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Provisional text

JUDGMENT OF THE COURT (Third Chamber)

17 October 2024 (*)

(Reference for a preliminary ruling – Consumer protection – Directive 2014/17/EU – Credit agreements for consumers relating to residential immovable property – Article 25(1) – Early repayment – Consumer’s right to a reduction in the total cost of the credit – Article 4(13) – Concept of ‘total cost of the credit to the consumer’ – Costs that are dependent of the duration of the contract – Commission for granting the credit payable when concluding the contract – Methodology for calculating the reduction)

In Case C-76/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy dla Warszawy-Woli w Warszawie (District Court for Warszawa-Wola, Warsaw, Poland), made by decision of 5 February 2022, received at the Court on 5 February 2022, in the proceedings

QI

v

Santander Bank Polska S.A.,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Second Chamber, acting as President of the Third Chamber, K. Lenaerts, President of the Court, acting as Judge of the Third Chamber, N. Jääskinen (Rapporteur), M. Gavalec and N. Piçarra, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– QI, by M. Żmuda Trzebiatowski, adwokat,

- Santander Bank Polska S.A., by M. Wojcieszak, adwokat,
- the Polish Government, by B. Majczyna and S. Żyrek, acting as Agents,
- the Czech Government, by M. Smolek, S. Šindelková and J. Vláčil, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, assisted by G. Rocchitta, avvocato dello Stato,
- the Portuguese Government, by P. Barros da Costa, A. Cunha and L. Medeiros, acting as Agents,
- the European Commission, by G. Goddin, U. Małecka, and P. Ondrůšek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 February 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 25(1) of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ 2014 L 60, p. 34).

2 The request has been made in proceedings between QI, acting as a consumer, and Santander Bank Polska S.A., concerning the scope of the reduction in the total cost of a residential mortgage loan following its early repayment by QI.

Legal context

European Union law

Directive 2008/48/EC

3 Article 3 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), entitled ‘Definitions’, provides:

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

...

(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;

...’

4 Article 16 of Directive 2008/48, 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 [or she] 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 one year. If the period does not exceed one year, the compensation may not exceed 0.5% of the amount of credit repaid early.

...

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 [or she] can prove that the loss he [or she] 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.

...'

Directive 2014/17

5 Recitals 15, 50 and 66 of Directive 2014/17 state:

'(15) The objective of this Directive is to ensure that consumers entering into credit agreements relating to immovable property benefit from a high level of protection. ...

...

(50) The total cost of the credit to the consumer should comprise all the costs that the consumer has to pay in connection with the credit agreement and which are known to the creditor. It should therefore include interest, commissions, taxes, fees for credit intermediaries, the costs of property valuation for a mortgage and any other fees, except for notarial fees, required to obtain the credit, for example life insurance, or to obtain it on the terms and conditions marketed, for example fire insurance. ... The total cost of the credit to the consumer should exclude costs that the consumer pays in relation to the purchase of the immovable property or land, such as associated taxes and notarial costs or the costs of land registration. ...

...

(66) A consumer's ability to repay the credit prior to the expiry of the credit agreement may play an important role in promoting competition in the internal market and the free movement of Union citizens as well as helping to provide the flexibility during the lifetime of the credit agreement needed to promote financial stability in line with the recommendations of the Financial Stability Board. However, substantial differences exist between the national principles and conditions under which consumers have the ability to repay their credit and the conditions under which such early repayment can take place. Whilst recognising the diversity in mortgage funding mechanisms and the range of products available, certain standards with regard to early repayment of credit are essential at [EU] level in order to ensure that consumers have the

possibility to discharge their obligations before the date agreed in the credit agreement and the confidence to compare offers in order to find the best products to meet their needs. Member States should therefore ensure, whether through law or other means such as contractual clauses, that consumers have a right to early repayment. Nevertheless, Member States should be able to define the conditions for the exercise of such a right. These conditions may include time limitations on the exercise of the right, different treatment depending on the type of the borrowing rate or restrictions with regard to the circumstances under which the right may be exercised. Where the early repayment falls within a period for which the borrowing rate is fixed, exercise of the right may be made subject to the existence of a legitimate interest on the part of the consumer specified by the Member State. ... The conditions set by Member States may provide that the creditor is entitled to fair and objectively justified compensation for potential costs directly linked to early repayment of the credit. In the event where Member States provide that the creditor is entitled to compensation such compensation should be a fair and objectively justified compensation for potential costs directly linked to early repayment of the credit in accordance with the national rules on compensation. The compensation should not exceed the financial loss of the creditor.'

6 Article 1 of that directive, entitled 'Subject matter', provides:

'This Directive lays down a common framework for certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers secured by a mortgage or otherwise relating to residential immovable property, including an obligation to carry out a creditworthiness assessment before granting a credit, as a basis for the development of effective underwriting standards in relation to residential immovable property in the Member States, and for certain prudential and supervisory requirements, including for the establishment and supervision of credit intermediaries, appointed representatives and non-credit institutions.'

7 Article 4 of that directive, entitled 'Definitions', provides:

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

...

(13) "Total cost of the credit to the consumer" means the total cost of the credit to the consumer as defined in point (g) of Article 3 of Directive 2008/48/EC including the cost of valuation of property where such valuation is necessary to obtain the credit but excluding registration fees for the transfer of ownership of the immovable property. It excludes any charges payable by the consumer for non-compliance with the commitments laid down in the credit agreement.

...'

8 Article 14 of Directive 2014/17, entitled 'Pre-contractual information', provides:

'1. Member States shall ensure that the creditor and, where applicable, the credit intermediary or appointed representative, provides the consumer with the personalised information needed to compare the credits available on the market, assess their implications and make an informed decision on whether to conclude a credit agreement:

- (a) without undue delay after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 20; and
- (b) in good time before the consumer is bound by any credit agreement or offer.

2. The personalised information referred to in paragraph 1, on paper or on another durable medium, shall be provided by means of the [European Standardised Information Sheet (ESIS)], as set out in Annex II.

...'

9 Article 25 of that directive, entitled 'Early repayment', states:

1. Member States shall ensure that the consumer has a right to discharge fully or partially his obligations under a credit agreement prior to the expiry of that agreement. In such cases, the consumer shall be entitled to a reduction in the total cost of the credit to the consumer, such reduction consisting of the interest and the costs for the remaining duration of the contract.

2. Member States may provide that the exercise of the right referred to in paragraph 1 is subject to certain conditions. Such conditions may include time limitations on the exercise of the right, a different treatment depending on the type of the borrowing rate or on the moment the consumer exercises the right, or restrictions with regard to the circumstances under which the right may be exercised.

3. Member States may provide that the creditor is entitled to fair and objective compensation, where justified, for possible costs directly linked to the early repayment but shall not impose a sanction on the consumer. In that regard, the compensation shall not exceed the financial loss of the creditor. Subject to those conditions Member States may provide that the compensation may not exceed a certain level or be allowed only for a certain period of time.

4. Where a consumer seeks to discharge his obligations under a credit agreement prior to the expiry of the agreement, the creditor shall provide the consumer without delay after receipt of the request, on paper or on another durable medium, with the information necessary to consider that option. That information shall at least quantify the implications for the consumer of discharging his obligations prior to the expiry of the credit agreement and clearly set out any assumptions used. Any assumptions used shall be reasonable and justifiable.

5. Where the early repayment falls within a period for which the borrowing rate is fixed Member States may provide that the exercise of the right referred to in paragraph 1 is subject to the existence of a legitimate interest on the part of the consumer.'

Polish law

10 Article 29 of the ustawa o kredycie hipotecznym oraz o nadzorze nad pośrednikami kredytu hipotecznego i agentami (Law on mortgage credit and supervision of credit intermediaries and agents) of 23 March 2017 (Dz. U. of 2017, item 819) provides, in point 1, of paragraph 1:

'The mortgage agreement shall set out the elements ... fees and other costs associated with granting the mortgage, including fees for processing the mortgage application, and preparing and concluding the mortgage agreement and the conditions under which they may be amended.'

11 Article 39(1) of that law provides:

'In the case of full repayment of the mortgage before the date indicated in the mortgage agreement, the total cost of the mortgage shall be reduced by the interest and other costs of the mortgage for the period by which that agreement is shortened, even if the consumer incurred them before that repayment.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 On 15 September 2017, QI concluded with the legal predecessor of Santander Bank Polska a mortgage agreement in the amount of 106 600 zlotys (PLN) (approximately EUR 24 600).

13 That loan was granted for a period of 360 months and released on 26 September 2017. The agreement provided for a commission for granting that loan, payable when concluding that agreement and corresponding to 2.50% of the amount thereof, namely PLN 2 600 (approximately EUR 600), which was indicated as an element of the total cost of the mortgage loan.

14 On 4 April 2019, that is to say 19 months after signing that agreement, QI repaid that loan in full. She therefore considered that Santander Bank Polska had to refund her the commission for granting that loan in the amount of PLN 2 462.78 (approximately EUR 570), which corresponded to the remaining duration of that loan, namely 341 months.

15 Accordingly, QI lodged a complaint with Santander Bank Polska. By letter dated of 20 July 2020, the latter rejected that complaint and refused to refund the commission at issue.

16 QI brought proceedings before the Sąd Rejonowy dla Warszawy-Woli w Warszawie (District Court for Warszawa-Wola, Warsaw, Poland), which is the referring court. Before that court, Santander Bank Polska claims that the commission for granting the mortgage was a one-off payment and was therefore excluded from the obligation relating to a proportional refund to the remaining duration of the credit agreement. If that commission were to be partially refunded, Santander Bank Polska considers that that reimbursement should not be proportional to the period covered by the early repayment in relation to the repayment duration initially agreed, but should be proportional to the profit expected by the creditor for the consumer's use of the financing.

17 The referring court asks, first, whether in the light, in particular, of the case-law of the Court relating to Article 16(1) of Directive 2008/48, it should be considered that the right of the consumer to obtain, in the event of early repayment of a mortgage, a reduction in the total cost of the credit, referred to in Article 25(1) of Directive 2014/17, also includes a commission for granting the credit at issue.

18 Secondly, that court questions the methodology for calculating the amount of the reduction in the total cost of that credit. It notes that neither the abovementioned directives nor the Court's case-law clearly state how the amount of that reduction is to be calculated. However, taking into account, in particular the fact that Article 25(1) of Directive 2014/17 refers to the 'remaining duration of the contract', it would be appropriate, in its view, to grant a refund proportional to the ratio between the period during which the mortgage agreement will not be performed due to the early repayment of the credit and the period initially agreed, during which that agreement was to apply.

19 In those circumstances, the Sąd Rejonowy dla Warszawy-Woli w Warszawie (District Court for Warszawa-Wola, Warsaw) therefore decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 25(1) of Directive [2014/17] be interpreted in the same way as Article 16(1) of Directive [2008/48], that is to say must that provision be interpreted as meaning that the consumer's right to reduce the total cost of the mortgage in the case of early repayment thereof includes all the costs imposed on the consumer, including the commission for granting the mortgage?

(2) Must the obligation to reduce the total cost of a mortgage in the case of early repayment thereof, as provided for in Article 25(1) of Directive [2014/17], be interpreted as meaning that the total cost of the mortgage should be reduced in proportion to the relationship of the length of the period between the date of the early repayment of the mortgage and the date originally agreed as the date of repayment of the mortgage to the length of the period originally agreed between the date of the drawdown of the mortgage and the date of the full repayment of the mortgage, or should the reduction of the total cost of the mortgage be proportionate to the loss of the expected benefits to the [creditor], that is to say to the relationship of the remaining interest to be paid after early repayment of the mortgage (due for the period from the date after actual full repayment to the date of the full repayment originally agreed) to the interest due for the entire duration of the mortgage originally agreed (from the date of the drawdown of the mortgage to the date of the full repayment of the mortgage agreed)?'

Procedure before the Court

20 By decision of 24 March 2022, the President of the Court stayed the present proceedings pending the decision closing the proceedings in Case C-555/21, *UniCredit Bank Austria*.

21 By decision of 10 February 2023, the judgment of 9 February 2023, *UniCredit Bank Austria* (C-555/21, EU:C:2023:78), was notified to the referring court, which was asked to inform the Court whether, in the light of that judgment, it wished to maintain its request for a preliminary ruling.

22 By letter of 13 March 2023, lodged at the Court Registry on 22 March 2023, the referring court stated that it was maintaining its request for a preliminary ruling.

Consideration of the questions referred

The first question

23 As regards Article 16(1) of Directive 2008/48, the Court held that that provision must be interpreted as meaning that the consumer's right to a reduction in the total cost of the credit in the event of early repayment of the consumer credit falling within the scope of that directive includes all the costs imposed on the consumer (see, to that effect, judgment of 11 September 2019, *Lexitor*, C-383/18, EU:C:2019:702, paragraph 36).

24 By contrast, in its judgment of 9 February 2023, *UniCredit Bank Austria* (C-555/21, EU:C:2023:78, paragraphs 27, 28 and 31), the Court found that, having regard in particular to the specific features of credit agreements relating to residential immovable property and notwithstanding the almost identical wording of Article 16(1) of Directive 2008/48 and Article 25(1) of Directive 2014/17, the right to a reduction in the total cost of the credit referred to in the latter provision does not include costs which, irrespective of the duration of the agreement, are charged to the consumer in favour either of the creditor or of third parties in respect of services which have already been performed in full at the time of early repayment.

25 In the present case, the referring court asks, in the context of a mortgage agreement governed by Directive 2014/17, whether a commission charged when concluding such an agreement, such as that at issue in the main proceedings, must be considered to fall within the latter category of costs.

26 In that regard, that court recalls that, according to the judgment of 9 February 2023, *UniCredit Bank Austria* (C-555/21, EU:C:2023:78, paragraphs 34 and 35), the creditor is required to establish whether or not the charges concerned are regular payments. In the dispute in the main proceedings, Santander Bank Polska, however, did not provide a breakdown of the charges of the mortgage indicating whether the costs at issue in the main proceedings are objectively linked to the duration of the mortgage agreement. Considering, where such information is missing, that the costs concerned are presumed to be regular payments, that court therefore questions the manner in which it is appropriate to proceed in order to determine whether those costs are covered by the right to a reduction in the total cost of the mortgage, referred to in Article 25(1) of Directive 2014/17.

27 In those circumstances, it must be considered that, by its first question, the referring court asks, in essence, whether Article 25(1) of Directive 2014/17 must be interpreted as meaning that, in the absence of information provided by the creditor enabling a national court to ascertain whether a commission charged when concluding a mortgage agreement falls within the category of costs that are independent of the duration of that agreement, that court must consider that such a commission is covered by the right to a reduction in the total cost of the credit referred to in that provision.

28 In the first place, it is important to point out that the EU legislature has adopted a broad definition of the concept of 'total cost of the credit to the consumer', which may include costs (see, to that effect, judgment of 9 February 2023, *UniCredit Bank Austria*, C-555/21, EU:C:2023:78, paragraph 23).

29 It follows from Article 4(13) of Directive 2014/17, read in conjunction with Article 3(g) of Directive 2008/48, that the concept of the ‘total cost of the credit to the consumer’, within the meaning of the first provision, includes all the costs that the consumer has to pay in connection with the credit agreement and which are known to the creditor, including commissions. Those costs exclude expressly, as confirmed by recital 50 of Directive 2014/17, notarial fees, registration costs in relation to the transfer of ownership of the immovable property such as the costs of registration in the Land Register and related fees, and the charges payable by the consumer for non-compliance with the commitments laid down in the credit agreement (judgment of 9 February 2023, *UniCredit Bank Austria*, C-555/21, EU:C:2023:78, paragraph 24).

30 As stated in paragraph 24 of this judgment, the Court nevertheless clarified, based, in particular on the specific features of credit agreements relating to residential immovable property, that the right to a reduction in the total cost of the credit, referred to in Article 25(1) of Directive 2014/17, does not include costs which, irrespective of the duration of the agreement, are charged to the consumer in favour either of the creditor or of third parties in respect of services which have already been performed in full at the time of early repayment.

31 In the second place, it is important to note that, under Article 1 of Directive 2014/17, read in the light of recital 15 thereof, that directive lays down a common framework relating to certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers secured by mortgage or other credit relating to immovable property for residential use in order to ensure that consumers enjoy a high level of protection (judgment of 9 February 2023, *UniCredit Bank Austria*, C-555/21, EU:C:2023:78, paragraph 29 and the case-law cited).

32 The Court’s interpretation of Article 25(1) of Directive 2014/17 in the judgment of 9 February 2023, *UniCredit Bank Austria* (C-555/21, EU:C:2023:78) does not have the effect of depriving consumers of that protection.

33 In order to ensure that protection, it is for the national courts to satisfy themselves that the costs which are imposed on the consumer, irrespective of the duration of the credit agreement, do not objectively constitute remuneration of the creditor for temporary use of the capital which is the subject matter of that agreement or for services which, at the time of early repayment, had not yet been provided to the consumer (judgment of 9 February 2023, *UniCredit Bank Austria*, C-555/21, EU:C:2023:78, paragraph 38).

34 Therefore, a national court cannot presume, solely on the basis that a charge was paid by the consumer in a single instalment when concluding the mortgage agreement, that that charge falls within the costs that are independent of the duration of the agreement, which therefore cannot result in a reduction in the total cost of the credit referred to in Article 25(1) of Directive 2014/17.

35 In the third place, it should be noted that the creditor or, as the case may be, the credit intermediary or its designated representative, is required, under Article 14(1) and (2) of Directive 2014/17, to provide the consumer with pre-contractual information on the breakdown of the charges payable by the consumer on the basis of whether they are regular payments or through the ESIS. Accordingly, the creditor is required to show whether or not the costs concerned are regular payments (see, to that effect, judgment of 9 February 2023, *UniCredit Bank Austria*, C-555/21, EU:C:2023:78, paragraphs 34 and 38).

36 In the present case, it is apparent from the explanations provided by the referring court that Santander Bank Polska has not submitted any breakdown of the costs of the mortgage at issue in the main proceedings enabling that court to determine whether the costs at issue in the main proceedings are objectively linked to the duration of the contract or whether those costs are independent of that duration.

37 In order to ensure that the consumer is not adversely affected by that absence of information, it must be considered that, in such a situation, the national court is required to find that the costs concerned are not independent of the duration of the contract and are, consequently, covered by the right to a reduction in the total cost of credit, referred to in Article 25(1) of Directive 2014/17.

38 It follows that, where the creditor has not provided the information necessary to enable the national court to ascertain that the costs concerned do not constitute remuneration of the creditor for temporary use of the capital which is the subject matter of the mortgage agreement or remuneration for a service which, at the time of early repayment, had not been provided in full, that court must, in order to ensure a high level of consumer protection, consider that they are costs linked to the duration of that agreement, which are covered by the right to reduction referred to in Article 25(1) of Directive 2014/17, even if those costs were paid in a single instalment when that agreement was concluded.

39 In the light of the foregoing, the answer to the first question is that Article 25(1) of Directive 2014/17 must be interpreted as meaning that, in the absence of information provided by the creditor enabling a national court to ascertain whether a commission charged when concluding a mortgage agreement falls within the category of costs that are independent of the duration of that agreement, that court must consider that such a commission is covered by the right to a reduction in the total cost of the credit referred to in that provision.

The second question

40 By its second question, the referring court asks, in essence, whether Article 25(1) of Directive 2014/17 must be interpreted as meaning that a specific methodology for calculating the amount of the reduction in the total cost of credit referred to in that provision stems from that provision.

41 In that regard, it is important to note, in the first place, that nothing in the wording of Article 25 of Directive 2014/17 in general, or of paragraph 1 of that article in particular, suggests that the EU legislature intended to provide for a specific methodology for calculating the amount of the reduction in the total cost of the mortgage, referred to in Article 25(1) of that directive.

42 That provision merely provides, first, that the Member States are to ensure that the consumer has a right to discharge fully or partially his or her obligations under a credit agreement prior to the expiry of that agreement. Secondly, that provision states that, in the event of early repayment, the consumer is to be entitled to a reduction in the total cost of the credit, which consists of the interest and the costs for the remaining duration of the contract.

43 It cannot be inferred from the reference to ‘the remaining duration of the contract’ that the amount of the reduction in the total cost of the credit should be determined, in all circumstances, on the basis of a methodology consisting in applying a refund proportional to the ratio between the period during which the mortgage agreement will not be performed due to the early repayment of the credit and the period during which that agreement was to apply, as initially agreed.

44 As the Advocate General noted, in essence, in point 33 of his Opinion, the reference to the remaining duration of the contract is intended solely to identify the temporal scope of the cost items to which the reduction in the total cost of the credit applies.

45 A specific methodology for calculating the amount of the reduction in the total cost of credit, referred to in Article 25(1) of Directive 2014/17, cannot be inferred from Article 25(2) to (5) of that directive either, since the latter paragraphs do not provide for any criteria for calculating that reduction.

46 In that regard, while Article 25(2) and (5) of Directive 2014/17 specifies the manner in which Member States may define the scope of the right to early repayment, Article 25(3) of that directive sets out the

possibility for those States to provide, in the event of early repayment of the mortgage, for a right to compensation for the creditor. As for Article 25(4) of that directive, it specifies the information that the creditor is required to communicate to the consumer so that the latter can consider the possibility of making an early repayment of the credit.

47 That reading of Article 25 of Directive 2014/17 is confirmed by recital 66 thereof, which recognises wide discretion for Member States as regards the manner in which they are to ensure the right to early repayment of the mortgage.

48 More specifically, it follows from that recital that, although the EU legislature considered it appropriate, given the existence of substantial differences in the principles and conditions for repayment of credit applied in the Member States, to lay down at EU level certain standards relating to the early repayment of a mortgage, in particular the conditions under which such repayment may take place, it nevertheless considered that those States should be able to define the conditions for the exercise of the right to such repayment. That recital states, in that regard, that those conditions may include time limitations on the exercise of the right, different treatment depending on the type of the borrowing rate or restrictions with regard to the circumstances under which the right may be exercised.

49 Admittedly, the methodology for calculating the reduction in the total cost of credit in the event of early repayment is not listed among the elements falling within the competence of the Member States which are expressly mentioned in recital 66 of Directive 2014/17. However, it is necessary to consider, as the Advocate General did in point 43 of his Opinion, that the methodology for calculating the amount of the reduction is one of those elements, since, as is apparent from the wording of a large proportion of the various language versions, the elements set out in that recital constitute only a non-exhaustive list.

50 In the second place, it should be noted that, although Article 25(1) of Directive 2014/17 does not impose a specific methodology for calculating the amount of the reduction in the total cost of the mortgage referred to in that provision, the fact remains that the methodology used must be suitable for ensuring the achievement of the objective of that directive, as set out in recital 15 thereof and recalled in paragraph 31 of this judgment, namely that of ensuring a high level of consumer protection in the area of credit contracts relating to immovable property.

51 In the present case, according to the information available to the Court, Polish legislation does not contain any provision relating to that calculation and the mortgage agreement at issue in the main proceedings does not state how the amount of the reduction in the total cost of the credit is to be calculated.

52 In such a situation, it is for the national court to decide on the appropriate methodology for calculating the amount of the reduction in the total cost of the mortgage, referred to in Article 25(1) of Directive 2014/17, provided that that methodology is suitable for ensuring the achievement of the objective of that directive of ensuring a high level of consumer protection.

53 In the light of the foregoing, the answer to the second question is that Article 25(1) of Directive 2014/17 must be interpreted as meaning that no specific methodology for calculating the amount of the reduction in the total cost of credit referred to in that provision stems from that provision.

Costs

54 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Third Chamber) hereby rules:

1. Article 25(1) of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010

must be interpreted as meaning that, in the absence of information provided by the creditor enabling a national court to ascertain whether a commission charged when concluding a mortgage agreement falls within the category of costs that are independent of the duration of that agreement, that court must consider that such a commission is covered by the right to a reduction in the total cost of the credit referred to in that provision.

2. Article 25(1) of Directive 2014/17

must be interpreted as meaning that no specific methodology for calculating the amount of the reduction in the total cost of credit referred to in that provision stems from that provision.

[Signatures]

* Language of the case: Polish.