



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

5 March 2020*

(Reference for a preliminary ruling — Consumer protection — Directive 2008/48/EC — Credit agreements for consumers — Article 8 — Creditor's obligation to assess the consumer's creditworthiness — National rules — Whether limitation may be invoked against the objection of nullity of the agreement raised by the consumer — Article 23 — Penalties — Effective, proportionate and dissuasive nature — National court — Examination by the court of its own motion as to whether that obligation has been complied with)

In Case C-679/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Okresní soud v Ostravě (District Court, Ostrava, Czech Republic), made by decision of 25 October 2018, received at the Court on 5 November 2018, in the proceedings

OPR-Finance s. r. o.

v

GK,

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, T. von Danwitz and A. Kumin (Rapporteur),
Judges,

Advocate General: J. Kokott,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 4 September 2019,

after considering the observations submitted on behalf of:

- the Czech Government, by M. Smolek, J. Vláčil and S. Šindelková, acting as Agents,
- the Portuguese Government, by L. Inez Fernandes, P. Barros da Costa, M.J. Marques and C. Farto, acting as Agents,
- the European Commission, by G. Goddin and P. Němečková, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 November 2019,

* Language of the case: Czech.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 8 and 23 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, and corrigenda OJ 2009 L 207, p. 14, OJ 2010 L 199, p. 40, and OJ 2011 L 234, p. 46).
- 2 The request has been made in proceedings between OPR-Finance s. r. o. and GK concerning a claim for payment of the outstanding amount due under an agreement relating to credit which that company had granted to GK.

Legal context

EU law

- 3 Recitals 7, 9, 26, 28 and 47 of Directive 2008/48 are worded as follows:

(7) In order to facilitate the emergence of a well-functioning internal market in consumer credit, it is necessary to make provision for a harmonised Community framework in a number of core areas. ...

...

(9) Full harmonisation is necessary in order to ensure that all consumers in the Community enjoy a high and equivalent level of protection of their interests and to create a genuine internal market. Member States should therefore not be allowed to maintain or introduce national provisions other than those laid down in this Directive. However, such restriction should only apply where there are provisions harmonised in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation. ... Another example of this possibility for Member States could be the maintenance or introduction of national provisions on the cancellation of a contract for the sale of goods or supply of services if the consumer exercises his right of withdrawal from the credit agreement. ...

...

(26) ... In the expanding credit market, in particular, it is important that creditors should not engage in irresponsible lending or give out credit without prior assessment of creditworthiness, and the Member States should carry out the necessary supervision to avoid such behaviour and should determine the necessary means to sanction creditors in the event of their doing so. ... [C]reditors should bear the responsibility of checking individually the creditworthiness of the consumer. To that end, they should be allowed to use information provided by the consumer not only during the preparation of the credit agreement in question, but also during a long-standing commercial relationship. The Member States' authorities could also give appropriate instructions and guidelines to creditors. Consumers should also act with prudence and respect their contractual obligations.

...

(28) To assess the credit status of a consumer, the creditor should also consult relevant databases; the legal and actual circumstances may require that such consultations vary in scope. ...

...

(47) Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. While the choice of penalties remains within the discretion of the Member States, the penalties provided for should be effective, proportionate and dissuasive.’

4 Article 8 of Directive 2008/48, entitled ‘Obligation to assess the creditworthiness of the consumer’, provides in its paragraph 1:

‘Member States shall ensure that, before the conclusion of the credit agreement, the creditor assesses the consumer’s creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database. Member States whose legislation requires creditors to assess the creditworthiness of consumers on the basis of a consultation of the relevant database may retain this requirement.’

5 Article 23 of that directive, entitled ‘Penalties’, provides:

‘Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.’

Czech law

Law No 257/2016 on consumer credit

6 Directive 2008/48 was transposed into Czech law by the zákon č. 257/2016 Sb., o spotřebitelském úvěru (Law No 257/2016 on consumer credit).

7 Paragraph 86 of that law, entitled ‘Assessing creditworthiness’, provides:

‘(1) Before the conclusion of a consumer credit agreement or any change of obligation in the agreement that entails a significant increase in the total amount of consumer credit, the supplier shall assess the consumer’s creditworthiness on the basis of essential, reliable, sufficient and proportionate information obtained from the consumer and, where necessary, from a database enabling assessment of the consumer’s creditworthiness or from other sources. The supplier shall provide consumer credit only where the result of a creditworthiness assessment indicates that there are no reasonable doubts about the consumer’s ability to repay the consumer credit.

(2) When assessing the consumer’s creditworthiness, the supplier shall in particular assess the consumer’s ability to make the agreed regular monthly consumer credit repayments, on the basis of a comparison of the consumer’s income and expenditure and means of meeting any existing debts. Moreover, he shall take into account the value of any property, if the effect of the consumer credit agreement is that the consumer credit is to be repaid, in part or in full, from the proceeds of sale of the consumer’s property rather than by regular repayments or if it is apparent from the consumer’s financial situation that he will be able to repay the consumer credit irrespective of his income.’

- 8 Paragraph 87 of that law, entitled ‘Consequences of failure to fulfil the obligation to assess the creditworthiness of the consumer’, provides in its paragraph 1:

‘If a supplier provides a consumer with consumer credit in breach of the second sentence of Paragraph 86(1), the agreement shall be null and void. The consumer may raise an objection of nullity within a limitation period of three years, running from the date of conclusion of the agreement. The consumer shall be obliged, at a time appropriate to his financial capacity, to return the principal sum of consumer credit paid out.’

Law No 89/2012 on the Civil Code

- 9 Paragraph 586 of the zákon č. 89/2012 Sb., občanský zákoník (Law No 89/2012 on the Civil Code) provides:

‘(1) Where the nullity of a legal transaction will protect the interest of a certain person, only that person may raise an objection of nullity in relation to that transaction.

(2) If a person entitled to raise an objection of nullity in relation to a legal transaction does not do so, that legal transaction shall be deemed to be valid.’

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

- 10 On 21 April 2017, GK concluded a revolving credit agreement with OPR-Finance using a means of distance communication, on the basis of which the latter provided an amount of 4 900 Czech Koruny (CZK) (approximately EUR 192) to GK.
- 11 Since GK failed to repay due credit instalments, OPR-Finance brought an action before the Okresní soud v Ostravě (District Court, Ostrava, Czech Republic) on 7 June 2018, seeking an order for payment of CZK 7 839 (approximately EUR 307) by GK plus statutory interest from 1 October 2017 until full payment of that sum.
- 12 It is apparent from the order for reference that, during the main proceedings, first, OPR-Finance did not state — and still less provided proof — that, before concluding the credit agreement in question, it had assessed the borrower’s creditworthiness.
- 13 Second, it is apparent that GK did not raise an objection of nullity of the agreement on that ground. Under Paragraph 87(1) of Law No 257/2016 on consumer credit, nullity of the credit agreement is a penalty that is applicable only if an objection to that effect has been raised by the consumer. The referring court takes the view that such a rule undermines consumer protection, as guaranteed by Directive 2008/48.
- 14 In this respect, that court observes, first, that, according to established Czech legal practice and academic writing, national courts are prohibited from applying, of their own motion, the penalty of relative nullity laid down in Paragraph 87(1) of Law No 257/2016 on consumer credit. Second, according to that court, it is extremely rare for consumers, who, in the majority of consumer credit disputes, are not represented by a lawyer, to raise an objection of nullity in relation to the agreement on the ground that the creditor had neglected to assess their creditworthiness.
- 15 Moreover, the referring court is uncertain as to whether an interpretation of national law in conformity with Directive 2008/48, which would imply that the national court is required to apply, of its own motion, the penalty provided for in Paragraph 87(1) of Law No 257/2016 on consumer credit, would not lead to an interpretation *contra legem*.

- 16 In those circumstances, the Okresní soud v Ostravě (District Court, Ostrava) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- (1) Do the combined provisions of Article 8 and Article 23 of Directive 2008/48 preclude national legislation which specifies that the penalty for failure to fulfil the creditor's obligation to assess the consumer's creditworthiness before the conclusion of the credit agreement shall be the nullity of the credit agreement linked with an obligation on the consumer to return the principal sum to the creditor at a time appropriate to the consumer's financial capacity, where such a penalty (the nullity of the credit agreement) is, however, applicable only in the event that the consumer invokes it (that is, raises an objection of nullity in relation to the agreement) within a three-year limitation period?
- (2) Do the combined provisions of Article 8 and Article 23 of Directive 2008/48 require a national court to apply, of its own motion, the penalty laid down in national legislation for failure of the creditor to fulfil its obligation to assess the consumer's creditworthiness (that is, even in the event that the consumer does not actively invoke the penalty)?'

Consideration of the questions referred

- 17 By its questions, which may conveniently be examined together, the referring court asks, in essence, whether Article 8 of Directive 2008/48, read in conjunction with Article 23 thereof, must be interpreted as meaning that, first, it requires a national court to examine of its own motion whether there has been a failure to comply with the creditor's pre-contractual obligation to assess the consumer's creditworthiness, provided for in Article 8 of that directive, and to draw the consequences arising under national law of a failure to comply with that obligation and, second, it precludes national rules under which such a failure is penalised by the nullity of the credit agreement, linked with an obligation for that consumer to return the principal sum to that creditor at a time appropriate to the consumer's financial capacity, only on condition that that consumer raises an objection of such nullity within a three-year limitation period.
- 18 In this respect, it is appropriate to note that the Court has recalled on numerous occasions the obligation of national courts to examine, of their own motion, infringements of certain provisions of EU consumer-protection legislation (judgment of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 62 and the case-law cited).
- 19 Such a requirement is justified by the consideration that the system of protection, in accordance with the settled case-law of the Court, is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge, which leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of those terms (judgment of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 63 and the case-law cited).
- 20 It follows from Article 8(1) of Directive 2008/48, read in the light of recital 28 thereof, that, prior to the conclusion of a credit agreement, the creditor must assess the consumer's creditworthiness and that obligation may, where appropriate, include a consultation of the relevant database. In that regard, it must be recalled that the purpose of that obligation, in accordance with recital 26 of that directive, is to make a creditor accountable and to prevent that creditor from granting credit to consumers who are not creditworthy.
- 21 Moreover, since such an obligation to assess the borrower's creditworthiness is intended to protect consumers against the risks of over-indebtedness and bankruptcy, it contributes to attaining the objective of Directive 2008/48, which consists, as can be seen from recitals 7 and 9 of that directive, in providing, as regards consumer credit, full and mandatory harmonisation in a number of key areas,

which is regarded as necessary in order to ensure that all consumers in the European Union enjoy a high and equivalent level of protection of their interests and to facilitate the emergence of a well-functioning internal market in consumer credit (judgment of 27 March 2014, *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraph 42). Therefore, that obligation is of fundamental significance for the consumer.

- 22 Furthermore, there is a real risk that the consumer, particularly because of a lack of awareness, will not rely on the legal rule that is intended to protect him (judgment of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 65 and the case-law cited).
- 23 It follows from the foregoing that, as the Court has held in regard to compliance with the obligation to provide information, set out in Article 10(2) of Directive 2008/48, which also contributes to attaining the objective of that directive, as recalled in paragraph 21 of this judgment, effective consumer protection could be achieved only if the national court were required, where it has available to it the legal and factual elements necessary for that task, to examine of its own motion whether there has been compliance with the creditor's obligation set out in Article 8 of that directive (see, by analogy, judgment of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraphs 66 and 70).
- 24 In addition, where the national court has, of its own motion, found that there has been a failure to comply with that obligation, it is obliged, without waiting for the consumer to make an application to that effect, to draw all the consequences arising under national law from that failure, provided always that there has been compliance with the principle of *audi alteram partem* and that the penalties laid down in national law satisfy the requirements of Article 23 of Directive 2008/48, as interpreted by the Court (see, to that effect, judgment of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraphs 71, 73 and 74). In this respect, it must be observed that Article 23 of that directive provides, first, that the system of penalties applicable in the event of infringement of the national provisions adopted pursuant to Article 8 of that directive must be established in such a way as to ensure that the penalties are effective, proportionate and dissuasive and, second, that the Member States are to take all measures necessary to ensure that they are implemented. Within those limits, the choice of penalties remains within the discretion of the Member States (see, to that effect, judgment of 27 March 2014, *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraph 43).
- 25 In addition, the Court has consistently held, with regard to the principle of sincere cooperation, enshrined in Article 4(3) TEU, that, while the choice of penalties remains within their discretion, Member States must ensure in particular that infringements of EU law are penalised under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive (judgment of 27 March 2014, *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraph 44 and the case-law cited).
- 26 The Court has also held that the severity of penalties must be commensurate with the seriousness of the infringements for which they are imposed, in particular by ensuring a genuinely deterrent effect, while respecting the general principle of proportionality (judgment of 9 November 2016, *Home Credit Slovakia*, C-42/15, EU:C:2016:842, paragraph 63 and the case-law cited).
- 27 It should be added that it is for the national courts, which have sole jurisdiction to interpret and apply national law, to determine whether, having regard to all the circumstances of the particular case, those penalties meet such requirements and are effective, proportionate and dissuasive.
- 28 The Court, when giving a preliminary ruling, may, however, provide clarification designed to give those national courts guidance in their assessment (see, by analogy, judgment of 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraph 91 and the case-law cited).

- 29 In the present case, according to the information contained in the request for a preliminary ruling, a failure to comply with the creditor's pre-contractual obligation to assess the borrower's creditworthiness imposed by Paragraph 86 of Law No 257/2016 on consumer credit is penalised, in accordance with Paragraph 87 of that law, by the nullity of the credit agreement, linked with an obligation on the consumer to return only the principal sum to the creditor at a time appropriate to the consumer's financial capacity, on condition that that consumer raises that objection of nullity within a limitation period of three years from the conclusion of the agreement. Thus, in the event that the penalty provided for by that law is applied, namely the nullity of the credit agreement, the creditor loses its rights to payment of the agreed interest and costs.
- 30 In this respect, it is appropriate to observe that, in so far as the application of such a penalty results in the creditor no longer being entitled to the agreed interest and costs, that penalty appears to be commensurate with the seriousness of the infringements for which it is imposed and, in particular, has a genuinely dissuasive effect (see, to that effect, judgments of 27 March 2014, *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraphs 52 and 53, and of 9 November 2016, *Home Credit Slovakia*, C-42/15, EU:C:2016:842, paragraph 69).
- 31 It must be stated that, given the importance of the objective of consumer protection inherent in the creditor's obligation to assess the borrower's creditworthiness, the Court has previously held that, if the penalty of forfeiture of entitlement to interest is, in practice, weakened, or even entirely undermined, it necessarily follows that that penalty is not genuinely dissuasive (see, to that effect, judgment of 27 March 2014, *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraphs 52 and 53).
- 32 It is apparent from the order for reference that the application of the penalty of nullity of the credit agreement is subject to the condition that the consumer raises that objection of nullity within a limitation period of three years. In that last regard, it must be noted that, according to settled case-law, in the absence of relevant EU rules, the detailed procedural rules designed to ensure the protection of the rights which individuals acquire under EU law are a matter for the domestic legal order of each Member State, in accordance with the principle of the procedural autonomy of the Member States, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it in practice impossible or excessively difficult to exercise rights conferred by the EU legal order (principle of effectiveness) (see, to that effect, judgment of 18 December 2014, *CA Consumer Finance*, C-449/13, EU:C:2014:2464, paragraph 23).
- 33 In respect of the principle of equivalence, it must be observed that the Court does not have before it any evidence which might raise doubts as to the compliance with that principle of the condition relating to the limitation period at issue in the main proceedings.
- 34 As regards the principle of effectiveness, it is sufficient to recall that, as is apparent from paragraph 23 and 24 of this judgment, effective consumer protection requires, in a situation where the creditor brings an action against the consumer based on the credit agreement, that the national court is to examine, of its own motion, the creditor's compliance with the obligation laid down in Article 8 of Directive 2008/48 and, if it finds that there has been a failure to comply with that obligation, must draw the consequences provided for by national law without waiting for the consumer to submit a request to that end, provided that the principle of *audi alteram partem* has been complied with.
- 35 In respect of a penalty such as nullity of the credit agreement linked with an obligation to return the principal sum, it must be stated that, where the consumer expresses a negative opinion to the application of such a penalty, that opinion should be taken into account (see, by analogy, judgments of 4 June 2009, *Pannon GSM*, C-243/08, EU:C:2009:350, paragraph 33, and of 21 February 2013, *Banif Plus Bank*, C-472/11, EU:C:2013:88, paragraph 35).

- 36 It follows from those factors that the principle of effectiveness precludes the condition that the penalty of nullity of the credit agreement linked with an obligation to return the principal sum, applicable in the event of failure by the creditor to comply with the obligation provided for in Article 8 of Directive 2008/48, must be raised by the consumer within a limitation period of three years.
- 37 That finding cannot be called into question by the argument, raised by the Czech Government in its written observations, that the national provisions on the supervision of credit institutions also provide for an administrative penalty in the form of a fine of CZK 20 million (approximately EUR 783 000) in the event of credit being granted without compliance with the obligation to assess the creditworthiness of the consumer.
- 38 It must be noted that the European Commission maintained at the hearing, without being contradicted, that the competent Czech supervisory authority, namely the Czech National Bank, has never notified any decision regarding the imposition of fines for failure, by the creditor, to comply with that obligation. Moreover, as the Advocate General observed in point 82 of her Opinion, such penalties on their own are not capable of ensuring, in a sufficiently effective manner, the protection of consumers against the risks of over-indebtedness and insolvency sought by Directive 2008/48, in so far as they have no effect on the situation of a consumer to whom a credit agreement was granted in infringement of Article 8 of that directive.
- 39 In any event, where the national legislature has, as in the present case, provided, with a view to penalising such an infringement, in addition to an administrative penalty, for a civil penalty from which the consumer concerned may benefit, that penalty must, in the light of the particular importance afforded by Directive 2008/48 to consumer protection, be implemented in compliance with the principle of effectiveness.
- 40 Finally, according to the information contained in the request for a preliminary ruling, the national court is, according to established Czech legal practice, prohibited from applying, of its own motion, the penalty of nullity of the credit agreement linked with an obligation to return the principal sum, provided for in the event of failure of the creditor to comply with the pre-contractual obligation to assess the consumer's creditworthiness.
- 41 As regards that prohibition, it must be borne in mind that, as the Court has consistently held, when national courts apply domestic law, they are bound to interpret it, so far as possible, in the light of the wording and the purpose of Directive 2008/48 in order to achieve the result sought by that directive and consequently comply with the third paragraph of Article 288 TFEU. This obligation to interpret national law in conformity with EU law is inherent in the system of the FEU Treaty, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they determine the disputes before them (judgment of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 79).
- 42 Moreover, the Court has ruled on numerous occasions that the principle that national law must be interpreted in conformity with European Union law requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that the directive in question is fully effective and to achieving an outcome consistent with the objective pursued by it (see, to that effect, judgment of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 27 and the case-law cited).
- 43 It should be added that national courts, including those giving judgment at final instance, must change their established case-law, where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of a directive (see, to that effect, judgment of 5 September 2019, *Pohotovost'*, C-331/18, EU:C:2019:665, paragraph 56 and the case-law cited).

- 44 It follows that the referring court cannot, in the main proceedings, validly claim that it is impossible for it to interpret the provisions of national law at issue in a manner that is compatible with EU law, for the sole reason that those provisions have been interpreted, by the Czech courts, in a way that is not compatible with EU law. Thus, it is for the referring court to ensure that Directive 2008/48 is given full effect, and if necessary to disapply, on its own authority, the interpretation adopted by the Czech courts, since that interpretation is not compatible with EU law (see, by analogy, judgment of 8 November 2016, *Ognyanov*, C-554/14, EU:C:2016:835, paragraphs 69 and 70 and the case-law cited).
- 45 However, that obligation to interpret national law in conformity with EU law is limited by the general principles of law, particularly that of legal certainty, in the sense that it cannot serve as the basis for an interpretation of national law *contra legem*.
- 46 In light of all of the foregoing considerations, the answer to the questions referred for a preliminary ruling is that Articles 8 and 23 of Directive 2008/48 must be interpreted as imposing an obligation on a national court to examine, of its own motion, whether there has been a failure to comply with the creditor's pre-contractual obligation to assess the consumer's creditworthiness, provided for in Article 8 of that directive, and to draw the consequences arising under national law of a failure to comply with that obligation, on condition that they satisfy the requirements of Article 23. Articles 8 and 23 of Directive 2008/48 must also be interpreted as precluding national rules under which a failure by the creditor to comply with its pre-contractual obligation to assess the consumer's creditworthiness is penalised by the nullity of the credit agreement, linked with an obligation on the consumer to return the principal sum to the creditor at a time appropriate to the consumer's financial capacity, solely on condition that that consumer raises an objection of such nullity within a three-year limitation period.

Costs

- 47 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 (Second Chamber) hereby rules:

Articles 8 and 23 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 must be interpreted as imposing an obligation on a national court to examine, of its own motion, whether there has been a failure to comply with the creditor's pre-contractual obligation to assess the consumer's creditworthiness, provided for in Article 8 of that directive, and to draw the consequences arising under national law of a failure to comply with that obligation, on condition that they satisfy the requirements of Article 23. Articles 8 and 23 of Directive 2008/48 must also be interpreted as precluding national rules under which a failure by the creditor to comply with its pre-contractual obligation to assess the consumer's creditworthiness is penalised by the nullity of the credit agreement, linked with an obligation on the consumer to return the principal sum to the creditor at a time appropriate to the consumer's financial capacity, solely on condition that that consumer raises an objection of such nullity within a three-year limitation period.

[Signatures]