



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

9 February 2023*

(Reference for a preliminary ruling – Consumer protection – Directive 2014/17/EU – Credit agreements for consumers relating to residential immovable property – Article 25(1) – Early repayment – Consumer’s right to a reduction in the total cost of the credit, consisting of the interest and the costs for the remaining duration of the contract – Article 4(13) – Concept of ‘total cost of the credit to the consumer’ – Costs that are independent of the duration of the agreement)

In Case C-555/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 19 August 2021, received at the Court on 9 September 2021, in the proceedings

UniCredit Bank Austria AG

v

Verein für Konsumenteninformation,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, M. Safjan (Rapporteur), N. Piçarra, N. Jääskinen and M. Gavalec, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: S. Beer, Administrator,

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

after considering the observations submitted on behalf of:

- UniCredit Bank Austria AG, by M. Kellner and F. Liebel, Rechtsanwälte,
- Verein für Konsumenteninformation, by A.-M. Kosesnik-Wehrle and S. Langer, Rechtsanwälte,
- the German Government, by J. Möller and M. Hellmann, acting as Agents,

* Language of the case: German.

- the Italian Government, by G. Palmieri, acting as Agent, and by G. Rocchitta, avvocato dello Stato,
- the European Commission, by G. Goddin, B.-R. Killmann and H. Tserepa-Lacombe, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 September 2022,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 25(1) of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ 2014 L 60, p. 34).
- 2 The request has been made in proceedings between UniCredit Bank Austria AG ('UCBA') and Verein für Konsumenteninformation ('VKI') regarding UCBA's use of a standard clause in its mortgage credit agreements providing that, in the event of early repayment of the credit by the consumer, processing costs that are not dependent on the duration of the agreement will not be reimbursed.

Legal context

European Union law

Directive 2008/48/EC

- 3 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) provides, in Article 3, entitled 'Definitions':

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

...

- (g) "total cost of the credit to the consumer" means all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for notarial costs; costs in respect of ancillary services relating to the credit agreement, in particular insurance premiums, are also included if, in addition, the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed;

...'

4 Article 16 of Directive 2008/48, entitled ‘Early repayment’, provides, in paragraph 1:

‘The consumer shall be entitled at any time to discharge fully or partially his or her obligations under a credit agreement. In such cases, he or she shall be entitled to a reduction in the total cost of the credit, such reduction consisting of the interest and the costs for the remaining duration of the contract.’

Directive 2014/17

5 Recitals 15, 19, 20, 22 and 50 of Directive 2014/17 are worded as follows:

‘(15) The objective of this Directive is to ensure that consumers entering into credit agreements relating to immovable property benefit from a high level of protection. ...

...

(19) For reasons of legal certainty, the Union legal framework in the area of credit agreements relating to residential immovable property should be consistent with and complementary to other [EU] acts, particularly in the areas of consumer protection and prudential supervision. ...

(20) In order to ensure a consistent framework for consumers in the area of credit as well as to minimise the administrative burden for creditors and credit intermediaries, the core framework of this Directive should follow the structure of Directive [2008/48] ...

...

(22) At the same time, it is important to take into consideration the specificities of credit agreements relating to residential immovable property, which justify a differentiated approach. ...

...

(50) The total cost of the credit to the consumer should comprise all the costs that the consumer has to pay in connection with the credit agreement and which are known to the creditor. It should therefore include interest, commissions, taxes, fees for credit intermediaries, the costs of property valuation for a mortgage and any other fees, except for notarial fees, required to obtain the credit, for example life insurance, or to obtain it on the terms and conditions marketed, for example fire insurance. ... The total cost of the credit to the consumer should exclude costs that the consumer pays in relation to the purchase of the immovable property or land, such as associated taxes and notarial costs or the costs of land registration. ...’

6 Article 1 of that directive, entitled ‘Subject matter’, provides:

‘This Directive lays down a common framework for certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers secured by a mortgage or otherwise relating to residential immovable property, including an obligation to carry out a creditworthiness assessment before granting a credit, as a basis for the development of effective underwriting standards in relation to residential immovable property in the Member States, and for certain prudential and supervisory requirements, including for the

establishment and supervision of credit intermediaries, appointed representatives and non-credit institutions.’

7 Article 4 of that directive, entitled ‘Definitions’, states:

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

...

(13) “Total cost of the credit to the consumer” means the total cost of the credit to the consumer as defined in point (g) of Article 3 of Directive [2008/48] including the cost of valuation of property where such valuation is necessary to obtain the credit but excluding registration fees for the transfer of ownership of the immovable property. It excludes any charges payable by the consumer for non-compliance with the commitments laid down in the credit agreement.

...’

8 Article 14 of that directive, entitled ‘Pre-contractual information’, provides, in paragraphs 1 and 2:

‘1. Member States shall ensure that the creditor and, where applicable, the credit intermediary or appointed representative, provides the consumer with the personalised information needed to compare the credits available on the market, assess their implications and make an informed decision on whether to conclude a credit agreement:

(a) without undue delay after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 20; and

(b) in good time before the consumer is bound by any credit agreement or offer.

2. The personalised information referred to in paragraph 1, on paper or on another durable medium, shall be provided by means of the [European Standardised Information Sheet (ESIS)], as set out in Annex II.’

9 Article 25 of Directive 2014/17, entitled ‘Early repayment’, provides, in paragraph 1:

‘Member States shall ensure that the consumer has a right to discharge fully or partially his or her obligations under a credit agreement prior to the expiry of that agreement. In such cases, the consumer shall be entitled to a reduction in the total cost of the credit to the consumer, such reduction consisting of the interest and the costs for the remaining duration of the contract.’

10 Article 41 of that directive, entitled ‘Imperative nature of this Directive’, provides:

‘Member States shall ensure that:

...

- (b) the measures they adopt in transposing this Directive cannot be circumvented in a way which could lead to consumers losing the protection granted by this Directive as a result of the way in which agreements are formulated, in particular by integrating credit agreements falling within the scope of this Directive into credit agreements the character or purpose of which would make it possible to avoid the application of those measures.’

Austrian law

- 11 Paragraph 20 of the Bundesgesetz über Hypothekar- und Immobilienkreditverträge und sonstige Kreditierungen zu Gunsten von Verbrauchern (Law on mortgage and immovable property loans and other types of consumer credit) of 26 November 2015 (BGBl. I, 135/2015), in its version in force until 31 December 2020 (BGBl. I, 93/2017), entitled ‘Early repayment’, provided, in subparagraph 1:

‘The borrower shall have the right to choose at any time to repay the amount of credit, either fully or partially, prior to the expiry of the agreed term. The early repayment of the entire amount of credit, together with interest, results in termination of the credit agreement. In the event of early repayment of the amount of credit, the amount of interest to be paid by the borrower shall decrease proportionally to the reduced receivable and, where appropriate, proportionally to the reduced term of the agreement; costs that are dependent on the duration of the agreement shall decrease proportionally.’

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

- 12 VKI, a consumer protection association, brought an action before the Austrian civil courts seeking an order for UCBA, a credit institution, to cease the use of a standard contractual term in credit agreements secured by mortgages covered by Directive 2014/17. That term states that, in the event of early repayment of the credit by the consumer, interest and costs that are dependent on the duration of the contract are to decrease proportionally, whereas ‘the processing costs that are not dependent on the duration of the agreement will not be reimbursed (even proportionally)’.
- 13 VKI argues that that term is incompatible with Article 25(1) of Directive 2014/17, which enshrines the consumer’s right to the reduction in the total cost of the credit in the event of early repayment. It refers in that connection to the judgment of 11 September 2019, *Lexitor* (C-383/18, EU:C:2019:702), in which the Court held that Article 16(1) of Directive 2008/48, which provides for such a right in credit agreements for consumers, must be interpreted as meaning that that right covers all the costs imposed on the consumer.
- 14 The court of first instance dismissed VKI’s action on the ground that Directive 2014/17 establishes a different system to that of Directive 2008/48. Those directives are different regarding, inter alia, the concept of ‘total cost of the credit to the consumer’, which is reduced in the event of early repayment.
- 15 The appeal court altered that judgment, holding that, due to their almost identical wording, Article 16(1) of Directive 2008/48 and Article 25(1) of Directive 2014/17 must be interpreted in the same way. In the light of the judgment of 11 September 2019, *Lexitor* (C-383/18, EU:C:2019:702), it cannot be inferred from Directive 2014/17 that costs that are not dependent on the duration of the credit agreement must not be reimbursed proportionately.

- 16 UBCA brought an appeal on a point of law (*Revision*) before the referring court, the Oberster Gerichtshof (Supreme Court, Austria), which is of the opinion that the appeal court's approach is open to debate.
- 17 According to the referring court, a finding could admittedly be made that, in the light of the almost identical wording of the two provisions and the shared objective of the two directives of ensuring a high degree of protection for consumers, Article 25(1) of Directive 2014/17 must be interpreted in the same way as Article 16(1) of Directive 2008/48.
- 18 However, credit agreements for consumers governed by Directive 2008/48 have significant differences in relation to credit agreements secured by a mortgage or relating to immovable property and governed by Directive 2014/17, as the latter usually involve many costs that are not dependent on the duration of the contract and the amount of which is not entirely within the control of the credit institution. In that respect, the referring court mentions, inter alia, valuation costs for the property, costs of the attestation of signatures for the purposes of registering the mortgage in the Land Register, those of applying for reservation of priority with a view to sale or giving as security and those of applying for registration of the mortgage in the Land Register.
- 19 In addition, regarding costs that are independent of the duration of the contract in the context of Directive 2014/17, the creditor does not have contractual flexibility to reclassify those costs as costs that are dependent on that duration. In that connection, the Austrian authorities verify, via reclassification if necessary, whether certain costs imposed on the consumer correspond to remuneration for temporary use of capital or whether their purpose is to compensate a creditor for a service that is independent of the duration of the contract.
- 20 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- 'Is Article 25(1) of Directive [2014/17] to be interpreted as precluding national legislation that provides for the sum of interest to be paid by the borrower and the costs that are dependent on the duration of the agreement to be proportionally reduced in the event that the borrower exercises the right to repay the amount of credit, either fully or partially, prior to the expiry of the agreed term, with no corresponding rule for costs that are not dependent on the duration of the agreement?'

Consideration of the question referred

- 21 By its question, the referring court asks, in essence, whether Article 25(1) of Directive 2014/17 must be interpreted as precluding national legislation which provides that the consumer's right to a reduction in the total cost of the credit in the event of early repayment of that credit includes only interests and costs which are dependent on the duration of the agreement.
- 22 In accordance with that provision, Member States are to ensure that the consumer has a right to discharge fully or partially his or her obligations under a credit agreement prior to the expiry of that agreement. In such cases, the consumer is entitled to a reduction in the total cost of the credit to the consumer, such reduction consisting of the interest and the costs for the remaining duration of the contract.

- 23 Regarding, in the first place, the costs that might come within the scope of the ‘total cost of the credit to the consumer’, the EU legislature has defined that concept broadly.
- 24 It follows from Article 4(13) of Directive 2014/17, read in conjunction with Article 3(g) of Directive 2008/48, that the concept of the ‘total cost of the credit to the consumer’, within the meaning of the first provision, includes all the costs that the consumer has to pay in connection with the credit agreement and which are known to the creditor. Those costs exclude expressly, as confirmed by recital 50 of Directive 2014/17, notarial fees, registration costs in relation to the transfer of ownership of the immovable property such as the costs of registration in the Land Register and related fees, and the charges payable by the consumer for non-compliance with the commitments laid down in the credit agreement.
- 25 It is therefore for the referring court to verify whether the types of fees to which it refers and which are set out in paragraph 18 of the present judgment are costs that the consumer must bear in accordance with the credit agreement at issue in the main proceedings and which are known to the creditor, in particular with regard to the situations referred to expressly in Article 4(13) of Directive 2014/17 and Article 3(g) of Directive 2008/48, or whether, as the case may be, they form part of the exceptions summarised in the previous paragraph, notarial fees in particular.
- 26 Regarding, in the second place, the scope of the concept of the ‘reduction in the total cost of the credit to the consumer’, referred to in Article 25(1) of Directive 2014/17, the Court has previously held, in paragraphs 24 and 25 of the judgment of 11 September 2019, *Lexitor* (C-383/18, EU:C:2019:702), regarding Article 16(1) of Directive 2008/48, that neither the reference to the ‘remaining duration of the contract’ in that provision nor a comparative analysis of the various language versions of that provision make it possible to determine the precise scope of the reduction provided for in the provision. The Court inferred, in paragraph 26 of that judgment, that it was therefore necessary, according to its settled case-law, to interpret that provision by reference to the context in which it occurs and the objectives pursued by the rules of which it is part.
- 27 The wording of Article 25(1) of Directive 2014/17 is almost identical to that of Article 16(1) of Directive 2008/48, with the result that it is not possible to determine, on the basis of its wording alone, the precise scope of the reduction provided for in the provision. It must therefore be interpreted in the light of the context in which it occurs and the objectives pursued by the rules of which it is part.
- 28 In that connection, it is apparent from recitals 19 and 20 of Directive 2014/17 that, for reasons of legal certainty, it is necessary to ensure that the directive is consistent with and complementary to other acts adopted in the area of consumer protection. Nevertheless, it is also apparent from recital 22 of the directive that it is important to take into consideration the specificities of credit agreements relating to residential immovable property, which justify a differentiated approach.
- 29 In addition, it should be borne in mind that, under Article 1 of Directive 2014/17, read in the light of recital 15 thereof, that directive lays down a common framework relating to certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers secured by mortgage or other credit relating to immovable property for residential use in order to ensure that consumers enjoy a high level of protection (see, to that effect, judgment of 15 October 2020, *Association française des usagers de banques*, C-778/18, EU:C:2020:831, paragraph 34).

- 30 However, the Court observes that, as pointed out by the Advocate General, in essence, in point 69 of his Opinion, that the aim of the right to reduction provided for in Article 25(1) of Directive 2014/17 is not to place the consumer in the situation in which he or she would have been if the credit had originally been granted for a shorter period, were for a smaller sum or, more generally, had been granted under different conditions. It does, however, aim to adapt that agreement according to the circumstances of the early repayment.
- 31 In those circumstances, that right cannot cover costs which, irrespective of the duration of the contract, are payable by the consumer to either the creditor or third parties for services previously rendered in their entirety at the time of early repayment.
- 32 Admittedly, the Court has held, in relation to Directive 2008/48, that the effectiveness of the right of the consumer to a reduction in the total cost of the credit would be reduced if that reduction could be limited to the taking into account of only those costs presented by the creditor as dependent on the duration of the contract, given that the costs and the breakdown thereof are determined unilaterally by the bank and the charging of fees may include a certain profit margin. In addition, limiting the reduction in the total cost of the credit solely to costs expressly connected with the duration of the contract would entail the risk that the consumer would be required to make a higher one-off payment when concluding the credit agreement, since the creditor could be tempted to reduce the costs depending on the duration of the contract to a minimum (see, to that effect, judgment of 11 September 2019, *Lexitor*, C-383/18, EU:C:2019:702, paragraphs 31 and 32).
- 33 To that effect, the Court emphasised that, in relation to that directive, the degree of flexibility available to credit institutions in terms of invoicing and internal organisation makes it very difficult in practice for a consumer or a court to determine which costs are objectively linked to the duration of the contract (see, to that effect, judgment of 11 September 2019, *Lexitor*, C-383/18, EU:C:2019:702, paragraph 33).
- 34 In that connection it should, however, be borne in mind that, in accordance with Article 14(1) and (2) of Directive 2014/17, the creditor or, as the case may be, the credit intermediary or its designated representative is required to provide the consumer with pre-contractual information through the ESIS in Annex II to that directive. That sheet provides for a breakdown of the charges payable by the consumer on the basis of whether they are regular payments.
- 35 Such standardised breakdown of charges payable by the consumer significantly reduces the degree of flexibility available to credit institutions in terms of invoicing and internal organisation, and makes it possible for the consumer and for the national court to ascertain whether a type of fee is objectively linked to the duration of the contract.
- 36 Consequently, the risk of abusive conduct on the part of the creditor, raised in the case-law cited in paragraphs 32 and 33 of the present judgment, cannot justify costs that are independent of the duration of the agreement being included in the right to reduction in the total cost of the credit provided for in Article 25(1) of Directive 2014/17.
- 37 In that respect, it must nevertheless be borne in mind that, in order to guarantee the protection enjoyed by consumers under Directive 2014/17, Article 41(b) of the directive requires Member States to ensure that the measures they adopt in transposing that directive cannot be circumvented in a way which could lead to consumers losing the protection granted by the directive as a result of the way in which agreements are worded.

- 38 In order to ensure that protection, it is for the national courts to satisfy themselves that the costs which are imposed on the consumer, irrespective of the duration of the credit agreement, do not objectively constitute remuneration of the creditor for temporary use of the capital which is the subject matter of that agreement or for services which, at the time of early repayment, had not yet been provided to the consumer. The creditor is, in that connection, required to show whether the costs concerned are regular payments.
- 39 In the light of all the foregoing considerations, the answer to the question referred is that Article 25(1) of Directive 2014/17 must be interpreted as not precluding national legislation which provides that the consumer's right to a reduction in the total cost of the credit in the event of early repayment of that credit includes only interest and costs which are dependent on the duration of the contract.

Costs

- 40 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 (Third Chamber) hereby rules:

Article 25(1) of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010

must be interpreted as not precluding national legislation which provides that the consumer's right to a reduction in the total cost of the credit in the event of early repayment of that credit includes only interest and costs which are dependent on the duration of the contract.

[Signatures]