

# Eye-catching decision on advertising of consumer loans

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The Supreme Court recently had to decide whether internet ads for consumer loans which stated a monthly rate in the main advertising text and a debit interest rate "from... % p.a." depending on creditworthiness, together with an example in the footnote text, complied with the Consumer Credit Act (VKrG).(1)

The VKrG implemented the EU Consumer Credit Directive (2008/48/EC), which provides strict requirements as regards the information to be given and the presentation of such information in ads for consumer credit. Pursuant to the VKrG, if interest rates or other figures relating to the costs of a loan for the consumer are stated in an ad for consumer credit agreements, the ad must contain certain standard information, including the borrowing rate and, if applicable, the amount of the instalments in a clear, concise and 'prominent' (ie, eye-catching) way, using a representative example. This is to enable the consumer to have a complete overview of the cost burden and to compare different offers.

The Supreme Court reiterated that 'clear and concise' means that the information given must be:

- accurate in terms of content;
- as concise as possible; and
- understandable to the average consumer.

'Eye catching' requires placement in a prominent position. Pursuant to the Supreme Court's decision, this requirement is not met with a combination of an attractive monthly rate in the main text and the other standard information in small print, as the standard information does not achieve a comparable level of 'eye-catchingness'.

Since the bank allegedly admitted in the proceeding that the lowest amount of the interest rate quoted in the ad ("from... % p.a.") was offered only at best, and not on average, the Supreme Court did not further assess whether the example included in the footnote text qualified as 'representative' in accordance with the VKrG, but simply held that the example "in no way fulfilled its representative purpose". Notwithstanding that, the Supreme Court held that the assessment of whether an example chosen for an ad is representative is not to be done on the basis of the loans actually granted, but rather on the basis of a comprehensible forecast decision by the lender.

This decision in a proceeding initiated by an Austrian consumer protection organisation is unsurprising. Both lower instances dismissed the bank's argument that the ad was in line with the VKrG and the Supreme Court upheld these rulings. Considering that the Austrian legislature has just enacted an amendment to the VKrG in order to align it with the European Court of Justice's *Lexitor* decision (for further details please see "[No worms for early birds? Lexitor and Austrian implementation of EU Consumer Credit Directive](#)"), European legislation aimed at consumer protection in the financial services industry continues to have a strong impact on the Austrian consumer credit market.

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## Endnotes

(1) 9 Ob 57/20b, 25 November 2020.

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