



## Reports of Cases

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

**VK**  
v  
**BMW Bank GmbH,**

**F.F.**  
v  
**C. Bank AG**

**CR and Others**  
v  
**Volkswagen Bank GmbH**  
**and**  
**Audi Bank**

(Requests for a preliminary ruling from the Landgericht Ravensburg)

**Judgment of the Court (Grand Chamber) of 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) – Contract of a distance contract – Article 2(8) – Concept of an off-premises contract – Article 16(1) – 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)

- 1. Consumer protection – Credit agreements for consumers – Directive 2008/48 – Distance marketing of financial services – Directive 2002/65 – Scope – Leasing agreement for a motor vehicle without an obligation to purchase – Not included (European Parliament and Council Directives 2002/65, Arts 1(1) and 2(b), and 2008/48, Art. 2(2)(d))*

(see paragraphs 131-135, 137-151, 156, operative part 1)

2. *Consumer protection – Consumer contracts – Directive 2011/83 – Service contract – Concept – Leasing agreement for a motor vehicle without an obligation to purchase – Included*  
(European Parliament and Council Directive 2011/83, Arts 2(6) and 3(1))

(see paragraphs 153-156, operative part 1)

3. *Consumer protection – Consumer contracts – Directive 2011/83 – Distance contract – Concept – Service contract for the leasing of a motor vehicle without an obligation to purchase – Contract concluded using a means of distance communication – Stage laying the ground for the contract, in the simultaneous physical presence of the consumer and an intermediary of the trader – Compliance, by the trader, with its obligation to provide information – Precluded*  
(European Parliament and Council Directive 2011/83, Art. 2(7))

(see paragraphs 164-167, 170-173, operative part 2)

4. *Consumer protection – Consumer contracts – Directive 2011/83 – Off-premises contract – Concept – Service contract for the leasing of a motor vehicle without an obligation to purchase – Contract concluded using a means of distance communication – Physical presence of the consumer in the commercial premises of an intermediary of the trader operating in a field of activity other than that of the trader – Precluded – Conditions*  
(European Parliament and Council Directive 2011/83, Art. 2(8)(a))

(see paragraphs 177-183, operative part 3)

5. *Consumer protection – Consumer contracts – Directive 2011/83 – Right of withdrawal – Exceptions – Provision of car rental services with a specific date or period of performance – Service contract for the leasing of a motor vehicle without an obligation to purchase – Main object – Use of the vehicle by the consumer for a specific period of performance, in return for the payment of sums of money – Included*  
(European Parliament and Council Directive 2011/83, Art. 16(l))

(see paragraphs 190-202, operative part 4)

6. *Consumer protection – Credit agreements for consumers – Directive 2008/48 – Requirements regarding the information to be stated in the agreement – Right of withdrawal – National legislation establishing a statutory presumption of compliance with the obligation to provide information regarding that right where a statutory information model is used – Not permissible – No obligation on a national court hearing a dispute exclusively between individuals to disapply, solely on the basis of EU law, such legislation – Right of individuals to seek compensation for damage resulting from the non-conformity of national law with EU law*  
(European Parliament and Council Directive 2008/48, Art. 10(2)(p))

(see paragraphs 217, 219, 220, 224-230, operative part 5)

7. *Consumer protection – Credit agreements for consumers – Directive 2008/48 – Requirements regarding the information to be stated in the agreement – Right of withdrawal – Obligation to state the amount of daily interest to be paid by the consumer in the event of that right being exercised – Scope*  
(European Parliament and Council Directive 2008/48, Arts 10(2)(p) and 14(3)(b))

(see paragraphs 233-240, operative part 6)

8. *Consumer protection – Credit agreements for consumers – Directive 2008/48 – Requirements regarding the information to be stated in the agreement – Obligation to set out formally the essential information regarding all the out-of-court complaint or redress procedures available to the consumer – Scope*  
(European Parliament and Council Directive 2008/48, Art. 10(2)(t))

(see paragraphs 243-246, operative part 7)

9. *Consumer protection – Credit agreements for consumers – Directive 2008/48 – Requirements regarding the information to be stated in the agreement – Compensation due in the event of early repayment – Obligation to state, in a manner that is specific and easily understandable for an average consumer, the method of calculating that compensation – Scope*  
(European Parliament and Council Directive 2008/48, Art. 10(2)(r))

(see paragraphs 250-256, operative part 8)

10. *Consumer protection – Credit agreements for consumers – Directive 2008/48 – Requirements regarding the information to be stated in the agreement – Incomplete or incorrect information received by the consumer – Condition for triggering the withdrawal period – Incomplete or incorrect nature of the information not capable of misleading the consumer as to the extent of his or her rights and obligations*  
(European Parliament and Council Directive 2008/48, Arts 10(2) and 14(1), second subpara., point (b))

(see paragraphs 263-267, operative part 9)

11. *Consumer protection – Credit agreements for consumers – Directive 2008/48 – Requirements regarding the information to be stated in the agreement – Late-payment interest – Indication of that rate in the form of a specific percentage and indication of the mechanism for adjusting that rate – Indication of the reference rate and the frequency of adjusting it in respect of the variable late-payment interest rate – Scope*  
(European Parliament and Council Directive 2008/48, Art. 10(2)(l))

(see paragraphs 269-272, operative part 10)

12. *Consumer protection – Credit agreements for consumers – Directive 2008/48 – Right of withdrawal – Extinguishment of that right when a credit agreement is performed in full (European Parliament and Council Directive 2008/48, Art. 14(1))*

(see paragraphs 275-279, 292, operative part 11)

13. *Consumer protection – Credit agreements for consumers – Directive 2008/48 – Requirements regarding the information to be stated in the agreement – Incomplete or incorrect information received by the consumer – Information that misled the consumer as to the extent of his or her rights and obligations – Non-triggering of the withdrawal period – Absence of any abusiveness in the exercise of the right of withdrawal (European Parliament and Council Directive 2008/48, Arts 10(2) and 14(1))*

(see paragraphs 280-284, 289-293, operative part 11)

14. *Consumer protection – Credit agreements for consumers – Directive 2008/48 – Requirements regarding the information to be stated in the agreement – Incomplete or incorrect information received by the consumer – Information that misled the consumer as to the extent of his or her rights and obligations – Non-triggering of the withdrawal period – Right of withdrawal exercised by the consumer – No possibility for the creditor to plead that that right is time-barred – Conditions (European Parliament and Council Directive 2008/48, Arts 10(2) and 14(1))*

(see paragraphs 297-300, operative part 12)

15. *Consumer protection – Credit agreements for consumers – Directive 2008/48 – Right of withdrawal – Consequences of withdrawing from a credit agreement linked to a contract for the supply of goods – National legislation requiring the consumer to return the goods financed by the credit or to put the creditor in a position to take back those goods – Possibility for the creditor not to repay, when those goods are returned, the monthly instalments already paid by the consumer – Not permissible (European Parliament and Council Directive 2008/48, Arts 3(n) and 14(1))*

(see paragraphs 303-308, operative part 13)

## **Résumé**

The three joined cases form part of several disputes between consumers and financial institutions linked to motor vehicle dealerships, regarding the validity of the exercise of those consumers' right of withdrawal concerning, respectively, a leasing agreement for a motor vehicle without an obligation to purchase (Case C-38/21) and a number of credit agreements intended to finance the purchase of second-hand motor vehicles (Cases C-47/21 and C-232/21).

In Case C-38/21, VK visited the premises of a BMW motor vehicle dealership where one of the latter's employees, acting as a credit intermediary for BMW Bank GmbH, offered VK a leased motor vehicle and set out the various aspects of that type of agreement, such as the duration and monthly instalments. In November 2018, VK, using a means of distance communication, concluded a leasing agreement with BMW Bank in respect of a motor vehicle for private use.

Under that agreement, concluded for 24 months and based on a loan being granted by BMW Bank, VK was not required to purchase the vehicle at the end of the contractual period. On 25 June 2020, VK stated that he wished to withdraw from the leasing agreement. He took the view that the 14-day withdrawal period provided for under national law had not yet started to run because the information that should have been provided to him under that law was insufficient and illegible.

In Cases C-47/21 and C-232/21, several consumers concluded loan agreements for the purchase of second-hand vehicles for private use. When those agreements were prepared and concluded, the car dealers from which the vehicles were purchased acted as intermediaries for C. Bank AG (Case C-47/21) and for Volkswagen Bank GmbH and Audi Bank (Case C-232/21). Those consumers subsequently withdraw from the loan agreements, essentially seeking repayment of the monthly instalments which they had paid up to the date of withdrawal. According to those consumers, the 14-day withdrawal period provided for under national law had not yet started to run because the information on the right of withdrawal and the other mandatory pieces of information had not been duly provided to them.

In its judgment, delivered by the Grand Chamber, the Court of Justice explains, in the context of a leasing agreement for a motor vehicle without an obligation on the consumer to purchase the vehicle, the scope of Directives 2002/65,<sup>1</sup> 2008/48<sup>2</sup> and 2011/83<sup>3</sup> on consumer protection and the scope of the concepts of ‘service contract’, ‘distance contract’ and ‘off-premises contract’ within the meaning of Directive 2011/83. The Court also rules, in the context of credit agreements, on several aspects of the obligation on creditors, under Directive 2008/48, to provide consumers with information on, inter alia, the right of withdrawal and on the consequences of providing incorrect or incomplete information on the exercise of that right. The Court also deals with, in the same context and under the same directive, the issue of a consumer’s abusive exercise of the right of withdrawal and the issue of when that right is time-barred.

### *Findings of the Court*

In the first place, the Court examines the nature of a leasing agreement for a motor vehicle without an obligation on the consumer to purchase the vehicle, in the light of Directives 2002/65, 2008/48 and 2011/83.

As regards, first, Directive 2011/83, the Court rules that a leasing agreement for 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.<sup>4</sup> That concept is defined broadly and must be understood as including all agreements

<sup>1</sup> 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).

<sup>2</sup> 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 (JO 2008, L 133, p. 66).

<sup>3</sup> 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).

<sup>4</sup> Under Article 2(6) of Directive 2011/83, the concept of a ‘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’.

which do not fall within the concept of a ‘sales contract’ provided for in that directive.<sup>5</sup> In the present case, a leasing agreement 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 fall within that concept given that it does not provide for the transfer of ownership of the vehicle to the consumer. Such a leasing agreement also does not come under the list of contracts excluded from the scope of Directive 2011/83.<sup>6</sup>

Second, the Court finds that such an agreement does not fall within the scope of Directive 2008/48. Although it does fall with the scope of a ‘leasing agreement’ under that directive,<sup>7</sup> it is nevertheless expressly excluded from the scope of that directive because it is not coupled with an obligation on the consumer to purchase the object of the agreement at the end of the latter.

Third, as regards Directive 2002/65, the Court also finds that a leasing agreement for a motor vehicle, which is characterised, *inter alia*, 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, does not fall with the scope of that directive. The Court states that, in order to fall within the scope of that directive, the purpose of an agreement must be, *inter alia*, the provision of a ‘financial service’,<sup>8</sup> such as a service of a credit nature. Although it is true that a leasing agreement for a motor vehicle without an obligation to purchase comprises both a credit element and a rental element, the Court states that such an agreement does not differ, for the most part, from a long-term car rental agreement. Since the main purpose of that type of agreement is the rental of the vehicle, it cannot be classified as a contract for a financial service of a credit nature.

In the second place, in the context of the interpretation of Directive 2011/83 as regards a leasing agreement for a motor vehicle without an obligation on the consumer to purchase the vehicle, the Court considers, first, the concepts of a ‘distance contract’<sup>9</sup> and an ‘off-premises contract’.<sup>10</sup>

Thus, the Court states, on the one hand, that a service contract concluded between a consumer and a trader by using a means of distance communication cannot be classified as a ‘distance contract’ where the stage which prepared the ground for the conclusion of the contract took place in the simultaneous physical presence of the consumer and an intermediary acting in the name or on behalf of the trader, who provided the consumer with all the information referred to in Directive 2011/83,<sup>11</sup> enabling that consumer 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.

<sup>5</sup> Under Article 2(5) of Directive 2011/83, a ‘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’.

<sup>6</sup> As laid down in Article 3(3) of Directive 2011/83.

<sup>7</sup> Within the meaning of Article 2(2)(d) of Directive 2008/48.

<sup>8</sup> Under Article 2(b) of Directive 2002/65, ‘any service of a banking, credit, insurance, personal pension, investment or payment nature’ comes under the concept of a financial service.

<sup>9</sup> Under Article 2(7) of Directive 2011/83, that concept covers ‘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’.

<sup>10</sup> Under Article 2(8) of Directive 2011/83, that concept covers ‘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’.

<sup>11</sup> In particular in Article 6 of Directive 2011/83.

On the other hand, the Court finds that a service contract concluded between a consumer and a trader, cannot be classified as an ‘off-premises contract’, 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 two conditions are met: (1) the consumer must have been able to expect, as an average consumer who is reasonably well informed and reasonably observant and circumspect, by 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 (2) the consumer must have been able easily to understand that that intermediary was acting in the name or on behalf of that trader.

Second, examining the exceptions provided for in Article 16 of Directive 2011/83 under which the consumer does not have a right of withdrawal in certain situations, the Court finds 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 relating to the provision of car rental services coupled with a specific date or period of performance,<sup>12</sup> where the main purpose of such an 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. In that regard, the Court states, on the one hand, that the term ‘specific’ to which that exception refers is also capable of covering long-term rental agreements, such as the 24-month leasing agreement in the case in the main proceedings, provided that that duration is set out in sufficient detail in the agreement. On the other hand, the Court states that, in the context of a leasing agreement for a vehicle that is acquired specifically at the consumer’s request in order to meet the latter’s specifications, the trader might, where the consumer has a right of withdrawal, find it difficult to put the vehicle to different use. As a result of, *inter alia*, those specifications, 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 loss.

In the third place, in the context of the interpretation of Directive 2008/48, the Court states, first of all, that the loan agreements for the purchase of second-hand motor vehicles for private use, at issue in Cases C-47/21 and C-232/21, fall within the scope of Directive 2008/48 as credit agreements.<sup>13</sup>

Next, the Court explains the extent of the trader’s obligation in respect of the information that is to be provided in credit agreements falling within the scope of that directive<sup>14</sup> and, *inter alia*, the extent of the trader’s obligation to provide information regarding the right of withdrawal.<sup>15</sup> Thus, the Court rules that that obligation precludes 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 where that trader refers, in a contract, to national provisions which themselves refer to a statutory information model regarding the right of withdrawal, while using terms set out in that model which do not comply with the requirements of Directive

<sup>12</sup> Article 16(l) of Directive 2011/83 concerns the exception regarding ‘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’.

<sup>13</sup> In accordance with Article 2(1) of Directive 2008/48.

<sup>14</sup> As laid down in Article 10(2) of Directive 2008/48.

<sup>15</sup> Article 10(2)(p) of Directive 2008/48 sets out the obligation to include, in credit agreements, information on the existence or absence of a right of withdrawal, the period during which that right may be exercised and other conditions governing the exercise of that right.

2008/48.<sup>16</sup> If it is not possible to interpret such national legislation in a manner consistent with that directive, 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.

Lastly, the Court rules on the various aspects relating to the right of withdrawal, as provided for in Directive 2008/48.<sup>17</sup>

First, it explains the point at which the withdrawal period starts to run. In that regard, where information provided by the creditor to the consumer under that directive<sup>18</sup> proves to be incomplete or incorrect, the 14-day withdrawal period provided for in Directive 2008/48 starts to run only if the incompleteness or incorrectness 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. 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.

Second, the Court analyses what effect the full performance of a credit agreement has on the continuance of the right of withdrawal. It thus finds that the full performance of such an agreement extinguishes that right. Since the performance of a contract constitutes the natural mechanism for extinguishing contractual obligations, a consumer can no longer rely on his or her right of withdrawal 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.

Third, as regards the issue of a consumer exercising his or her right of withdrawal, the Court rules that a 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, the consumer exercised that right abusively where, due to the incompleteness or incorrectness of the information in the credit agreement, in breach of Directive 2008/48, the withdrawal period has not begun to run because 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.

Fourth, ruling on whether the right of withdrawal can be time-barred, the Court states that Directive 2008/48 precludes a creditor from being able to plead, where the consumer exercises his or her right of withdrawal in accordance with the conditions laid down in that directive,<sup>19</sup> that that right is time-barred where at least one of the mandatory pieces of information referred to in that directive<sup>20</sup> was not included in the credit agreement or was set out in it in an

<sup>16</sup> Article 10(2)(p) of Directive 2008/48.

<sup>17</sup> Under Article 14(1) of Directive 2008/48, a consumer has a period of 14 calendar days in which to withdraw from the credit agreement without giving any reason.

<sup>18</sup> Under Article 10(2) of Directive 2008/48.

<sup>19</sup> As set out in Article 14(1) of Directive 2008/48.

<sup>20</sup> As set out in Article 10(2) of Directive 2008/48.



incomplete or incorrect manner without being duly communicated subsequently and where, on that ground, the withdrawal period has not started to run. Directive 2008/48 does not lay down any temporal limitation of the consumer's exercise of his or her right of withdrawal in the situation that has just been stated. The national legislation cannot therefore impose such a limitation.

Fifth, the Court examines the effects of the right of withdrawal. It thus states that that right, read in conjunction with the principle of effectiveness, precludes national legislation which provides that, where the consumer withdraws from a linked credit agreement,<sup>21</sup> 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. Subject to the checks which it is for the referring court to carry out, national procedural rules requiring a borrower who withdraws from such an agreement to return to the creditor the goods financed by the credit or to have given the creditor formal notice to take back those goods without that creditor being under an obligation to repay, at the same time, the monthly instalments of the credit already paid, are capable, in practice, of making it impossible or excessively difficult for the right of withdrawal to be exercised.

<sup>21</sup> Within the meaning of Article 3(n) of Directive 2008/48.