JUDGMENT OF THE COURT (Sixth Chamber)

5 March 2002 *

In Case C-386/00,

REFERENCE to the Court under Article 234 EC by the Cour d'appel de Bruxelles (Belgium) for a preliminary ruling in the proceedings pending before that court between

Axa Royale Belge SA

and

Georges Ochoa

Stratégie Finance SPRL,

on the interpretation of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ 1992 L 360, p. 1)

* Language of the case: French.

THE COURT (Sixth Chamber),

composed of: N. Colneric, President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann, R. Schintgen, V. Skouris and J.N. Cunha Rodrigues (Rapporteur), Judges,

Advocate General: F.G. Jacobs,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Axa Royale Belge SA, by M. Brouhns and C. Schöller, avocats,

— Mr Ochoa and Stratégie Finance SPRL, by P.-M. Sprockeels, avocat,

— the Belgian Government, by A. Snoecx, acting as Agent,

— the Greek Government, by M. Apessos and I. Bacopoulos, acting as Agents,

— the Spanish Government, by M. López-Monís Gallego, acting as Agent,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Commission of the European Communities, by C. Tufvesson and B. Mongin, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Axa Royale Belge SA, represented by M. Brouhns and C. Schöller, of Mr Ochoa and Stratégie Finance SPRL, represented by P.-M. Sprockeels, and the Commission, represented by R. Tricot, acting as Agent at the hearing on 20 September 2001,

after hearing the Opinion of the Advocate General at the sitting on 15 November 2001,

gives the following

Judgment

1 By judgment of 17 October 2000, received at the Court on 23 October 2000, the Cour d'appel de Bruxelles (Court of Appeal, Brussels) referred for a preliminary ruling under Article 234 EC a question concerning the interpretation of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ 1992 L 360, p. 1, 'the directive').

2 That question was raised in the course of proceedings between Axa Royale Belge SA and Mr Ochoa, an insurance broker, and Stratégie Finance SPRL concerning the failure to include certain information required by national law in life-assurance proposals or policies.

The directive

3 Article 31 of the directive provides:

'1. Before the assurance contract is concluded, at least the information listed in point A of Annex II shall be communicated to the policy-holder.

2. The policy-holder shall be kept informed throughout the term of the contract of any change concerning the information listed in point B of Annex II.

3. The Member State of the commitment may require assurance undertakings to furnish information in addition to that listed in Annex II only if it is necessary for a proper understanding by the policy-holder of the essential elements of the commitment.

4. The detailed rules for implementing this Article and Annex II shall be laid down by the Member State of the commitment.'

4 Annex II to the directive, headed 'Information for Policy-holders', states that the information to be communicated to the policy-holder must be provided in a clear and accurate manner, in writing. Point A of that annex lists the information that must be communicated to the policy-holder before the contract is concluded. That information includes, *inter alia*, the definition of each benefit and each option (a.4), the term of the contract (a.5), the means of terminating the contract (a.6), the means of payment of premiums and duration of payments (a.7), the means of calculation and distribution of bonuses (a.8), the indication of surrender and paid-up values and the extent to which they are guaranteed (a.9), information on the premiums for each benefit (a.10), for unit-linked policies, definition of the units to which the benefits are linked (a.11), indication of the nature of the underlying assets for unit-linked policies (a.12), arrangements for application of the cooling-off period (a.13) and general information on the tax arrangements applicable to the type of policy (a.14).

5 Point B of Annex II lists the information that must be given to the policy-holder during the term of the contract. It provides that, in addition to the general and special policy conditions to be communicated to the policy-holder, the latter must receive all of the information listed in subdivisions a.4 to a.12 of point A of that annex in the event of a change in the policy conditions or amendment of the law applicable to the contract (b.2), and every year, information on the state of bonuses (b.3).

The national provisions

6 Article 4(2)(b) of the Royal Decree of 17 December 1992 on activities relating to life assurance (*Moniteur belge* of 31 December 1992, p. 27893, 'the Royal Decree

of 17 December 1992'), which, according to the referring court, was adopted to transpose the directive into Belgian law, provides:

'The proposal, or in the absence of a proposal, the policy must:

...

(b) inform the policy-holder that cancellation, reduction or surrender of an existing life-assurance contract for the purposes of subscribing to another life-assurance contract is generally detrimental to the policy-holder.'

7 Article 20(2) of the Law of 9 July 1975 on the supervision of insurance undertakings, as amended by the Royal Decree of 12 August 1994 (*Moniteur belge* of 16 September 1994, p. 23541), provides:

'All proposals and policies and any other documents produced by assurance companies for the attention of the public in Belgium must include the information laid down by the King.

The King may also determine the information to be provided by assurance companies to policy-holders before the conclusion of the contract and during its term.'

8 In its written observations the Belgian Government points out that Article 15(1) of the Royal Decree of 22 February 1991 regulating the supervision of insurance undertakings, as amended by Royal Decree of 22 November 1994 (*Moniteur belge* of 21 December 1994, p. 31529), which transposed Article 31(1) and (2) of the directive into national law, did not repeal Article 4(2)(b) of the Royal Decree of 17 December 1992.

9 Article 93 of the Law of 14 July 1991 on commercial practices and the protection of and provision of information to consumers (*Moniteur belge* of 29 August 1991, p. 18712, 'the Law of 14 July 1991') provides:

'Any act contrary to honest practice in commercial matters, by which a vendor adversely affects, or may adversely affect, the professional interests of one or more other vendors, shall be prohibited.'

10 Article 94 of the same Law provides:

'Any act contrary to honest practice in commercial matters, by which a vendor adversely affects, or may adversely affect, the interests of one or more consumers, shall be prohibited.'

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

11 It is apparent from the order for reference that, by an interlocutory judgment handed down on 23 December 1999, the Cour d'appel de Bruxelles declared that,

by communicating to policy-holders a life-assurance proposal in which the warning required by Article 4(2)(b) of the Royal Decree of 17 December 1992 had been deleted, Stratégie Finance SPRL had infringed that provision.

12 That judgment arose in the course of an action brought by Axa Royale Belge SA, seeking a declaration that, by thus breaching the obligations arising under Article 4(2)(b) of the Royal Decree of 17 December 1992, Stratégie Finance SPRL had infringed Articles 93 and 94 of the Law of 14 July 1991, and an order requiring Stratégie Finance SPRL to cease such practice or to pay a periodic penalty payment.

13 Before giving final judgment on the application, the national court is concerned with the compatibility with that directive, given its objectives, of the obligation to include in assurance proposals or, in the absence of a proposal, in assurance policies, a warning exceeding the minimum requirements of the directive as to consumer information.

14 First, according to the referring court, that warning does not encourage the consumer to compare the various assurance products on offer within the Community in order to select from among them that which best meets his requirements but, instead, encourages him to maintain his existing contract. It follows precisely from the recitals in the preamble to the directive that its purpose is to offer the policy-holder access to the widest possible range of assurance products on offer within the Community in order to allow him to select from among them that which best meets his requirements, ensuring in particular that the policy-holder receives clear and accurate information on the essential characteristics of the products being offered to him.

15 Next, the warning in question is, according to the national court, liable to procure a competitive advantage for assurers operating within the national

territory when the Royal Decree of 17 December 1992 entered into force, whereas it is apparent from the recitals in the preamble to the directive that it is for the Member State of the commitment to ensure that there is no obstacle within its territory to the marketing of all of the assurance products on offer within the Community.

16 Finally, the national court considers that the general interest in informing consumers of the detrimental consequences which termination, reduction or surrender of an existing life-assurance contract in order to subscribe to another contract of that type may entail does not appear to be adequately addressed by a mere warning as to the generally detrimental nature of such operations, whereas, as the recitals in the preamble to the directive point out, general-interest provisions must be objectively necessary and proportionate to the objective pursued.

17 It is in those circumstances that the Cour d'appel de Bruxelles has decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Community law, and in particular Council Directive 92/96/EEC of 10 November 1992, preclude national legislation which provides that a life-assurance proposal or, in the absence of a proposal, a life-assurance policy must inform a policy-holder that termination, reduction or surrender of an existing life-assurance contract for the purpose of subscribing to another life-assurance contract is generally detrimental to the policy-holder?'

The question referred

18 It should be recalled, as a preliminary point that even if, in the absence of proper transposition into national law, a directive cannot of itself impose obligations on

individuals, the national court that has to interpret that law must do so, as far as possible, in the light of the wording and the purpose of the directive so as to achieve the result it has in view and thereby comply with the third paragraph of Article 189 of the EC Treaty (now the third paragraph of Article 249 EC) (see, in particular, Case C-456/98 *Centrosteel* [2000] ECR I-6007, paragraphs 15 and 16).

19 It is in the light of that observation that the question referred for a preliminary ruling should be answered.

20 It is apparent from the 23rd recital in the preamble to the directive that the latter seeks, *inter alia*, to coordinate the minimum provisions in order for the consumer to receive clear and accurate information on the essential characteristics of assurance products proposed to him. As is pointed out in the same recital, if he is to profit fully from the greater choice and diversity in the single market for assurance, and from increased competition, the consumer must be provided with whatever information is necessary to enable him to choose the contract which best meets his requirements.

21 Article 31(1) of the directive provides to that end that at least the information listed in point A of Annex II must be communicated to the policy-holder before the conclusion of the assurance contract and Article 31(2) of the same directive provides that the policy-holder must be kept informed throughout the term of the contract of any change concerning the information listed in point B of that annex. Article 31(3) of the same directive provides that the Member State of the commitment may require assurance undertakings to furnish information in addition to that listed in that Annex only if it is necessary for a proper understanding by the policy-holder of the essential elements of the commitment.

22 It is not in dispute that the list in Annex II to the directive does not include information such as the warning provided for by Article 4(2)(b) of the Royal

Decree of 17 December 1992. Since the issue here is information in addition to that set out in that Annex, it is necessary to determine whether, as Article 31(3) of the directive requires, that additional information may be classified as 'necessary for a proper understanding by the policy-holder of the essential elements of the commitment'.

23 Only additional information meeting the requirements referred to above is compatible with Community law, in that the Community legislature intended, by Article 31 of the directive, to delimit the type of information which Member States may require assurance undertakings to provide in the interest of consumers, in order not to restrict unduly the choice of assurance products offered in the single market for assurance.

24 It is thus apparent from the express wording of Article 31(3), Annex II and the 23rd recital in the preamble to the directive that the additional information Member States may require in accordance with that article must be clear, accurate and necessary for a proper understanding of the essential characteristics of assurance products proposed to the policy-holder.

25 As Mr Ochoa, Stratégie Finance SPRL, the Commission, and to a lesser extent, the Spanish Government rightly pointed out, a warning as general and vague as that in question in the main action does not appear to meet those requirements.

26 The warning in question does not distinguish between the three options it envisages for terminating an assurance contract, namely cancellation, reduction

or surrender, or specify the nature of the detriment that the policy-holder may suffer as a result of exercising those various options for the purposes of entering into a new contract. Nor does it state the criteria or the means of ascertaining the detrimental effect or otherwise of the options available to him.

27 Given its generality and vagueness, such a warning is therefore inappropriate for the purposes of informing the policy-holder as to the choice to be made and, given its reference only to the disadvantages resulting from cancellation, reduction or surrender, is more likely to dissuade the policy-holder from terminating an existing contract, even though the conclusion of a new contract might, in fact, be to his advantage.

28 The warning in question thus also risks jeopardising the objective sought by Article 31 of the directive, which, as the preamble states, is to provide the policy-holder with the information necessary to enable him to select the contract best suited to his requirements so that he can profit fully from the greater choice of contracts and the increased competition in the single assurance market.

29 By contrast, as the Commission has rightly pointed out, the detailed information which, under Article 31(1) and (2), together with Annex II, of the directive, must be provided to the policy-holder, both before the conclusion of the contract and during its term, does not have that disadvantage. That information is precise and objective and is intended to enable the policy-holder to choose from amongst the available products the one best suited to his requirements and also to assess, in practical terms, the potential disadvantages of cancelling, reducing or surrendering an assurance contract and to assess whether those consequences may not, in

the final analysis, be compensated for by advantages arising from the conclusion of a new contract.

30 It follows from those considerations that information as vague and general as that given by the warning provided for by Article 4(2)(b) of the Royal Decree of 17 December 1992 cannot be regarded as additional information for the purposes of Article 31(3) of the directive.

31 In those circumstances the reply to the question referred must be that Article 31(3) of the directive precludes national legislation which provides that a life-assurance proposal, or in the absence of a proposal, a life-assurance policy must inform the policy-holder that cancellation, reduction or surrender of an existing life-assurance contract for the purpose of subscribing to another life-assurance contract is generally detrimental to the policy-holder.

Costs

32 The costs incurred by the Belgian, Greek, Spanish and Austrian Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Cour d'appel de Bruxelles by judgment of 17 October 2000, hereby rules:

Article 31(3) of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) precludes national legislation which provides that a life-assurance proposal, or in the absence of a proposal, a life-assurance policy must inform the policy-holder that cancellation, reduction or surrender of an existing life-assurance contract for the purpose of subscribing to another life-assurance policy is generally detrimental to the policy-holder.

Colneric Gulmann Schintgen

Skouris Cunha Rodrigues

Delivered in open court in Luxembourg on 5 March 2002.

R. Grass

Registrar

F. Macken

President of the Sixth Chamber