



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

18 December 2014*

(Reference for a preliminary ruling — Consumer protection — Consumer credit — Directive 2008/48/EC — Pre-contractual information duties — Obligation to check the borrower's creditworthiness — Burden of proof — Methods of proof)

In case C-449/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal d'instance d'Orléans (France), made by decision of 5 August 2013, received at the Court on 12 August 2013, in the proceedings

CA Consumer Finance SA

v

Ingrid Bakkaus,

Charline Bonato, née Savary,

Florian Bonato,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský, M. Safjan, A. Prechal (Rapporteur) and K. Jürimäe, Judges,

Advocate General: N. Wahl,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 10 July 2014,

after considering the observations submitted on behalf of:

- CA Consumer Finance SA, by B. Soltner, avocat,
- the French Government, by D. Colas and S. Menez, acting as Agents,
- the German Government, by T. Henze and J. Kemper, acting as Agents,
- the Spanish Government, by A. Rubio González, acting as Agent,

* Language of the case: French.

— the European Commission, by M. Owsiany-Hornung and M. Van Hoof, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 11 September 2014,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 5 and 8 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).
- 2 The request has been made in proceedings between CA Consumer Finance SA ('CA CF'), on the one hand, and, on the other, Ms Bakkaus, and Mrs Bonato, née Savary, and Mr Bonato ('the borrowers') concerning payment requests for sums due on personal loans which that company had granted to the borrowers and which those borrowers have defaulted on.

Legal context

EU law

- 3 Recitals 7, 9, 19, 24 and 26 to 28 in the preamble to Directive 2008/48 are worded as follows:

(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. ...

...

(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. ...

...

(19) In order to enable consumers to make their decisions in full knowledge of the facts, they should receive adequate information, which the consumer may take away and consider, prior to the conclusion of the credit agreement, on the conditions and cost of the credit and on their obligations. To ensure the fullest possible transparency and comparability of offers, such information should, in particular, include the annual percentage rate of charge applicable to the credit, determined in the same way throughout the Community. ...

...

(24) The consumer needs to be given comprehensive information before he concludes the credit agreement, regardless of whether or not a credit intermediary is involved in the marketing of the credit. Therefore, in general, the pre-contractual information requirements should also apply to credit intermediaries. ...

...

- (26) ... In the expanding credit market, in particular, it is important that creditors should not engage in irresponsible lending or give out credit without prior assessment of creditworthiness, and the Member States should carry out the necessary supervision to avoid such behaviour and should determine the necessary means to sanction creditors in the event of their doing so. ... [C]reditors should bear the responsibility of checking individually the creditworthiness of the consumer. To that end, they should be allowed to use information provided by the consumer not only during the preparation of the credit agreement in question, but also during a long-standing commercial relationship. The Member States' authorities could also give appropriate instructions and guidelines to creditors. Consumers should also act with prudence and respect their contractual obligations.
- (27) Despite the pre-contractual information to be provided, the consumer may still need additional assistance in order to decide which credit agreement, within the range of products proposed, is the most appropriate for his needs and financial situation. Therefore, Member States should ensure that creditors provide such assistance in relation to the credit products which they offer to the consumer. Where appropriate, the relevant pre-contractual information, as well as the essential characteristics of the products proposed, should be explained to the consumer in a personalised manner so that the consumer can understand the effects which they may have on his economic situation. Where applicable, this duty to assist the consumer should also apply to credit intermediaries. Member States could determine when and to what extent such explanations are to be given to the consumer, taking into account the particular circumstances in which the credit is offered, the consumer's need for assistance and the nature of individual credit products.
- (28) To assess the credit status of a consumer, the creditor should also consult relevant databases; the legal and actual circumstances may require that such consultations vary in scope. ...'

- 4 Article 5 of Directive 2008/48, entitled 'Pre-contractual information', provides in the first subparagraph of paragraph 1 and in paragraph 6:

'1. In good time before the consumer is bound by any credit agreement or offer, the creditor and, where applicable, the credit intermediary shall, on the basis of the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer, provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement. Such information, on paper or on another durable medium, shall be provided by means of the Standard European Consumer Credit Information form set out in Annex II. The creditor shall be deemed to have fulfilled the information requirements in this paragraph and in Article 3, paragraphs (1) and (2) of Directive 2002/65/EC if he has supplied the Standard European Consumer Credit Information.

...

6. Member States shall ensure that creditors and, where applicable, credit intermediaries provide adequate explanations to the consumer, in order to place the consumer in a position enabling him to assess whether the proposed credit agreement is adapted to his needs and to his financial situation, where appropriate by explaining the pre-contractual information to be provided in accordance with paragraph 1, the essential characteristics of the products proposed and the specific effects they may have on the consumer, including the consequences of default in payment by the consumer. Member States may adapt the manner by which and the extent to which such assistance is given, as well as by whom it is given, to the particular circumstances of the situation in which the credit agreement is offered, the person to whom it is offered and the type of credit offered.'

- 5 Article 8 of that directive, entitled ‘Obligation to assess the creditworthiness of the consumer’, provides in paragraph 1:

‘Member States shall ensure that, before the conclusion of the credit agreement, the creditor assesses the consumer’s creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database. Member States whose legislation requires creditors to assess the creditworthiness of consumers on the basis of a consultation of the relevant database may retain this requirement.’

- 6 Article 22 of that directive, entitled ‘Harmonisation and imperative nature of this Directive’, provides in paragraphs 2 and 3:

‘2. Member States shall ensure that consumers may not waive the rights conferred on them by the provisions of national law implementing or corresponding to this Directive.

3. Member States shall further ensure that the provisions they adopt in implementation of this Directive cannot be circumvented as a result of the way in which agreements are formulated, in particular by integrating drawdowns or credit agreements falling within the scope of this Directive into credit agreements the character or purpose of which would make it possible to avoid its application.’

French law

- 7 Law No 2010-737 of 1 July 2010 on the reform of consumer credit (JORF, 2 July 2010, p. 12001), which is intended to transpose Directive 2008/48 into French domestic law, was incorporated into the French Consumer Code in Article L. 311-1 et seq.

- 8 Article L. 311-6 of that code provides:

I. Before the conclusion of the credit agreement, the creditor or credit intermediary shall provide the borrower, in writing or on another durable medium, with the information needed to compare the different offers and allowing the borrower, in the light of his preferences, to have a clear understanding of the extent of his commitment.

...

II. Where the consumer seeks to enter into a credit agreement at the place of sale, the creditor shall ensure that the information form mentioned in paragraph I is supplied to him at the place of sale.’

- 9 Article L. 311-8 of that code provides:

‘The creditor or credit intermediary shall provide explanations to the borrower enabling him to assess whether the proposed credit agreement is adapted to his needs and to his financial situation, in particular on the basis of the information contained in the form referred to in Article L. 311-6. It shall draw the borrower’s attention to the essential characteristics of the loan or loans offered and to the consequences which those loans may have on his financial situation, including the consequences of default in payment. That information shall be supplied on the basis of the preferences, if any, expressed by the borrower.

...’

10 Article L. 311-9 of that code is worded as follows:

‘Before concluding the credit agreement, the creditor shall check the borrower’s creditworthiness on the basis of sufficient information, including the information supplied by the borrower at the creditor’s request. The creditor shall consult the register provided for in Article L. 333-4, under the conditions laid down in the ministerial order referred to in Article L. 333-5.’

11 The second and third paragraphs of Article L. 311-48 of the Consumer Code provide:

‘Where the creditor has not complied with the obligations laid down in Articles L. 311-8 and L. 311-9, he shall forfeit entitlement to interest, in whole or in such proportion as the court may direct. ...

The borrower shall be required only to repay the principal in accordance with the schedule provided for and also, where appropriate, to pay the interest not forfeited by the creditor. Sums received by way of interest, which produce interest at the statutory rate from the date of their payment, shall be reimbursed by the creditor or set off against the principal remaining due.’

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

12 On 5 May 2011, Mr and Mrs Bonato concluded an agreement with CA CF, through a broker, to take out a personal loan linked to the purchase of a motor vehicle for EUR 20 900, at an annual fixed interest rate of 6.40% and an annual percentage rate of 7.685%.

13 On 15 July 2011, Ms Bakkaus concluded an agreement with CA CF to take out a personal loan for EUR 20 000, at an annual fixed interest rate of 7.674% and an annual percentage rate of 7.950%.

14 When repayments under the loans ceased, CA CF brought proceedings against the borrowers before the Tribunal d’instance d’Orléans (Orléans District Court) for payment of the balance due under the loans, together with interest.

15 The national court raised of its own motion the plea concerning the possible forfeiture of the lender’s entitlement to interest, as provided for in the second paragraph of Article L. 311-48 of the Consumer Code, given that the CA CF did not produce at the hearing either the pre-contractual information form which was to be given to the borrowers, or any other evidence proving that it had fulfilled its duties to provide information towards those borrowers and that it had checked their creditworthiness.

16 The national court states that Directive 2008/48 and Law No 2010-737, which aims to transpose that directive into French law, make creditors responsible for supplying information and explanations such as to enable the borrower to make an informed choice as to the commitment to subscribe to a loan. However, no provision of that directive or of that law lays down any rules relating to the burden of, or the detailed rules for, proving that the creditors’ obligations have been fulfilled.

17 As regards the creditor’s obligation to provide consumers with a ‘Standard European Consumer Credit Information’ form, the national court states that in the present case, such a form was not produced by CA CF. Moreover, that company did not produce any evidence relating to its duty to provide explanations and provided no reason for that lack of evidence. The national court, however, states that the contract signed by Ms Bakkaus contains a standard term which is worded as follows: ‘I, the undersigned, Bakkaus Ingrid, acknowledge that I have received and taken note of the Standard European Information form’. The national court considers that such a clause could cause difficulties if it were to have the effect of reversing the burden of proof to the detriment of the consumer. The national court considers that that type of term could thereby make it difficult, or even impossible, for the consumer to exercise the right to challenge whether the creditor has performed its obligations in full.

- 18 As regards checking the borrowers' creditworthiness, the national court states that, although in the proceedings involving Ms Bakkaus CA CF produced an income and expenses form signed by the borrower together with the documentary evidence of income which she had sent to CA CF, that was not the case in the proceedings involving Mr and Mrs Bonato.
- 19 In those circumstances, the Tribunal d'instance d'Orléans decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- (1) Must Directive [2008/48] be interpreted to the effect that the onus is on the creditor to prove that it has correctly and fully complied with its obligations under national law transposing that directive when a credit agreement is entered into and performed?
 - (2) Does Directive [2008/48] preclude a creditor from being able to prove that it has fulfilled its obligations correctly and in full solely by means of a standard term in the credit agreement, whereby the consumer acknowledges the fulfilment of those obligations, without that term being supported by documents issued by the creditor and supplied to the borrower?
 - (3) Must Article 8 of Directive [2008/48] be interpreted as precluding the creditworthiness check from being carried out solely on the basis of information supplied by the consumer, without such information being effectively scrutinised against other evidence?
 - (4) Must Article 5(6) of Directive [2008/48] be interpreted to the effect that it is not possible for a creditor to provide adequate explanations to the consumer if it has not checked the consumer's financial situation and his needs beforehand?

Must Article 5(6) of Directive [2008/48] be interpreted as precluding a situation in which explanations to be supplied to the consumer are deemed to be adequate where those explanations are provided only in the contractual information mentioned in the credit agreement, without a specific document being drawn up?

Consideration of the questions referred

The first and second questions

- 20 By its first and second questions, which should be considered together, the national court essentially asks, first, whether Directive 2008/48 must be interpreted to the effect that the onus is on the creditor to prove that it has correctly and fully complied with its pre-contractual obligations laid down in Articles 5 and 8 of that directive and arising from national law transposing that directive and, secondly, whether the inclusion of a standard term in the credit agreement, whereby the consumer acknowledges that the creditor has fulfilled its obligations, without that term being supported by documents issued by the creditor and supplied to the borrower, can be sufficient to prove that the creditor has correctly fulfilled its pre-contractual obligations to provide information.
- 21 It should be noted at the outset that the pre-contractual obligations referred to in the questions contribute to attaining the objective pursued by Directive 2008/48, which, as can be seen from recitals 7 and 9 in the preamble to 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 (see judgment in *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraph 42).

- 22 However, as regards, first, the burden of proof that the creditor has fulfilled its obligations to provide the consumer with adequate information and to check the consumer's creditworthiness, laid down in Articles 5 and 8 of Directive 2008/48, and, secondly, the detailed rules for proving compliance with those obligations, it must be noted that that directive makes no provision in that respect.
- 23 According to settled case-law, in the absence of relevant EU rules, the detailed procedural rules designed to ensure the protection of the rights which individuals acquire under EU law are a matter for the domestic legal order of each Member State, in accordance with the principle of the procedural autonomy of the Member States, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it in practice impossible or excessively difficult to exercise rights conferred by the EU legal order (principle of effectiveness) (see, *inter alia*, judgment in *Specht and Others*, C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraph 112 and the case-law cited).
- 24 As regards the principle of equivalence, it must be observed that the Court does not have before it any evidence which might raise doubts as to the compliance of the rules at issue in the main proceedings with that principle.
- 25 As regards the principle of effectiveness, it should be noted 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 (judgment in *Kušionová*, C-34/13, EU:C:2014:2189, paragraph 52 and the case-law cited).
- 26 In the present case, as far as the national rules at issue in the main proceedings are concerned, it must be stated that it is not for the Court to rule on the interpretation of provisions of national law, that being a matter exclusively for the national court.
- 27 It should, however, be stated that compliance with that principle would be undermined if the burden of proving the non-performance of the obligations laid down in Articles 5 and 8 of Directive 2008/48 lay with the consumer. The consumer does not have the means at his disposal to enable him to prove that the creditor, first, did not provide him with the information required under Article 5 of that directive and, secondly, did not check his creditworthiness.
- 28 On the other hand, the effective exercise of the rights conferred by Directive 2008/48 is ensured by a national rule according to which the creditor is, in principle, required to prove to the court that those pre-contractual obligations have been fulfilled. Such a rule aims to ensure, as was stated in paragraph 21 above, the protection of the consumer, without disproportionately interfering with the creditor's right to a fair trial. As the Advocate General stated in point 35 of his Opinion, a diligent creditor must be aware of the need to gather and retain evidence that its obligations to provide information and explanations have been fulfilled.
- 29 As regards the standard clause contained in the credit agreement concluded by Ms Bakkaus, such a term does not undermine the effectiveness of rights recognised by Directive 2008/48 if, under national law, that term means only that the borrower is declaring that the Standard European Consumer Credit form has been delivered to her.
- 30 In that regard, it is clear from Article 22(3) of Directive 2008/48 that such a term cannot allow the creditor to circumvent its obligations. Thus, the standard term in question is an indication which the lender is required to substantiate with one or more relevant items of evidence. Furthermore, the consumer must always be in a position to state that she did not receive that form or that the form did not enable the creditor to fulfil its pre-contractual obligations to provide information.

- 31 If, on the other hand, such a standard term were to mean under national law that the consumer acknowledges that the creditor's pre-contractual obligations have been fully and correctly performed, it would, as a consequence, result in a reversal of the burden of proving the performance of those obligations such as to undermine the effectiveness of the rights conferred by Directive 2008/48. Thus, it is for the national court to ascertain whether the evidentiary value of that standard term undermines the possibility both for the consumer and for the court to call into question the correct performance of the creditor's pre-contractual obligations to provide information and to carry out creditworthiness checks.
- 32 In the light of all of the foregoing, the answer to the first and second questions referred is that the provisions of Directive 2008/48 must be interpreted to the effect that:
- first, they preclude national rules according to which the burden of proving the non-performance of the obligations laid down in Articles 5 and 8 of Directive 2008/48 lies with the consumer; and
 - secondly, they preclude a court from having to find that, as a result of a standard term, a consumer has acknowledged that the creditor's pre-contractual obligations have been fully and correctly performed, with that term thereby resulting in a reversal of the burden of proving the performance of those obligations such as to undermine the effectiveness of the rights conferred by Directive 2008/48.

The third question

- 33 By its third question, the national court asks whether Article 8 of Directive 2008/48 must be interpreted as precluding the consumer's creditworthiness assessment from being carried out solely on the basis of information supplied by the consumer, without such information being effectively scrutinised against other evidence.
- 34 It is clear from Article 8(1) of Directive 2008/48 that before the conclusion of the credit agreement, the creditor is required to assess the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database.
- 35 In that regard, recital 26 in the preamble to that directive states that creditors should bear the responsibility of checking individually the creditworthiness of the consumer, and that they should be allowed to use information provided by the consumer not only during the preparation of the credit agreement in question, but also during a long-standing commercial relationship. That obligation thus aims to make creditors accountable and to avoid loans being granted to consumers who are not creditworthy.
- 36 Directive 2008/48 does not contain an exhaustive list of the information with which the creditor must assess the consumer's creditworthiness, nor does it specify whether that information must be scrutinised and in what way that should be done. Rather, the wording of Article 8(1) of Directive 2008/48, read in the light of recital 26 in its preamble, affords the creditor a margin of discretion for the purposes of determining whether or not the information at its disposal is sufficient to demonstrate the consumer's creditworthiness and whether it must check that information against other evidence.
- 37 It follows that the creditor must, first, in every case and taking into account the specific circumstances of that case, assess whether that information is adequate and sufficient for the purposes of evaluating the consumer's creditworthiness. In that regard, the sufficient nature of the information may vary depending on the circumstances in which the credit agreement was concluded, the personal situation of the consumer or the amount covered by the agreement. That assessment may be carried out using

supporting evidence of the consumer's financial situation, but it is possible that the creditor may take into account prior knowledge of the loan applicant's financial situation which it may have. However, mere unsupported declarations made by the consumer may not, in themselves, be sufficient if they are not accompanied by supporting evidence.

38 Secondly, and without prejudice to the second sentence of Article 8(1) of Directive 2008/48 according to which Member States may retain in their legislation the obligation for the creditor to consult a database, Directive 2008/48 does not require creditors to scrutinise systematically the veracity of the information supplied by the consumer. Depending on the specific circumstances of the case, the creditor may either be satisfied with the information supplied by the consumer, or decide that it is necessary to obtain confirmation of that information.

39 In the light of the foregoing, the answer to the third question is that Article 8(1) of Directive 2008/48 must be interpreted to the effect that, first, it does not preclude the consumer's creditworthiness assessment from being carried out solely on the basis of information supplied by the consumer, provided that that information is sufficient and that mere declarations by the consumer are also accompanied by supporting evidence and, secondly, that it does not require the creditor to carry out systematic checks of the veracity of the information supplied by the consumer.

The fourth question

40 By its fourth question, which has two parts, the national court asks, first, whether Article 5(6) of Directive 2008/48 must be interpreted to the effect that a creditor cannot be regarded as having provided adequate explanations to the consumer if it has not checked the financial situation and the needs of the consumer beforehand. Secondly, the national court asks whether that provision must be interpreted as precluding the adequate explanations supplied to the consumer from being provided only in the contractual information mentioned in the credit agreement, without a specific document being drawn up.

41 As regards the first part of that question, it is apparent from Article 5(6) of, and recital 27 in the preamble to, Directive 2008/48 that, notwithstanding the pre-contractual information which must be provided under Article 5(1) of that directive, the consumer may, before entering into the credit agreement, still need additional assistance in order to decide which credit agreement is the most appropriate for his needs and his financial situation. The creditor must therefore provide the consumer with adequate, personalised explanations in order to place the consumer in a position that enables him to assess whether the proposed credit agreement is adapted to his needs and to his financial situation, where appropriate by providing explanations of the pre-contractual information, the essential characteristics of the products proposed and the specific effects they may have on his situation, including the consequences of default in payment by the consumer.

42 That obligation to provide adequate explanations thus aims to enable the consumer to make a fully informed decision with regard to a type of loan agreement.

43 However, as has already been stated in paragraph 35 above, the obligation to assess the consumer's creditworthiness, laid down in Article 8(1) of Directive 2008/48, aims to make creditors accountable and to prevent them from granting loans to consumers who are not creditworthy.

44 Article 5 and Article 8 of that directive aim to protect all consumers in the European Union and to ensure that they enjoy a high and equivalent level of protection of their interests.

45 While both those obligations are pre-contractual in nature, given that they apply before conclusion of the credit agreement, it does not follow from either the wording or the objectives of Articles 5 and 8 of Directive 2008/48 that the assessment of the financial situation and the needs of the consumer must be

carried out before the adequate explanations are provided. In principle, there is no link between the two obligations stemming from those articles of the directive. The creditor is in a position to give the consumer explanations based solely on information which the consumer supplies to him, so that the consumer may make a decision with regard to a type of loan agreement, without the creditor being required to assess the consumer's creditworthiness beforehand. However, the creditor must take account of the assessment of the consumer's creditworthiness in so far as that assessment means that the explanations provided need to be adapted.

- 46 As regards the second part of the fourth question, it must be observed that it is clear from Article 5(1) of Directive 2008/48 that the duties to provide information laid down in Article 5 of that directive are pre-contractual in nature. Accordingly, they may not be fulfilled at the stage of concluding the credit agreement, but must be fulfilled in good time by giving to the consumer the explanations referred to in Article 5(6) of that directive before the agreement is signed.
- 47 As regards the detailed rules for fulfilling the lender's obligations to provide explanations, Article 5(6) of Directive 2008/48, unlike Article 5(1), does not specify in what form the adequate explanations to which it refers must be given to the borrower. It therefore does not follow from the wording of Article 5(6) or from the objective which it pursues that those explanations must be provided in a specific document, and the possibility cannot be ruled out that those explanations may be given orally by the creditor to the consumer in the course of an interview.
- 48 However, the Member States may, by reason of the second sentence of Article 5(6) of that directive, specify the obligation to be performed by the creditor in providing adequate explanations. The question of the form in which those explanations must be given to the consumer is therefore a matter for national law.
- 49 In the light of the foregoing, the answer to the fourth question is that Article 5(6) of Directive 2008/48 must be interpreted to the effect that, although it does not preclude a creditor from providing the consumer with adequate explanations before assessing the financial situation and the needs of that consumer, it may be that the assessment of the consumer's creditworthiness means that the adequate explanations provided need to be adapted, and that those explanations must be communicated to the consumer in good time before the credit agreement is signed, without this, however, requiring a specific document to be drawn up.

Costs

- 50 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. The provisions 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 to the effect that:**
 - first, they preclude national rules according to which the burden of proving the non-performance of the obligations laid down in Articles 5 and 8 of Directive 2008/48 lies with the consumer; and

- secondly, they preclude a court from having to find that, as a result of a standard term, a consumer has acknowledged that the creditor's pre-contractual obligations have been fully and correctly performed, with that term thereby resulting in a reversal of the burden of proving the performance of those obligations such as to undermine the effectiveness of the rights conferred by Directive 2008/48.
2. Article 8(1) of Directive 2008/48 must be interpreted to the effect that, first, it does not preclude the consumer's creditworthiness assessment from being carried out solely on the basis of information supplied by the consumer, provided that that information is sufficient and that mere declarations by the consumer are also accompanied by supporting evidence and, secondly, that it does not require the creditor to carry out systematic checks of the veracity of the information supplied by the consumer.
 3. Article 5(6) of Directive 2008/48 must be interpreted to the effect that, although it does not preclude a creditor from providing the consumer with adequate explanations before assessing the financial situation and the needs of that consumer, it may be that the assessment of the consumer's creditworthiness means that the adequate explanations provided need to be adapted, and that those explanations must be communicated to the consumer in good time before the credit agreement is signed, without this, however, requiring a specific document to be drawn up.

Signatures