

Fifth, the General Court made an error in law and distorted the facts regarding the Commission's failure to open a formal investigation procedure.

Request for a preliminary ruling from the Landgericht Ravensburg (Germany) lodged on 12 April 2021 — CR, AY, ML, BQ v Volkswagen Bank GmbH, Audi Bank

(Case C-232/21)

(2021/C 297/20)

Language of the case: German

Referring court

Landgericht Ravensburg

Parties to the main proceedings

Applicants: CR, AY, ML, BQ

Defendants: Volkswagen Bank GmbH, Audi Bank

Questions referred

1. Statutory presumption in accordance with Article 247(6), second paragraph, third sentence, and Article 247(12), first paragraph, third sentence, of the Einführungsgesetz zum Bürgerlichen Gesetzbuche (Introductory Law to the German Civil Code, 'the EGBGB')

- (a) Inasmuch as they state that contract terms which conflict with the requirements of Article 10(2)(p) of Directive 2008/48/EC⁽¹⁾ satisfy the requirements of Article 247(6), second paragraph, first and second sentences, of the EGBGB, and the requirements laid down in Article 247(12), first paragraph, second sentence, point 2(b), of the EGBGB, are Article 247(6), second paragraph, third sentence, and Article 247(12), first paragraph, third sentence, of the EGBGB incompatible with Article 10(2)(p) and Article 14(1) of Directive 2008/48/EC?

If so:

- (b) Does it follow from EU law, in particular from Article 10(2)(p) and Article 14(1) of Directive 2008/48/EC, that inasmuch as they state that contract terms which conflict with the requirements of Article 10(2)(p) of Directive 2008/48/EC satisfy the requirements of Article 247(6), second paragraph, first and second sentences, of the EGBGB, and the requirements laid down in Article 247(12), first paragraph, second sentence, point 2(b), of the EGBGB Article 247(6), second paragraph, third sentence, and Article 247(12), first paragraph, third sentence, of the EGBGB must be disapplied?

Irrespective of the answers to Questions 1(a) and 1(b):

2. Mandatory information required under Article 10(2) of Directive 2008/48/EC

- (a) Is Article 10(2)(p) of Directive 2008/48/EC to be interpreted as meaning that the amount of interest payable per day, which must be specified in the credit agreement, must be calculated from the contractual borrowing rate specified in the agreement?

(b) Article 10(2)(r) of Directive 2008/48/EC:

- (aa) Is that provision to be interpreted as meaning that the information in the credit agreement concerning the compensation payable in the event of early repayment of the loan must be sufficiently precise to enable the consumer to calculate at least approximately the compensation payable?

(should Question (aa) above be answered in the affirmative)

- (bb) Do Article 10(2)(r) and the second sentence of Article 14(1) of Directive 2008/48/EC preclude national legislation pursuant to which, in the case of incomplete information within the meaning of Article 10(2)(r) of that directive, the period for withdrawal nevertheless commences on conclusion of the agreement and only the creditor's right to compensation for early repayment of the credit is lost?

If at least one of the above Questions 2(a) and 2(b) is answered in the affirmative:

- (c) Is Article 14(1), second sentence, point (b), of Directive 2008/48/EC to be interpreted as meaning that the period of withdrawal does not begin until the information required under Article 10(2) of Directive 2008/48/EC has been provided fully and correctly?

If not:

- (d) What are the relevant criteria for determining whether the period of withdrawal is to begin in spite of the fact that that information is incomplete or incorrect?

If the above Question 1(a) and/or one of Questions 2(a) and 2(b) is answered in the affirmative:

3. Forfeiture of the right of withdrawal in accordance with Article 14(1), first sentence, of Directive 2008/48/EC:

- (a) Is the right of withdrawal in accordance with Article 14(1), first sentence, of Directive 2008/48/EC subject to forfeiture?

If so:

- (b) Is forfeiture a time limit on the right of withdrawal which must be regulated by statute?

If not:

- (c) Does forfeiture depend, from a subjective standpoint, on the consumer knowing that his or her right of withdrawal continued to exist or, at least, on his or her ignorance being ascribed to gross negligence? Does the same apply to agreements that have been terminated?

If not:

- (d) Does the creditor's facility to provide the borrower subsequently with the information required under Article 14(1), second sentence, point (b), of Directive 2008/48/EC and thus trigger the period of withdrawal preclude the application of the rules of forfeiture in good faith? Does the same apply to agreements that have been terminated?

If not:

- (e) Is this compatible with the established principles of international law by which the German courts are bound under the Grundgesetz (Basic Law)?

If so:

- (f) How are German legal practitioners to resolve a conflict between the binding prescripts of international law and the prescripts of the Court of Justice of the European Union?

4. Assumption of an abuse of the consumer's right of withdrawal under Article 14(1), first sentence, of Directive 2008/48/EC:

- (a) Is it possible to abuse the right of withdrawal under Article 14(1), first sentence, of Directive 2008/48/EC?

If so:

- (b) Is the assumption of an abuse of the right of withdrawal a limitation of the right of withdrawal which must be regulated by statute?

If not:

- (c) Does the assumption of an abuse of the right of withdrawal depend, from a subjective standpoint, on the consumer knowing that his or her right of withdrawal continued to exist or, at least, on his or her ignorance being ascribed to gross negligence? Does the same apply to agreements that have been terminated?

If not:

- (d) Does the creditor's facility to provide the consumer subsequently with the information required under Article 14(1), second sentence, point (b), of Directive 2008/48/EC and thus trigger the period of withdrawal preclude the assumption of an abuse of rights in the exercise of the right of withdrawal in good faith? Does the same apply to agreements that have been terminated?

If not:

- (e) Is this compatible with the established principles of international law by which the German courts are bound under the Basic Law?

If so:

- (f) How are German legal practitioners to resolve a conflict between the binding prescripts of international law and the prescripts of the Court of Justice of the European Union?

Irrespective of the answers to Questions 1 to 4 above:

5. (a) Is it compatible with EU law if, under national law, in the case of a credit agreement linked to a contract of sale, following the effective exercise of the consumer's right of withdrawal under Article 14(1) of Directive 2008/48/EC,
- (aa) a consumer's claim against the creditor for repayment of the loan instalments paid does not arise until he or she has in turn returned the object purchased to the creditor or provided proof that he or she has dispatched it to the creditor?
- (bb) an action brought by the consumer for *repayment of the loan instalments paid by the consumer, after having returned the object purchased*, is to be dismissed as currently unfounded if the creditor has not delayed in accepting the object purchased?

If not:

- (b) Does it follow from EU law that the national rules described in (a)(aa) and/or (a)(bb) must be disapplied?

Irrespective of the answers to Questions 1 to 5 above:

6. Inasmuch as it also refers to orders for reference in accordance with the second paragraph of Article 267 TFEU, is Paragraph 348a(2), point 1, of the Zivilprozessordnung (German Code of Civil Procedure) incompatible with the right conferred on the national courts to request a preliminary ruling pursuant to the second paragraph of Article 267 TFEU and must it therefore be disapplied to orders for reference?

(¹) 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).

Request for a preliminary ruling from the Cour constitutionnelle (Belgium) lodged on 12 April 2021 — Défense Active des Amateurs d'Armes ASBL, NG, WL v Conseil des ministres

(Case C-234/21)

(2021/C 297/21)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicants: Défense Active des Amateurs d'Armes ASBL, NG, WL

Defendant: Conseil des ministres