

Case C-155/20

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

31 March 2020

Referring court:

Landgericht Ravensburg (Germany)

Date of the decision to refer:

5 March 2020

Applicants and defendants to the counterclaim:

RT

SV

BC

Defendants and counterclaimants:

Volkswagen Bank GmbH

Skoda Bank, a branch of Volkswagen Bank GmbH

Subject matter of the main proceedings

Consumer credit agreement — Right of withdrawal — Mandatory information — Directive 2008/48/EC — Forfeiture of the right of withdrawal — Abuse of rights

Subject matter and legal basis of the reference

Interpretation of EU law, Article 267 TFEU

Questions referred

1. Is Article 10(2)(l) 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 ('Directive 2008/48/EC') to be interpreted as meaning that the credit agreement
 - a) must specify the interest rate applicable in the case of late payments as applicable at the time of the conclusion of the credit agreement as an absolute number or, at the very least, the current reference interest rate (in this case the base rate in accordance with Paragraph 247 of the Bürgerliches Gesetzbuch (German Civil Code, BGB)), from which the interest rate applicable in the case of late payments is obtained by adding a premium (in this case of five percentage points in accordance with Paragraph 288(1), second sentence, of the BGB), as an absolute number?
 - b) must explain the specific arrangements for adjustment of the interest rate applicable in the case of late payments or, at the very least, must reference the national standards from which such arrangements follow (Paragraph 247 and Paragraph 288(1), second sentence, of the BGB)?
2. Is Article 10(2)(r) of Directive 2008/48/EC to be interpreted as meaning that the credit agreement must specify a particular method that the consumer can understand for calculating the compensation payable in the event of early repayment of the loan, so that the consumer can calculate at least approximately the compensation payable in the event of early termination?
3. Is Article 10(2)(s) of Directive 2008/48/EC to be interpreted as meaning
 - a) that the credit agreement must also specify the parties' rights of termination of the credit agreement regulated under national law, including in particular the borrower's right of termination with good cause under Paragraph 314 of the BGB, in the case of fixed-term loan agreements?
 - b) (if Question a) above is answered in the negative) that it does not preclude a national regulation which stipulates the designation of a national special right of termination as mandatory information within the meaning of Article 10(2)(s) of Directive 2008/48/EC?
 - c) that the credit agreement must indicate the time limit for and form of the declaration of termination prescribed for the purpose

of exercising the right of termination for all rights of termination of the parties to the credit agreement?

4. In the case of a consumer credit agreement, is the creditor excluded from invoking the plea of forfeiture in respect of the exercising of the right of withdrawal of the consumer in accordance with the first sentence of Article 14(1) of Directive 2008/48/EC
 - a) if some of the mandatory information required under Article 10(2) of Directive 2008/48/EC has been neither properly included in the credit agreement nor subsequently duly provided and the period of withdrawal in accordance with Article 14(1) of Directive 2008/48/EC has therefore not begun?
 - b) (if Question a) above is answered in the negative) if the forfeiture is decisively based on the lapse of time since conclusion of the agreement and/or on the complete fulfilment of the agreement by both parties and/or on the creditor's disposal of the recovered loan amount or the return of the loan security and/or (in the case of a purchase agreement linked with the credit agreement) on the use or sale of the financed object by the consumer, but the consumer had no knowledge of the continued existence of his right of withdrawal in the relevant period and when the relevant circumstances arose and is also not responsible for that lack of knowledge, and the creditor could also not assume that the consumer has such knowledge?
5. In the case of a consumer credit agreement, is the creditor excluded from invoking the plea of abuse of rights in respect of the exercising of the right of withdrawal of the consumer in accordance with the first sentence of Article 14(1) of Directive 2008/48/EC
 - a) if some of the mandatory information required under Article 10(2) of Directive 2008/48/EC has been neither properly included in the credit agreement nor subsequently duly provided and the period of withdrawal pursuant to Article 14(1) of Directive 2008/48/EC has therefore not begun?
 - b) (if Question a) above is answered in the negative) if the abuse of rights is decisively based on the lapse of time since conclusion of the agreement and/or on the complete fulfilment of the agreement by both parties and/or on the creditor's disposal of the recovered loan amount or the return of the loan security and/or (in the case of a purchase agreement linked with the credit agreement) on the use or sale of the financed object by the consumer, but the consumer had no knowledge of the continued existence of his right of withdrawal in the relevant period and when the relevant

circumstances arose and is also not responsible for that lack of knowledge, and the creditor could also not assume that the consumer has such knowledge?

Provisions of Community law cited

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 ('Directive 2008/48'), in particular Article 10(2)(l), (r) and (s)

Provisions of national law cited

Einführungsgesetz zum Bürgerlichen Gesetzbuche (Introductory Law to the German Civil Code, EGBGB), Article 247, Paragraphs 3, 6 and 7

Bürgerliches Gesetzbuch (German Civil Code, BGB), in particular Paragraphs 242, 247, 288, 314, 355, 356b, 357, 357a, 358, 492 and 495

Brief summary of the facts and procedure

- 1 The request for a preliminary ruling in Case C-155/20 is based on three joined proceedings.
- 2 In the RT v Volkswagen Bank case, the applicant concluded a loan agreement with Volkswagen Bank for a net loan amount of EUR 11 257.14 for the purpose of purchasing a VW Passat for private use. The vendor of the vehicle was a car dealership in Ravensburg (Germany). The purchase price was EUR 15 750. The applicant paid the vendor a deposit of EUR 5 000 and financed the balance of EUR 10 750 plus the one-off payment to insure the balance — described in the loan application as CPI (= Credit Protection Insurance) — of EUR 507.14, giving a total of EUR 11 257.14, by way of the aforesaid loan.
- 3 The defendant prepared and concluded the loan agreement with the vendor's assistance. In particular, the vendor acted as the defendant's loan broker and used the agreement forms provided by the defendant. It was agreed in the loan agreement that the applicant would repay the loan of EUR 11 927.04 (net loan amount of EUR 11 257.14 plus interest of EUR 669.90) in 48 equal monthly instalments of EUR 248.48 starting on 15 January 2015. The applicant duly paid the agreed instalments and redeemed the loan in full with the final instalment due on 15 December 2018.
- 4 Shortly before completely fulfilling his payment obligations under the loan agreement, the applicant withdrew his declaration of intention to conclude the loan agreement by letter of 22 November 2018. He believes that the withdrawal is effective, as the period of withdrawal had not begun due to erroneous mandatory information. He is therefore demanding repayment by the defendant of the loan

instalments paid to date and of the deposit paid to the vendor, in exchange for return of the vehicle.

- 5 The defendant considers the action to be unfounded, since it duly provided the applicant with all the mandatory information and the withdrawal is time-barred. The defendant also invokes the plea of forfeiture and abuse of rights, since the right of withdrawal does not serve to allow contractual obligations to be evaded long after the agreement has been concluded and after the contractual obligations have been performed without objection and the consideration has been claimed and used.
- 6 The facts in the BC v Volkswagen Bank case essentially correspond to those in the RT v Volkswagen Bank case, but with the following difference: Again, the applicant duly paid her loan instalments and redeemed the loan by payment of the final instalment due on 1 May 2018. By purchase agreement of 4 June 2018, she sold her vehicle back to the car dealership from which she had purchased it. By letter of 5 January 2019, the applicant withdrew her declaration of intention to conclude the loan agreement.
- 7 The applicant is of the opinion that, following the effective withdrawal of 5 January 2019, the loan agreement converted into a restitutionary obligation. The applicant is therefore demanding repayment by the defendant of the loan instalments paid to the defendant and of the deposit paid to the vendor, minus the resale price. The applicant is also seeking reimbursement of her out-of-court legal costs.
- 8 The defendant considers the action to be unfounded, since it duly provided the applicant with all the mandatory information and the withdrawal is time-barred. In the alternative, the defendant submits that the exercise of the right of withdrawal is in any case precluded by the plea of forfeiture and abuse of rights, as it had legitimately expected that the applicant would no longer make use of any right of withdrawal after the applicant had paid back the loan on 1 May 2018. The defendant also bases the plea of abuse of rights on the fact that the exercise of the right of withdrawal despite the prior sale of the vehicle back to the original vendor must be regarded as an abuse of rights.
- 9 The SV v Skoda Bank case essentially corresponds to the BC v Volkswagen Bank case, but with the difference that SV redeemed her loan in full with the final instalment of 3 August 2016, but only withdrew her declaration of intention to conclude the loan agreement by letter of 25 April 2019, that is to say almost three years later.

Brief summary of the basis for the reference

- 10 In this regard, reference is first made to paragraphs 7 to 44 of the summary of the request for a preliminary ruling in Case C-33/20. Even though the third question in the present case consists of three sub-questions and that in Case C-33/20

consists of two sub-questions, Questions 1 to 3 in the two requests for a preliminary ruling are otherwise identical, and the observations in the request for a preliminary ruling in Case C-155/20 regarding Questions 1 to 3 correspond to those in the request for a preliminary ruling in Case C-33/20. The present case additionally involves the considerations of the referring court on the subjects of forfeiture of the right of withdrawal and abuse of the right of withdrawal.

- 11 The referring court makes the following observations with regard to Questions 4.a) and b). The question as to the conditions under which a consumer has forfeited the exercise of his right of withdrawal in the case of credit agreements for consumers is not answered consistently in the national case-law and literature. In the view of the referring court, this depends on which legal principles apply to the plea of forfeiture of the right of withdrawal under EU law.
- 12 It refers to the order of 27 November 2007, *Diy-Mar Insaat Sanayi ve Ticaret and Akar v Commission*, C-163/07 P, EU:C:2007:717, paragraph 36, in which the Court of Justice ruled that expiry of a time limit cannot be cited against an entitled party where pardonable confusion could be caused in the mind of a party acting in good faith and exercising all the diligence required of a normally experienced person, and to the settled case-law according to which the obligated party may not validly rely on reasons of legal certainty in order to redress a situation caused by its own failure to comply with the requirement, under European Union law, to communicate information relating to the right of the entitled party to cancel or withdraw from the contract (judgment of 19 December 2013, *Endress*, C-209/12, EU:C:2013:864, paragraph 30).
- 13 The referring court also refers to the principle of effectiveness, which must be observed in respect of the question of forfeiture. The holder of the right may not be prevented from or impeded in exercising his right by the national legal system. The principle of effectiveness could also preclude recourse to national rules on good faith, as those rules might not coincide with the requirements under EU law. It is therefore debatable whether, in the case of inadequate provision of the mandatory information pursuant to Article 10(2) of Directive 2008/48, the plea of forfeiture may be invoked at all.
- 14 However, even if the plea of forfeiture were, in principle, considered to be admissible under EU law in cases of inadequate provision of mandatory information, it seems doubtful whether the length of time and other circumstances can be taken into account in the overall assessment of the factors militating for and against a forfeiture where the consumer was not aware nor should have been aware, during the period of relevance for the forfeiture and when the relevant circumstances arose, that his right of withdrawal continues to exist.
- 15 The referring court considers Questions 4.a) and b) to be material to the decision, since if either of those two questions is answered in the affirmative, the respective defendants will probably not be able to successfully rely on the respective applicants having forfeited their right of withdrawal.

- 16 With regard to Questions 5.a) and b) concerning the abuse of the right of withdrawal, the referring court states that there is likewise a divergence of views on this subject in case-law and literature. The referring court again considers it to be decisive which legal principles apply to the plea of abuse of the right of withdrawal pursuant to the first sentence of Article 14(1) of Directive 2008/48 under EU law.
- 17 It is debatable whether, in the case of inadequate provision of the mandatory information pursuant to Article 10(2) of Directive 2008/48, the plea of abuse of rights may not be invoked from the outset, since, according to settled case-law of the Court of Justice, the obligated party may not validly rely on reasons of legal certainty in order to redress a situation caused by its own failure to comply with the requirement, under European Union law, to communicate information relating to the right of the entitled party to cancel or withdraw from the contract (judgment of 19 December 2013, *Endress*, C-209/12, EU:C:2013:864, paragraph 30).
- 18 Even if the plea of abuse of rights were, in principle, considered to be admissible under EU law in cases of inadequate provision of mandatory information, it is nevertheless debatable to what extent the length of time and other circumstances can be taken into account in the overall assessment of the factors militating for and against an abuse of rights. It is possible that these circumstances can only be taken into account if the consumer was aware or should have been aware, during the relevant period, that his right of withdrawal continues to exist.
- 19 The referring court considers Questions 5.a) and b) to be material to the decision, since if either of those two questions is answered in the affirmative, the respective defendants will probably not be able to successfully rely on the respective applicants having abused their right of withdrawal.