



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

15 October 2020*

(Reference for a preliminary ruling – Consumer protection – Payment services in the internal market – Directive 2007/64/EC – Article 45 – Directive (EU) 2015/2366 – Article 55 – Termination of a framework contract – Directive 2014/17/EU – Credit agreements for consumers relating to residential immovable property – Article 12(1), (2)(a) and (3) – Tying practices – Bundling practices – Directive 2014/92/EU – Payment accounts – Articles 9 to 14 – Account switching – Obligation to deposit income on a payment account held with the lender during a period fixed by the credit agreement as consideration for an individual advantage – Duration of the obligation – Loss of the individual advantage in the event of early termination of the account)

In Case C-778/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, France), made by decision of 5 December 2018, received at the Court on 11 December 2018, in the proceedings

Association française des usagers de banques

v

Ministre de l'Économie et des Finances,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, M. Ilešič, E. Juhász, C. Lycourgos and I. Jarukaitis (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 18 December 2019,

after considering the observations submitted on behalf of:

- the French Government, by A.-L. Desjonquères, J. Traband, E. Toutain and D. Colas, acting as Agents,
- the Czech Government, by M. Smolek, J. Vlácil and S. Šindelková, acting as Agents,
- the European Commission, by D. Triantafyllou and H. Tserepa-Lacombe, acting as Agents,

* Language of the case: French.

after hearing the Opinion of the Advocate General at the sitting on 27 February 2020,
gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 45 of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ 2007 L 319, p. 1, and corrigendum OJ 2009 L 187, p. 5), Article 12(2)(a) and (3) of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ 2014 L 60, p. 34, and corrigendum OJ 2015 L 246, p. 11), Articles 9 to 14 of Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ 2014 L 257, p. 214), and Article 55 of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ 2015 L 337, p. 35, and corrigendum OJ 2018 L 102, p. 97).
- 2 The request has been made in the context of a dispute between the Association française des usagers de banques ('the AFUB') and the ministre de l'Économie et des Finances (Minister for Economic Affairs and Finance, France; 'the Minister') concerning the legality of a decree fixing the period during which a lender may require a borrower to deposit his or her salary or similar income on a payment account.

Legal context

European Union law

Directive 2007/64

- 3 Under recital 29 of Directive 2007/64:

'In order to facilitate customer mobility, it should be possible for consumers to terminate a framework contract after the expiry of a year without incurring charges. ...'
- 4 Article 45 of that directive, entitled 'Termination', provides in paragraphs 1 and 2 thereof:

'1. The payment service user may terminate the framework contract at any time, unless the parties have agreed on a period of notice. Such a period may not exceed one month.

2. Termination of a framework contract concluded for a fixed period exceeding 12 months or for an indefinite period shall be free of charge for the payment service user after the expiry of 12 months. In all other cases charges for the termination shall be appropriate and in line with costs.'

Directive 2015/2366

- 5 Directive 2007/64 was repealed, with effect from 13 January 2018, by Directive 2015/2366. Recital 62 of that directive is worded as follows:

‘In order to facilitate customer mobility, it should be possible for consumers to terminate a framework contract without incurring charges. However, for contracts terminated by the consumer less than 6 months after their entry into force, payment service providers should be allowed to apply charges in line with the costs incurred due to the termination of the framework contract by the consumer. ...’

- 6 Article 55 of that directive, entitled ‘Termination’, which replaced Article 45 of Directive 2007/64, provides, in paragraphs 1 and 2 thereof:

‘1. The payment service user may terminate the framework contract at any time, unless the parties have agreed on a period of notice. Such a period shall not exceed 1 month.

2. Termination of the framework contract shall be free of charge for the payment service user except where the contract has been in force for less than 6 months. Charges, if any, for termination of the framework contract shall be appropriate and in line with costs.’

Directive 2014/17

- 7 Recitals 15, 24 and 25 of Directive 2014/17 are worded as follows:

‘(15) The objective of this Directive is to ensure that consumers entering into credit agreements relating to immovable property benefit from a high level of protection. ...

...

(24) ... Combining a credit agreement with one or more other financial services or products in packages is a means for creditors to diversify their offer and to compete against each other, provided that the components of the package can also be bought separately. While a combination of credit agreements with one or more other financial services or products in packages can benefit consumers, it may negatively affect consumers’ mobility and their ability to make informed choices, unless the components of the package can be bought separately. It is important to prevent practices such as tying of certain products which may induce consumers to enter into credit agreements which are not in their best interest, without however restricting product bundling which can be beneficial to consumers. Member States should however continue monitoring retail financial services markets closely to ensure that bundling practices do not distort consumer choice and competition in the market.

(25) As a general rule, tying practices should not be allowed unless the financial service or product offered together with the credit agreement could not be offered separately as it is a fully integrated part of the credit, for example in the event of a secured overdraft. In other instances, it may however be justified for creditors to offer or sell a credit agreement in a package with a payment account, savings account, investment product or pension product, for instance where the capital in the account is used to repay the credit or is a prerequisite for pooling resources to obtain the credit ...’

8 Article 1 of that directive, headed ‘Subject matter’, provides:

‘This Directive lays down a common framework for certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers secured by a mortgage or otherwise relating to residential immovable property ...’

9 Article 2 of that directive, entitled ‘Level of harmonisation’, provides, in paragraph 1 thereof:

‘This Directive shall not preclude Member States from maintaining or introducing more stringent provisions in order to protect consumers, provided that such provisions are consistent with their obligations under Union law.’

10 Article 4 of Directive 2014/17, entitled ‘Definitions’, provides:

‘For the purposes of this Directive, the following definitions shall apply:

...

(26) “Tying practice” means the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is not made available to the consumer separately.

(27) “Bundling practice” means the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services.

...’

11 Article 12 of the directive, concerning ‘tying and bundling practices’, which forms part of Chapter 4 of the directive, entitled ‘Information and practices preliminary to the conclusion of the credit agreement’, states:

‘1. Member States shall allow bundling practices but shall prohibit tying practices.

2. Notwithstanding paragraph 1, Member States may provide that creditors can request the consumer or a family member or close relation of the consumer to:

(a) open or maintain a payment or a savings account, where the only purpose of such an account is to accumulate capital to repay the credit, to service the credit, to pool resources to obtain the credit, or to provide additional security for the creditor in the event of default;

...

3. Notwithstanding paragraph 1, Member States may allow tying practices when the creditor can demonstrate to its competent authority that the tied products or categories of product offered, on terms and conditions similar to each other, which are not made available separately, result in a clear benefit to the consumers taking due account of the availability and the prices of the relevant products offered on the market. This paragraph shall only apply to products which are marketed after 20 March 2014.

...’

Directive 2014/92

12 Recitals 9 and 12 of Directive 2014/92 are worded as follows:

‘(9) In order to support effective and smooth financial mobility in the long term, it is vital to establish a uniform set of rules to tackle the issue of low customer mobility, and in particular ... to incentivise payment account switching ...

...

(12) ... All provisions of this Directive should concern payment accounts through which consumers are able to carry out the following transactions: place funds, withdraw cash and execute and receive payment transactions to and from third parties, including the execution of credit transfers. As a consequence, accounts with more limited functions should be excluded. For example, accounts such as ... current account mortgages ... should in principle be excluded from the scope of this Directive. However, should those accounts be used for day-to-day payment transactions and should they comprise all of the functions listed above, they will fall within the scope of this Directive. ...’

13 Article 2 of that directive, entitled ‘Definitions’, states:

‘For the purposes of this Directive, the following definitions apply:

...

(15) “fees” means all charges and penalties, if any, payable by the consumer to the payment service provider for or in relation to services linked to a payment account;

...’

14 Article 9 of that directive, entitled ‘Provision of the switching service’, requires Member States to ensure that payment service providers offer an account switching service to any consumer who opens or holds a payment account with a payment service provider located in the territory of the Member State concerned.

15 Article 10 of Directive 2014/92, entitled ‘The switching service’, sets out the methods to be used by service providers in executing consumers’ account switching requests.

16 Article 11 of that directive, entitled ‘Facilitation of cross-border account-opening for consumers’, requires Member States to facilitate the cross-border opening of accounts and sets out the methods for so doing.

17 Article 12 of the directive, entitled ‘Fees connected with the switching service’, states, in paragraphs 3 and 4 thereof:

‘3. Member States shall ensure that fees, if any, applied by the transferring payment service provider to the consumer for the termination of the payment account held with it are determined in accordance with Article 45(2), (4) and (6) of Directive [2007/64].

4. Member States shall ensure that fees, if any, applied by the transferring or the receiving payment service provider to the consumer for any service provided under Article 10, other than those referred to in paragraphs 1, 2 and 3 of this Article, are reasonable and in line with the actual costs of that payment service provider.’

- 18 Article 13 of Directive 2014/92, entitled ‘Financial loss for consumers’, requires, in paragraph 1 thereof, Member States to ensure that any financial loss resulting directly from the non-compliance of a payment service provider with its obligations under Article 10 is refunded to the consumer without delay.
- 19 Article 14 of that directive, entitled ‘Information about the switching service’, sets out the details of the information which payment service providers are required to make available to consumers in connection with the switching of accounts.

French law

- 20 Under Article 67, II, first paragraph, of Law No 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life (JORF, 10 December 2016, text No 2):

‘On the conditions laid down in Article 38 of the Constitution, the Government shall be empowered to adopt by order, within six months of the promulgation of this law, any measure falling within the scope of the law and enabling it to regulate, in accordance with Article L. 312-1-2 of the code monétaire et financier [(Monetary and Financial Code)], the conditions under which the entry by a consumer into a mortgage credit agreement and the level of that consumer’s interest rate may be associated with the opening of a deposit account and the deposit of his or her income, whatever its nature or origin, during the term of the credit.’

- 21 Article L. 312-1-2, I., 1. of the Monetary and Financial Code, in the version applicable to the facts in the main proceedings, provides as follows:

‘The sale or offer for sale of bundled products or services shall be prohibited save when the products or services included in the bundle can be purchased individually or when they are inseparable.’

- 22 Article L. 314-1, I, of that code reads as follows:

“Payment account” means an account held in the name of one or more persons, used for the purpose of executing payment transactions.’

- 23 Under Article L. 313-25 of the code de la consommation (Consumer Code), in the version resulting from Order No 2017-1090 of 1 June 2017 relating to mortgage credit offers that are conditional upon the borrower depositing his or her salary or similar income in a payment account (JORF, 3 June 2017, text No 13), applicable to the facts in the main proceedings:

‘The offer referred to in Article L. 313-24:

...

- 10° Shall state whether the credit is conditional upon the deposit referred to in Article L. 313-25-1. If that is the case, the following shall be stated: the duration of that deposit; if applicable, the fees for opening and maintaining the account on which the salary or similar income shall be deposited; and the nature of the individual advantage conferred by the lender as consideration. The offer must enable that advantage clearly to be identified by setting out the conditions, as to rate or otherwise, on the basis of which it is drawn up and which would be applied by the lender if the deposit requirement were to be no longer satisfied by the borrower.

...’

24 Article L. 313-25-1 of that code, inserted into it by Order No 2017-1090, provides:

‘The lender may make the credit offer referred to in Article L. 313-24 conditional on the deposit of the borrower’s salary or similar income on a payment account as referred to in Article L. 314-1 of the Monetary and Financial Code, subject to the lender conferring an individual advantage on the borrower as consideration.

That requirement may not be imposed on the borrower beyond a maximum term set by decree in Council of State. At the end of the period provided for in the credit agreement, the individual advantage shall be enjoyed by the borrower until the end of the credit.

If, before the end of that period, the borrower ceases to satisfy the abovementioned income deposit requirement, the lender may terminate, for the instalments remaining of the credit, the individual advantage referred to in the first paragraph, and apply the conditions, as to rate or otherwise, referred to in 10° of Article L. 313-25. ...’

25 Article R. 313-21-1 of that code, inserted into it by Decree No 2017-1099 of 14 June 2017, setting the period during which the lender may require the borrower to deposit his or her salary or similar income on a payment account (JORF, 16 June 2017, text No 38), provides:

‘The maximum period during which salaries or similar income referred to in Article L. 313-25-1 must be deposited shall be 10 years following the conclusion of the credit agreement or, where applicable, the amendment to the initial credit agreement.

That period may not, in any event, exceed that of the credit agreement.’

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

26 On 9 August 2017, the AFUB lodged an application before the Conseil d’État (Council of State, France) seeking the annulment of Decree No 2017-1099 on grounds of misuse of power.

27 Before the referring court, the AFUB submits, first, that Order No 2017-1090, for the implementation of which Decree No 2017-1099 was adopted, disregards the objective of facilitating banking mobility pursued by Directives 2007/64, 2014/17, 2014/92 and 2015/2366, in that it authorises credit institutions to require consumers to deposit their salaries or similar income with them and, second, that the decree disregards that same objective in that it fixes at 10 years the maximum period during which credit institutions may make the grant of individual advantages to consumers conditional on such deposit.

28 The Minister claims that the application should be rejected.

29 The referring court points out that the mechanism provided for in Article L. 313-25-1 of the Consumer Code allows credit institutions to make the grant of an individual advantage, in the context of a credit agreement offered to a borrower relating to immovable property, conditional on an undertaking to deposit his or her salary or similar income with that institution for a specified period, failure to comply with that undertaking before the end of that period entailing the loss of that advantage.

30 That court considers that the response to the pleas in law raised by the AFUB depends, first, on whether the provisions of Article 12(2)(a) of Directive 2014/17, having regard in particular to the purpose which they assign to the payment or savings account, or the provisions of Article 12(3) of that directive authorise the lender, on the one hand, to require the borrower, in return for an individual advantage, to deposit all his or her salary or similar income on a payment account for a

period laid down in the loan agreement, irrespective of the amount, maturities and duration of the loan and, on the other, to set that period at a maximum of 10 years, without, however, it exceeding that of the loan agreement.

- 31 That answer depends, second, on whether, on the one hand, Article 45 of Directive 2007/64, Article 55 of Directive 2015/2366 and Articles 9 to 14 of Directive 2014/92 relating to the facilitation of banking mobility and to fees for terminating a payment account, preclude the termination of an account opened by the borrower with the creditor, for the purposes of depositing his or her income with that creditor as consideration for an individual advantage as part of a credit agreement, from resulting, if it occurs before the expiry of the period fixed in that agreement, in the loss of that advantage, including more than a year after the opening of the account and, on the other, whether those provisions prevent the duration of that period extending to 10 years or the total duration of the loan.
- 32 In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- '(1) Do the provisions of Article 12(2)(a) of Directive [2014/17], having regard, *inter alia*, to the purpose that they assign to the payment or savings account which they authorise to be opened or maintained, or the provisions of [Article 12(3) of that directive], authorise, first, the creditor to require the borrower, as consideration for an individual advantage, to deposit all of his or her salary or similar income in a payment account opened with that creditor during a period fixed by the credit agreement, whatever the amount, the instalments and the duration of the loan, and, second, that the period thus fixed may extend to 10 years or, if it is shorter, the duration of the agreement?
- (2) Do Article 45 of Directive [2007/64], applicable at the material time and now recast as Article 55 of Directive [2015/2366], and Articles 9 to 14 of Directive [2014/92] relating to the facilitation of banking mobility and to fees for terminating a payment account, preclude the termination of an account opened by the borrower with the creditor, for the purposes of depositing his or her income with that creditor as consideration for an individual advantage as part of a credit agreement, from resulting, if it occurs before the expiry of the period fixed in that agreement, in the loss of that advantage, including more than a year after the opening of the account and, second, do those provisions prevent the duration of that period extending to 10 years or the total duration of the loan?'

Consideration of the questions referred

The first question

- 33 By its first question, the referring court asks, in essence, whether Article 12(2)(a) and (3) of Directive 2014/17 must be interpreted as precluding national legislation which allows a lender to require a borrower, when concluding a credit agreement relating to immovable property for residential use, as consideration for an individual advantage, to deposit all his or her salary or similar income on a payment account opened with that lender, irrespective of the amount, maturities and duration of the loan, for a period of up to 10 years or, if the duration of the loan contract is shorter, during that period.
- 34 It follows from Article 1 of Directive 2014/17, as clarified by recital 15 thereof, that that directive lays down a common framework relating to certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers secured by mortgage or other credit relating to immovable property for residential use in order to ensure that consumers enjoy a high level of protection.

- 35 In that regard, Article 12(1) of that directive provides that Member States are to permit bundling practices but prohibit tying practices.
- 36 The concept of ‘bundling practice’ is defined in Article 4(27) of Directive 2014/17 as meaning the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services.
- 37 The concept of ‘tying practice’ is defined in Article 4(26) of that directive as the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is not made available to the consumer separately.
- 38 It follows that the difference between those two transactions constituted by bundling practices and tying practices, within the meaning of that directive, lies in the fact that, in the first transaction, the consumer has the option of purchasing a credit agreement and other financial products or services separately, which are offered by the creditor in the form of a package, whereas, in the second transaction, the consumer is deprived of that option.
- 39 However, under Article 12(2)(a) of that directive, Member States may provide, despite the prohibition of tying practices laid down in paragraph 1 of that article, that creditors may request the consumer or a family member or close relation of the consumer to open or maintain a payment or a savings account, where the only purpose of such an account is to accumulate capital to repay the credit, to service the credit, to pool resources to obtain the credit, or to provide additional security for the creditor in the event of default.
- 40 Thus, it follows from the wording of Article 12(1) and (2) of Directive 2014/17 that, although that directive, in principle, prohibits tying practices, it nevertheless provides, by way of exception to that prohibition, for certain strictly limited situations in which Member States may authorise such a transaction, one of those situations being that provided for in paragraph 2(a) of that article.
- 41 It is also apparent from the wording of Article 12(2) of Directive 2014/17 that it refers only to tying practices and does not concern bundling practices, which are permitted under Article 12(1) of that directive.
- 42 In the present case, it is clear from the order for reference that Article L. 312-1-2, I., 1. of the Monetary and Financial Code provides that the sale or offer for sale of bundled products or services is prohibited save when the products or services included in the bundle can be purchased individually or when they are inseparable. In response to a request for clarification from the Court, the referring court has stated that that provision must be interpreted as prohibiting tying practices and authorising bundling practices within the meaning of Directive 2014/17.
- 43 Furthermore, it is clear from this decision that Article L. 313-25-1 of the Consumer Code, in the version applicable to the dispute in the main proceedings, provides that the lender may make the loan offer conditional on the borrower’s paying his or her salary or similar income into a payment account for a period laid down in the credit agreement, subject to the lender granting the borrower an individual advantage as consideration. That provision adds that, at the end of that period, the advantage is acquired by the borrower until the end of the loan, while specifying that, if, before the end of that period, the borrower ceases to satisfy the income deposit requirement, the lender may terminate that advantage for the remaining instalments of the credit.

- 44 It is appropriate to note, in that regard, that the French Government submits that that provision concerns bundling practices, since, according to that government, lenders are obliged to offer consumers both mortgage loan agreements with an income deposit clause and mortgage loan agreements without such a clause. The existence or otherwise of such a clause thus forms part of the contractual freedom of parties to those contracts.
- 45 If it were to be accepted, which it is for the referring court alone to determine, that Article L. 313-25-1 of the Consumer Code does indeed concern bundling practices, Article 12(2)(a) of Directive 2014/17 would not be applicable in the present case since, as has been held in paragraph 41 of this judgment, that provision refers only to tying practices.
- 46 However, the referring court is doubtful as to the scope of Article L. 313-25-1 of the Consumer Code. It states, in its reply to the request for clarification referred to in paragraph 42 of this judgment, that whether the possibility provided for in that provision of making the grant of the loan conditional on deposit of the income on an account opened with the lender must be interpreted as permitting a tying or bundling practice can be decided only after the Court has given its answer to the question referred for a preliminary ruling.
- 47 In that regard, it must be borne in mind that, in accordance with the settled case-law of the Court, in proceedings under Article 267 TFEU, based on a clear separation of functions between the referring courts and the Court of Justice, the referring court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law. Similarly, it is solely for the referring court, before which the dispute has been brought and which must assume responsibility for the judicial decision to be made, to determine, in the light of the particular circumstances of the case, both the need for and the relevance of the questions that it submits to the Court (judgment of 26 May 2011, *Stichting Natuur en Milieu and Others*, C-165/09 to C-167/09, EU:C:2011:348, paragraph 47 and the case-law cited).
- 48 In those circumstances, since it is for the referring court to make the definitive assessment of the scope of Article L. 313-25-1 of the Consumer Code, it is necessary, for the purposes of answering the first question referred, to adopt the hypothesis that that article provides for an exception to the prohibition of tying practices laid down in Article L. 312-1-2 of the Monetary and Financial Code, which constitutes the transposition of Article 12(1) of Directive 2014/17 into the French legal order.
- 49 As regards whether, in the first place, Article 12(2)(a) of Directive 2014/17 must be interpreted as precluding national legislation under which a lender may require a borrower to deposit all his or her salary or similar income on a payment account opened with that lender, irrespective of the amount, maturities and duration of the loan, it is important, in accordance with the settled case-law of the Court, to take account not only of the terms of that article but also of its context and the objective pursued by the legislation of which it forms part (see, to that effect, judgment of 26 May 2016, *Envirotec Denmark*, C-550/14, EU:C:2016:354, paragraph 27 and the case-law cited).
- 50 As regards, first of all, the wording of Article 12(2)(a) of Directive 2014/17, it must be pointed out that that provision provides for the possibility for creditors to ask the consumer to open a payment or savings account solely for the purposes specified in that provision, namely accumulating capital to ensure repayment of the loan, pooling resources in order to obtain the credit, or providing the creditor with additional guarantees in the event of default.
- 51 Next, with regard to the objective of Directive 2014/17, that directive seeks, as is clear from paragraph 34 of this judgment, to ensure a high level of protection for consumers concluding credit agreements relating to immovable property. The directive also has the objective, as may be inferred from recital 24 thereof, of protecting the mobility of such consumers and their ability to make informed choices.

- 52 Finally, with regard to the context of Article 12(2)(a) of Directive 2014/17, it should be noted, as is clear from paragraph 40 of this judgment, that, although Article 12(1) of that directive, in principle, prohibits tying practices, since they may undermine the objectives referred to in the preceding paragraph, Article 12(2) nevertheless sets out the situations in which Member States may authorise such a practice, one of those situations being that provided for in subparagraph point (a) of that paragraph.
- 53 Since Article 12(2)(a) of Directive 2014/17 constitutes an exception to the general rule laid down in Article 12(1) of that directive, it must, in accordance with the settled case-law of the Court, be interpreted strictly (see, by analogy, judgment of 22 January 2020, *Pensionsversicherungsanstalt (severance allowance after retirement age)*, C-32/19, EU:C:2020:25, paragraph 38 and the case-law cited).
- 54 That exception gives lenders the possibility, as is also apparent from recital 25 of that directive, to request the opening of a payment or savings account, inter alia, in order to accumulate capital on such an account forming part of the offer or sale of a credit agreement for the purpose of repaying the credit or, in order to obtain it, for the purpose of pooling resources as a precondition for obtaining it. It follows that the obligation placed on a borrower to deposit his or her income for such a purpose is, in principle, consistent with that provision.
- 55 However, in the present case, it is apparent from the wording of the first question referred that the referring court considers that Article L. 313-25-1 of the Consumer Code authorises the lender to make the grant of the loan conditional on the deposit of all a borrower's salary or similar income on a payment account, irrespective of the amount, maturities and duration of the loan.
- 56 In the light of the foregoing considerations, such an option offered to a lender is disproportionate, in so far as the national rules concerned do not provide for account to be taken of the characteristics of the loan concerned as regards its amount, maturities and duration. The deposit that the lender is thereby entitled to require from the borrower is, as a result, likely to exceed, at least in certain cases, what is necessary to repay the loan, obtain the credit or provide the lender with additional security in the event of default. In the light of the factors set out in paragraphs 51 to 54 of this judgment, the possibility for Member States to allow lenders to carry out tying practices is offered to them only for the sole purpose of achieving at least one of the three aims listed in Article 12(2)(a) of Directive 2014/17.
- 57 Any other interpretation of that provision, first, would be detrimental to the objective of that directive, which is to ensure a high level of consumer protection, since, in certain circumstances, the conclusion of a loan agreement with a clause requiring the deposit of all the consumer's income, irrespective of the characteristics of the loan as to its amount, maturities and duration, might not be in the consumer's best interests. Second, such an interpretation would be contrary to the objective of banking mobility for consumers which is also pursued by that directive, in particular in cases where a consumer wishes to conclude a number of loan agreements with different lenders.
- 58 It must therefore be held that Article 12(2)(a) of Directive 2014/17 must be interpreted as precluding national legislation which allows the lender to make the grant of a loan conditional on the deposit of all the borrower's salary or similar income on a payment account opened with that lender, irrespective of the amount, maturities and duration of the loan.
- 59 Moreover, it must be recalled that, in accordance with the settled case-law of the Court, the referring court is required, by virtue of the principle that national law must be interpreted in conformity with EU law, to the greatest extent possible, to interpret national law in conformity with the requirements of EU law and thus to ensure, within the limits of its jurisdiction, the full effectiveness of EU law when it determines the dispute before it. That principle requires the referring court to take account of all national law in order to assess the extent to which that law may be applied in such a way that it

does not lead to a result contrary to EU law (see, to that effect, judgments of 19 December 2013, *Koushkaki*, C-84/12, EU:C:2013:862, paragraphs 75 and 76, and of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 55).

- 60 In the present case, it is therefore for the referring court to ascertain whether it is possible to interpret Article L. 313-25-1 of the Consumer Code in accordance with Article 12(2)(a) of Directive 2014/17. That would be the case, in particular, as is clear from paragraph 54 of this judgment, if that provision of national law could be interpreted as allowing the lender to make the grant of the loan conditional on the deposit of only that part of the borrower's salary or similar income which corresponds to what is necessary for the purposes of repaying the loan, obtaining the credit or providing the lender with additional guarantees in the event of default, within the meaning of that provision of Directive 2014/17.
- 61 As to whether, in the second place, Article 12(2)(a) of Directive 2014/17 must be interpreted as precluding national legislation which provides that the period of obligatory deposit of the borrower's salary or similar income imposed by the lender may be of up to 10 years, or if the duration of the loan agreement at issue is shorter, the duration of that agreement, it must be held that that directive does not provide for any limitation on the period during which creditors may require consumers to maintain a payment or savings account opened pursuant to the provisions transposing that provision into the national legal order. The maximum period during which the lender is authorised to require the borrower to deposit his or her salary may therefore be equal to that of the loan agreement concerned, provided that, as is clear from paragraphs 56 to 58 of this judgment, the deposit requirement is limited to what is necessary in order to achieve the aims listed in that provision, namely to provide the lender with certain guarantees relating to the obtaining or repayment of the credit.
- 62 Accordingly, having regard, in particular, to the objective of Directive 2014/17, which is to ensure a high level of consumer protection, and to Article 2(1) thereof, pursuant to which that directive does not preclude Member States from maintaining or adopting more stringent provisions for the protection of consumers, it must be held that the time limit on the period during which the lender may require the borrower to deposit his or her income from employment or similar activities is not contrary to Article 12(2)(a) of that directive.
- 63 Moreover, in view of the fact that the individual advantage which must, under Article L. 313-25-1 of the Consumer Code, be offered to the borrower constitutes the consideration for opening the account for the income deposit with the lender, such a situation falls within the scope of Article 12(2)(a) of Directive 2014/17 such that there is no need to answer the first question in the light of Article 12(3) of that directive.
- 64 In the light of the foregoing, the answer to the first question is that Article 12(2)(a) of Directive 2014/17 must be interpreted as precluding national legislation which authorises a lender to require a borrower, when concluding a credit agreement relating to immovable property for residential use, as consideration for an individual advantage, to deposit all his or her salary or similar income on a payment account opened with that lender, irrespective of the amount, maturities and duration of the loan. However, that provision must be interpreted as not precluding national legislation under which the duration of the deposit required, where it does not relate to the borrower's entire income from employment, may be of up to 10 years or, if it is shorter, the duration of the credit agreement concerned.

The second question

- 65 In the light of the wording of the second question referred and of the file available to the Court, it must be held that, by that question, the referring court is asking, in substance, whether the concept of ‘charges’ or ‘fees’, within the meaning of Article 45(2) of Directive 2007/64, Article 55(2) of Directive 2015/2366 and Article 12(3) of Directive 2014/92, must be interpreted as including the loss of an individual advantage offered by the lender to the borrower as consideration for opening an account with that lender for the purpose of depositing his or her income in the context of a credit agreement, caused by the termination of that account, and, if so, whether those provisions preclude national legislation under which the loss of that advantage may take place more than one year after the opening of that account.
- 66 As regards, first, Directives 2007/64 and 2015/2366, which concern payment services in the internal market, recital 29 of the former and recital 62 of the latter state that, in order to facilitate customer mobility, consumers should have the option, under certain conditions, of terminating a framework contract free of charge. In that context, Article 45(1) of Directive 2007/64 provides that the payment service user may terminate the framework contract at any time unless the parties have agreed on a period of notice and Article 45(2) of that directive provides that the termination of such a framework contract concluded for a period exceeding 12 months or for an indefinite period is not to give rise to any charges after the expiry of a period of 12 months. The provisions of Article 55(1) and (2) of Directive 2015/2366 in essence reproduce the substance of those of Article 45(1) and (2) of Directive 2007/64, with the sole difference that the termination without charge of the framework contract henceforth presupposes that that contract has been in force for at least six months.
- 67 Second, as regards Directive 2014/92, it follows from Article 2(15) thereof that, within the meaning of that directive, all charges and penalties, if any, payable by the consumer to the payment service provider for or in relation to services linked to a payment account constitute ‘fees’ within the meaning of that directive.
- 68 Article 12(3) of that directive further provides that Member States are to ensure that fees, if any, applied by the transferring payment service provider to the consumer for the termination of the payment account held with it are determined in accordance with, inter alia, Article 45(2) of Directive 2007/64, which has been replaced by Article 55(2) of Directive 2015/2366.
- 69 In the present case, as the Advocate General noted, in essence, in points 84 and 85 of his Opinion, it is common ground that the loss of the individual advantage referred to in Article L. 313-25-1 of the Consumer Code is the result of the application of a contractual clause agreed between the parties to a loan agreement which makes the acquisition of that advantage subject to the deposit by the borrower of his or her salary or similar income with the lender for a certain period, also laid down in that agreement, and that, therefore, that loss is the consequence not of the termination of the payment account which was opened for the purpose of deposit of the borrower’s income with the lender, but of the end of that deposit requirement. It thus appears, subject to verification by the referring court, that, even after the cessation of that deposit requirement, such an account may remain open.
- 70 It must, therefore, be noted that the loss of such an advantage cannot be regarded as giving rise to fees applied by a payment services provider for the termination of the framework agreement or the termination of a payment account, within the meaning of Directives 2007/64, 2015/2366 and 2014/92. In consequence, the methods for invoicing such fees, provided for in those directives, do not apply to the loss of an advantage of that type.
- 71 In the light of the foregoing, the answer to the second question referred is that the concept of ‘charges’ or ‘fees’, within the meaning of Article 45(2) of Directive 2007/64, Article 55(2) of Directive 2015/2366 and Article 12(3) of Directive 2014/92, must be interpreted as not including the loss of an individual

advantage offered by a lender to a borrower as consideration for the opening of an account with that lender for the purpose of depositing his or her income in the context of a credit agreement, caused by the termination of that account.

Costs

- ⁷² Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fifth Chamber) hereby rules:

1. **Article 12(2)(a) of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 must be interpreted as precluding national legislation which authorises a lender to require a borrower, when concluding a credit agreement relating to immovable property for residential use, as consideration for an individual advantage, to deposit all his or her salary or similar income on a payment account opened with that lender, irrespective of the amount, maturities and duration of the loan. However, that provision must be interpreted as not precluding national legislation under which the duration of the deposit required, where it does not relate to the borrower's entire income from employment, may be of up to 10 years or, if it is shorter, the duration of the credit agreement concerned.**
2. **The concept of 'charges' or 'fees', within the meaning of Article 45(2) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, Article 55(2) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, and Article 12(3) of Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, must be interpreted as not including the loss of an individual advantage offered by a lender to a borrower as consideration for the opening of an account with that lender for the purpose of depositing his or her income in the context of a credit agreement, caused by the termination of that account.**

[Signatures]