

Case C-677/23

**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:

14 November 2023

Referring Court:

Krajský súd v Prešove (Regional Court, Prešov) (Slovakia)

Date of the decision to refer:

12 October 2023

Applicants:

A.B.

F.B.

Defendant:

Slovenská sporiteľňa, a.s.

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Subject matter of the main proceedings

Appeal against a judgment in proceedings for a declaration that a loan is interest-free and charge-free, for recovery of unjust enrichment, and for a declaration that contractual terms are unfair.

Subject matter and legal basis of the request

The referring court requests an interpretation of Article 10(2)(c) of Directive 2008/48 in connection with the requirement to specify the duration of a credit agreement in a clear and concise manner and asks whether the specification in a credit agreement of the duration of that agreement corresponds to the period defined as ‘during ... a commercial transaction’ within the meaning of Article 3(1) of Directive 2005/29. The referring court also requests an interpretation of Article 10(2)(g) of Directive 2008/48 in connection with the requirement to specify in a clear and concise manner in a credit agreement all the assumptions used in order to calculate the annual percentage rate of charge.

Questions referred for a preliminary ruling

A.1 Must Article 10(2)(c) 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) (‘Directive 2008/48’) be interpreted as meaning that the specification of the duration of the credit agreement in a clear and concise manner in the contractual terms:

- requires the duration of the credit agreement to be specified expressly, for example by stating the date of the conclusion and expiry of the agreement (from ... to ...) or, alternatively, by using calendar units of time such as, for example, months or years (e.g. for a period of one year), or
- is it sufficient if it is done in such a way that the consumer is to calculate the duration of the agreement or determine it in some other way on the basis of the contractual terms, for example on the basis of the number of monthly instalments or the time at which the credit is repaid in full?

A.2 Must Article 10(2)(c) of Directive 2008/48 be interpreted as meaning that the specification in a credit agreement of the duration of that agreement corresponds to a period defined as ‘during ... a commercial transaction’ within the meaning of Article 3(1) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer

commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Directive 2005/29')?

B Must Article 10(2)(g) of Directive 2008/48, in the sections stating 'in a clear and concise manner' and 'all the assumptions used in order to calculate that rate', be interpreted as meaning that:

- the assumptions used in order to calculate the annual percentage rate of charge (APRC) must be expressly identified in the agreement as the assumptions used in order to calculate the APRC, or
- the consumer is him or herself to determine the relevant assumptions used in order to calculate the APRC on the basis of the contractual terms?

Provisions of European Union 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 (OJ 2008 L 133, p. 66) ('Directive 2008/48'), Articles 5(1)(g), 6(1)(f), 10(2)(c), (d), (f), (g) and (h), 10(5)(f), and 19(5), and Annex III, point 3

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), (OJ 2005 L 149, p. 22) ('Directive 2005/29'), Articles 3(1) and 7(1)

Provisions of national law cited

Zákon č. 129/2010 Z. z. o spotrebiteľských úveroch a o iných úveroch a pôžičkách pre spotrebiteľov a o zmene a doplnení niektorých zákonov (Law No 129/2010 on consumer credit and other forms of credit and loans for consumers, amending certain other laws; 'Law No 129/2010'): Articles 9(2) and 11(1).

Article 9(2) of Law No 129/2010 provides that 'a consumer credit agreement must, in addition to the general requirements set out in the Občiansky zákonník [Civil Code], state the following:

[...]

(f) the duration of the consumer credit agreement and the date of the final repayment of the consumer credit,

(g) the total amount and specific currency of the consumer credit and the conditions governing the drawdown of the credit,

[...]

(i) the borrowing rate, the conditions governing the application thereof, the index or reference rate to which the borrowing rate is linked, and also the periods during which the borrowing rate is changed, and the conditions for and the way in which the change is to take place; if different borrowing rates apply in different circumstances, the abovementioned information shall be provided in respect of all the different borrowing rates applicable,

,

(j) the annual percentage rate of charge and the total amount the consumer is required to pay, calculated on the basis of current data at the time the consumer credit agreement is concluded; all the assumptions used in calculating the annual percentage rate of charge,

(k) the amount, number and frequency of payments and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement,

(l) [...],

(m) a concise statement showing the periods and conditions for the payment of the interest and any associated recurrent or non-recurrent charges, where the charges and interest are to be paid without capital amortisation,

(n) where applicable, the charges for maintaining one or more accounts recording both payment transactions and drawdowns and, if the opening of an account is obligatory, and also the charges for using a means of payment for both payment transactions and drawdowns, and any other charges deriving from the consumer credit agreement, and the conditions under which those charges may be changed,

[...]

(r) the amount of the charges born by the consumer for notarial acts, in so far as they are known to the creditor.

[...]’.

Under Article 11(1) of that law, ‘a consumer credit granted is to be regarded as interest-free and free of charges if:

[...]

(b) the consumer credit agreement is not in written form in accordance with Article 9(1) and does not contain the elements specified in Article 9(2)(a) to (k), (r) and (y),

[...]’.

Zákon č. 40/1964 Zb., občiansky zákonník (Law No 40/1964 establishing the Civil Code), ‘the Civil Code’, Article 122(1) and (2).

Under Article 122(1) of the Civil Code, ‘a period expressed in days shall commence from the day following the event on which its commencement depends. Half a month shall be deemed to be fifteen days’.

Under 122(2) of the Civil Code, ‘the end of a period expressed in weeks, months or years shall fall on the day by which, in terms of its name or number, corresponds to the day on which the event, from which the period begins, falls. If there is no such day in the last month, the end of the period shall fall on the last day of that month’.

Succinct presentation of the facts and procedure in the main proceedings

- 1 The applicants in the present case concluded a consumer credit agreement with the defendant bank on 29 October 2014 and the amount of the credit was transferred to their bank account on the same day. The credit agreement was concluded for a fixed term and the applicants undertook to repay the credit in 108 monthly instalments of EUR 54.20 each. The monthly instalments were to be paid by the twentieth of each month. The first instalment was to be paid on 20 December 2014 and the final repayment date of the loan was set at 20 November 2023. The annual percentage rate of charge (APRC) was set at 17.93% and the total amount to be repaid was EUR 5 858.98.
- 2 The paragraph of the consumer credit agreement entitled ‘Assumptions used to calculate the APRC’ read: ‘The credit has been granted immediately, in full; the borrower shall fulfil his obligations under the terms and conditions and within the time limits set out in the credit agreement; the interest rate shall apply until the end of the credit relationship’. Paragraph 12 of Part III of the agreement stipulated that ‘the agreement shall be concluded for a [...] fixed period until the full settlement of all relationships arising in connection with the credit granted’.
- 3 The applicants challenged the credit agreement in an action brought before the Okresný súd Prešov (District Court, Prešov, Slovakia), claiming that the agreement infringes the applicants’ rights as consumers because it does not specify the duration of the agreement or state the assumptions used to calculate the APRC.

- 4 The court of first instance dismissed the action on the ground that that it is sufficient that the duration of the agreement can be inferred from the terms of the credit agreement, and specifically the number of monthly instalments and the dates of the first and final instalment to be paid.
- 5 The applicants lodged an appeal against that judgment with the Krajský súd v Prešove (Regional Court in Prešov, Slovakia), which is the national court making the present reference for a preliminary ruling (the ‘referring court’).

The essential arguments of the parties in the main proceedings

- 6 The applicants argue that the consumer credit agreement repeatedly infringes their rights as consumers and claim that the agreement does not specify the duration of the agreement and state the assumptions used to calculate the APRC. If the applicants’ claims were found to be well-founded, they could seek penalties for infringement of their rights as consumers, even in the form of deprivation of the bank of its right to interest.
- 7 The applicants consider that the section of the agreement stating that ‘the agreement shall be concluded for a fixed period until the full settlement of all relationships arising in connection with the credit granted’ is unclear and replaces the obligatory specification of the duration of the credit agreement. The applicants take the position that the duration of the credit agreement should be set out clearly in the credit agreement so that the consumer does not have to establish it by inference from other terms of the agreement.

Succinct presentation of the reasoning in the request for a preliminary ruling

The first question:

- 8 The referring court notes, first of all, that the Court of Justice in Case C-42/15 has already interpreted the clarity and precision of the obligatory information in a consumer credit agreement, specifically with regard to information on the amount, number and frequency of repayments. In its judgment of 9 November 2016, *Home Credit Slovakia*, C-42/15, EU:C:2016:842, paragraph 50, the Court of Justice pointed out that a credit agreement need not indicate the specific date on which every payment falls due, ‘provided that the terms of the agreement allow the consumer to ascertain the dates of those payments without difficulty and with certainty’.
- 9 However, the referring court considers that information about the duration of the agreement cannot be established without difficulty on the basis of other contractual terms, such as those relating to instalments, or by reference to [the date of] full repayment of all liabilities.

- 10 The referring court considers that the payment dates of the first and final instalments may not correspond to the actual duration of the agreement. The particular point here is that the subject matter of the credit agreement is a service which, unlike the purchase of goods, is provided for a fixed term and the consumer is entitled to take advantage of the credit service for the entire duration of its provision.
- 11 Although, in the view of the court of first instance, the duration of the agreement may also be determined on the basis of an agreement under which the contractual relationship is entered into for a fixed term until all the relationships arising on the basis of or in connection with the loan have been fully settled, the referring court considers that, since the directive requires the duration of the agreement to be specified in a clear and concise manner, it is very difficult to determine the precise time frame of the credit service, and thus also the duration thereof and the specific moment at which all the liabilities are actually settled. Although the credit agreement is concluded for a fixed period, the duration of the agreement until all liabilities have been fully settled is not specified.
- 12 In that regard, the referring court refers to the EU legislation on the concept of the 'duration of the credit agreement'. In its view, it is clear that Directive 2008/48 places systemic importance on the duration of the agreement, which reinforces the conclusion that it is not sufficient for consumers to be able to calculate or presume the duration of the agreement. It may be considered that if the consumer had to calculate (by reference to the instalments) or presume (by reference to the final repayment of the credit) the duration of the credit agreement, such calculations or presumptions as to the duration of the agreement do not appear to meet the requirement relating to clarity and conciseness laid down in Article 10(2) of Directive 2008/48.
- 13 Slovak law, in Paragraph 122 of the Civil Code, provides for the calculation of time in, *inter alia*, months and years, and therefore, in the view of the referring court, the specification of the duration of the agreement in months or years could correspond to the express specification of the duration of the credit agreement and thus satisfy the requirement relating to clarity and conciseness laid down in Directive 2008/48.
- 14 The referring court also takes the position that the precise limits of the duration of a credit agreement are important for consumers, not only from the perspective of exercising rights over the duration of the agreement but also from the perspective of determining when there is a period before, during and after a commercial transaction in relation to a product within the meaning of Article 3(1) of Directive 2005/29.
- 15 The referring court sees a link between Directive 2005/29, Directive 2008/48 and Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (see judgment of the Court of Justice of 15 March 2012, *Pereničová and Perenič*, C-453/10, EU:C:2012:144). Although the referring court is not seeking

an interpretation of Directive 93/13, it cannot be ruled out that, in particular with regard to the requirement that contractual terms be specific, it will be important to attain the objectives of Directive 93/13 (see judgment of the Court of Justice of 20 September 2017, *Andriuc and Others*, C-186/16, EU:C:2017:703). The proceedings also involve an assessment of whether the assumptions used to calculate the APRC are appropriate, and thus the referring court also intends to address unfair and misleading commercial practices, which gives rise to the question whether the period after the commercial transaction within the meaning of Article 3(1) of Directive 2005/29 corresponds to the period after the end of the service, which could overlap with the period after the end of the duration of the agreement.

The second question:

- 16 It is clear from the wording of Article 10(2) of Directive 2008/48 that it requires the credit agreement to specify the assumptions used in order to calculate the APRC [subparagraph (g)], even though the same Article 10(2) also requires the separate specification of individual assumptions, such as, for example, the amount of credit [subparagraph (d)], the amount, number and frequency of payments [subparagraph (h)], and the charges [subparagraph (k)]. In this context, the question arises as to why Directive 2008/48 requires that, in addition to the APRC itself, all assumptions used in order to calculate the APRC also be specified, when all assumptions necessary in order to calculate the APRC are required separately as obligatory information in the credit agreement.
- 17 The referring court considers the assumptions used in order to calculate the APRC must be specified in view of the requirement relating to transparency of the information on the APRC and, maybe, the possibility of verifying that that information is correct. That view is supported by the requirement contained in the introduction to Article 10(2) that those assumptions be specified ‘in a clear and concise manner’. The referring court considers that the average consumer is unable to identify all the assumptions used in order to calculate the APRC on the basis of an agreement, which has a large number of pages. In the present case, the agreement and the Standard European Consumer Credit Information form run to ten pages.
- 18 If the individual constituents of the APRC were specified in the credit agreement as assumptions used in order to calculate the APRC, the consumer would be much better informed. This is most clearly seen in the case of the charge for maintaining a credit account [Article 10(2)(k) of Directive 2008/48], where the creditor does not include such a charge in the calculation of the APRC, assuming that such a charge has been voluntarily agreed, although in fact the consumer has not voluntarily agreed to it, and it is not clear from the wording of the agreement whether or not such a charge has been included in the calculation of the APRC. A requirement to identify such a charge as an ‘assumption used in order to calculate the APRC’ would make it possible to determine whether the creditor had included such a charge in the calculations.

- 19 The referring considers that the directive requires not only that the assumptions used in order to calculate the APR be specified, but also that they be specified in a clear and concise manner. That requirement is fulfilled if the assumptions are set out in summary form, otherwise the requirement relating clarity and conciseness may not be satisfied since the formula in point 1 of Annex I to Directive 2008/48 is not in itself straightforward and, if the consumer himself has to identify in the agreement the various assumptions used in order to calculate the APRC, such an arrangement (formula and the need to identify them in an extensive agreement) does not appear to be clear and concise.
- 20 The referring court considers that Directive 2008/48 [Articles 5(1)(g), 6(1)(f), 10(5)(f), 19(5), point 3 of Annex III] repeatedly specifies the assumptions used in order to calculate the APRC as a legal arrangement, which indicates the validity of the assumptions used in order to calculate the APRC, and implicitly also requires that all the assumptions used to calculate the APRC be set out in summary form.

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