

JUDGMENT OF THE COURT (First Chamber)

4 October 2007*

In Case C-429/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunal d'instance de Saintes (France), made by decision of 16 November 2005, received at the Court on 2 December 2005, in the proceedings

Max Rampion,

Marie-Jeanne Rampion, née Godard,

v

Franfinance SA,

K par K SAS,

THE COURT (First Chamber),

composed of P. Jann (Rapporteur), President of the Chamber, A. Tizzano, A. Borg Barthet, M. Ilešič and E. Levits, Judges,

* Language of the case: French.

Advocate General: P. Mengozzi,
Registrar: M.-A. Gaudissart, Head of Unit,

having regard to the written procedure and further to the hearing on 8 February 2007,

after considering the observations submitted on behalf of:

- Franfinance SA, by B. Soltner, avocat,

- the French Government, by G. de Bergues and R. Loosli-Surrans, acting as Agents,

- the German Government, by M. Lumma and A. Dittrich, acting as Agents,

- the Spanish Government, by F. Díez Moreno, acting as Agent,

- the Italian Government, by I.M. Braguglia, acting as Agent, assisted by W. Ferrante, avvocato dello Stato,

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

— the Commission of the European Communities, by A. Aresu and J.-P. Keppenne, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 March 2007,

gives the following

Judgment

- ¹ This reference for a preliminary ruling concerns the interpretation of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48), as amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 (OJ 1998 L 101, p. 17) ('Directive 87/102'), in particular Articles 11 and 14 thereof.

- ² The reference was made in the course of proceedings between, on the one hand, Mr Rampion and Mrs Rampion, née Godard, ('Mr and Mrs Rampion') and, on the other, Franfinance SA ('Franfinance') and K par K SAS ('KpK') concerning a contract of sale for windows and a credit facility used to finance that contract.

Legal context

Community law

3 Directive 87/102 seeks to approximate the laws, regulations and administrative provisions of the Member States concerning consumer credit.

4 Article 11 of Directive 87/102 states:

‘1. Member States shall ensure that the existence of a credit agreement shall not in any way affect the rights of the consumer against the supplier of goods or services purchased by means of such an agreement in cases where the goods or services are not supplied or are otherwise not in conformity with the contract for their supply.

2. Where:

(a) in order to buy goods or obtain services the consumer enters into a credit agreement with a person other than the supplier of them; and

- (b) the grantor of the credit and the supplier of the goods or services have a pre-existing agreement whereunder credit is made available exclusively by that grantor of credit to customers of that supplier for the acquisition of goods or services from that supplier; and

- (c) the consumer referred to in subparagraph (a) obtains his credit pursuant to that pre-existing agreement; and

- (d) the goods or services covered by the credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for supply of them; and

- (e) the consumer has pursued his remedies against the supplier but has failed to obtain the satisfaction to which he is entitled,

the consumer shall have the right to pursue remedies against the grantor of credit. Member States shall determine to what extent and under what conditions these remedies shall be exercisable.

3. Paragraph 2 shall not apply where the individual transaction in question is for an amount less than the equivalent of 200 [euro].’

5 Article 14 of Directive 87/102 states:

‘1. Member States shall ensure that credit agreements shall not derogate, to the detriment of the consumer, from the provisions of national law implementing or corresponding to this Directive.

2. Member States shall further ensure that the provisions which they adopt in implementation of this directive are not circumvented as a result of the way in which agreements are formulated, in particular by the device of distributing the amount of credit over several agreements.’

National law

6 Article L. 311-20 of the Code de la consommation (‘the Consumer Code’) provides, for the purposes of applying Article 11 of Directive 87/102, that ‘where the prior offer indicates the goods or services being financed, the borrower’s obligations shall arise only with effect from delivery of the goods or from supply of the services; ...’.

- 7 In that regard, Article L. 311-21 of the Consumer Code states that ‘in the event of a dispute concerning the performance of the principal contract, the court may, pending the outcome of the dispute, suspend performance of the credit agreement. The credit agreement shall be set aside or annulled by operation of law where the contract in respect of which it was entered into is itself judicially set aside or annulled. ...’

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

- 8 On 5 September 2003 following an approach by a door-to-door salesperson, Mr and Mrs Rampion ordered windows from KpK for a total price of EUR 6 150. According to the contract of sale, the windows were to be delivered no later than six to eight weeks after the technician had measured up.
- 9 According to the referring court, the contract of sale indicates that the purchase is to be financed entirely by means of credit granted by Franfinance.
- 10 On the same day, Mr and Mrs Rampion entered into an arrangement with Franfinance for a credit facility, the credit limit being equal to the sale price. The offer of credit identifies the seller by the reference ‘K par K platform account’ but does not specify the goods being financed.
- 11 On 27 November 2003, when the windows ordered were delivered, Mr and Mrs Rampion noticed that the sills and frames were infested with parasites. The work went unfinished and by letter of 5 January 2004 Mr and Mrs Rampion repudiated the contract of sale.

- 12 As their request for termination went unheeded, Mr and Mrs Rampion brought proceedings against KpK and Franfinance, by acts of 29 October and 2 November 2004, seeking a declaration that the contract of sale was void and the termination, in consequence, of the credit agreement, on the ground that the contract of sale did not indicate precisely the deadline for delivery of the relevant goods, in contravention of the requirement imposed by the Consumer Code.
- 13 In the alternative, Mr and Mrs Rampion sought termination of the contract of sale on grounds of failure by KpK to fulfil its obligation to give advice, since it had proposed the supply and installation of the woodwork even though the supporting structure was defective.
- 14 The defendants in the main proceedings contended, in particular, that the two contracts were not interdependent since, contrary to the requirement imposed by Article L. 311-20 of the Consumer Code, the goods being financed were not indicated in the offer of credit. Moreover, it was a credit facility, not credit tied to the financing of the sale.
- 15 In the course of the proceedings, the referring court raised of its own motion a number of pleas in law based on the provisions of the Consumer Code relating to consumer credit and door-to-door sales.
- 16 It is in those circumstances that the Tribunal d'instance de Saintes (Saintes District Court) (France) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are Articles 11 and 14 ... of Directive 87/102/EEC ... to be interpreted as allowing courts to apply the rules on interdependence between a credit

agreement and a contract for the supply of goods or services that is financed by that credit in cases where the credit agreement does not indicate the goods being financed or where it has been concluded in the form of a credit facility without indicating the goods being financed?

- (2) Does Directive 87/102/EEC ... have an objective which extends beyond consumer protection alone to the organisation of the market and allows courts to apply of their own motion the provisions which flow from it?’

The questions referred for a preliminary ruling

Question 1

Admissibility

- ¹⁷ In the first place, Franfinance contends that, as Question 1 really concerns only the application of provisions of national law relating to the conditions necessary to find the existence of tied credit, the Court has no jurisdiction to rule on that question. Directive 87/102 provides for only minimum harmonisation and Article 11 thereof states that the Member States are to determine, inter alia, under what conditions the consumer may pursue remedies against the grantor of credit.

- 18 In that regard it must be accepted that, as is clear from Article 15 of Directive 87/102 and from the 25th recital in the preamble thereto, according to which the Directive does not prevent Member States from maintaining or adopting stricter provisions for the protection of consumers, the Directive provides for only minimum harmonisation of the provisions of national law relating to consumer credit.
- 19 Nevertheless, Question 1 explicitly refers to an interpretation of Article 11 of the Directive which, as is common ground, was transposed into French law specifically by Articles L. 311-20 and L. 311-21 of the Consumer Code which allow the borrower, subject to certain conditions, to have the credit agreement suspended, cancelled or annulled.
- 20 The question whether — and, if so, to what extent — national law may make the right to pursue remedies, provided for in Article 11(2) of Directive 87/102, which the consumer enjoys against the grantor of credit, subject to conditions other than those set out in that provision forms part of the substantive analysis of Question 1. The addition of any supplementary condition carries the risk of causing the provisions of national law to fall short of the level of harmonisation sought by the Directive and cannot therefore be automatically regarded as a matter of national law alone.
- 21 Secondly, Franfinance contends that this issue falls outside the jurisdiction of the Court *a fortiori* because the true intention of the referring court is not to ensure that, in the main proceedings, the borrowers have an effective remedy against the grantor of credit for the purposes of Article 11 of Directive 87/102, but to ensure that the interdependence of the contracts at issue is acknowledged for completely different purposes. The referring court is really seeking to apply rules specific to French law, the nature and purpose of which are different in that they do not concern that right to pursue remedies: rather, they provide that the grantor of credit is to be automatically divested of its right to interest if certain information relating to the interdependence of the contracts is not contained in the offer of credit.

- 22 As regards the admissibility of the questions referred for a preliminary ruling or the Court's jurisdiction to reply to those questions, the Commission of the European Communities expresses a reservation based on the fact that the referring court does not indicate precisely why an answer is necessary to enable it to give judgment in the main proceedings.
- 23 In that regard, it should be recalled that in the factual and legislative context which the national court is responsible for defining, and the accuracy of which is not a matter for this Court to determine, the questions submitted by the national court in relation to the interpretation of Community law enjoy a presumption of relevance (see Case C-300/01 *Salzmann* [2003] ECR I-4899, paragraphs 29 and 31, and Joined Cases C-94/04 and C-202/04 *Cipolla and Others* [2006] ECR I-11421, paragraph 25).
- 24 The Court may reject a request for a preliminary ruling submitted by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39; Case C-466/04 *Acereda Herrera* [2006] ECR I-5341, paragraph 48; and *Cipolla and Others*, paragraph 25).
- 25 However, it is not obvious here that the interpretation of the rules of Community law requested by the referring court bears no relation to the actual facts of the main action or its purpose, or that the questions concerning the interpretation of those rules are hypothetical. Although Question 1 makes a very general reference to the application of 'the rules on interdependence between a credit agreement and a contract for the supply of goods or services', it is not apparent from the order for

reference that, in reality, Question 1 concerns only the application of provisions of national law other than those transposing Article 11 of Directive 87/102 or those falling within the scope of that article.

26 In those circumstances, the presumption of relevance enjoyed by Question 1 has not been rebutted.

27 Nevertheless, while it is for the Court of Justice, in the system laid down by Article 234 EC providing for cooperation, to provide the referring court with an answer which will be of use to it and enable it to determine the case before it, the Court may have to reformulate the questions referred (see, inter alia, Case C-88/99 *Roquettes Frères* [2000] ECR I-10465, paragraph 18; Case C-469/00 *Ravil* [2003] ECR I-5053, paragraph 27; and Case C-286/05 *Haug* [2006] ECR I-4121, paragraph 17).

28 Thus, Question 1 should be understood as asking whether Articles 11 and 14 of Directive 87/102 must be interpreted as meaning that the right to pursue remedies, provided for in Article 11(2) of Directive 87/102, which the consumer enjoys against the grantor of credit, may not be made subject to the condition that the prior offer of credit must indicate the goods or services being financed.

29 In the light of the foregoing, it is appropriate to regard Question 1 as admissible.

Substance

30 All the governments which have submitted observations to the Court maintain — as does the Commission — that the right to pursue remedies, enjoyed by the consumer pursuant to Article 11(2) of Directive 87/102, cannot be made subject to the condition that the goods being financed must be explicitly indicated in the credit agreement. That view is based both on the wording of that provision and on the aim of the Directive, namely, consumer protection.

31 Franfinance, on the other hand, contends that the contract which it concluded with Mr and Mrs Rampion constitutes the arrangement of a genuine credit facility which could have numerous uses. By contrast with tied credit, which serves to finance a single transaction, such a credit facility is not subject to the interdependence rule laid down in Article 11 of Directive 87/102, as the grantor of credit cannot assume all the financial risks linked to each purchase. The possibility of abuse or fraud has to be assessed on a case-by-case basis.

— The scope *ratione materiae* of Directive 87/102 and, in particular, of Article 11(2) thereof

32 It should be recalled at the outset that, under Article 1(1) of Directive 87/102, the Directive applies to credit agreements. Credit agreements are defined in the first subparagraph of Article 1(2)(c) as agreements whereby ‘a creditor grants or promises to grant to a consumer a credit in the form of a deferred payment, a loan or other similar financial accommodation’. That broad definition of the concept of ‘credit agreement’ is confirmed, as the Commission pointed out at the hearing, by the 10th

recital in the preamble to Directive 87/102, according to which 'better protection of consumers can be achieved by adopting certain requirements which are to apply to all forms of credit'.

33 Nevertheless, as is clear from the second subparagraph of Article 1(2)(c) and from Article 2 of Directive 87/102, as well as from the 11th and 14th recitals in the preamble to the Directive, certain credit agreements or types of transaction are, or may be — owing to their specific character — partially or entirely excluded from the scope of the Directive. The arrangement of a credit facility is not one of the cases listed in those provisions.

34 The arrangement of a credit facility for the sole purpose of making credit, which can be used on a number of occasions, available to the consumer is not excluded either, even partially, from the scope of Directive 87/102 under Article 2(1)(e) thereof.

35 It should be recalled that, according to the wording of Article 2(1)(e) thereof, Directive 87/102 does not apply to 'credit in the form of advances on a current account granted by a credit institution or financial institution other than on credit card accounts'. Nevertheless, by virtue of that provision, the provisions laid down in Article 6 of the Directive are to apply to that form of credit.

36 The notion of a 'current account' within the meaning of Article 2(1)(e) — which, being an exception, falls to be narrowly construed — presupposes, as is clear from the phrase 'credit in the form of advances on a current account', that the purpose of that account is not simply to make credit available to the customer. On the contrary, an account of that type constitutes a more or less general platform which enables the

customer to carry out financial transactions and which is characterised by the fact that the amounts transferred to that account, whether by the customer himself or by a third party, are not necessarily for the purpose of renewing credit made available on that account. In other words, a negative balance, representing an authorised advance, is only one of the possible states of that account, which could also show a positive balance.

37 Moreover, neither the broad logic nor the aim of Directive 87/102 — which seeks, in particular, to protect consumers — weighs in favour of excluding from the scope of the Directive credit agreements in the form of an arranged credit facility, the sole purpose of which is to make available to the consumer credit which can be used on a number of occasions.

38 As regards, more specifically, the scope of Article 11(2) of Directive 87/102, it does not follow from the wording of that provision, contrary to Franfinance's contention, that it applies only to credit agreements designed to finance a single contract of sale or a single contract for services.

39 As the Advocate General pointed out at point 58 of his Opinion, there is nothing in the wording of Article 11(2) of Directive 87/102 to suggest that that provision does not apply to credit facilities. In particular, the use of the word 'contract' in the singular at the end of Article 11(2)(d) of Directive 87/102 — which, as one of the conditions required to trigger the right to pursue remedies, refers to the situation where 'the goods or services covered by the credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for supply of them' — does not support the simplistic interpretation of that provision argued for by Franfinance.

- 40 Furthermore, Article 11(3) of the Directive makes express provision for an exception to the application of Article 11(2). However, it is not credit facilities which are thus generally excluded.
- 41 As for the line of argument put forward by Franfinance to the effect that Article 11 of Directive 87/102 cannot apply to a credit facility because the grantor of credit cannot assume all the financial risks linked to each purchase, it must be stated that those risks are considerably reduced by the fact that paragraph 2 of that article confers on the consumer the right to pursue remedies against the grantor of credit only where, in accordance with the condition laid down in paragraph 2(b) thereof, 'the grantor of the credit and the supplier of the goods or services have a pre-existing agreement whereunder credit is made available exclusively by that grantor of credit to customers of that supplier for the acquisition of goods or services from that supplier' and the consumer has, in accordance with the condition laid down in paragraph 2(c) thereof, obtained 'his credit pursuant to that pre-existing agreement'.
- 42 The aim of Article 11(2) of Directive 87/102 can be achieved only if that provision applies also where the credit may be put to a variety of uses. In fact, Article 11(2) must be read in the light of the 21st recital, according to which, in particular, 'as regards goods or services which the consumer has contracted to acquire on credit, the consumer should, at least in the circumstances defined [above], have rights vis-à-vis the grantor of credit which are in addition to his normal contractual rights against him and against the supplier of the goods or services'.
- 43 Moreover, the fact that one purchase among several financed by means of the same credit facility may, pursuant to Article 11(2) of Directive 87/102, allow the consumer to take action against the grantor of credit does not necessarily mean that that

remedy affects the credit facility in its entirety. As the Advocate General indicated at point 65 et seq. of his Opinion, Article 11(2) allows the protection offered to the consumer to take various forms, in order to take account of the specific characteristics of a credit facility as compared with tied credit, granted for a single purchase.

- 44 It must therefore be held that Article 11(2) of Directive 87/102 applies both to credit designed to finance a single transaction and a credit facility allowing the consumer to use the credit granted on a number of occasions.

— The right to pursue remedies as provided for in Article 11(2) of Directive 87/102

- 45 As regards the question whether it is contrary to Article 11(2) of Directive 87/102 to make the right to pursue remedies, provided for therein, subject to the condition that the prior offer of credit must indicate the goods or services being financed, it must be stated that a condition to that effect is not to be found amongst the five cumulative conditions set out in the first sentence of that provision.

- 46 It is true that the second sentence of Article 11(2) of Directive 87/102 provides that 'Member States shall determine to what extent and under what conditions these remedies shall be exercisable'. However, as the German Government pointed out and as the Advocate General remarked at point 71 of his Opinion, that provision

cannot be interpreted as allowing Member States to make the consumer's right to pursue remedies subject to conditions over and above those exhaustively listed in the first sentence of Article 11(2) of Directive 87/102.

⁴⁷ In the first place, as is clear from its wording, the second sentence of Article 11(2) of Directive 87/102 presupposes the existence of a right to pursue remedies as provided for in the first sentence of that provision. In the second place, it would run counter to the aim of Directive 87/102, which consists primarily in ensuring that a minimum standard of consumer protection in matters of consumer credit is complied with in all Member States, if it were permissible to make the right to pursue remedies — which the consumer enjoys against the grantor of credit pursuant to the first sentence of Article 11(2) of the Directive — subject to a formal requirement such as that at issue in the main proceedings.

⁴⁸ That interpretation is supported by Article 14(1) of Directive 87/102, which states that 'Member States shall ensure that credit agreements shall not derogate, to the detriment of the consumer, from the provisions of national law implementing or corresponding to this Directive' and also by Article 14(2) thereof, which states that 'Member States shall further ensure that the provisions which they adopt in implementation of this directive are not circumvented as a result of the way in which agreements are formulated ...'.

⁴⁹ Indeed, Article 14 emphasises, in a general manner, the importance placed by the Community legislature on the protective provisions laid down in Directive 87/102, as well as on their strict application. Moreover, as the French, German, Spanish and Italian Governments and the Commission submit, Article 14(2) specifically precludes national legislation from enabling the grantor of credit to avoid facing an action brought by the consumer under Article 11(2) of that Directive simply because there is no indication of the goods or services being financed.

50 In the light of all the foregoing, the answer to Question 1 must be that Articles 11 and 14 of Directive 87/102 are to be interpreted as meaning that the right to pursue remedies, provided for in Article 11(2) of Directive 87/102, which the consumer enjoys against the grantor of credit, may not be made subject to the condition that the prior offer of credit must indicate the goods or services being financed.

Question 2

Admissibility

51 Franfinance contends that Question 2, which is not relevant for the purposes of deciding the dispute in the main proceedings, is inadmissible. According to Franfinance, the referring court does not need to raise of its own motion the question whether the principal contract and the credit agreement are interdependent, as that question was directly raised by Mr and Mrs Rampion when they sought a declaration by the national court that the contract of sale is void and the termination 'in consequence' of the associated credit agreement.

52 The French Government contended at the hearing that, in seeking a declaration by the referring court that the contract of sale is void and the termination 'in consequence' of the credit agreement, Mr and Mrs Rampion relied on various pleas in law, but did not claim that the two contracts at issue are interdependent. Although the referring court nevertheless pondered that issue, it did not really do so of its own motion since, in their respective defences, both KpK and Franfinance

contended that, in the absence of any indication in the offer of credit of the goods sold, the credit agreement did not constitute an agreement for tied credit.

53 The Commission pointed out at the hearing that it is not clear whether, in the main proceedings, the referring court was led to raise the issue of interdependence of its own motion. In fact, in seeking termination of the credit agreement as a consequence of the nullity of the contract of sale, Mr and Mrs Rampion were themselves relying on the interdependence of the two contracts. Moreover, in the light of the arguments put forward by KpK and by Franfinance in their defence in the main proceedings, it could be asked whether a line of argument alleging such interdependence had not already been adduced before the referring court.

54 It should be recalled that, according to the case-law cited at paragraph 24 of the present judgment, the Court may reject a request for a preliminary ruling submitted by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.

55 As it is, in the grounds of its decision relating to Question 2, the referring court explicitly states that the provisions of Articles L. 311-20 and L. 311-21 of the Consumer Code were not relied on by Mr and Mrs Rampion. In those circumstances, it is not obvious that Question 2 — which concerns the possibility for courts to apply those provisions of national law of their own motion — bears no relation to the actual facts of the main action or its purpose, or that the problem raised thereby is hypothetical.

56 Question 2 must therefore be regarded as admissible.

Substance

57 By Question 2, the referring court asks, in essence, whether Directive 87/102 must be interpreted as allowing the national courts to apply of their own motion the provisions transposing Article 11(2) thereof into national law, particularly in view of the fact that the aim of the Directive is broader than consumer protection alone, extending also to the organisation of the market.

58 The question of the aim of Directive 87/102 is raised in the specific context of the case-law of the Cour de cassation (Court of Cassation) (France), which — as is clear from the order for reference and especially from the observations of the French Government — draws a distinction between public policy rules designed to order society (*règles d'ordre public de direction*), adopted in the general interest and which the court may raise of its own motion, and public policy rules designed to protect specific interests (*règles d'ordre public de protection*), adopted in the interest of a particular category of persons and which may be relied upon only by persons belonging to that category. The rules relating to consumer credit fall within the latter category.

59 The Court has repeatedly stated that, as is clear from its preamble, Directive 87/102 was adopted with the dual aim of ensuring both the creation of a common consumer credit market (third to fifth recitals) and the protection of consumers who avail themselves of such credit (sixth, seventh and ninth recitals) (Case C-208/98 *Berliner Kindl Brauerei* [2000] ECR I-1741, paragraph 20, and Case C-264/02 *Cofinoga* [2004] ECR I-2157, paragraph 25).

- 60 All the same, the referring court asks whether it is possible to transpose to Directive 87/102 the case-law of the Court regarding the possibility for courts to raise of their own motion provisions flowing from Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), which results in particular from Joined Cases C-240/98 to C-244/98 *Océano Grupo Editorial and Salvat Editores* [2000] ECR I-4941 and Case C-473/00 *Cofidis* [2002] ECR I-10875.
- 61 At paragraph 26 of *Océano Grupo Editorial and Salvat Editores*, the Court held that the aim of Article 6 of Directive 93/13, which requires Member States to provide that unfair contract terms are not to be binding on the consumer, could not be achieved if the consumer were himself obliged to raise the unfair nature of such terms. In disputes where the amounts involved are often small, the lawyers' fees may be higher than the amount at stake, which may deter the consumer from defending himself against the application of an unfair term. While it is true that, in a number of Member States, procedural rules enable individuals to defend themselves in such proceedings, there is a real risk that the consumer, particularly because of a lack of awareness, will not challenge the unfair nature of the term pleaded against him. It follows that effective consumer protection can be attained only if the national courts are given power to evaluate terms of this kind of their own motion.
- 62 Referring to that paragraph in *Océano Grupo Editorial and Salvat Editores*, the Court confirmed at paragraph 33 of *Cofidis* that the power of the court to raise of its own motion the unfair nature of a contract term has been regarded as necessary for ensuring that the consumer enjoys effective protection, in view in particular of the real risk that he may be unaware of his rights or may encounter difficulties in exercising them (see also Case C-168/05 *Mostaza Claro* [2006] ECR I-10421, paragraph 28).

- 63 As submitted by the Spanish and Italian Governments and the Commission, and as the Advocate General remarked at point 102 et seq. of his Opinion, those considerations are equally valid with regard to consumer protection, as provided for in Article 11(2) of Directive 87/102.
- 64 On that point, it should be recalled that while Article 11(2) of Directive 87/102 pursues the dual aim described in paragraph 59 of the present judgment, it seeks to confer on the consumer, in well-defined circumstances, rights vis-à-vis the grantor of credit over and above the consumer's normal contractual rights against the grantor of credit and against the supplier of the goods or services (see paragraph 42 of the present judgment).
- 65 That aim could not be effectively achieved if the consumer were himself obliged to invoke the right to pursue remedies which he enjoys against the grantor of credit in accordance with the provisions of national law transposing Article 11(2) of Directive 87/102, in particular because of the real risk that the consumer may be unaware of his rights or may encounter difficulties in exercising them. As the Advocate General stated at point 107 of his Opinion, the fact that the main proceedings were brought by Mr and Mrs Rampion and that they are represented in those proceedings by a lawyer does not justify a different conclusion, as the issue must be settled independently of the specific circumstances of the case.
- 66 Franfinance nevertheless contends that the true purpose of Question 2 is to authorise the national courts to impose, of their own motion, the penalty under French law for failure to include certain information — mandatory under French law — in the prior offer relating to tied credit, that penalty being to divest the grantor of credit of its right to interest. That is a genuine 'punitive penalty' (*peine privée*), which could never be imposed by a court of its own motion without infringing, on the one hand, the principle that it is for the parties to delimit the subject-matter of the proceedings (*le principe dispositif*) and, on the other, the right to a fair trial enshrined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

- 67 To the same effect, the French Government pointed out at the hearing — referring to Joined Cases C-430/93 and C-431/93 *van Schijndel and van Veen* [1995] ECR I-4705 — that, if a consumer does not seek a ruling by the court that the grantor of credit has forfeited its right to the interest owed by the consumer, the court cannot of its own motion raise the issue of the lack of any indication in the prior offer of credit of the goods or service being financed, without giving judgment on matters not covered by the consumer's application.
- 68 In that regard, it should be noted that, as is clear from paragraphs 55 and 57 of the present judgment, Question 2 concerns only Article 11(2) of Directive 87/102 and the provisions transposing it into national law (that is to say, according to the referring court, Articles L. 311-20 and L. 311-21 of the Consumer Code). In the order for reference, the national court makes no reference whatsoever to any penalty consisting in divesting the grantor of credit of its right to interest. Nor was it argued before the Court that those provisions of the Consumer Code provide for that penalty. Thus, the arguments reproduced in the preceding paragraphs are not relevant for the purposes of this analysis, which does not encompass the question whether the national court may of its own motion impose a penalty such as that to which Franfinance refers.
- 69 The answer to Question 2 must therefore be that Directive 87/102 is to be interpreted as allowing national courts to apply of their own motion the provisions transposing Article 11(2) thereof into national law.

Costs

- 70 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (First Chamber) hereby rules:

- 1. Articles 11 and 14 of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, as amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998, must be interpreted as meaning that the right to pursue remedies, provided for in Article 11(2) of Directive 87/102, as amended, which the consumer enjoys against the grantor of credit, may not be made subject to the condition that the prior offer of credit must indicate the goods or services being financed.**

- 2. Directive 87/102, as amended by Directive 98/7, must be interpreted as allowing national courts to apply of their own motion the provisions transposing Article 11(2) of Directive 87/102 into national law.**

[Signatures]