Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

12 July 2012*

(Consumer protection — Credit agreements for consumers — Directive 2008/48/EC — Articles 22, 24 and 30 — National legislation designed to transpose that directive — Applicability to agreements not included in the material and temporal scope of the directive — Obligations not provided for by the directive — Limitation on the bank charges capable of being levied by the creditor — Articles 56 TFEU, 58 TFEU and 63 TFEU — Obligation to put in place, in national law, adequate and effective out-of-court dispute resolution procedures)

In Case C-602/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Judecătoria Călăraşi (Romania), made by decision of 6 December 2010, received at the Court on 21 December 2010, in the proceedings

**SC Volksbank România SA**

v

**Autoritatea Naţională pentru Protecţia Consumatorilor — Comisariatul Judeţean pentru Protecţia Consumatorilor Călăraşi (CJPC),**

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, A. Prechal (Rapporteur), L. Bay Larsen, C. Toader and E. Jarašiūnas, Judges,

Advocate General: V. Trstenjak,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 19 April 2012,

after considering the observations submitted on behalf of:

— SC Volksbank România SA, by M. Niculeasa, R. Damaschin and R. Nanescu, avocats,

— the Romanian Government, by R.H. Radu and R.-I. Munteanu, acting as Agents,

— the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

* Language of the case: Romanian.

— the Italian Government, by G. Palmieri, acting as Agent, and S. Fiorentino, avvocato dello Stato,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the European Commission, by L. Bouyon and M. Owsiany-Hornung, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

## Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 22, 24 and 30 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, and — corrigenda — OJ 2009 L 207, p. 14, OJ 2010 L 199, p. 40, and OJ 2011 L 234, p. 46) and of Articles 56 TFEU, 58 TFEU and 63 TFEU.

2 The reference has been made in proceedings between SC Volksbank România SA ('Volksbank') and the Autoritatea Națională pentru Protecția Consumatorilor - Comisariatul Județean pentru Protecția Consumatorilor Călărași (CJPC) (National Consumer Protection Authority - District Commissariat for Consumer Protection of Călărași; 'the ANPC') concerning certain clauses included in consumer credit agreements entered into between Volksbank and its customers which, according to the ANPC, are contrary to the national legislation designed to transpose Directive 2008/48.

### Legal context

*European Union law*

3 Recitals 3, 4 and 7 in the preamble to Directive 2008/48 are worded as follows:

'(3) ... reports and consultations revealed substantial differences between the laws of the various Member States in the field of credit for natural persons in general and consumer credit in particular. …

(4) The *de facto* and *de jure* situation resulting from those national differences in some cases leads to distortions of competition among creditors in the Community and creates obstacles to the internal market where Member States have adopted different mandatory provisions more stringent than those provided for in [Council] Directive 87/102/EEC [of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48), as amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 (OJ 1998 L 101, p. 17) ("Directive 87/102")]. It restricts consumers' ability to make direct use of the gradually increasing availability of cross-border credit. ...

...

(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. ...'

4 Recitals 9 and 10 in the preamble to Directive 2008/48 state:

‘(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. ...

(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. ...’

5 Recital 14 in the preamble is worded as follows:

‘Credit agreements covering the granting of credit secured by real estate should be excluded from the scope of this Directive. That type of credit is of a very specific nature. Also, credit agreements the purpose of which is to finance the acquisition or retention of property rights in land or in an existing or projected building should be excluded from the scope of this Directive. ...’

6 Recital 44 in the preamble states:

‘In order to ensure market transparency and stability, and pending further harmonisation, Member States should ensure that appropriate measures for the regulation or supervision of creditors are in place.’

7 Article 2 of Directive 2008/48, headed ‘Scope’, provides in paragraph 2:

‘This Directive shall not apply to the following:

(a) credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on immovable property or secured by a right related to immovable property;

(b) credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building;

(c) credit agreements involving a total amount of credit less than EUR 200 or more than EUR 75 000;

...’

8 Article 22 of Directive 2008/48, headed ‘Harmonisation and imperative nature of this Directive’, states in paragraph 1:

‘Insofar 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.’

9 Article 24 of Directive 2008/48, headed 'Out-of-court dispute resolution', provides in paragraph 1:

'Member States shall ensure that adequate and effective out-of-court dispute resolution procedures for the settlement of consumer disputes concerning credit agreements are put in place, using existing bodies where appropriate.'

10 In accordance with Articles 27 and 29 of Directive 2008/48, the period for the directive's transposition expired on 11 June 2010, the date upon which Directive 87/102 was repealed.

11 Article 30 of Directive 2008/48, headed 'Transitional measures', provides:

'1. This Directive shall not apply to credit agreements existing on the date when the national implementing measures enter into force.

2. However, Member States shall ensure that Articles 11, 12, 13 and 17, the second sentence of Article 18(1), and Article 18(2) are applied also to open-end credit agreements existing on the date when the national implementing measures enter into force.'

*Romanian law*

12 Government Emergency Order (Ordonanță de Urgență a Guvernului) 50/2010 (*Monitorul Oficial al României*, Part I, No 389 of 11 June 2010; 'OUG 50/2010') is designed to transpose Directive 2008/48 into domestic law.

13 Article 2(1) of OUG 50/2010 states:

'This emergency order shall apply to credit agreements, including credit agreements secured by a mortgage or by another right in immovable property, and credit agreements the purpose of which is to finance the acquisition or retention of property rights in an existing or projected building or the renovation, rebuilding, reinforcement, improvement, extension or increase in value of immovable property, irrespective of the total amount of the credit.'

14 Article 36 of OUG 50/2010 provides:

'For the credit granted, the creditor may levy only a charge for the processing of the application, a credit administration charge or current account administration charge, compensation in the event of early repayment, insurance costs, penalties if appropriate, and a single charge for services provided upon request by consumers.'

15 Article 85(2) of OUG 50/2010 states:

'In order to settle any disputes amicably and without prejudice to the right of consumers to bring proceedings against creditors and credit intermediaries who have infringed the provisions of this emergency order and to their right to have recourse to the [ANPC], consumers may use the out-of-court complaints and compensation procedure for consumers, in accordance with the provisions of Law 192/2006 on mediation and the organisation of the profession of mediator, as amended and supplemented.'

16 Articles 86 to 88 of OUG 50/2010 set out the system of penalties, including those which may be imposed by agents of the ANPC, should the provisions of that order be infringed.

17 Article 94 of OUG 50/2010 states:

'This emergency order shall enter into force 10 days after the date of its publication in the *Monitorul Oficial al României*, Part I.'

18 Article 95 of OUG 50/2010 is worded as follows:

'1. For agreements in the process of being performed, creditors shall be required to take measures, within 90 days of the date of entry into force of this emergency order, to bring the agreement into line with its provisions.

2. Agreements in the process of being performed shall be amended by supplementary agreements within 90 days of the date of entry into force of this emergency order.

...'

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

19 The credit agreements at issue in the main proceedings were concluded between Volksbank and its customers before OUG 50/2010 entered into force.

20 They are essentially agreements granting consumers credit secured by mortgages or by other rights in immovable property.

21 The agreements contain certain clauses relating to bank charges which Volksbank reserves the right to demand from its customers and which are the subject of the dispute in the main proceedings.

22 Thus, clause 3.5 of the general conditions of the credit agreements at issue in the main proceedings, which is headed 'risk charge', provides that, for the making available of the credit, the borrower may be required to pay the bank a risk charge, calculated on the basis of the balance of the loan and payable monthly throughout its term.

23 Clause 5 of the agreements' general conditions, which is likewise headed 'risk charge', specifies that that charge is equal to 0.2% of the balance of the loan and that it must be paid monthly on the due dates throughout the term of the agreement.

24 After 22 June 2010, the date upon which OUG 50/2010 entered into force, Volksbank took steps to change, in agreements supplementing the credit agreements, the designation of the clauses at issue to 'credit administration charge', a category of charge referred to in Article 36 of that order, but it did not change the amount of the charge.

25 Likewise after OUG 50/2010 entered into force, the ANPC found, when carrying out checks in respect of Volksbank, that the latter was continuing to levy the 'risk charge', as referred to in the credit agreements at issue in the main proceedings and subsequently called 'credit administration charge'.

26 The ANPC, which took the view that the levying of that charge was contrary to Article 36 of OUG 50/2010, drew up a report in respect of Volksbank, by which it was in particular ordered to pay a fine and ancillary penalties. Volksbank challenged that report before the national court.

27 Before the national court, Volksbank submitted that certain provisions of OUG 50/2010 are contrary to Directive 2008/48. Therefore, given also the objective of that directive, which consists in providing for full harmonisation in order to ensure the free movement of services provided by credit institutions, Volksbank maintained that that court was required to disapply those provisions in the main proceedings.

28 Thus, according to Volksbank, Article 2(1) of OUG 50/2010, inasmuch as it makes that order applicable to credit agreements secured by a mortgage or by another right in immovable property, such as the agreements at issue in the main proceedings, is contrary to Article 2(2) of Directive 2008/48 since the latter provision expressly provides that the directive is not to apply to such agreements.

29 Furthermore, with regard to agreements which may be regarded as falling within the scope of Directive 2008/48, Volksbank contended that, inasmuch as Article 36 of OUG 50/2010 contains an exhaustive list of bank charges that can be levied by a credit institution, it fails to have regard to the directive's scope, since the directive lays down only rules concerning the provision of adequate information to consumers.

30 The prohibition on levying charges other than those listed in Article 36 of OUG 50/2010 is also, in Volksbank's submission, contrary to the rules of European Union law concerning the free movement of capital and the freedom to provide services.

31 As regards the freedom to provide services, that prohibition gives rise, for credit institutions offering their services in Romania, to an increase in costs preventing them from being competitive at European Union level. It also blocks access of credit institutions established outside Romania to the Romanian consumer credit market.

32 So far as concerns the free movement of capital, Romanian consumers will no longer be able to obtain credit from institutions established outside Romania given that those consumers will be entitled to request the removal of charges or clauses inconsistent with the provisions of OUG 50/2010.

33 Finally, Volksbank submits that a consumer's ability, provided for in Article 85(2) of OUG 50/2010, to have direct recourse to the ANPC and the power of that authority to impose penalties where it considers there to be an infringement of that order do not amount to an adequate and effective means of out-of-court dispute resolution, as required in Article 24(1) of Directive 2008/48, but, on the contrary, are such as to give rise to an increase in the number of disputes, as has indeed occurred in Romania.

34 The national court explains that the dispute in the main proceedings essentially concerns the validity of the clause headed 'risk charge', which appears in credit agreements concluded before the date of entry into force of OUG 50/2010 and whose title, following a change after that date, is now 'credit administration charge'.

35 The national court considers that the provisions of OUG 50/2010 were adopted for the purpose of the urgent transposition of Directive 2008/48 and that they must, consequently, be applied in accordance with that directive; however, those national provisions may transpose the directive inappropriately or incompletely.

36 In those circumstances, the Judecătoria Călăraşi (District Court, Călăraşi) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. To what extent must Article 30(1) of Directive 2008/48 be interpreted as precluding Member States from providing that national legislation transposing the directive is also to apply to agreements concluded before the entry into force of the national implementing provision?

2. To what extent do the provisions of Article 85(2) of OUG 50/2010 constitute an adequate transposition of the Community provision laid down in Article 24(1) of Directive 2008/48, which requires the Member States to ensure that adequate and effective out-of-court dispute resolution procedures exist for the settlement of disputes with consumers concerning consumer credit agreements?

3. To what extent must Article 22(1) of Directive 2008/48 be interpreted as meaning that it introduces the maximum level of harmonisation in the field of consumer credit agreements, which precludes the Member States from:

   (a) extending the scope of the provisions in Directive 2008/48 to agreements expressly excluded from the scope of the directive (such as mortgage loan agreements or agreements concerning the right of ownership in immovable property); or

   (b) introducing additional obligations for credit institutions as regards the types of charges they may levy or the categories of reference indices to which the variable interest rate may refer in consumer credit agreements falling within the scope of the national implementing provision?

4. If the third question is answered in the negative, to what extent must the principles of the free movement of services and the free movement of capital in general, and Articles 56 [TFEU], 58 [TFEU] and 63(1) [TFEU] in particular, be interpreted as precluding a Member State from imposing measures on credit institutions prohibiting in consumer credit agreements the application of bank charges not included in the list of permitted charges, without the latter being defined in the legislation of the State concerned?'

## Consideration of the questions referred

*Question 3(a)*

37 By Question 3(a), which it is appropriate to examine first, the national court asks, in essence, whether Article 22(1) of Directive 2008/48 must be interpreted as precluding a national measure designed to transpose that directive into domestic law from including in its material scope credit agreements, such as those at issue in the main proceedings, concerning the grant of credit secured by immovable property, even though such agreements are expressly excluded from the material scope of the directive by virtue of Article 2(2)(a) thereof.

38 It follows from Article 22(1) of Directive 2008/48, interpreted in the light of recitals 9 and 10 in its preamble, that, so far as concerns credit agreements which fall within the directive's scope, the directive provides for full harmonisation and — as is evident from the heading of Article 22 — is imperative in nature, factors which must be understood as meaning that, as regards the matters specifically covered by that harmonisation, the Member States are not authorised to maintain or introduce national provisions other than those provided for by the directive.

39 Furthermore, in accordance in particular with recitals 3, 4 and 7 in the preamble to Directive 2008/48, the harmonisation which the directive is intended to achieve in a number of core areas is fundamentally different from the harmonisation sought by Directive 87/102 which, now repealed and replaced by Directive 2008/48, provided for only minimum harmonisation, as the Court described it (see to this effect, inter alia, the order in Case C-76/10 *Pohotovosť* [2010] ECR I-11557, paragraph 66 and the case-law cited).

40 However, as is also clear from recital 10 in the preamble to Directive 2008/48, the Member States may, in accordance with European Union law, apply provisions of that directive to areas not covered by its scope. Thus they may, in respect of credit agreements not falling within the directive's scope, maintain or introduce national measures corresponding to the provisions of the directive or to certain of them.

41 It is apparent from the order for reference that the credit agreements at issue in the main proceedings essentially concern the grant of credit secured by immovable property.

42 Accordingly, pursuant to Article 2(2)(a) of Directive 2008/48 and having regard to recital 14 in its preamble, such credit agreements do not fall within the directive's scope by reason of the specific nature of that type of credit.

43 Therefore, as is apparent from paragraph 40 of the present judgment, the harmonisation for which Directive 2008/48 provides does not preclude a Member State from including such agreements within the scope of a national measure designed to transpose that directive, in order to apply all or certain of the directive's provisions to those agreements.

44 The answer to Question 3(a) consequently is that Article 22(1) of Directive 2008/48 must be interpreted as not precluding a national measure designed to transpose that directive into domestic law from including in its material scope credit agreements, such as those at issue in the main proceedings, concerning the grant of credit secured by immovable property, even though such agreements are expressly excluded from the material scope of the directive by virtue of Article 2(2)(a) thereof.

*Question 1*

45 By Question 1, which it is appropriate to examine second, the national court asks, in essence, whether Article 30(1) of Directive 2008/48 must be interpreted as precluding a national measure designed to transpose that directive into domestic law from defining its temporal scope so that the measure also applies to credit agreements, such as those at issue in the main proceedings, which are excluded from the material scope of that directive and were existing on the date when that national measure entered into force.

Admissibility

46 The Romanian Government considers that this question is cast in terms that are too general, since it refers to consumer credit agreements generally whilst the main proceedings concern a credit agreement secured by a mortgage, which does not fall within the material scope of Directive 2008/48. The question is therefore partially inadmissible.

47 The European Commission observes that the dispute in the main proceedings relates to the validity of clauses in credit agreements secured by mortgages. Since Directive 2008/48 excludes such agreements from its scope and does not contain harmonised provisions relating to contractual clauses, the answer to Question 1 has no tangible bearing on that dispute.

48 As to those submissions, it should be borne in mind that, in proceedings under Article 267 TFEU, it is solely for the national court before which the 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 concern the interpretation of European Union law, the Court is in principle bound to give a ruling (see, inter alia, Joined Cases C-317/08 to C-320/08 *Alassini and Others* [2010] ECR I-2213, paragraph 25 and the case-law cited).

49 Thus, the Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of European Union 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 (see, inter alia, Case C-450/06 *Varec* [2008] ECR I-581, paragraph 24 and the case-law cited).

50 It is apparent from the documents before the Court that, by the present question, the national court asks in essence whether, so far as concerns credit agreements, such as those at issue in the main proceedings, which are excluded from the material scope of Directive 2008/48 and were existing on the date when the national measure designed to transpose that directive into domestic law entered into force, Article 30(1) of the directive precludes that national measure from defining its temporal scope so that it also applies to such agreements.

51 Since the question thus concerns the interpretation of European Union law and it is, at the very least, not obvious that an answer relevant for resolving the dispute in the main proceedings cannot be given to the question, the Court is obliged to answer it.

Substance

52 As is apparent from recitals 9 and 10 in the preamble to Directive 2008/48, it is in principle for the Member States to determine the conditions in which they propose to extend their national set of rules transposing that directive to credit agreements, such as those at issue in the main proceedings, which do not fall within one of the areas for which the European Union legislature sought to lay down harmonised provisions.

53 It follows that whilst, for those agreements, the Member States may introduce in their national legislation designed to transpose Directive 2008/48 a rule corresponding specifically to the transitional measure laid down in Article 30(1) of that directive, they may in principle also, in compliance with the rules of the FEU Treaty and without prejudice to other measures of secondary law that may be relevant, lay down a different transitional measure, such as that prescribed in Article 95 of OUG 50/2010, the consequence of which is that that legislation also applies to agreements existing on the date of its entry into force.

54 In the light of the foregoing considerations, the answer to Question 1 is that Article 30(1) of Directive 2008/48 must be interpreted as not precluding a national measure designed to transpose that directive into domestic law from defining its temporal scope so that the measure also applies to credit agreements, such as those at issue in the main proceedings, which are excluded from the material scope of that directive and were existing on the date when that national measure entered into force.

*Question 3(b)*

55 By Question 3(b), which it is appropriate to examine third, the national court asks, in essence, whether Article 22(1) of Directive 2008/48 must be interpreted as precluding a national measure designed to transpose that directive into domestic law from imposing on credit institutions obligations not provided for by the directive as regards, first, the types of charges that they may levy in connection with consumer credit agreements falling within the scope of that measure and, second, the categories of reference indices to which the variable interest rate in those agreements may refer.

Admissibility

56 The Romanian Government and the Commission contend that this question is inadmissible in so far as it concerns the categories of reference indices to which the variable interest rate in consumer credit agreements may refer.

57 In the light of the principles recalled in paragraphs 48 and 49 of the present judgment, those objections must be upheld.

58 It is not apparent from any of the documents submitted to the Court that the applicable national law includes rules imposing obligations on credit institutions as regards the categories of reference indices to which the variable interest rate in consumer credit agreements may refer that are additional to those prescribed by Directive 2008/48. Those documents do not describe such rules of national law and, above all, do not indicate that the latter are the subject of the dispute in the main proceedings.

59 It follows that there is no need to answer Question 3(b) in so far as it concerns the categories of reference indices to which the variable interest rate in consumer credit agreements may refer.

Substance

60 As has been stated in paragraph 40 of the present judgment, it is clear in particular from recital 10 in the preamble to Directive 2008/48 that, in the case of credit agreements that do not fall within that directive's material scope, such as those at issue in the main proceedings, the Member States may maintain or introduce national measures corresponding to the provisions of the directive or to certain of them.

61 Therefore, Directive 2008/48, in particular Article 22(1), likewise does not preclude, as regards those agreements, a Member State from imposing obligations not provided for by that directive which are designed to protect consumers, such as, in the present instance, Article 36 of OUG 50/2010, which contains an exhaustive list of bank charges that can be levied by the creditor upon consumers.

62 It is not evident that such a consumer protection rule, in a field not harmonised by Directive 2008/48, would be such as to affect the balance upon which that directive is based, in the field harmonised by it, between the objectives of consumer protection and the objective of ensuring the establishment of a well-functioning internal market in consumer credit.

63 It should be added that, as has been stated in paragraph 38 of the present judgment, Article 22(1) of Directive 2008/48, interpreted in the light of recitals 9 and 10 in the directive's preamble, must be understood as meaning that, so far as concerns credit agreements which fall within the directive's scope — to which the national court refers within the framework of the present question even if they are not the subject of the dispute in the main proceedings — the directive provides for a full and imperative harmonisation which, as regards the matters specifically covered by that harmonisation, precludes the Member States from maintaining or introducing national provisions other than those which it contains.

64 Therefore, in the case of such agreements, the Member States are entitled to adopt obligations such as the obligation arising from Article 36 of OUG 50/2010 regarding bank charges only if Directive 2008/48 does not contain harmonised provisions on that matter.

65 It must be found that, whilst Directive 2008/48 provides for obligations relating to the information required to be supplied by the creditor as regards, inter alia, bank charges in so far as they form part of the total cost of the credit within the meaning of Article 3(g) thereof, the directive does not, on the other hand, contain substantive rules relating to the types of charges that the creditor may levy.

66 It is, moreover, apparent from recital 44 in the preamble to Directive 2008/48 that, in order to ensure market transparency and stability, and pending further harmonisation, Member States should ensure that appropriate measures for the regulation or supervision of creditors are in place.

67 The answer to Question 3(b) therefore is that Article 22(1) of Directive 2008/48 must be interpreted as not precluding a national measure designed to transpose that directive into domestic law from imposing on credit institutions obligations not provided for by the directive as regards the types of charges that they may levy in connection with consumer credit agreements falling within the scope of that measure.

*Question 4*

68 By Question 4, the national court asks, in essence, whether the Treaty rules concerning the freedom to provide services and the free movement of capital, in particular Articles 56 TFEU, 58 TFEU and 63(1) TFEU, must be interpreted as precluding a provision of national law that prohibits credit institutions from levying certain bank charges.

69 It must be stated first of all that there is no need to examine the national provision at issue in the main proceedings in the light of the Treaty rules concerning the free movement of capital.

70 Where a national measure relates to both the freedom to provide services and the free movement of capital, it is necessary to consider to what extent the exercise of those fundamental freedoms is affected and whether, in the circumstances of the main proceedings, one of them prevails over the other. The Court will in principle examine the measure in dispute in relation to only one of those two freedoms if it appears, in the circumstances of the case, that one of them is entirely secondary in relation to the other and may be considered together with it (Case C-452/04 *Fidium Finanz* [2006] ECR I-9521, paragraph 34).

71 In the present instance, if it were to be found, as Volksbank contends, that, by making consumer credit offered by companies which are established in other Member States less accessible for customers established in Romania, that provision has the effect of making recourse by such customers to those services less frequent and, therefore, of reducing cross-border financial flows relating to those services, that would be merely an unavoidable consequence of any restriction on the freedom to provide services (see, to this effect, *Fidium Finanz*, paragraph 48).

72 As regards examination of the national provision at issue in the main proceedings in the light of the Treaty rules concerning the freedom to provide services, it is clear from the Court's settled case-law that the business of a credit institution consisting of granting credit constitutes a service within the meaning of Article 56 TFEU (see, in particular, *Fidium Finanz*, paragraph 39).

73 It is also settled case-law that the concept of 'restriction' within the meaning of Article 56 TFEU relates to measures by which exercise of the freedom to provide services is prohibited, impeded or rendered less attractive (see, inter alia, Case C-565/08 *Commission* v *Italy* [2011] ECR I-2101, paragraph 45).

74 As to determining the circumstances in which a measure that is applicable without distinction to all credit institutions supplying services in Romania, such as the prohibition on levying certain bank charges at issue here, may fall within that concept, it must be borne in mind that rules of a Member State do not constitute a restriction within the meaning of the Treaty solely by virtue of the fact that other Member States apply less strict, or economically more favourable, rules to providers of similar services established in their territory (see, inter alia *Commission* v *Italy*, paragraph 49).

75 On the other hand, the concept of 'restriction' covers measures taken by a Member State which, although applicable without distinction, affect access to the market for economic operators from other Member States (see, inter alia, *Commission* v *Italy*, paragraph 46).

76 In the case in point, it has not, however, been asserted that the prohibition by which the national provision at issue in the main proceedings prevents creditors from levying certain bank charges is imposed in the context of the approval in Romania of credit institutions established in other Member States.

77 Nor is it apparent from the documents submitted to the Court that the establishment of such a prohibition constitutes an actual interference in those institutions' freedom to contract.

78 The Romanian Government and the Commission have submitted, without being contradicted by Volksbank in this regard, that whilst the national legislation at issue in the main proceedings limits the number of bank charges that can be included in credit agreements, it does not impose requirements curbing the rate of charge, since no limit is laid down as regards the amount of the charges that are authorised by the national provision at issue in the main proceedings or as regards interest rates in general.

79 Therefore, although that national provision may require certain clauses of agreements to be amended, it does not result, by itself, in an additional burden for credit institutions established in other Member States or, a fortiori, in the need for those undertakings to review their commercial policy and strategies in order to be able to gain access to the Romanian market in conditions compatible with Romanian legislation.

80 It follows that, having regard to the factors put forward before the Court, it is not evident that that national provision renders access to the Romanian market less attractive and, in the event of access thereto, genuinely reduces the ability of the undertakings concerned to compete effectively, from the outset, against undertakings traditionally established in Romania.

81 In those circumstances, the effect of that national provision on trade in services is too uncertain and indirect for such a national measure to be regarded as liable to hinder intra-Community trade (see by analogy, inter alia, Case C-291/09 *Francesco Guarnieri & Cie* [2011] ECR I-2685, paragraph 17 and the case-law cited).

82 Accordingly, having regard to the material available to the Court, it must be concluded that a national measure such as that at issue in the main proceedings is not contrary to the Treaty rules concerning the freedom to provide services.

83 In the light of the foregoing considerations, the answer to Question 4 is that the Treaty rules concerning the freedom to provide services must be interpreted as not precluding a provision of national law that prohibits credit institutions from levying certain bank charges.

*Question 2*

84 By Question 2, which is to be examined last, the national court asks, in essence, whether Article 24(1) of Directive 2008/48 must be interpreted as precluding a rule forming part of the national measure designed to transpose Directive 2008/48 that, as regards disputes concerning consumer credit, allows consumers to have direct recourse to a consumer protection authority, which may subsequently impose penalties on credit institutions for infringement of that national measure, without having to use beforehand the out-of-court resolution procedures provided for by national legislation for such disputes.

Admissibility

85 First of all, it should be noted that whilst, in the case in point, the implementing measure concerned, namely Article 85(2) of OUG 50/2010, applies in the context of consumer credit agreements which do not fall within the material and temporal scope of Directive 2008/48, it is not disputed that the harmonised provision with which the present question is concerned, namely Article 24(1) of Directive 2008/48, is rendered applicable to such agreements, by virtue of that implementing measure.

86 The Court has repeatedly considered itself to have jurisdiction to give preliminary rulings on questions concerning provisions of European Union law in situations where the facts at issue in the main proceedings were outside the scope of European Union law and therefore fell within the competence of the Member States alone, but where those provisions of European Union law had been rendered applicable by domestic law due to a reference made by that law to the content of those provisions (see, inter alia, Case C-310/10 *Agafiței and Others* [2011] ECR I-5989, paragraph 38 and the case-law cited).

87 The Court has stated in particular in that regard that where, in regulating purely internal situations, domestic legislation seeks to adopt the same solutions as those adopted in European Union law in order, for example, to avoid discrimination against a Member State's own nationals or any distortion of competition or to provide for one single procedure in comparable situations, there is clearly an interest that, in order to forestall future differences of interpretation, provisions or concepts taken from European Union law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (see, inter alia, *Agafiței and Others*, paragraph 39 and the case-law cited).

88 Here, such an interest exists since application of the harmonised provision laid down in Article 24(1) of Directive 2008/48 to consumer credit agreements not falling within the material and temporal scope of that directive is designed to ensure that one single procedure exists in comparable situations so far as concerns the out-of-court resolution of disputes that relate to such agreements.

89 Furthermore, the Romanian Government and the Commission submit that Question 2 is inadmissible since it relates to out-of-court dispute resolution procedures when such procedures play no specific part in the main proceedings. The interpretation sought from the Court in this question is stated to bear no relation to the purpose of the main proceedings.

90 Moreover, the Romanian Government considers that this question is also inadmissible because the national court asks the Court to interpret national law, a matter falling within the jurisdiction of national courts alone.

91 It must be stated that Volksbank has contended before the national court that, since a rule forming part of the national measure designed to transpose Directive 2008/48, namely Article 85(2) of OUG 50/2010, allows recourse to a consumer protection authority, which may subsequently impose penalties on credit institutions without the out-of-court resolution procedures provided for by national legislation for such disputes having to be followed beforehand, that measure is contrary to Article 24(1) of Directive 2008/48, which obliges the Member States to ensure that adequate and effective out-of-court dispute resolution procedures exist for the settlement of consumer disputes concerning consumer credit.

92 It is also not in dispute that in the main proceedings a consumer protection authority, the ANPC, did in fact impose a fine on a credit institution, Volksbank, on the ground that consumer credit agreements concluded by it contained clauses contrary to national legislation designed to transpose Directive 2008/48, without that credit institution first having the opportunity to settle the dispute out of court.

93 In those circumstances, it must be concluded, having regard to the principles recalled in paragraphs 48 and 49 of the present judgment, that, since the question is one of interpretation of European Union law and it is, at the very least, not obvious that an answer relevant for resolving the dispute in the main proceedings cannot be given to the question, the Court is obliged to answer it.

Substance

94 Whilst Article 24(1) of Directive 2008/48 requires out-of-court dispute resolution procedures to be adequate and effective, neither that provision nor anything else in Directive 2008/48 that can be taken into account in order to interpret the provision's purport enlarges upon the detail or nature of those procedures.

95 Therefore, it is for the Member States to lay down the detail of those procedures, including whether they are mandatory, whilst ensuring that the directive remains effective (see, by analogy, *Alassini and Others*, paragraph 44).

96 It is true that national legislation imposing an obligation of prior recourse to an out-of-court dispute resolution procedure, in so far as it ensures that such a procedure is systematically used, is designed to strengthen the effectiveness of Directive 2008/48 (see, by analogy, *Alassini and Others*, paragraph 45).

97 The fact remains, however, that it follows neither from the wording nor, indeed, from the purpose of Article 24(1) of Directive 2008/48 or from any other contextual matter that can be taken into account in order to interpret that provision that the provision requires the Member States to transpose it by laying down such an obligation.

98 Furthermore, Directive 2008/48 cannot prevent a Member State, in the exercise of the broad discretion which it is allowed by that directive as regards regulating the detailed procedure relating to the out-of-court resolution of disputes concerning consumer credit agreements, from permitting the widest possible access of consumer to the bodies specially set up to defend their interests on account, in particular, of the risk that consumers, who are as a general rule in an inferior position to creditors so far as concerns both bargaining power and level of knowledge, will be unaware of their rights or encounter difficulties in exercising them.

99 Nor can the view be taken that, inasmuch as a national provision, such as Article 85(2) of OUG 50/2010, permits direct recourse to a consumer protection authority having the power to impose fines, it has, because of that fact alone, the effect of rendering procedures concerning out-of-court resolution of disputes relating to consumer credit agreements, such as the procedures provided for by the national law at issue in the main proceedings, inadequate, ineffective or prejudicial to the effectiveness of Directive 2008/48.

100 In the light of the foregoing considerations, the answer to Question 2 is that Article 24(1) of Directive 2008/48 must be interpreted as not precluding a rule forming part of the national measure designed to transpose that directive that, as regards disputes concerning consumer credit, allows consumers to have direct recourse to a consumer protection authority, which may subsequently impose penalties on credit institutions for infringement of that national measure, without having to use beforehand the out-of-court resolution procedures provided for by national legislation for such disputes.

**Costs**

101 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Fourth Chamber) hereby rules:

1. **Article 22(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 must be interpreted as not precluding a national measure designed to transpose that directive into domestic law from including in its material scope credit agreements, such as those at issue in the main proceedings, concerning the grant of credit secured by immovable property, even though such agreements are expressly excluded from the material scope of the directive by virtue of Article 2(2)(a) thereof.**

2. **Article 30(1) of Directive 2008/48 must be interpreted as not precluding a national measure designed to transpose that directive into domestic law from defining its temporal scope so that the measure also applies to credit agreements, such as those at issue in the main proceedings, which are excluded from the material scope of that directive and were existing on the date when that national measure entered into force.**

3. **Article 22(1) of Directive 2008/48 must be interpreted as not precluding a national measure designed to transpose that directive into domestic law from imposing on credit institutions obligations not provided for by the directive as regards the types of charges that they may levy in connection with consumer credit agreements falling within the scope of that measure.**

4. **The rules of the FEU Treaty concerning the freedom to provide services must be interpreted as not precluding a provision of national law that prohibits credit institutions from levying certain bank charges.**

5. **Article 24(1) of Directive 2008/48 must be interpreted as not precluding a rule forming part of the national measure designed to transpose that directive that, as regards disputes concerning consumer credit, allows consumers to have direct recourse to a consumer protection authority, which may subsequently impose penalties on credit institutions for infringement of that national measure, without having to use beforehand the out-of-court resolution procedures provided for by national legislation for such disputes.**

[Signatures]