3. EXTENSION OF THE RIGHT TO REIMBURSEMENT OF COMMISSIONS IN THE EMPLOYEE LOANS

The claimant is part of a credit agreement and decides to early repay the loan. Specifically, he discharge his obligations on 10.12.2019 while the time fixed by the agreement was May 2022. Following this early repayment, the financing bank reimburse the exponent the sum of € 945.24 as part of the amount of the commissions paid by the consumer.

The exponentm however, expected the return of an additional amount of € 432.00 relating to costs which are not dependent on the duration of the contract (so-called upfront costs).The Bank denied the repayment claiming that the reduction in the total cost of the credit in the event of early repayment does not concern costs which are not dependent on the duration of the contract.

1. **verify if the parties involved fall under the definition of “consumer” and “trader”:**
2. Art. 2, par. 1, n. 1, Dir. 2011/83: «any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession» «any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive».
3. *ratione personae*: Can a company be regarded as a consumer?'
4. consumer must be interpreted as referring solely to natural persons.
5. companies and association (even NGO) must be escluded

**CGCE, C-541/99 and C-542/99**: «It is thus clear from the wording of Article 2 of the Directive that a person other than a natural person who concludes a contract with a seller or supplier cannot be regarded as a consumer within the meaning of that provision»

**CGCE, C-256/00, §26**

1. *ratione materiae*, private purpose

CGCE, C-269/95 «it follows from the foregoing that, in order to determine whether a person has the capacity of a consumer, a concept which must be strictly construed, reference must be made to the position of the person concerned in a particular contract, having regard to the nature and aim of that contract, and not to the subjective situation of the person concerned. As the Advocate General rightly observed in point 38 of his Opinion, the self-same person may be regarded as a consumer in relation to certain transactions and as an economic operator in relation to others» §16

«Consequently, only contracts concluded for the purpose of satisfying an individu­ al's own needs in terms of private consumption come under the provisions designed to protect the consumer as the party deemed to be the weaker party eco­nomically. The specific protection sought to be afforded by those provisions is unwarranted in the case of contracts for the purpose of trade or professional activ­ ity, even if that activity is only planned for the future, since the fact that an activity is in the nature of a future activity does not divest it in any way of its trade or professional character» §17.

CGCE, C-464/01: goods mainly for business or for private purposes: in case of doubt, is a contract which may be attributed both to private and to trade or professional activity to be regarded as a consumer contract?

what criteria are to be applied in determining which of the private and the trade or professional purposes predominates?

L’attuale orientamento interpretativo ricostruisce lo scopo in senso oggettivo e restrittivo, in base ad indagini sull’oggetto e il contenuto del contratto, le circostanze di tempo e luogo in cui l’atto viene posto in essere.