of a single Judge to make requests for a preliminary ruling to the Court could be challenged, citing, in that regard,

proceedings in cases other than those which gave rise to the present references for a preliminary ruling, in which either orders for reference made by a single Judge were challenged, or the recusal of the single Judge was sought on grounds of bias. However, the referring court has not specified how such a challenge affects orders for reference or, as the case may be, the decisions closing the proceedings. In particular, it is not apparent from the orders for reference that they have, at this stage of the proceedings, been the subject of an appeal in which it is alleged that they are vitiated by a possible defect due to having been made by a single Judge.

125 In those circumstances, the sixth question in Case C-47/21 and in Case C-232/21 is inadmissible in so far as it is hypothetical.

Substance

The fifth question in Case C-38/21

126 By the fifth question in Case C-38/21, which it is appropriate to examine first, the referring court asks, in essence, whether a leasing agreement relating to a motor vehicle, which provides that the consumer is not obliged to purchase the vehicle upon the expiry of the agreement, falls within the scope of Directive 2008/48, Directive 2002/65 or of Directive 2011/83.

127 As a preliminary point, it should be noted that, although it is for the referring court alone to rule on the classification of the agreement at issue in the dispute before it, in accordance with the particular circumstances of the case, the fact remains that the Court may elicit from the provisions of those directives the criteria which that court must apply to that end (see, to that effect, judgment of 3 December 2015, *Banif Plus Bank*, C-312/14, EU:C:2015:794, paragraph 51 and the case-law cited).

128 Moreover, there is nothing preventing a national court from asking the Court to rule in such a classification, although it is for the national court to make the findings of fact necessary for that classification in the light of all the material in the file in its possession (see, to that effect, judgment of 3 December 2015, *Banif Plus Bank*, C-312/14, EU:C:2015:794, paragraph 52).

129 In the present case, it is apparent from the file before the Court that, as stated in paragraph 49 of the present judgment, the agreement at issue in the main proceedings provides that a loan is granted to VK so that the latter may lease, for a period of 24 months and subject to a limit on the mileage that he is permitted to run up, a motor vehicle acquired by BMW Bank in accordance with the specifications provided by VK, that vehicle remaining the property of that bank. During the term of the agreement, the consumer bears the risk of loss, damage and other depreciation of the vehicle and must, in that regard, take out insurance covering all risks. It is also for the consumer to assert defect-related rights against third parties, in particular against the dealer and the manufacturer. Neither the agreement itself nor any separate agreement imposes an obligation on that consumer to purchase the vehicle. Furthermore, the consumer does not assume any guarantee of residual value upon the expiry of the agreement, and he or she is required to compensate for the loss of value only if, when the vehicle is returned, it is established that its condition does not correspond to its age or that the agreed maximum mileage has been exceeded.

130 As regards, in the first place, the scope of Directive 2008/48, it must be noted that, under Article 2(1) of that directive, the latter applies to credit agreements, subject to the exclusions provided for in Article 2(2) of that directive.

131 In accordance with Article 2(2)(d) of Directive 2008/48, the latter does not apply to hiring or leasing agreements where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement; such an obligation is to be deemed to exist if it is so decided unilaterally by the creditor.

132 In that context, it is necessary to determine whether a leasing agreement such as that at issue in the main proceedings falls within the concept of 'leasing agreement' referred to in that provision, it being noted that neither that provision nor any other provision of Directive 2008/48 defines that concept or refers to national law.

133 According to the Court's settled case-law, it follows from the requirements for the uniform application of EU law and from the principle of equality that the terms of a provision of EU law which does not contain any express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, and that interpretation must take into account the wording of that concept, in the light of the context and the objective pursued by the provision in which that concept is used (judgment of 18 June 2020, *Sparkasse Südholstein*, C-639/18, EU:C:2020:477, paragraph 24 and the case-law cited).

134 In everyday legal language, the concept of a 'leasing agreement' covers an agreement whereby one of the parties grants credit to the other party in order to finance the rental use of an asset of which the party granting the credit remains the owner and which the other party may, at the end of the agreement, return or purchase, it being specified that substantially all the rewards and risks of legal ownership are transferred to that other party throughout the term of the agreement (see, by analogy, judgment of 16 February 2012, *Eon Aset Menidjmunt*, C-118/11, EU:C:2012:97, paragraphs 37 and 38).

135 In the present case, it is apparent from the characteristics of the leasing agreement at issue in the main proceedings, referred to in paragraph 129 of the present judgment, that BMW Bank granted VK credit in order to finance the rental use of a vehicle acquired by that bank in accordance with the specifications provided by VK, who, at the end of the agreement, was required to return the vehicle due to being under no obligation to purchase it, whilst bearing substantially all the rewards and risks of ownership of the vehicle throughout the term of the agreement. Although such a leasing agreement falls within the concept of 'leasing' within the meaning of Article 2(2)(d) of Directive 2008/48, it is nevertheless excluded from the scope of that directive since it is not coupled with any obligation on the consumer to purchase the object of the agreement at the end of the latter.

136 As regards, in the second place, the scope of Directive 2002/65, it should be noted that, in accordance with Article 1(1) of that directive, the object of the latter is to approximate the laws, regulations and administrative provisions of the Member States concerning the distance marketing of consumer financial services. Recital 14 of that directive states that the directive covers all financial services liable to be provided at a distance, subject to the application of the provisions of EU legislation specifically governing certain financial services.

137 In order to fall within the scope of Directive 2002/65, an agreement must not only be a 'distance contract' within the meaning of Article 2(a) of that directive, but also be intended to provide a 'financial service' within the meaning of Article 2(b) of that directive, those two conditions being cumulative.

138 In that regard, it must be noted that Directive 2002/65 is intended, in principle, to bring about full harmonisation of the matters that it governs, so that its terms must be given an interpretation that is common to all Member States (judgment of 18 June 2020, *Sparkasse Südholstein*, C-639/18, EU:C:2020:477, paragraph 23), in accordance with the case-law principles set out in paragraph 133 of the present judgment.

139 As regards the concept of 'financial service', Article 2(b) of Directive 2002/65 defines it as covering any service of a banking, credit, insurance, personal pension, investment or payment nature. It is therefore necessary to determine whether a leasing agreement such as that at issue in the main proceedings relates to at least one of the areas referred to in Article 2(b) of Directive 2002/65.

140 First, it must be held, as the Advocate General observed in point 95 of his Opinion, that the concept of 'service of a banking nature', within the meaning of that provision, must be understood as a service offered in the context of a commercial activity traditionally carried out by 'high street' banks.

141 In that regard, it should be noted, as the German Government submits in its written observations, that the offer of a leasing agreement for a motor vehicle such as that at issue in the main proceedings is, in any event, outside the traditional range of services in the banking sector, since such a particular service is most often offered by banks linked to car manufacturers or by companies specialising in car leasing such as vehicle hire companies.

142 It follows that such an agreement does not relate to a 'service of a banking nature' within the meaning of Article 2(b) of Directive 2002/65.

143 Second, as regards the concept of 'service of a credit nature' within the meaning of Article 2(b) of Directive 2002/65, it must be noted that that directive does not contain a definition of the term 'credit'.

144 However, in everyday legal language, that term refers to the provision of a sum of money or deferred payment terms or financial accommodation by the creditor to the borrower for financing or deferred payment purposes, with the result that a credit agreement must be regarded as 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.

145 It follows that a financial services agreement of a credit nature is, as also follows, in essence, from points 97 and 100 of the Advocate General's Opinion, characterised by the fact that it falls within the logic of financing or deferred payment, by means of funds or deferred payment or financial accommodation made available to the consumer by the trader for that purpose.

146 In the present case, as stated before the Court, an agreement for leasing a motor vehicle without an obligation to purchase, such as the agreement at issue in the main proceedings, comprises two elements, namely, first, a credit element characterised by the fact that a bank grants a consumer credit in the form of financial accommodation and, second, a rental element to enable the consumer to use, for a specified period of time, a vehicle of his or her choice belonging to that bank in return for payment of an initial price followed by monthly instalments.

147 In those circumstances, in order to determine whether such an agreement, on account of its hybrid nature, is of a credit nature within the meaning of Article 2(b) of Directive 2002/65, it is necessary, as the Advocate General stated in point 97 of his Opinion, to consider the agreement's main purpose in order to ascertain whether the credit element takes precedence over the rental element or whether the opposite is the case.

148 In that regard, it should be noted, as the Advocate General stated, in essence, in point 100 of his Opinion, that such an agreement does not differ, for the most part, from a long-term car hire agreement in which the consumer must pay a rental fee in return for the right to use the vehicle, provided that it is not coupled with an obligation to purchase the vehicle at the end of the leasing period, that the consumer does not bear the full amortisation of the costs incurred by the supplier of the vehicle in acquiring it and provided that the consumer does not bear the risks associated with the residual value of the vehicle upon the expiry of the agreement. The obligation on the consumer to compensate for the loss in value of the vehicle if it is established, when the vehicle is returned, that its condition does not correspond to its age or that the agreed maximum mileage has been exceeded, also does not allow a distinction to be drawn between those types of agreement.

149 Since the main purpose of a leasing agreement relating to a motor vehicle without an obligation to purchase, such as the agreement at issue in the main proceedings, concerns the rental of that vehicle, such an agreement cannot therefore be classified as a contract for a financial service of a credit nature under Article 1(1) of Directive 2002/65, read in conjunction with Article 2(b) thereof.

150 Third, since such an agreement also manifestly does not relate to a 'service of an insurance, personal pension, investment or payment nature' within the meaning of Article 2(b) of Directive 2002/65, it cannot be classified as an agreement relating to the marketing of a 'financial service' within the meaning of that provision.

151 Since one of the two cumulative conditions referred to in paragraph 137 of the present judgment is not satisfied, it must be concluded that a leasing agreement relating to a motor vehicle, characterised in particular by the fact that neither that agreement nor a separate agreement provides that the consumer is required to purchase the vehicle upon the expiry of the agreement and by the fact that the consumer does not bear either the full amortisation of the costs incurred by the supplier of the vehicle in acquiring the vehicle or the risks associated with the residual value of the vehicle upon the expiry of the agreement, does not fall within the scope of Directive 2002/65.

152 As regards, in the third place, the scope of Directive 2011/83, it must be noted that, in accordance with Article 3(1) of that directive, the latter applies, under the conditions and to the extent set out in its provisions, to any contract concluded between a trader and a consumer, with the exception of the contracts referred to in paragraph 3 of that article, such as contracts for financial services, the latter being defined in Article 2(12) of that directive, in essence, in the same manner as in Article 2(b) of Directive 2002/65 referred to in paragraph 139 of the present judgment.

153 A leasing agreement such as that at issue in the main proceedings cannot be classified, by analogy with the considerations set out in paragraphs 143 to 149 of the present judgment, as a contract for a 'financial service' within the meaning of Article 2(12) of Directive 2011/83. However, it cannot be ruled out that such a leasing agreement may be classified as a 'service contract' within the meaning of Article 2(6) of that directive.

154 In that regard, the term 'service contract' in the latter provision is defined broadly as 'any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof'. It follows from the wording of that provision that that term must be understood as covering all contracts which do not fall within the term 'sales contract' (judgment of 12 March 2020, *Verbraucherzentrale Berlin*, C-583/18, EU:C:2020:199, paragraph 22).

155 A leasing agreement such as that at issue in the main proceedings, by which a trader undertakes to provide a consumer with a vehicle in return for payment by instalments without an obligation to purchase that vehicle at the end of the lease, does not constitute a 'sales contract' consisting of the transfer of ownership of the vehicle to the consumer within the meaning of Article 2(5) of Directive 2011/83. Since that agreement also does not come under the list of exclusions referred to in Article 3(3) of that directive, it must be held that it falls within the scope of that directive as a 'service contract' under Article 2(6) of that directive.

156 In the light of the foregoing, the answer to the fifth question in Case C-38/21 is that Article 2(6) of Directive 2011/83, read in conjunction with Article 3(1) of that directive, must be interpreted as meaning that a leasing agreement relating to a motor vehicle, which is characterised by the fact that neither that agreement nor a separate agreement provides that the consumer is required to purchase the vehicle upon the expiry of the agreement, falls within the scope of that directive, as a 'service contract' within the meaning of Article 2(6) thereof. By contrast, such an agreement does not fall within the scope of either Directive 2002/65 or Directive 2008/48.

The sixth to eighth questions in Case C-38/21

157 It should be noted that those questions are all referred in the event that the Court finds that a leasing agreement such as that at issue in the main proceedings must be classified as a contract for financial services within the meaning of Directive 2002/65 and/or Directive 2011/83.

158 It follows from the considerations set out in paragraphs 149, 151 and 156 of the present judgment that such an agreement does not concern financial services within the meaning of those directives, but must be classified as a 'service contract' within the meaning of Article 2(6) of Directive 2011/83, read in conjunction with Article 3(1) of that directive.

159 Thus, the sixth to eighth questions remain relevant in so far as they concern the interpretation of the provisions of that directive.

160 In that regard, it must be stated that those questions seek, in essence, to enable the referring court to determine whether VK may rely on the right of withdrawal, provided for in Article 9 of Directive 2011/83, only in respect of distance contracts or off-commercial premises contracts, or whether that right is excluded under Article 16 of that directive.

161 In those circumstances, the Court considers it useful to answer, first of all, the eighth question concerning the concept of a 'distance contract', then the sixth question concerning the concept of an 'off-premises contract' and, lastly, the seventh question relating to Article 16 of Directive 2011/83.

– *The eighth question in Case C-38/21*

162 By the eighth question in Case C-38/21, the referring court asks, in essence, whether Article 2(7) of Directive 2011/83 must be interpreted as meaning that a service contract, within the meaning of Article 2(6) of that directive, concluded between a consumer and a trader using a means of distance communication, may be classified as a 'distance contract', within the meaning of the first of those provisions, where, during the stage preparing the ground for the conclusion of the contract, the consumer was in the physical presence of an intermediary authorised to answer his or her questions and to prepare the contract but not to conclude it.

163 In that regard, it must be noted, first, that Article 2(7) of Directive 2011/83 defines the concept of a 'distance contract' as any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.

164 It thus follows from the wording of that provision, in particular from the expression 'up to and including the time at which', that, for the purposes of classifying a contract as a 'distance contract', the requirement for the exclusive use of one or more means of distance communication between the trader and the consumer without the simultaneous physical presence of those persons applies not only to the conclusion of the contract as such, but also to the stage preparing the ground for that contract.

165 Secondly, it follows from the definition of the concept of a 'trader', set out in Article 2(2) of Directive 2011/83, that a trader may act, as regards contracts falling within the scope of that directive, through another person acting in its name or on its behalf.

166 In that regard, it must be noted that an intermediary who, as in the present case, is authorised by the trader to calculate the various elements of the subject matter of the contract, to discuss the terms and conditions of the contract with the consumer, to provide information about the proposed contract and to answer that consumer's questions, and to fill in, receive or send that consumer's written request for the conclusion of that contract with the trader necessarily acts in the name and on behalf of the trader.

167 It follows from the considerations set out in paragraphs 163 to 166 of the present judgment that the simultaneous physical presence of the consumer and an intermediary acting in the name or on behalf of the trader during the stage preparing the ground for the conclusion of the contract precludes, in principle, that contract from being regarded as having been concluded through the exclusive use of one or more means of distance communication.

168 Nevertheless, as is apparent from recital 20 of Directive 2011/83, the definition of the concept of 'distance contract' covers situations in which the consumer visits the business premises merely in order to gather information about the goods or services and subsequently negotiates and concludes the contract at a distance. By contrast, a contract which is negotiated at the business premises of the trader and ultimately concluded by means of distance communication is not considered a distance contract.

169 The provisions of Directive 2011/83 concerning distance contracts are aimed, in that regard, at avoiding a situation where the use of means of distance communication leads to a reduction in the information provided to the consumer, in particular in so far as the information provided,

before a contract is concluded, under Article 6 of that directive, which concerns both the terms of the contract and the consequences of concluding it, allowing that consumer to decide whether he or she wishes to be contractually bound to the trader, and on the proper performance of the contract, in particular the exercise of that consumer's rights, is of fundamental importance for that consumer (see, to that effect, judgments of 23 January 2019, *Walbusch Walter Busch*, C-430/17, EU:C:2019:47, paragraphs 35 and 36 and the case-law cited, and of 5 May 2022, *Victorinox*, C-179/21, EU:C:2022:353, paragraph 26 and the case-law cited).

170 Thus, it is not necessary to classify as a 'distance contract', within the meaning of Article 2(7) of Directive 2011/83, contracts which admittedly were concluded with the trader using a means of distance communication, but which were negotiated between the consumer and an intermediary acting in the name or on behalf of the trader, during which the consumer, who was in the physical presence of that intermediary, received, inter alia, the information referred to in Article 6 of Directive 2011/83 and was able to ask that intermediary questions about the proposed contract or offer, in order to remove any uncertainty as to the scope of his or her possible contractual commitment with the trader.

171 By contrast, a contract concluded between a consumer and a trader using one or more means of distance communication may be classified as a 'distance contract', within the meaning of Article 2(7) of Directive 2011/83, where, during the stage preparing the ground for the conclusion of the contract with the trader, the consumer was in the physical presence of an intermediary acting in the name or on behalf of the trader, that intermediary having, however, merely enabled the consumer to gather information on the subject matter of the contract and, as the case may be, to receive and forward to the trader the consumer's request without negotiating with that consumer or providing him or her with the information referred to in Article 6 of that directive.

172 It follows from the considerations set out in paragraphs 46 and 166 of the present judgment that a negotiation stage did take place between VK and an intermediary authorised to act in the name or on behalf of BMW Bank, in particular in so far as the elements and duration of the leasing agreement, as well as the amount of the initial payment and the monthly instalments due, were, as information referred to in Article 6(1)(a), (e), (g) and (o) of Directive 2011/83, discussed between those two persons, the intermediary having also answered VK's questions concerning the proposed agreement. Subject to verification by the referring court that VK received in the context of that preparatory stage, in a clear and comprehensible manner, all the information referred to in Article 6 of that directive, it must therefore be held, in accordance with the considerations set out in paragraph 170 of the present judgment, that the leasing agreement at issue in the main proceedings is not a distance contract within the meaning of Article 2(7) of Directive 2011/83.

173 In the light of the foregoing, the answer to the eighth question in Case C-38/21 is that Article 2(7) of Directive 2011/83 must be interpreted as meaning that a service contract, within the meaning of Article 2(6) of that directive, concluded between a consumer and a trader by using a means of distance communication cannot be classified as a 'distance contract', within the meaning of the first of those provisions, where the conclusion of the contract was preceded by a negotiation stage which took place in the simultaneous physical presence of the consumer and an intermediary acting in the name or on behalf of the trader, and during which that consumer received from that intermediary, for the purposes of that negotiation, all the information referred

to in Article 6 of that directive and was able to ask that intermediary questions about the proposed contract or offer in order to remove any uncertainty as to the scope of his or her possible contractual commitment with the trader.

– *The sixth question in Case C-38/21*

174 By the sixth question in Case C-38/21, the referring court asks, in essence, whether Article 2(8)(a) of Directive 2011/83 must be interpreted as meaning that a service contract, within the meaning of Article 2(6) of that directive, concluded between a consumer and a trader, may be classified as an 'off-premises contract', within the meaning of the first of those provisions, where, during the stage preparing the ground for the conclusion of the contract through the use of a means of distance communication, the consumer visited the business premises of an intermediary acting in the name or on behalf of the trader for the purposes of the negotiation of that contract but operating in a field of activity other than that of the trader.

175 In that regard, it must be noted that, in accordance with Article 2(8)(a) of Directive 2011/83, the concept of an 'off-premises contract' is defined, inter alia, as any contract between the trader and the consumer concluded in the simultaneous physical presence of the trader and the consumer in a place which is not the business premises of the trader. Under Article 2(9) of that directive, the concept of 'business premises' is defined as any immovable retail premises where the trader carries out his or her activity on a permanent basis, or any movable retail premises where the trader carries out his or her activity on a usual basis.

176 Article 2(2) of Directive 2011/83 provides that the 'trader' may act through another person acting in his or her name or on his or her behalf. In addition, it follows from recital 22 of that directive that an intermediary's business premises should be regarded as business premises within the meaning of that directive, that is to say, as the trader's business premises, within the meaning of Article 2(9) of that directive.

177 Accordingly, it follows from a combined reading of all those provisions in the light of that recital that, where a consumer spontaneously visits the business premises of an intermediary acting in the name or on behalf of the trader and, on those premises, negotiates a contract before concluding it with the trader using a means of distance communication, that contract does not constitute an 'off-premises contract' within the meaning of Article 2(8)(a) of Directive 2011/83, even if the consumer visited only the intermediary's business premises.

178 That interpretation is supported by the objective pursued by the provisions of Directive 2011/83 relating to off-premises contracts, which consists, as follows from recitals 21 and 37 of that directive, in protecting the consumer against the risk of being put under psychological pressure or of being confronted with an element of surprise when he or she is away from the trader's business premises (see, to that effect, judgment of 7 August 2018, *Verbraucherzentrale Berlin*, C-485/17, EU:C:2018:642, paragraph 33).

179 In that context, the Court has already held that, while the EU legislature in principle provided for a right of withdrawal in order to protect the consumer, in respect of off-premises contracts, in cases in which, at the time the contract is concluded, the consumer is not in premises occupied on a permanent or usual basis by the trader, that is because it considered that that consumer can expect to be solicited by the trader only when he or she spontaneously visits premises occupied on a permanent or usual basis by the trader, so that, should the case arise, he or she could not

properly claim subsequently that he or she was surprised by the offer made by the trader (see, to that effect, judgment of 7 August 2018, *Verbraucherzentrale Berlin*, C-485/17, EU:C:2018:642, paragraph 34).

180 The position cannot be different where such a consumer spontaneously visits the business premises of an intermediary acting ostensibly in the name or on behalf of such a trader, irrespective of whether that intermediary is authorised to act solely for the purposes of negotiating the contract but not for concluding it. In such a case, the intermediary's business premises must be treated in the same way as the trader's business premises for the purposes of Article 2(8)(a) of Directive 2011/83, read in the light of recital 22 of that directive.

181 That said, where the intermediary himself or herself is a trader whose activity falls within a sector other than that of the trader in the name or on behalf of which he or she is acting, the decisive factor is whether or not, for the purposes of treating both premises in the same way, an average consumer who is reasonably well informed and reasonably observant and circumspect can expect, by visiting that intermediary's business premises, to be solicited by that intermediary for the purposes of the negotiation and then conclusion at a distance of a contract falling within the activity of the trader in the name or on behalf of which that intermediary acts (see, to that effect, judgment of 7 August 2018, *Verbraucherzentrale Berlin*, C-485/17, EU:C:2018:642, paragraphs 43 and 44).

182 In those circumstances, it will be for the referring court to determine whether, by visiting the car dealer's business premises, VK could, from the perspective of an average consumer who is reasonably well informed and reasonably observant and circumspect, expect to be solicited by that dealer for the purposes of the negotiation and conclusion of a leasing agreement with BMW Bank and, moreover, easily understand that that dealer was acting in the name or on behalf of the trader.

183 In the light of the foregoing, the answer to the sixth question referred in Case C-38/21 is that Article 2(8)(a) of Directive 2011/83 must be interpreted as meaning that a service contract, within the meaning of Article 2(6) of that directive, concluded between a consumer and a trader, cannot be classified as an 'off-premises contract' within the meaning of the first of those provisions, where, during the stage preparing the ground for the conclusion of the contract through the use of a means of distance communication, the consumer visited the business premises of an intermediary acting in the name or on behalf of the trader for the purposes of the negotiation of that contract but operating in a field of activity other than that of the trader, provided that that consumer, as an average consumer who is reasonably well informed and reasonably observant and circumspect, could have expected, from visiting the business premises of the intermediary, to be solicited by that intermediary for the purposes of the negotiation and conclusion of a service contract with the trader and provided that that consumer could also easily have understood that that intermediary was acting in the name or on behalf of that trader.

– *The seventh question in Case C-38/21*

184 By the seventh question in Case C-38/21, the referring court asks, in essence, whether Article 16(l) of Directive 2011/83 must be interpreted as meaning that the exception from the right of withdrawal laid down in that provision for distance or off-premises contracts falling within the scope of that directive and relating to car rental services coupled with a specific date or period of

performance may be relied on against a consumer who has concluded with a trader, for a period of 24 months, a leasing agreement for a motor vehicle, classified as a distance or off-premises service contract within the meaning of that directive.

185 As a preliminary point, it should be noted that the Court's answer to that question will be relevant only if the referring court were to classify the leasing agreement at issue in the main proceedings, in the light of the answer given to the eighth and sixth questions in Case C-38/21, as a distance or off-premises contract within the meaning of Directive 2011/83.

186 In the light of that clarification, it must be noted that Articles 9 to 15 of that directive grant the consumer a right of withdrawal following the conclusion of a distance or off-premises contract, within the meaning of, respectively, Article 2(7) and (8) of that directive, and lay down the conditions and detailed rules for the exercise of that right.

187 However, Article 16 of that directive lays down exceptions to that right of withdrawal, inter alia in the case, referred to in point (l) of that article, of a provision of car rental services if the contract provides for a specific date or period of performance.

188 It must therefore be determined whether a leasing agreement for a motor vehicle concluded for a period of 24 months, such as that at issue in the main proceedings, relates to a 'provision of … car rental services … for a specific date or period of performance' within the meaning of Article 16(l) of Directive 2011/83. In the absence of a reference to the law of the Member States, that concept must, in accordance with the case-law referred to in paragraph 133 of the present judgment, be given an autonomous and uniform interpretation, and that interpretation must take into account the wording of that concept, in the light of its context and the objective pursued by that provision.

189 Furthermore, according to the Court's settled case-law, when terms to be interpreted appear in a provision which constitutes a derogation from a principle or, more specifically, from EU rules intended to protect consumers, they must be interpreted strictly (see, to that effect, judgments of 10 March 2005, *EasyCar*, C-336/03, EU:C:2005:150, paragraph 21, and of 14 May 2020, *NK (Design for a single-family house)*, C-208/19, EU:C:2020:382, paragraph 40). However, that does not mean that the terms used to define that derogating regime must be construed in such a way as to deprive it of its effects. The interpretation of those terms must be consistent with the objectives pursued by that arrangement (judgment of 30 September 2021, *Icade Promotion*, C-299/20, EU:C:2021:783, paragraph 31 and the case-law cited).

190 As regards, in the first place, the wording of Article 16(l) of Directive 2011/83, it must be held that the essential nature of the car rental services referred to in that provision is the making available to the consumer, on a specific date or for a specific period, of a car, that is to say, a motor vehicle, in return for payment of a rental fee or monthly instalments (see, to that effect and by analogy, judgment of 10 March 2005, *EasyCar*, C-336/03, EU:C:2005:150, paragraph 27).

191 As stated in paragraph 148 of the present judgment, the main purpose of a leasing agreement such as that at issue in the main proceedings is to allow the consumer to use the vehicle for a specific period of performance, in the present case 24 months, in return for the monthly payment of a sum of money throughout that period. While it is true that such an agreement also contains a credit element, the wording of Article 16(l) of Directive 2011/83, in so far as it refers generally to the 'provision of … car rental services', does not permit the inference, even taking into account the case-law referred to in paragraph 189 of the present judgment, that the EU legislature wished to exclude from the scope of that provision leasing agreements relating to a motor vehicle.

192 In particular, the fact that Article 16(l) of Directive 2011/83 imposes as a condition that the car rental contract must provide for a 'specific' date or period of performance does not permit the inference that the EU legislature envisaged only short-term rental contracts. The term 'specific' is also capable of covering rental contracts of a longer duration, such as of 24 months, provided that that duration is set out in sufficient detail in the contract.

193 In the second place, as regards the context of that provision, it is true that the categories of services other than car rental services, mentioned in that provision, namely accommodation services other than for residential purposes, transport of goods, catering services and services related to leisure activities, are, as a general rule, provided on an ad hoc basis or over a relatively short period of time. However, Article 16(l) of Directive 2011/83 does not indicate that there is any specific temporal limitation to permit the inference that only car rental contracts concluded for a certain maximum period could fall within the exception to the right of withdrawal established by that provision. That is all the more so since the other categories of services may also, in certain circumstances, be the subject of long-term contracts.

194 In the third place, in view of the considerations set out in paragraphs 190 to 193 of the present judgment and the case-law referred to in paragraph 189 thereof, it is in the light of the objective pursued by Article 16(l) of Directive 2011/83 that it must be determined whether the concept of 'provision of … car rental services … for a specific date or period of performance', which must be interpreted strictly, includes leasing agreements relating to a motor vehicle concluded for a period of 24 months, such as the agreement at issue in the main proceedings.

195 That objective is, as is apparent from recital 49 of that directive, to protect traders against the risk associated with the setting aside of some capacity which, if a right of withdrawal were exercised, the trader may find difficult to fill (judgment of 31 March 2022, *CTS Eventim*, C-96/21, EU:C:2022:238, paragraph 44).

196 Thus, Article 16(l) of Directive 2011/83 seeks, in particular, to protect the interests of the providers of certain services, in order that the latter should not suffer the disproportionate consequences arising from the cancellation at no expense and with no explanation of a service for which there is a prior booking, as a consequence of the consumer's withdrawal at short notice before the date specified for the provision of that service (judgment of 31 March 2022, *CTS Eventim*, C-96/21, EU:C:2022:238, paragraph 45 and the case-law cited).

197 As regards, more specifically, the activity of car rental undertakings, the Court has held that the protection which the EU legislature wished to afford that activity by virtue of that exception to the right of withdrawal is linked to the fact that those undertakings must make arrangements for the performance, on the date fixed at the time of booking, of the agreed service and, for that reason, suffer the same consequences in the event of cancellation as the undertakings operating in the other sectors listed in that provision (see, by analogy, judgment of 10 March 2005, *EasyCar*, C-336/03, EU:C:2005:150, paragraph 29).

198 In the present case, it is apparent from the file before the Court that, in the context of a leasing agreement such as that at issue in the main proceedings, the trader acquires the relevant vehicle at the request of the consumer and in accordance with the latter's specifications. The trader remains the owner of the vehicle for the duration of the agreement, the consumer being required to return that vehicle to the trader when the agreement expires so that the trader can put the vehicle to new use, such as a new lease, another form of hire or to sell it.

199 Irrespective of the period of time for which such an agreement is concluded, the trader could, where the consumer has a right of withdrawal, find it difficult, without suffering disproportionate difficulties in that regard, to put to different use the vehicle which was acquired specifically at the consumer's request in order to meet the latter's specifications. Depending, inter alia, on the make of car, the model, the type of engine, the colour of the bodywork or the interior of the vehicle or the options with which it is fitted, the trader might not succeed, within a reasonable period following the exercise of the right of withdrawal, in putting the vehicle to another equivalent use for the period corresponding to the duration of the originally planned lease, without suffering significant financial damage.

200 That interpretation is consistent with the exception to the right of withdrawal provided for in Article 16(c) of Directive 2011/83, concerning 'the supply of goods made to the consumer's specifications or clearly personalised'. It is true that a leasing agreement such as that at issue in the main proceedings in Case C-38/21 concerns not the supply of goods, but the provision of a service. However, the fact remains that that other exception demonstrates the EU legislature's intention to exclude the right of withdrawal in cases where goods have been manufactured or made to the consumer's precise specifications, which is the case where a new vehicle is ordered based on the consumer's precise specifications with a view to use in the context of a leasing agreement.

201 It follows from the literal, contextual and teleological interpretation of Article 16(l) of Directive 2011/83, made in paragraphs 190 to 200 of the present judgment, that a leasing agreement relating to a motor vehicle concluded for a period of 24 months, such as that at issue in the main proceedings, relates to a 'provision of … car rental services … for a specific date or period of performance', within the meaning of Article 16(l) of Directive 2011/83.

202 In the light of the foregoing, the answer to the seventh question referred in Case C-38/21 is that Article 16(l) of Directive 2011/83 must be interpreted as meaning that a leasing agreement for a motor vehicle, concluded between a trader and a consumer and classified as a distance or off-premises service contract within the meaning of that directive, comes under the exception to the right of withdrawal laid down in that provision in respect of distance or off-premises contracts falling within the scope of that directive and concerning car rental services coupled with a specific date or period of performance, where the main purpose of that agreement is to allow the consumer to use a vehicle for the specific period of time stipulated in that agreement, in return for the regular payment of sums of money.

The first to fourth questions in Case C-38/21

203 As the first to fourth questions concern the interpretation of provisions of Directive 2008/48, it must be held, in the first place, that, since a leasing agreement such as that at issue in the main proceedings does not, in accordance with the answer to the fifth question in Case C-38/21, fall within the scope of that directive, it is no longer necessary, in accordance with the case-law referred to in paragraph 110 of the present judgment, to answer those first to fourth questions in the light of that directive.

204 That finding is not called into question by the fact that the referring court states that, in its view, such a leasing agreement should be governed *mutatis mutandis* by the provisions of national law transposing Directive 2008/48.

205 It is true that, under Article 1 of Directive 2008/48, read in conjunction with recital 10 of that directive, the Member States may, notwithstanding the full harmonisation of the aspects covered by that directive, maintain or introduce national provisions corresponding to the provisions of that directive or certain of its provisions on credit agreements which do not fall within the scope of that directive, such as 'hiring or leasing agreements where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement', referred to in Article 2(2)(d) of Directive 2008/48.

206 It is also true that the Court has repeatedly held that it has jurisdiction to give preliminary rulings on questions concerning provisions of EU law in situations in which those provisions had been rendered applicable by national law and where, in dealing with purely internal situations, the national law followed the same approach as that provided for by EU law. In such a case, it is clearly in the interest of the European Union that, in order to forestall future differences of interpretation, provisions or concepts taken from EU law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (see, to that effect, judgment of 30 January 2020, *I.G.I.*, C-394/18, EU:C:2020:56, paragraphs 45 and 46 and the case-law cited).

207 That said, it follows from the Court's case-law that the relevant provisions of EU law must have been made applicable by national law directly and unconditionally, in order to ensure that internal situations and situations governed by EU law are treated in the same way, and that the specific factors that allow such direct and unconditional applicability to be established must be apparent from the order for reference. To that end, the referring court must indicate, in accordance with Article 94 of the Rules of Procedure of the Court, in what way the dispute pending before it, despite its purely domestic character, has a connecting factor with the provisions of EU law that makes the preliminary ruling on interpretation necessary for it to give judgment in that dispute (see, to that effect, judgment of 30 January 2020, *I.G.I.*, C-394/18, EU:C:2020:56, paragraphs 46, 48 and 49 and the case-law cited).

208 In the present case, the referring court states, in the supplement to the request for a preliminary ruling, that the Bundesgerichtshof (Federal Court of Justice) has held that leasing agreements for a motor vehicle which provide that the consumer is under no obligation to purchase the vehicle upon the expiry of the agreement do not fall within the scope of Paragraph 506 of the BGB, which refers to provisions of the BGB which transposed Directive 2008/48. Since and notwithstanding the fact that it has doubts as to that interpretation, the referring court states in its request for a preliminary ruling that, according to the case-law of the Bundesgerichtshof (Federal Court of Justice), which forms part of German law, that law did not make the provisions of Directive 2008/48 directly and unconditionally applicable to leasing agreements such as that at issue in the main proceedings.

209 In the second place, it must be noted that, in its supplement to the request for a preliminary ruling, the referring court states that, even if the agreement at issue in the main proceedings were not to fall within the scope of Directive 2008/48 as a consumer credit agreement, the third and fourth questions in Case C-38/21 would remain relevant in the event that the right of withdrawal provided for off-premises and distance contracts by the provisions of German law transposing the provisions of Directive 2002/65 and Directive 2011/83 could be relied on by the consumer.

210 In that regard, it follows from paragraph 156 of the present judgment that a consumer such as VK does not have a right of withdrawal on the basis of Directive 2002/65 since a leasing agreement for a motor vehicle, such as the agreement at issue in the main proceedings, does not fall within the scope of that directive. In addition, it follows from paragraphs 156 and 202 of the present

judgment that, although such an agreement falls within the scope of Directive 2011/83 and assuming that it can be classified as an off-premises contract or as a distance contract within the meaning of Article 2(6) and (7) of that directive, a consumer who has concluded it with a trader does not have the right of withdrawal provided for by that directive, in accordance with Article 16(l) thereof.

211 In those circumstances, there is no need to answer the third and fourth questions in Case C-38/21 in the light of Directives 2002/65 and 2011/83.

The first question in Cases C-47/21 and C-232/21

212 As a preliminary point and in order to answer the objection of C. Bank, Volkswagen Bank and Audi Bank to the effect that that question is inadmissible, it must be noted that, although it is true that, on a literal reading of that question, the Court is being asked to rule on the compatibility of provisions of national law with EU law, such wording does not prevent the Court from providing the referring court with guidance as to the interpretation of EU law which will enable that court to rule itself on the compatibility of national rules with EU law (judgment of 17 March 2021, *Consulmarketing*, C-652/19, EU:C:2021:208, paragraph 33 and the case-law cited).

213 In the present case, it is apparent, first of all, from the requests for a preliminary ruling in Cases C-47/21 and C-232/21 that the agreements at issue in those cases provide that the period within which the consumer may withdraw does not start to run until after the conclusion of the contract, provided that the borrower has received all the mandatory information provided for by German law and corresponding, in essence, to the information set out in Article 10(2)(p) of Directive 2008/48.

214 Next, those agreements contain terms which correspond to the statutory model provided for by German law. Even though the referring court has established that some of those terms did not comply with Article 10(2)(p) of Directive 2008/48, that court states that it is apparent from the third sentence of Article 247(6)(2) and the third sentence of Article 247(12)(1) of the EGBGB that, if the agreement contains a prominent and clearly formulated term, which corresponds to that model, that term is deemed to meet the requirements as to providing the consumer with information regarding his or her right of withdrawal.

215 Lastly, it must be observed that, although the first question in Cases C-47/21 and C-232/21 is submitted in the light not only of Article 10(2)(p) of Directive 2008/48, but also of Article 14(1) of that directive, only the interpretation of the first of those provisions is necessary for the purposes of answering that question.

216 In those circumstances, it must be understood that, by its first question in Cases C-47/21 and C-232/21, the referring court asks, in essence, whether Article 10(2)(p) of Directive 2008/48 must be interpreted as precluding national legislation that establishes a statutory presumption that the trader is in compliance with its obligation to inform the consumer of his or her right of withdrawal where that trader refers, in a contract, to national provisions which themselves refer to a statutory information model in that regard, while using terms set out in that model which do not comply with the requirements of that provision of the directive. If so, the referring court also asks whether that national legislation must be disapplied in a dispute exclusively between private individuals.

217 In that regard, it is important to note that the loan agreements at issue in the disputes in the main proceedings in Cases C-47/21 and C-232/21 meet the definition of credit agreements set out in Article 3(c) of Directive 2008/48. Those agreements thus fall within the scope of that directive, in accordance with Article 2(1) thereof.

218 That point having been clarified, it should be noted that Article 10(2) of Directive 2008/48 lists the information that must be specified in a clear and concise manner in the credit agreements which fall within the scope of that directive under Article 2 thereof. Article 10(2)(p) of that directive provides in particular that the credit agreement must thereby specify the existence or absence of a right of withdrawal, the period during which that right may be exercised and other conditions governing the exercise thereof, including information concerning the obligation of the consumer to pay the capital drawn down, the interest and the amount of interest payable per day.

219 The Court has already held that Article 10(2)(p) of Directive 2008/48 precludes a credit agreement from making reference, as regards the information referred to in Article 10 of that directive, to a provision of national law which itself refers to other legislative provisions of the Member State in question. Where an agreement concluded by a consumer refers to certain provisions of national law as regards information which must be provided pursuant to Article 10 of Directive 2008/48, the consumer is not in a position, on the basis of the agreement, to determine the scope of his or her contractual obligations, to check whether all the required information, in accordance with that provision, is included in the contract that he or she has concluded, or a fortiori to verify whether the period of withdrawal open to him or her has begun (see, to that effect, judgment of 26 March 2020, *Kreissparkasse Saarlouis*, C-66/19, EU:C:2020:242, paragraphs 44 and 49).

220 It follows that Article 10(2)(p) of Directive 2008/48 precludes the inclusion in a credit agreement of a term which refers to national provisions which themselves refer to a statutory information model such as the statutory model. The same applies a fortiori where terms in such a model are contrary to that provision because of their lack of clarity in the context of the relevant agreement. Therefore, that provision also precludes national legislation which attaches to the use of such terms a statutory presumption that the trader has complied with its obligation to inform the consumer of his or her right of withdrawal.

221 As regards the conclusions which the referring court must draw from that finding, it must be noted that a national court, when hearing a dispute which is exclusively between private individuals, is required, when applying the provisions of domestic law adopted for the purpose of transposing obligations laid down by a directive, to consider the whole body of rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the directive in order to achieve an outcome consistent with the objective pursued by that directive (judgment of 18 January 2022, *Thelen Technopark Berlin*, C-261/20, EU:C:2022:33, paragraph 27 and the case-law cited).

222 However, the principle that national law must be interpreted in conformity with EU law has certain limits. Thus, the obligation on a national court to refer to the content of a directive when interpreting and applying the relevant rules of domestic law is limited by general principles of law and it cannot serve as the basis for a *contra legem* interpretation of national law (judgment of 18 January 2022, *Thelen Technopark Berlin*, C-261/20, EU:C:2022:33, paragraph 28 and the case-law cited).

223 In the present case, it is apparent from the file before the Court that, according to the Bundesgerichtshof (Federal Court of Justice), the wording, origin and purpose of the national provisions in question in the main proceedings preclude those provisions from being interpreted in accordance with Directive 2008/48. The referring court states that there is a doctrinal position in favour of such an interpretation, and also envisages those national provisions not being applied.

224 In those circumstances, it is for that court to determine whether the national provisions at issue in the main proceedings lend themselves to an interpretation that is consistent with Directive 2008/48, bearing in mind that that court cannot validly consider that it is impossible for it to carry out such an interpretation merely because those provisions have been interpreted by other courts of the Member State to which it belongs, albeit a supreme court, in a manner that is incompatible with that law (see, to that effect, judgment of 22 April 2021, *Profi Credit Slovakia*, C-485/19, EU:C:2021:313, paragraph 72 and the case-law cited).

225 If the referring court were to conclude that it is impossible to do so, it should be noted that, where it is unable to interpret national legislation in compliance with the requirements of EU law, the principle of the primacy of EU law requires that the national court which is called upon within the exercise of its jurisdiction to apply provisions of that law, give full effect to those provisions by disapplying, as required, of its own motion, any national rule or practice, even if adopted subsequently, that is contrary to a provision of EU law with direct effect, without it having to request or await the prior setting aside of that national rule or practice by legislative or other constitutional means (judgments of 8 March 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect)*, C-205/20, EU:C:2022:168, paragraph 37 and the case-law cited, and of 24 July 2023, *Lin*, C-107/23 PPU, EU:C:2023:606, paragraph 95).

226 It is settled case-law that a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against that individual before a national court. Therefore, even a clear, precise and unconditional provision of a directive does not allow a national court to disapply a provision of its national law which conflicts with it if, were that court to do so, an additional obligation would be imposed on an individual (see, to that effect, judgment of 18 January 2022, *Thelen Technopark Berlin*, C-261/20, EU:C:2022:33, paragraph 32 and the case-law cited).

227 In the present case, it is common ground, first, that the disputes in the main proceedings are exclusively between private individuals. Second, if the national provisions at issue were disapplied under Article 10(2)(p) of Directive 2008/48 in the disputes in the main proceedings, the defendant banks in those disputes would be deprived of the benefit of the statutory presumption established by those provisions and, therefore, would be required to state, in a clear and comprehensible manner in the agreements at issue in the main proceedings, the pieces of information relating to the right of withdrawal that are listed in that provision. The case-law referred to in the preceding paragraph precludes that provision having such an effect, solely on the basis of EU law.

228 It follows that the referring court is not required, solely on the basis of EU law, to disapply the third sentence of Article 247(6)(2) and the third sentence of Article 247(12)(1) of the EGBGB, even though those provisions are contrary to Article 10(2)(p) of Directive 2008/48, without prejudice to the possibility for that court to disapply those provisions on the basis of its domestic law (see, by analogy, judgment of 18 January 2022, *Thelen Technopark Berlin*, C-261/20, EU:C:2022:33, paragraph 33).

229 It should nevertheless be noted that a party which has been harmed as a result of national law not being in conformity with EU law could rely on the case-law derived from the judgment of 19 November 1991, *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428), in order to obtain, if appropriate, compensation for the loss or damage sustained (see, to that effect, judgments of 7 March 1996, *El Corte Inglés*, C-192/94, EU:C:1996:88, paragraph 22, and of 18 January 2022, *Thelen Technopark Berlin*, C-261/20, EU:C:2022:33, paragraph 41 and the case-law cited).

230 In the light of the foregoing, the answer to the first question in Cases C-47/21 and C-232/21 is that Article 10(2)(p) of Directive 2008/48 must be interpreted as precluding national legislation that establishes a statutory presumption that the trader is in compliance with its obligation to inform the consumer of his or her right of withdrawal where that trader refers, in a contract, to national provisions which themselves refer to a statutory information model in that regard, while using terms set out in that model which do not comply with the requirements of that provision of the directive. If it is not possible to interpret the national legislation at issue in a manner consistent with Directive 2008/48, a national court hearing a dispute exclusively between private individuals is not required, solely on the basis of EU law, to disapply such legislation, without prejudice to the possibility for that court to disapply it on the basis of its domestic law and, failing that, without prejudice to the right of the party harmed as a result of national law not being in conformity with EU law to claim compensation for the resulting loss which he or she has suffered.

Part (a) of the second question in Case C-232/21

231 By part (a) of the second question in Case C-232/21, the referring court asks whether Article 10(2)(p) of Directive 2008/48 must be interpreted as meaning that the amount of daily interest that must be stated in a credit agreement pursuant to that provision, applicable where the consumer exercises the right of withdrawal, must be calculated from the contractual borrowing rate stipulated in that agreement.

232 Article 10(2)(p) of Directive 2008/48 provides that a credit agreement must specify, in a clear and concise manner, information concerning the obligation of the consumer, in the event of the exercise of his or her right of withdrawal, to pay the capital drawn down and the interest in accordance with Article 14(3)(b) of that directive and the amount of interest payable per day.

233 It follows from Article 10(2) of Directive 2008/48, read in the light of recital 31 thereof, that the requirement to include the information referred to in that provision in a credit agreement drawn up on paper or on another durable medium in a clear and concise manner is necessary in order to ensure that the consumer is aware of his or her rights and obligations (judgment of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraph 70 and the case-law cited).

234 Knowledge and good understanding, on the part of the consumer, of the information that must be mandatorily included in the credit agreement, in accordance with Article 10(2) of Directive 2008/48, are necessary for the proper performance of the agreement and, in particular, for the exercise of the consumer's rights, which include his or her right of withdrawal (see, to that effect, judgment of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraph 71 and the case-law cited).

235 To enable a good understanding of that information in compliance with the requirement for clarity laid down in Article 10(2) of Directive 2008/48, the information provided in a credit agreement must therefore be devoid of any contradiction that objectively may be liable to mislead an average consumer who is reasonably well informed and reasonably observant and circumspect as to the extent of his or her rights and obligations under that agreement.

236 Furthermore, Article 14(3)(b) of Directive 2008/48 provides, inter alia, that, in the event of exercise of the right of withdrawal, interest is to be calculated on the basis of the agreed borrowing rate. It must be held that the concept of 'interest' also includes the daily interest referred to in Article 10(2)(p) of that directive, since Article 14(3)(b) of that directive covers all 'interest accrued [on the capital] from the date the credit was drawn down until the date the capital is repaid'.

237 It thus follows from the provisions of Article 10(2)(p) in conjunction with Article 14(3)(b) of Directive 2008/48 that, as regards the amount of daily interest which the consumer is required to pay in the event of the exercise of his or her right of withdrawal, that interest may under no circumstances exceed the amount calculated from the borrowing rate stipulated in the credit agreement.

238 In view of the case-law referred to in paragraphs 233 to 235 of the present judgment, the information provided in the agreement as regards the amount of daily interest must be stated in a clear and concise manner so that, inter alia, read in conjunction with other information, it contains no contradiction objectively capable of misleading an average consumer who is reasonably well informed and reasonably observant and circumspect as to the amount of daily interest that he or she will ultimately have to pay. In the absence of such information, no amount of daily interest is payable.

239 It will be for the referring court to ascertain whether, in the light of the contractual terms at issue in Case C-232/21, an average consumer who is reasonably well informed and reasonably observant and circumspect would have been able to identify clearly the amount of daily interest payable in the event of the exercise of the right of withdrawal.

240 In the light of the foregoing, the answer to part (a) of the second question in Case C-232/21 is that Article 10(2)(p) of Directive 2008/48, read in conjunction with Article 14(3)(b) of that directive, must be interpreted as meaning that the amount of daily interest that must be stated in a credit agreement pursuant to that provision, applicable where the consumer exercises the right of withdrawal, may not, under any circumstances, exceed the amount calculated from the contractual borrowing rate stipulated in that agreement. The information provided in the agreement concerning the amount of daily interest must be stated in a clear and concise manner so that, inter alia, read in conjunction with other information, it contains no contradiction objectively capable of misleading an average consumer who is reasonably well informed and reasonably observant and circumspect as to the amount of daily interest that he or she will ultimately have to pay. In the absence of such information, no amount of daily interest is payable.

Part (d) of the second question in Case C-47/21

241 By part (d) of the second question in Case C-47/21, the referring court asks, in essence, whether Article 10(2)(t) of Directive 2008/48 must be interpreted as meaning that a credit agreement must specify the essential formal requirements for the initiation of an out-of-court complaint and redress mechanism or whether it is sufficient for that agreement to refer, in that regard, to rules of procedure that are available upon request or on the internet.

242 In that respect, it is important to note that, in accordance with Article 10(2)(t) of Directive 2008/48, a credit agreement must specify in a clear and concise manner whether or not there is an out-of-court complaint and redress mechanism for the consumer and, if so, the methods for having access to it.

243 In that context, the Court has already held that, although the information contained in the credit agreement need not necessarily reproduce all the procedural rules governing the out-of-court complaint and redress mechanisms available to the consumer, Article 10(2)(t) of Directive 2008/48 nevertheless seeks to ensure, first, that the consumer is able to decide, in full knowledge of the facts, whether it is appropriate for him or her to have recourse to one of those procedures and, second, to ensure that he or she is actually in a position to initiate such a procedure based on the information contained in the credit agreement (see, to that effect, judgment of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraphs 132 and 135).

244 For that purpose, it is crucial that the consumer be informed (i) about all out-of-court complaint or redress mechanisms available to him or her and, where appropriate, the cost of using them; (ii) of the fact that the complaint or application for redress must be submitted by post or electronically; (iii) of the physical or electronic address to which that complaint or application for redress should be sent; and (iv) of the other formal requirements to be satisfied by that complaint or application for redress (judgment of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraph 136).

245 The Court has already held in that regard that a mere reference, in the credit agreement, to rules of procedure available on the internet or to another act or document concerning the detailed rules governing out-of-court complaint and redress mechanisms is insufficient (judgment of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraph 137). That must also be the case where the credit agreement states that such rules of procedure are available on request.

246 In the light of the foregoing, the answer to part (d) of the second question in Case C-47/21 is that Article 10(2)(t) of Directive 2008/48 must be interpreted as meaning that a credit agreement must specify the essential information concerning all out-of-court complaint or redress mechanisms available to the consumer and, where appropriate, the cost of using them, the fact that the complaint or application for redress must be submitted by post or electronically, the physical or electronic address to which that complaint or application for redress must be sent and the other formal conditions to which that complaint or application for redress is subject, since a mere reference, in the credit agreement, to rules of procedure available upon request or on the internet, or to another act or document concerning the detailed rules governing out-of-court complaint and redress mechanisms is insufficient.

Part (b)(aa) of the second question in Cases C-47/21 and C-232/21

247 By part (b)(aa) of the second question in Cases C-47/21 and C-232/21, the referring court asks, in essence, whether Article 10(2)(r) of Directive 2008/48 must be interpreted as meaning that a credit agreement must, for the calculation of the compensation due in the event of early repayment of the loan, indicate an arithmetical formula that is sufficiently specific and understandable for the consumer so that he or she can calculate, at least approximately, the amount due in such a case.

248 Under Article 10(2)(r) of Directive 2008/48, a credit agreement must specify in a clear and concise manner 'the right of early repayment, the procedure for early repayment, as well as, where applicable, information concerning the creditor's right to compensation and the way in which that compensation will be determined'.

249 In the present case, it is apparent from the orders for reference that the credit agreements at issue in Cases C-47/21 and C-232/21 provide, in essence, that, in the event of early repayment of the loan by the consumer, the bank may claim compensation which is calculated in accordance with the arithmetical framework prescribed by the Bundesgerichtshof (Federal Court of Justice), which takes into account, inter alia, the level of the interest rate that has varied in the meantime, the cash flows initially agreed for the loan, the lending bank's loss of profit, the administrative costs associated with the early repayment and the costs of risk and administrative costs saved as a result of the early repayment. Those agreements also state that the early repayment compensation thus calculated is reduced to the lower of the following two amounts where that compensation is higher: either 1% or, where the early repayment is made less than seven years before the agreed repayment date, 0.5% of the amount repaid early, or the amount of interest that the borrower would have paid between the date of the early repayment and the agreed repayment date.

250 In a similar context, the Court has already held that, where Directive 2008/48 provides for an obligation on the part of trader to inform the consumer of the substance of the contractual obligation proposed to him or her, certain aspects of which are specified by mandatory statutory or regulatory provisions of a Member State, that trader is required to inform the consumer in a clear and concise manner of the contents of those provisions in order to ensure that that consumer is aware of his or her rights and obligations (judgment of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraph 99 and the case-law cited).

251 While it is not necessary, for that purpose, as regards the compensation payable in the event of early repayment, referred to in Article 10(2)(r) of Directive 2008/48, for the credit agreement to specify the arithmetical formula to be used to calculate that compensation, it must nevertheless state the specific method for calculating that compensation in a way which is readily understood by an average consumer who is reasonably well informed and reasonably observant and circumspect, so that he or she can ascertain the amount of compensation payable in the event of early repayment based on the information provided in the credit agreement (see, to that effect, judgment of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraph 100).

252 Thus, the Court has held that a mere reference, for the purpose of calculating the compensation payable in the event of early repayment of the loan, to the financial arithmetical framework established by a national court, does not satisfy the requirement, mentioned in paragraph 250 of the present judgment, that the consumer must be informed of the content of his or her contractual obligations (judgment of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraph 101).

253 That being the case, the obligation, referred to in Article 10(2)(r) of Directive 2008/48, to inform the consumer of the method of calculating the compensation which he or she will have to pay to the creditor in the event of early repayment of the loan is intended to enable the consumer to determine the amount of that compensation on the basis of the information provided in the credit agreement. In that regard, it follows from the Court's case-law that the provision of incomplete or

incorrect information may be treated as a failure to provide information only if the consumer is thereby misled as to his or her rights and obligations (see, to that effect, judgments of 10 April 2008, *Hamilton*, C-412/06, EU:C:2008:215, paragraph 35, and of 19 December 2019, *Rust-Hackner and Others*, C-355/18 to C-357/18 and C-479/18, EU:C:2019:1123, paragraph 78) and if, therefore, he or she is led to conclude an agreement which he or she might not have concluded if all the complete and materially correct information had been available to him or her.

254 It cannot be considered that a consumer has been misled, within the meaning of that case-law, where, notwithstanding the non-conformity of a reference, for the purposes of the calculation of that compensation, to the financial arithmetical framework prescribed by a national court, the agreement contains other information enabling that consumer easily to determine the amount of the relevant compensation, in particular the maximum amount thereof which he or she will have to pay in the event of early repayment of the loan.

255 It will therefore be for the referring court to determine whether the agreements at issue in Cases C-47/21 and C-232/21 satisfy that condition in so far as they provide that the compensation for early repayment calculated on the basis of the financial arithmetical framework set out in the case-law is reduced to the lower of the two amounts referred to in paragraph 249 of the present judgment where that compensation is higher.

256 In the light of the foregoing, the answer to part (b)(aa) of the second question in Cases C-47/21 and C-232/21 is that Article 10(2)(r) of Directive 2008/48 must be interpreted as meaning that a credit agreement must, in principle, for the calculation of the compensation due in the event of early repayment of the loan, indicate the method of calculating that compensation in a manner that is specific and easily understandable for an average consumer who is reasonably well informed and reasonably observant and circumspect so that he or she can determine the amount of compensation due in the event of early repayment on the basis of the information provided in that agreement. That said, even in the absence of a specific and easily understandable indication of the method of calculation, such an agreement may satisfy the obligation set out in that provision provided that it contains other information enabling the consumer easily to determine the amount of the relevant compensation, in particular the maximum amount thereof, which he or she will have to pay in the event of early repayment of the loan.

Part (b)(bb), part (e) and part (f) of the second question in Case C-47/21 and part (b)(bb), part (c) and part (d) of the second question in Case C-232/21

257 As a preliminary point, it must be held that parts (e) and (f) of the second question in Case C-47/21 and parts (c) and (d) of the second question in Case C-232/21 are admissible, contrary to what is claimed by C. Bank, Volkswagen Bank and Audi Bank respectively in their written observations. It is true that the referring court asks those questions by referring generally to Article 10(2) of Directive 2008/48 and not explicitly to specific parts of that provision. Nevertheless, it follows from an overall reading of the orders for reference in those two cases that the Court is able to understand the aspects of that provision which give rise to the referring court's doubts as to the interpretation of it, and to provide the referring court with a useful answer in that regard. It follows that, in accordance with the principles set out in paragraphs 110 and 117 of the present judgment, the referring court has identified with sufficient precision, in the context of those questions, a provision of EU law which is related to the actual facts of the main actions and their purpose, thus enabling the Court to give the referring court a useful answer.

258 Thus, by part (b)(bb), part (e) and part (f) of the second question in Case C-47/21 and by part (b)(bb), part (c) and part (d) of the second question in Case C-232/21, the referring court asks, in essence, whether point (b) of the second subparagraph of Article 14(1) of Directive 2008/48 must be interpreted as meaning that the withdrawal period provided for in the first subparagraph of Article 14(1) of that directive starts to run only if the information required under Article 10(2) of that directive has been provided to the consumer in full and if it does not contain any substantive error.

259 In that regard, it should be noted that, as with other EU directives on consumer protection, the system of protection established by Directive 2008/48 is based on the idea that the consumer is in a weak position vis-à-vis the trader, as regards both his or her bargaining power and his or her level of knowledge, which leads to the consumer agreeing to terms drawn up in advance by the trader without being able to influence the content of those terms (see, to that effect, judgments of 4 June 2015, *Faber*, C-497/13, EU:C:2015:357, paragraph 42 and the case-law cited, and of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 63 and the case-law cited).

260 In that regard, information, before and at the time of concluding a contract, on the terms of the contract and the consequences of concluding it is of fundamental importance for a consumer. It is, in particular, on the basis of that information that the consumer decides whether he or she wishes to be bound by the conditions drafted in advance by the trader (judgment of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 64 and the case-law cited).

261 It thus follows from point (b) of the second subparagraph of Article 14(1) of Directive 2008/48 that the 14-day withdrawal period starts to run only from the day on which, inter alia, the information provided for in Article 10 of that directive is received by the consumer, if that day is later than the day on which the credit agreement was concluded. Article 10(2) lists the information which must be set out, in a clear and concise manner, in the credit agreement.

262 In the latter regard, it must be noted that the obligation to provide information, set out in Article 10(2) of Directive 2008/48, contributes to attaining the objective pursued by that directive, which, as can be seen from recitals 7 and 9 of that directive, consists in providing, as regards consumer credit, full and mandatory harmonisation in a number of key areas, which is regarded as necessary in order to ensure that all consumers in the European Union enjoy a high and equivalent level of protection of their interests and to facilitate the emergence of a well-functioning internal market in consumer credit (judgment of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 61 and the case-law cited).

263 As already stated in paragraphs 233 and 234 of the present judgment, it follows from Article 10(2) of Directive 2008/48, read in the light of recital 31 of that directive, that the requirement to include the information referred to in that provision in a credit agreement drawn up on paper or on another durable medium in a clear and concise manner is necessary in order to ensure that the consumer is aware of his or her rights and obligations. More specifically, knowledge and good understanding, on the part of the consumer, of the information that must be mandatorily included in the credit agreement are necessary for the proper performance of the agreement and, in particular, for the exercise of the consumer's rights (judgment of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraphs 70 and 71 and the case-law cited).

264 However, as stated in paragraph 253 of the present judgment, the provision of incomplete or incorrect information may be treated as a failure to provide information only if the consumer is thereby misled as to his or her rights and obligations, and if, therefore, he or she is led to conclude a contract which he or she might not have concluded if all the complete and materially correct information had been available to him or her.

265 Accordingly, it must be held that, where information provided by the creditor to the consumer under Article 10(2) of Directive 2008/48 proves to be incomplete or incorrect, the withdrawal period starts to run only if the incomplete or incorrect nature of that information is not capable of affecting the consumer's ability to assess the extent of his or her rights and obligations under that directive or his or her decision to conclude the contract and, where relevant, is not capable of depriving him or her of the possibility of exercising his or her rights, in essence, under the same conditions as would have prevailed if that information had been provided in a complete and correct manner (see, to that effect and by analogy, judgments of 9 November 2016, *Home Credit Slovakia*, C-42/15, EU:C:2016:842, paragraph 72, and of 19 December 2019, *Rust-Hackner and Others*, C-355/18 to C-357/18 and C-479/18, EU:C:2019:1123, paragraph 81). It is for the referring court to determine that point.

266 It is also important to state that the possible existence, in national law, of measures designed to penalise the incomplete or incorrect nature of the information provided to the consumer in a manner other than the manner that has just been described above has no effect on the procedure for triggering the withdrawal period. As the Advocate General stated, in essence, in point 146 of his Opinion, the fact that, under point (b) of the second subparagraph of Article 14(1) of Directive 2008/48, the withdrawal periods starts to run only from the day on which the information laid down in Article 10 of that directive is received by the consumer is a direct result of the creditor's failure to comply with its obligation to provide the consumer, in the credit agreement, with the mandatory information referred to in Article 10. In accordance with Article 22(1) of Directive 2008/48, it would be incompatible with the effects of the full and mandatory harmonisation brought about by that directive in the sphere of the right of withdrawal to allow the Member States to derogate from the consequence which point (b) of the second subparagraph of Article 14(1) of that directive attaches to a failure to comply with the obligation to provide information that is laid down, inter alia, in Article 10(2) of that directive.

267 In the light of the foregoing, the answer to part (b)(bb), part (e) and part (f) of the second question in Case C-47/21 and to part (b)(bb), part (c) and part (d) of the second question in Case C-232/21 is that point (b) of the second subparagraph of Article 14(1) of Directive 2008/48 must be interpreted as meaning that, where information provided by the creditor to the consumer under Article 10(2) of that directive proves to be incomplete or incorrect, the withdrawal period starts to run only if the incomplete or incorrect nature of that information is not capable of affecting the consumer's ability to assess the extent of his or her rights and obligations under that directive or his or her decision to conclude the contract and, where relevant, is not capable of depriving him or her of the possibility of exercising his or her rights, in essence, under the same conditions as would have prevailed if that information had been provided in a complete and correct manner.

Part (c) of the second question in Case C-47/21

268 By part (c) of its second question in Case C-47/21, the referring court asks, in essence, whether Article 10(2)(l) of Directive 2008/48 must be interpreted as meaning that a credit agreement must state, as a specific percentage, the rate of late-payment interest that is applicable at the time the agreement is concluded and, where that rate is determined on the basis of a variable reference interest rate, the latter rate and the mechanism by virtue of which that rate may vary over time.

269 In that regard, it must be noted that, under Article 10(2)(l) of Directive 2008/48, a credit agreement must specify, inter alia, in a clear and concise manner, the interest rate applicable in the case of late payments, as applicable at the time the credit agreement is concluded, and the arrangements for adjusting that rate.

270 In view of the case-law referred to in paragraphs 233 to 235 of the present judgment, the Court has already held that a credit agreement must state, in the form of a specific percentage, the rate of late-payment interest applicable at the time of conclusion of that agreement and must explain the specific arrangements for adjusting the rate of late-payment interest (judgment of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraphs 92 and 95).

271 It should be noted that, where, as in the case of the agreement at issue in the main proceedings, that rate is determined on the basis of a variable reference interest rate, the latter must, for the same reasons, be mentioned as a specific percentage applicable on the date the contract is concluded. The method for calculating the rate of late-payment interest on the basis of the reference interest rate must be set out in the agreement in a way which is readily understood by an average consumer who does not have specialist knowledge in the financial field so that he or she can calculate the rate of late-payment interest based on the information provided in that agreement. Furthermore, the credit agreement must indicate the frequency with which that reference interest rate may be varied, even if that frequency is determined by national provisions (see, to that effect, judgment of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraph 94).

272 In the light of the foregoing, the answer to part (c) of the second question in Case C-47/21 is that Article 10(2)(l) of Directive 2008/48 must be interpreted as meaning that a credit agreement must state, as a specific percentage, the rate of late-payment interest that is applicable at the time the agreement is concluded and must describe in specific terms the mechanism for adjusting that rate. Where that rate is determined on the basis of a reference interest rate which varies over time, the credit agreement must state the reference interest rate that is applicable on the date the agreement is concluded, and the method for calculating the rate of late-payment interest on the basis of the reference interest rate must be set out in the agreement in a way which is readily understood by an average consumer who does not have specialist knowledge in the financial field, so that he or she can calculate the rate of late-payment interest based on the information provided in that agreement. Furthermore, the credit agreement must indicate the frequency with which that reference interest rate may be varied, even if that frequency is determined by national provisions.

Parts (a) to (d) of the fourth question in Cases C-47/21 and C-232/21

273 By parts (a) to (d) of the fourth question in Cases C-47/21 and C-232/21, the referring court asks, in essence, whether Article 14(1) of Directive 2008/48 must be interpreted as meaning that, where at least one of the mandatory pieces of information referred to in Article 10(2) of that directive is not included in a credit agreement or is set out in that agreement in an incomplete or incorrect manner without being duly communicated subsequently, it precludes the creditor from validly pleading that the consumer has exercised his or her right of withdrawal in an abusive manner.

274 In order to answer that question and in view of the fact that, in one of the cases in the main proceedings which gave rise to Case C-232/21, the right of withdrawal was exercised even though the credit agreement had been performed in full, it is necessary, in the first place, to ascertain to what extent such full performance, in the absence of specific provisions in Directive 2008/48 in that regard, has an impact on the retention of the right of withdrawal provided for in Article 14(1) of that directive.

275 In that regard, it should be noted that, in accordance with Article 14(1) of Directive 2008/48, the consumer has a right of withdrawal in the context of a credit agreement, the exercise of that right having the effect of extinguishing the parties' obligation to perform the credit agreement under the conditions and within the periods referred to in Article 14(3)(b) of that directive.

276 Furthermore, it follows from recital 34 of Directive 2008/48 that that directive provides for a right of withdrawal under conditions similar to those provided for by Directive 2002/65. By providing, in Article 6(2)(c), that the right of withdrawal does not apply to contracts whose performance has been fully completed by both parties at the consumer's express request, Directive 2002/65 gives expression to the principle that the right of withdrawal cannot, in all circumstances, be relied on where the contract is performed in full, and that principle must also apply to Directive 2008/48.

277 Furthermore, in the event of the complete performance of the credit agreement, the obligation to provide the information stipulated in Article 10(2) of Directive 2008/48 is no longer, in principle, capable of attaining the objective pursued by that provision, which, as noted in paragraphs 233 and 234 of the present judgment, is to enable the consumer to obtain all the information necessary for the proper performance of the agreement and, in particular, for the exercise of his or her rights, including his or her right of withdrawal, so as to enable him or her to ascertain the extent of his or her rights and obligations. It follows that those obligations no longer have the same degree of usefulness once the agreement has been performed in full.

278 Lastly, it must be noted that, in ruling on the right of withdrawal provided for by Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31), the Court has already held that, in accordance with the general principles of civil law, that right cannot be exercised where there is no longer any obligation arising from that contract (see, to that effect, judgment of 10 April 2008, *Hamilton* C-412/06, EU:C:2008:215, paragraph 42).

279 In those circumstances, since the performance of a contract constitutes the natural mechanism for extinguishing contractual obligations, it must be held that, in the absence of specific provisions in that regard, a consumer can no longer rely on his or her right of withdrawal under Article 14(1) of Directive 2008/48 once the credit agreement has been performed in full by the parties and the mutual obligations arising from that agreement have therefore come to an end.

280 In the second place, as regards the question of whether the creditor may rely on the abusive exercise by the consumer of the right of withdrawal referred to in Article 14 of Directive 2008/48, it should, first, be noted that that directive does not contain provisions governing the abuse by a consumer of the rights conferred on him or her by that directive (judgment of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraph 120).

281 Nevertheless, in accordance with settled case-law, there is, in EU law, a general legal principle that EU law cannot be relied on for abusive or fraudulent ends (judgment of 26 February 2019, *T Danmark and Y Denmark*, C-116/16 and C-117/16, EU:C:2019:135, paragraph 70 and the case-law cited).

282 That general principle of law must be complied with by individuals. Indeed, the application of EU legislation cannot be extended to cover transactions carried out for the purpose of fraudulently or wrongfully obtaining advantages provided for by EU law (judgment of 26 February 2019, *T Danmark and Y Denmark*, C-116/16 and C-117/16, EU:C:2019:135, paragraph 71 and the case-law cited).

283 It thus follows from that principle that a Member State must refuse, even in the absence of provisions of national law providing for such a refusal, to grant the benefit of the provisions of EU law where they are relied upon by a person not with a view to achieving the objectives of those provisions, but with the aim of benefiting from an advantage granted to that person by EU law when the objective conditions required for obtaining the advantage sought, prescribed by EU law, are met only formally (see, to that effect, judgments of 22 November 2017, *Cussens and Others*, C-251/16, EU:C:2017:881, paragraphs 32 and 33, and of 26 February 2019, *T Danmark and Y Denmark*, C-116/16 and C-117/16, EU:C:2019:135, paragraphs 72 and 91).

284 Thus, whether or not the principle of EU law relating to the prohibition of abuse of rights is enshrined in provisions of national law and whether or not those provisions have been adopted by the parliament of the Member State concerned is irrelevant.

285 As is clear from the Court's case-law, proof of an abusive practice requires, first, a combination of objective circumstances in which, despite formal observance of the conditions laid down by the EU rules, the purpose of those rules has not been achieved and, second, a subjective element consisting in the intention to obtain an advantage from the EU rules by artificially creating the conditions laid down for obtaining it (judgments of 26 February 2019, *T Danmark and Y Denmark*, C-116/16 and C-117/16, EU:C:2019:135, paragraph 97 and the case-law cited, and of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraph 122).

286 In establishing such abuse, the referring court must take into account all the facts and circumstances of the case, including those subsequent to the transaction which is alleged to be abusive (see, to that effect, judgment of 14 April 2016, *Cervati and Malvi*, C-131/14, EU:C:2016:255, paragraph 35 and the case-law cited).

287 It is therefore for the national court to determine, in accordance with the rules of evidence of national law, provided that the effectiveness of EU law is not undermined, whether the constituent elements of an abusive practice, as set out in paragraph 285 of the present judgment, are present in the disputes in the main proceedings, other than the dispute referred to in paragraph 274 of the present judgment in which the contract was performed in full. However, the Court, when giving a preliminary ruling, may, where appropriate, provide clarification designed to

give the national court guidance in its interpretation (judgments of 28 July 2016, *Kratzer*, C-423/15, EU:C:2016:604, paragraph 42 and the case-law cited, and of 22 November 2017, *Cussens and Others*, C-251/16, EU:C:2017:881, paragraph 59 and the case-law cited).

288 In that respect, as regards, second, the existence of objective evidence of an abusive practice, referred to in paragraph 285 of the present judgment, the Court has already held, first, that the aim of Article 14 of Directive 2008/48 is to allow a consumer to choose the agreement best suited to his or her needs and, thus, to withdraw from an agreement that has been concluded but proves to be unsuitable to the needs of that consumer in the course of the cooling-off period during which the right of withdrawal may be exercised. Second, the aim of point (b) of the second subparagraph of Article 14(1) of that directive is to ensure that consumers receive all the information necessary to assess the extent of their contractual obligations and to penalise creditors who fail to provide them with the information listed in Article 10 thereof (judgment of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraphs 123 and 124 and the case-law cited).

289 In order for the creditor to be deterred from infringing its obligations under Directive 2008/48 to the consumer, the Court has held, in paragraph 126 of the judgment of 9 September 2021, *Volkswagen Bank and Others* (C-33/20, C-155/20 and C-187/20, EU:C:2021:736), that, where a creditor has failed to provide a consumer with the information listed in Article 10 of that directive and the consumer decides to withdraw from the credit agreement after the 14-day period following its conclusion, that trader cannot complain that the consumer has abusively exercised his or her right of withdrawal, even if a considerable length of time has elapsed between conclusion of that agreement and withdrawal by the consumer.

290 The Court concluded that Directive 2008/48 must be interpreted as precluding a creditor from legitimately claiming that, because of the lapse of a considerable period of time between the conclusion of the agreement and the exercise of the right of withdrawal laid down in Article 14(1) of that directive, a consumer has abused that right where some of the mandatory information listed in Article 10(2) of that directive was not included in the credit agreement and, further, was not duly communicated at a later stage, irrespective of whether the consumer was unaware of the existence of his or her right of withdrawal (judgment of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraph 127).

291 It must nevertheless be stated in that regard that, in accordance with the answer given by the Court in paragraph 267 of the present judgment, a creditor cannot plead that the right of withdrawal was exercised abusively where, in the event of incomplete or incorrect information contained in the agreement, the withdrawal period has not begun to run because it has been established that the incompleteness or incorrectness of that information affected the consumer's ability to assess the extent of his or her rights and obligations under Directive 2008/48 and his or her decision to conclude the agreement.

292 In the light of the foregoing, the answer to parts (a) to (d) of the fourth question in Cases C-47/21 and C-232/21 is that Article 14(1) of Directive 2008/48 must be interpreted as meaning that the full performance of the credit agreement causes the right of withdrawal to be extinguished. Furthermore, the creditor cannot validly plead that, on account of the consumer's conduct between the conclusion of the agreement and the exercise of the right of withdrawal, or even after exercising it, the consumer exercised that right abusively where, due to incomplete or incorrect information in the credit agreement, in breach of Article 10(2) of Directive 2008/48, the withdrawal period has not begun to run because it has been established that the

incompleteness or incorrectness of that information affected the consumer's ability to assess the extent of his or her rights and obligations under Directive 2008/48 and his or her decision to conclude the agreement.

Parts (a) to (d) of the third question in Cases C-47/21 and C-232/21

293 By parts (a) to (d) of the third question in Cases C-47/21 and C-232/21, the referring court asks, in essence, whether Directive 2008/48 must be interpreted as precluding a creditor from being able to plead, where the consumer exercises his or her right of withdrawal in accordance with Article 14(1) of that directive, that that right is time-barred under rules of national law, including where the consumer was unaware that that right continued to exist and/or where at least one of the mandatory pieces of information referred to in Article 10(2) of that directive was not included in the credit agreement or was set out in that agreement in an incomplete or incorrect manner without being duly communicated subsequently.

294 In order to answer that question, it must be noted that, as follows from point (b) of the second subparagraph of Article 14(1) of Directive 2008/48, the withdrawal period of 14 calendar days does not begin until the consumer is provided with the information laid down in Article 10 of that directive, if the provision of that information occurs later than the day on which the credit agreement is concluded. Article 10 lists the information that must be specified in a clear and concise manner in credit agreements.

295 It should be noted that it is apparent from Article 22(1) of Directive 2008/48, interpreted in the light of recitals 9 and 10 thereof, that, as regards credit agreements falling within its scope, that directive provides for full harmonisation and, as is apparent from the heading of Article 22, is imperative in nature. It follows that, in the matters specifically covered by that harmonisation, the Member States are not authorised to maintain or introduce national provisions other than those laid down by that directive (judgment of 9 March 2023, *Sogefinancement*, C-50/22, EU:C:2023:177, paragraph 27 and the case-law cited).

296 The Court has already held that the temporal requirements for the exercise by the consumer of his or her right of withdrawal fall within the scope of the harmonisation carried out by Article 14 of Directive 2008/48 and that, consequently, since that directive does not provide for any temporal limitation on the exercise by the consumer of his or her right of withdrawal where the information laid down in Article 10 of that directive has not been provided to him or her or has been provided to him or her in an incomplete or incorrect manner and where, in accordance with the answer given in paragraph 267 of the present judgment, the withdrawal period has not begun to run, such a limitation, as would result from the right of withdrawal being time-barred, cannot be imposed within a Member State by way of national legislation (see, to that effect, judgment of 9 September 2021, *Volkswagen Bank and Others*, C-33/20, C-155/20 and C-187/20, EU:C:2021:736, paragraphs 116 and 117).

297 In those circumstances and in order to answer the referring court's questions, it is of little importance whether the rules of national law in question are derived from a law adopted by the parliament of the Member State concerned, whether the consumer was aware or unaware that his or her right of withdrawal continued to exist and whether it was open to the creditor to set the withdrawal period running by providing the missing, incomplete or incorrect information.

298 The same is true of the fact put forward by the German Government, in its written observations, that, under German law, time-barring requires not only a lapse of a certain amount of time, but also factual circumstances showing that the exercise of the relevant right is abusive. It follows from the answer given in paragraph 292 of the present judgment that such abuse is excluded in a situation such as that described in paragraph 296 of the present judgment.

299 In the light of the foregoing, the answer to parts (a) to (d) of the third question in Cases C-47/21 and C-232/21 is that Directive 2008/48 must be interpreted as precluding a creditor from being able to plead, where the consumer exercises his or her right of withdrawal in accordance with Article 14(1) of that directive, that that right is time-barred under rules of national law, where at least one of the mandatory pieces of information referred to in Article 10(2) of that directive was not included in the credit agreement or was set out in it in an incomplete or incorrect manner without being duly communicated subsequently and where, on that ground, the withdrawal period provided for in Article 14(1) has not started to run.

The fifth question in Cases C-47/21 and C-232/21

300 By the fifth question in Cases C-47/21 and C-232/21, the referring court asks, in essence, whether Article 14(1) of Directive 2008/48 must be interpreted as precluding national legislation which provides that, where the consumer withdraws from a linked credit agreement, within the meaning of Article 3(n) of that directive, he or she must return to the creditor the goods financed by the credit or must have given the creditor formal notice to take back those goods before being able to request and obtain repayment of the monthly instalments paid under the credit agreement, such repayment being capable of being deferred, in the event of the creditor's challenge to the validity of the withdrawal, until the final outcome of the legal proceedings.

301 In that regard, it should be noted that, under Article 3(n) of Directive 2008/48, a 'linked credit agreement' is defined as a credit agreement under which the credit in question serves exclusively to finance an agreement relating, inter alia, to the supply of goods, such as, in the present case, a motor vehicle, provided that those two agreements form, from an objective point of view, a commercial unit.

302 Directive 2008/48 does not, however, contain any provisions governing the consequences of a withdrawal, by the consumer, from a credit agreement linked to the contract for the supply of goods. Recital 35 of that directive states, moreover, that that directive should be without prejudice to any regulation by Member States of questions concerning the return of the goods financed by the credit or any related questions.

303 In the absence of specific EU rules governing the matter, the rules implementing the consumer protection provided for by Directive 2008/48 are a matter for the domestic legal order of the Member States in accordance with the principle of the procedural autonomy of the Member States. However, those rules must not be less favourable than those governing similar domestic actions (principle of equivalence); nor may they be framed in such a way as to make it in practice impossible or excessively difficult to exercise the rights conferred by EU law (principle of effectiveness) (see, by analogy, judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 27 and the case-law cited).

304 As regards the principle of effectiveness, which is the only relevant principle in the present cases, it follows from the Court's case-law that every case in which the question arises as to whether a national procedural provision makes the application of EU law impossible or excessively difficult

must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national bodies. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (see, to that effect, judgments of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 28 and the case-law cited, and of 17 May 2022, *Unicaja Banco*, C-869/19, EU:C:2022:397, paragraph 28 and the case-law cited).

305 In the present case, it is apparent from the orders for reference that, under German law, the consumer, when withdrawing from a credit agreement, is always required to return to the creditor the goods financed by that agreement or give the creditor formal notice to take back those goods in order to be able to request and obtain repayment of the monthly instalments paid under that agreement, including where the creditor challenges the validity of the withdrawal and where the consumer must then bring legal proceedings for repayment and await the outcome of those proceedings in order to obtain, if successful, repayment of the monthly instalments.

306 Subject to the checks which it is for the referring court to carry out, it must be held that such procedural rules governing the legal effects associated with the exercise of the right of withdrawal provided for in Article 14(1) of Directive 2008/48 are capable, in practice, of making it impossible or excessively difficult for that right to be exercised where the consumer must return the goods financed by the credit or give the creditor formal notice to take back those goods without the creditor being required, at the same time, to repay the monthly instalments of the credit already paid by the consumer.

307 In the light of the foregoing, the answer to the fifth question in Cases C-47/21 and C-232/21 is that Article 14(1) of Directive 2008/48, read in conjunction with the principle of effectiveness, must be interpreted as precluding national legislation which provides that, where the consumer withdraws from a linked credit agreement, within the meaning of Article 3(n) of that directive, he or she must return to the creditor the goods financed by the credit or must have given the creditor formal notice to take back those goods without that creditor being required, at the same time, to repay the monthly instalments of the credit already paid by the consumer.

Costs

308 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 (Grand Chamber) hereby rules:

1. **Article 2(6) of 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, read in conjunction with Article 3(1) of Directive 2011/83,**

   must be interpreted as meaning that a leasing agreement relating to a motor vehicle, which is characterised by the fact that neither that agreement nor a separate agreement

provides that the consumer is required to purchase the vehicle upon the expiry of the agreement, falls within the scope of Directive 2011/83, as a 'service contract' within the meaning of Article 2(6) thereof. By contrast, such an agreement does not fall within the scope of either Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC, or 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.

2. Article 2(7) of Directive 2011/83

must be interpreted as meaning that a service contract, within the meaning of Article 2(6) of that directive, concluded between a consumer and a trader by using a means of distance communication cannot be classified as a 'distance contract', within the meaning of the first of those provisions, where the conclusion of the contract was preceded by a negotiation stage which took place in the simultaneous physical presence of the consumer and an intermediary acting in the name or on behalf of the trader, and during which that consumer received from that intermediary, for the purposes of that negotiation, all the information referred to in Article 6 of that directive and was able to ask that intermediary questions about the proposed contract or offer in order to remove any uncertainty as to the scope of his or her possible contractual commitment with the trader.

3. Article 2(8)(a) of Directive 2011/83

must be interpreted as meaning that a service contract, within the meaning of Article 2(6) of that directive, concluded between a consumer and a trader, cannot be classified as an 'off-premises contract' within the meaning of the first of those provisions, where, during the stage preparing the ground for the conclusion of the contract through the use of a means of distance communication, the consumer visited the business premises of an intermediary acting in the name or on behalf of the trader for the purposes of the negotiation of that contract but operating in a field of activity other than that of the trader, provided that that consumer, as an average consumer who is reasonably well informed and reasonably observant and circumspect, could have expected, from visiting the business premises of the intermediary, to be solicited by that intermediary for the purposes of the negotiation and conclusion of a service contract with the trader and provided that that consumer could also easily have understood that that intermediary was acting in the name or on behalf of that trader.

4. Article 16(l) of Directive 2011/83

must be interpreted as meaning that a leasing agreement for a motor vehicle, concluded between a trader and a consumer and classified as a distance or off-premises service contract within the meaning of that directive, comes under the exception to the right of withdrawal laid down in that provision in respect of distance or off-premises contracts falling within the scope of that directive and concerning car rental services coupled with a specific date or period of performance, where the main purpose of that agreement is to allow the consumer to use a vehicle for the specific period of time stipulated in that agreement, in return for the regular payment of sums of money.

5. Article 10(2)(p) of Directive 2008/48

must be interpreted as precluding national legislation that establishes a statutory presumption that the trader is in compliance with its obligation to inform the consumer of his or her right of withdrawal where that trader refers, in a contract, to national provisions which themselves refer to a statutory information model in that regard, while using terms set out in that model which do not comply with the requirements of that provision of the directive. If it is not possible to interpret the national legislation at issue in a manner consistent with Directive 2008/48, a national court hearing a dispute exclusively between private individuals is not required, solely on the basis of EU law, to disapply such legislation, without prejudice to the possibility for that court to disapply it on the basis of its domestic law and, failing that, without prejudice to the right of the party harmed as a result of national law not being in conformity with EU law to claim compensation for the resulting loss which he or she has suffered.

6. Article 10(2)(p) of Directive 2008/48, read in conjunction with Article 14(3)(b) of that directive,

must be interpreted as meaning that the amount of daily interest that must be stated in a credit agreement pursuant to that provision, applicable where the consumer exercises the right of withdrawal, may not, under any circumstances, exceed the amount calculated from the contractual borrowing rate stipulated in that agreement. The information provided in the agreement concerning the amount of daily interest must be stated in a clear and concise manner so that, inter alia, read in conjunction with other information, it contains no contradiction objectively capable of misleading an average consumer who is reasonably well informed and reasonably observant and circumspect as to the amount of daily interest that he or she will ultimately have to pay. In the absence of such information, no amount of daily interest is payable.

7. Article 10(2)(t) of Directive 2008/48

must be interpreted as meaning that a credit agreement must specify the essential information concerning all out-of-court complaint or redress mechanisms available to the consumer and, where appropriate, the cost of using them, the fact that the complaint or application for redress must be submitted by post or electronically, the physical or electronic address to which that complaint or application for redress must be sent and the other formal conditions to which that complaint or application for redress is subject, since a mere reference, in the credit agreement, to rules of procedure available upon request or on the internet, or to another act or document concerning the detailed rules governing out-of-court complaint and redress mechanisms is insufficient.

8. Article 10(2)(r) of Directive 2008/48

must be interpreted as meaning that a credit agreement must, in principle, for the calculation of the compensation due in the event of early repayment of the loan, indicate the method of calculating that compensation in a manner that is specific and easily understandable for an average consumer who is reasonably well informed and reasonably observant and circumspect so that he or she can determine the amount of compensation due in the event of early repayment on the basis of the information

provided in that agreement. That said, even in the absence of a specific and easily understandable indication of the method of calculation, such an agreement may satisfy the obligation set out in that provision provided that it contains other information enabling the consumer easily to determine the amount of the relevant compensation, in particular the maximum amount thereof, which he or she will have to pay in the event of early repayment of the loan.

9. Point (b) of the second subparagraph of Article 14(1) of Directive 2008/48

must be interpreted as meaning that, where information provided by the creditor to the consumer under Article 10(2) of that directive proves to be incomplete or incorrect, the withdrawal period starts to run only if the incomplete or incorrect nature of that information is not capable of affecting the consumer's ability to assess the extent of his or her rights and obligations under that directive or his or her decision to conclude the contract and, where relevant, is not capable of depriving him or her of the possibility of exercising his or her rights, in essence, under the same conditions as would have prevailed if that information had been provided in a complete and correct manner.

10. Article 10(2)(l) of Directive 2008/48

must be interpreted as meaning that a credit agreement must state, as a specific percentage, the rate of late-payment interest that is applicable at the time the agreement is concluded and must describe in specific terms the mechanism for adjusting that rate. Where that rate is determined on the basis of a reference interest rate which varies over time, the credit agreement must state the reference interest rate that is applicable on the date the agreement is concluded, and the method for calculating the rate of late-payment interest on the basis of the reference interest rate must be set out in the agreement in a way which is readily understood by an average consumer who does not have specialist knowledge in the financial field, so that he or she can calculate the rate of late-payment interest based on the information provided in that agreement. Furthermore, the credit agreement must indicate the frequency with which that reference interest rate may be varied, even if that frequency is determined by national provisions.

11. Article 14(1) of Directive 2008/48

must be interpreted as meaning that the full performance of the credit agreement causes the right of withdrawal to be extinguished.

Furthermore, the creditor cannot validly plead that, on account of the consumer's conduct between the conclusion of the agreement and the exercise of the right of withdrawal, or even after exercising it, the consumer exercised that right abusively where, due to incomplete or incorrect information in the credit agreement, in breach of Article 10(2) of Directive 2008/48, the withdrawal period has not begun to run because it has been established that the incompleteness or incorrectness of that information affected the consumer's ability to assess the extent of his or her rights and obligations under Directive 2008/48 and his or her decision to conclude the agreement.

12. Directive 2008/48

must be interpreted as precluding a creditor from being able to plead, where the consumer exercises his or her right of withdrawal in accordance with Article 14(1) of that directive, that that right is time-barred under rules of national law, where at least one of the mandatory pieces of information referred to in Article 10(2) of that directive was not included in the credit agreement or was set out in it in an incomplete or incorrect manner without being duly communicated subsequently and where, on that ground, the withdrawal period provided for in Article 14(1) has not started to run.

13. **Article 14(1) of Directive 2008/48, read in conjunction with the principle of effectiveness,**

must be interpreted as precluding national legislation which provides that, where the consumer withdraws from a linked credit agreement, within the meaning of Article 3(n) of that directive, he or she must return to the creditor the goods financed by the credit or must have given the creditor formal notice to take back those goods without that creditor being required, at the same time, to repay the monthly instalments of the credit already paid by the consumer.

[Signatures]