

C 234e11 September 2019 (\*)

(Reference for a preliminary ruling — Consumer protection — Credit agreements for consumers — Directive 2008/48/EC — Article 16(1) — Early repayment — Right of the consumer to a reduction in the total cost of the credit, consisting of the interest and the costs for the remaining duration of the contract)

In Case C-383/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy Lublin-Wschód w Lublinie z siedzibą w Świdniku (Lublin-Wschód District Court in Lublin with its seat in Świdnik, Poland), made by decision of 28 May 2018, received at the Court on 11 June 2018, in the proceedings

**Lexitor sp. z o.o.**

v

**Spółdzielcza Kasa Oszczędnościowo — Kredytowa im. Franciszka Stefczyka,**

**Santander Consumer Bank S.A.,**

**mBank S.A.,**

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader (Rapporteur), A. Rosas, L. Bay Larsen and M. Safjan, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Spółdzielcza Kasa Oszczędnościowo — Kredytowa im. Franciszka Stefczyka, by P. Chojecki and P. Skurzyński, radcowie prawni, and by M. Kowara, adwokat,
- Santander Consumer Bank S.A., by P. Kończal and P. Muciek, and by J. Wojnarowska, radca prawny,
- mBank S.A., by A. Opalski, radca prawny,
- the Polish Government, by B. Majczyna, acting as Agent,
- the Spanish Government, by S. Jiménez García, acting as Agent,
- the European Commission, by A. Szmytkowska, G. Goddin and C. Valero, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 May 2019,

gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 16(1) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66).

2 The request has been made in the course of three sets of proceedings between Lexitor sp. z o.o. ('Lexitor') and Spółdzielcza Kasa Oszczędnościowo — Kredytowa im. Franciszka Stefczyka ('SKOK'), Santander Consumer Bank S.A. ('Santander Consumer Bank') and mBank S.A. ('mBank') respectively concerning a reduction in the total cost of consumer credit on account of the early repayment of that credit.

## **Legal context**

### *European Union law*

#### *Directive 87/102/EEC*

3 Article 8 of Council Directive 87/102/EEC of 22 December 1986 on the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48), which was repealed and replaced by Directive 2008/48 with effect from 11 June 2010, provided:

'The consumer shall be entitled to discharge his obligations under a credit agreement before the time fixed by the agreement. In this event, in accordance with the rules laid down by the Member States, the consumer shall be entitled to an equitable reduction in the total cost of the credit.'

#### *Directive 2008/48*

4 Recitals 7, 9 and 39 of Directive 2008/48 state:

'(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. In view of the continuously developing market in consumer credit and the increasing mobility of European citizens, forward-looking Community legislation which is able to adapt to future forms of credit and which allows Member States the appropriate degree of flexibility in their implementation should help to establish a modern body of law on consumer credit.

...

(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 ...

...

(39) The consumer should have the right to discharge his obligations before the date agreed in the credit agreement. In the case of early repayment, either in part or in full, the creditor should be

entitled to compensation for the costs directly linked to the early repayment, taking into account also any savings thereby made by the creditor. However, in order to determine the method of calculating the compensation, it is important to respect several principles. The calculation of the compensation due to the creditor should be transparent and comprehensible to consumers already at the pre-contractual stage and in any case during the performance of the credit agreement. In addition, the calculation method should be easy for creditors to apply, and supervisory control of the compensation by the responsible authorities should be facilitated. ...'

5 Under Article 3 of that directive:

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

(a) "consumer" means a natural person who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession;

...

(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;

...'

6 Article 16 of that directive, entitled 'Early repayment', provides:

'1. The consumer shall be entitled at any time to discharge fully or partially his obligations under a credit agreement. In such cases, he 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.

2. In the event of early repayment of credit the creditor shall be entitled to fair and objectively justified compensation for possible costs directly linked to early repayment of credit provided that the early repayment falls within a period for which the borrowing rate is fixed.

Such compensation may not exceed 1% of the amount of credit repaid early, if the period of time between the early repayment and the agreed termination of the credit agreement exceeds 1 year. If the period does not exceed 1 year, the compensation may not exceed 0.5% of the amount of credit repaid early.

3. Compensation for early repayment shall not be claimed:

(a) if the repayment has been made under an insurance contract intended to provide a credit repayment guarantee;

(b) in the case of overdraft facilities; or

(c) if the repayment falls within a period for which the borrowing rate is not fixed.

4. Member States may provide that:

- (a) such compensation may be claimed by the creditor only on condition that the amount of the early repayment exceeds the threshold defined by national law. That threshold shall not exceed EUR 10 000 within any period of 12 months;
- (b) the creditor may exceptionally claim higher compensation if he can prove that the loss he suffered from early repayment exceeds the amount determined under paragraph 2.

If the compensation claimed by the creditor exceeds the loss actually suffered, the consumer may claim a corresponding reduction.

In this case, the loss shall consist of the difference between the initially agreed interest rate and the interest rate at which the creditor can lend out the amount repaid early on the market at the time of early repayment, and shall take into account the impact of early repayment on administrative costs.

5. Any compensation shall not exceed the amount of interest the consumer would have paid during the period between the early repayment and the agreed date of termination of the credit agreement.'

7 Under Article 22 of that directive, entitled 'Harmonisation and imperative nature of this Directive':

'1. Insofar as this Directive contains harmonised provisions, Member States may not maintain or introduce in their national law provisions diverging from those laid down in this Directive.

...

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.'

### ***National law***

8 The ustawa o kredycie konsumenckim (Law on consumer credit) of 12 May 2011 (Dziennik Ustaw No 126, item 715), in the version relevant to the disputes in the main proceedings ('the Law on consumer credit'), transposes Directive 2008/48 into Polish law.

9 Under Article 5(6) of that Law, the 'total cost of the credit' is defined as all the costs which the consumer is required to pay in connection with the credit agreement, in particular interest, fees, commissions, taxes and margins which are known to the creditor, and costs in respect of ancillary services, in particular insurance, if these must be paid in order to obtain the credit or to obtain it on the terms and conditions marketed, except for notarial costs borne by the consumer.

10 Pursuant to Article 49(1) of that Law, in the case of full repayment of the credit before the date indicated in the agreement, the total cost of the credit is to be reduced by the costs relating to the remaining duration of the contract, even if the consumer had borne those costs before the repayment.

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

11 The three cases in the main proceedings, which have been joined by the referring court, arise from the conclusion of consumer credit agreements between a consumer within the meaning of Article 3(a) of Directive 2008/48 and SKOK, Santander Consumer Bank, and mBank, respectively. Each of the credit agreements provided for the payment to the bank concerned of a commission the amount of which was not dependent on the duration of that agreement, namely 1 591.35 Polish zlotys (PLN) (approximately EUR 380), PLN 4 845 (approximately EUR 1 150) and PLN 3 070.40 (approximately EUR 730), respectively.

12 After early repayment of their loans, the consumers assigned to Lexitor, a company governed by Polish law offering legal services to consumers, their claims against the banks resulting from the early repayment.

13 Subsequently, Lexitor, in its capacity as assignee of the claims, requested SKOK, Santander Consumer Bank, and mBank to reimburse part of the amount of the commissions paid by the consumers, together with default interest.

14 As the credit institutions did not accede to those requests, Lexitor brought three actions, on 8 January 2018, 29 December 2017 and 26 February 2018 respectively, before the referring court seeking an order that Santander Consumer Bank, SKOK and mBank be ordered to pay part of those commissions, relating to the remaining duration of each of the credit agreements, together with default interest.

15 The defendants in the main proceedings have raised objections to the orders for payment issued by the referring court.

16 The referring court is uncertain whether, in a situation such as those at issue in the main proceedings, the right of the consumer to a reduction in the total cost of the credit in the event of early repayment of that credit as referred to in Article 16(1) of Directive 2008/48 also concerns costs which are not dependent on the duration of the contract. In that regard, it emphasises that, although certain Polish courts have answered that question in the negative, on the basis of the Law on consumer credit, another court has, by contrast, answered in the affirmative, relying on an interpretation of that Law in the light of Article 16 of that directive.

17 The referring court considers that that article must be interpreted as meaning that the reduction in the total cost of the credit includes costs which are not dependent on the duration of the contract. In its view, that interpretation would make it possible to protect the interests of consumers and would ensure a balance between the parties. The creditor could, in the case of early repayment of the contract, re-use the sum repaid in order to grant a new credit and thus benefit from a new commission. Moreover, the opposite solution might lead to a practice in which creditors would apply only costs which, formally, are not dependent on the duration of the credit agreement, in order to prevent them from being concerned by the reduction in the total cost of the credit.

18 In those circumstances, the Sąd Rejonowy Lublin-Wschód w Lublinie z siedzibą w Świdniku (Lublin-Wschód District Court in Lublin, with its seat in Świdnik, Poland) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 16(1), [read] in conjunction with Article 3(g), of [Directive 2008/48] to be interpreted as meaning that a consumer, in the event of early repayment of his obligations under a credit agreement, is entitled to a reduction in the total [cost] of the credit, including ... costs the amount of which does not depend on the duration of that credit agreement?’

19 The referring court also requested that the case be dealt with under the expedited procedure, pursuant to Article 105(1) of the Rules of Procedure of the Court of Justice. That request was refused by order of the President of the Court of 17 September 2018, *Lexitor* (C-383/18, not published, EU:C:2018:769).

### Consideration of the question referred

20 As a preliminary point, it should be specified that the fact that the disputes in the main proceedings are only between sellers or suppliers does not preclude the application of Directive 2008/48. Indeed, as the Advocate General noted in point 24 of his Opinion, the scope of that directive is not dependent on the identity of the parties to the dispute, but on the capacity of the parties to the credit agreement. In the present case, the claims which are the subject of the disputes in the main proceedings are derived from three consumer credit agreements concluded between three consumers and the three defendants in the main proceedings, and were assigned to the applicant in the main proceedings following the early repayment of those agreements.

21 By its question, the referring court asks, in essence, whether Article 16(1) of Directive 2008/48 is to be interpreted as meaning that the right to a reduction in the total cost of the credit in the event of early repayment of that credit also includes costs which are not dependent on the duration of the contract.

22 Article 16(1) of Directive 2008/48, read in the light of recital 39 thereof, provides for the consumer to be entitled to repay the contract early and to receive 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.

23 So far as concerns the ‘total cost of the credit’, Article 3(g) of that directive defines it as 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. That definition does not therefore contain any restriction relating to the duration of the credit agreement at issue.

24 In that regard, as is apparent in particular from the request for a preliminary ruling and from the observations submitted by both the defendants in the main proceedings and the other interested parties in the present case, the reference to ‘the remaining duration of the contract’ in Article 16(1) of Directive 2008/48 could be interpreted either as meaning that the costs concerned by the reduction in the total cost of the credit are limited to those which depend objectively on the duration of the contract or those which are presented by the creditor as relating to a particular stage of the conclusion or performance of the contract, or as indicating that the calculation method to be used for the purposes of that reduction consists of taking into account all costs borne by the consumer and then reducing the amount of those costs in proportion with the remaining duration of the contract.

25 It is not possible to determine the exact extent of the reduction in the total cost of the credit provided for in Article 16(1) of Directive 2008/48 from a comparative analysis of the different language versions of that provision. On the one hand, the Dutch, Polish and Romanian language versions of that provision suggest a reduction in the costs associated with the remaining contract period (*‘een verlaging van de totale kredietkosten, bestaande uit de interesten en de kosten gedurende de resterende duur van de overeenkomst’*, *‘obniżki całkowitego kosztu kredytu, na którą składają się odsetki i koszty przypadające na pozostały okres obowiązywania umowy’* and *‘o reducerea a costului total al creditului, care constă în dobânda și în costurile aferente duratei*

*restante a contractului*). On the other hand, the German and English language versions of that provision are characterised by a certain ambiguity and suggest that the costs associated with that period are to serve as an indication for the calculation of the reduction (*'das Recht auf Ermäßigung der Gesamtkosten des Kredits, die sich nach den Zinsen und den Kosten für die verbleibende Laufzeit des Vertrags richtet'* and *'reduction consisting of the interest and the costs for the remaining duration of the contract'*). The Italian language version of that provision refers, like the French language version, to interest and costs 'owed' (*'dovuti'*) for the remaining duration of the contract. Lastly, the Spanish language version of Article 16(1) of Directive 2008/48 requires a reduction that includes the costs corresponding to the remaining duration of the contract (*'una reducción del coste total del crédito, que comprende los intereses y costes correspondientes a la duración del contrato que quede por transcurrir'*).

26 Nevertheless, according to the settled case-law of the Court, it is necessary to interpret that provision not only by reference to its wording but also by reference to the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgment of 10 July 2019, *Bundesverband der Verbraucherzentralen und Verbraucherverbände*, C-649/17, EU:C:2019:576, paragraph 37).

27 Concerning the context, it should be borne in mind that Article 8 of Directive 87/102, which was repealed and replaced by Directive 2008/48, provided that, 'in accordance with the rules laid down by the Member States, the consumer shall be entitled to an equitable reduction in the total cost of the credit'.

28 Thus, it must be held that Article 16(1) of Directive 2008/48 gave concrete expression to the right of the consumer to a reduction in the cost of the credit in the event of early repayment by replacing the general concept of 'an equitable reduction' with the more specific concept of 'a reduction in the total cost of the credit' and by adding that that reduction must cover 'the interest and the costs'.

29 As regards the objective of Directive 2008/48, the Court has consistently held that that directive is intended to guarantee a high level of consumer protection (see, to that effect, judgment of 6 June 2019, *Schyns*, C-58/18, EU:C:2019:467, paragraph 28 and the case-law cited). That system of protection is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge (see, to that effect, judgment of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 63).

30 In order to guarantee that protection, Article 22(3) of Directive 2008/48 requires the Member States to ensure that the provisions they adopt in implementation of that directive cannot be circumvented as a result of the way in which agreements are formulated.

31 However, the effectiveness of the right of the consumer to a reduction in the total cost of the credit would be reduced if the reduction of the credit 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, as was noted by the Advocate General in point 54 of his Opinion, the costs and the breakdown thereof are determined unilaterally by the bank and the charging of fees may include a certain profit margin.

32 In addition, as is emphasised by the referring court, limiting the possibility of reducing 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.

33 Furthermore, as was emphasised by the Advocate General in points 53 and 55 of his Opinion, 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.

34 It should be added that including costs which are not dependent on the duration of the contract in the reduction in the total cost of the credit is not likely to be disproportionately disadvantageous to the creditor. Indeed, it should be borne in mind that the interests of the creditor are taken into account by means of, first, Article 16(2) of Directive 2008/48, which provides, to the creditor's benefit, for the right to compensation for possible costs directly linked to early repayment of the contract and, second, Article 16(4) of that directive, which provides the Member States with an additional opportunity to ensure that that compensation is adapted to the conditions of the credit and the market in order to protect the creditor's interests.

35 Lastly, it should be noted that, in the event of early repayment of the credit, the creditor is recovering the sum borrowed ahead of schedule, which is then available for the conclusion, as the case may be, of a new credit agreement.

36 In the light of all the foregoing considerations, the answer to the question referred for a preliminary ruling is that Article 16(1) of Directive 2008/48 must be interpreted as meaning that the right of the consumer to a reduction in the total cost of the credit in the event of early repayment of the credit includes all the costs imposed on the consumer.

### Costs

37 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 (First Chamber) hereby rules:

**Article 16(1) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC must be interpreted as meaning that the right of the consumer to a reduction in the total cost of the credit in the event of early repayment of the credit includes all the costs imposed on the consumer.**