

Question referred

Does EU law preclude an assessment on the basis of the principle of the protection of legitimate expectations under national law of whether a national administrative body has created expectations contrary to a provision of EU law and has thus acted unlawfully under national law in failing to compensate the injured party for the damage suffered as a result, where the injured party cannot successfully invoke the principle of the protection of legitimate expectations under EU law because it involves an unambiguous provision of EU law?

Request for a preliminary ruling from the Landgericht Ravensburg (Germany) lodged on 22 January 2021 — VK v BMW Bank GmbH**(Case C-38/21)**

(2021/C 128/23)

*Language of the case: German***Referring court**

Landgericht Ravensburg

Parties to the main proceedings*Applicant:* VK*Defendant:* BMW Bank GmbH**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?

If the answer to Question 1(b) is in the negative:

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) Is Article 10(2)(l) of Directive 2008/48/EC to be interpreted as meaning that the interest rate applicable in the case of late payments as applicable at the time of the conclusion of the credit agreement must be specified as an absolute number or, at the very least, that the current reference interest rate (in this case, the base rate in accordance with Paragraph 247 of the Bürgerliches Gesetzbuch (German Civil Code, 'the BGB')), from which the interest rate applicable in the case of late payments is obtained by adding a premium (in this case, a premium of five percentage points in accordance with Paragraph 288(1), second sentence, of the BGB), must be specified as an absolute number, and must the consumer be informed of the reference interest rate (base rate) and the variability of that rate?
- (c) Is Article 10(2)(t) of Directive 2008/48/EC to be interpreted as meaning that the essential formal requirements for a complaint and/or redress in the out-of-court complaint and/or redress procedure must be specified in the text of the credit agreement?

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

- (d) 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:

- (e) 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 at least one of Questions 2(a) to (c) 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 an act of parliament?

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?

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 application of the rules of forfeiture in good faith?

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 an act of parliament?

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?

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?

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?

(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 Rechtbank Den Haag, zittingsplaats's-Hertogenbosch
(Netherlands) lodged on 26 January 2021 — X v Staatssecretaris van Justitie en Veiligheid**

(Case C-39/21)

(2021/C 128/24)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats's-Hertogenbosch

Parties to the main proceedings

Applicant: X

Defendant: Staatssecretaris van Justitie en Veiligheid