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JUDGMENT OF THE COURT (First Chamber)

10 April 2008 (*)

(Consumer protection – Contracts negotiated away from business premises – Directive 85/577/EEC – First paragraph of Article 4 and Article 5(1) – Contract for long-term credit – Right of cancellation)

In Case C-412/06,

REFERENCE for a preliminary ruling under Article 234 EC, from the Oberlandesgericht Stuttgart (Germany), made by decision of 2 October 2006, received at the Court on 10 October 2006, in the proceedings

Annelore Hamilton

v

Volksbank Filder eG,

THE COURT (First Chamber),

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

Advocate General: M. Poiares Maduro,

Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 20 September 2007,

after considering the observations submitted on behalf of:

- Ms Hamilton, by K.-O. Knops, Rechtsanwalt,
- Volksbank Filder eG, by M. Siegmann and J. Höger, Rechtsanwälte,
- the German Government, by M. Lumma and A. Günther, acting as Agents,
- the Polish Government, by E. Osniecka-Tamecka, acting as Agent,
- the Commission of the European Communities, by A. Aresu and V. Kreuzschatz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 November 2007,

gives the following

Judgment

1 This reference for a preliminary ruling relates to the interpretation of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31; 'the doorstep selling directive').

- 2 The reference has been made in the course of proceedings between Ms Hamilton and Volksbank Filder eG ('Volksbank') concerning an application for annulment of a loan contract and repayment of the interest paid.

Legal context

Community legislation

- 3 The fourth recital in the preamble to the doorstep selling directive states as follows:

'... the special feature of contracts concluded away from the business premises of the trader is that as a rule it is the trader who initiates the contract negotiations, for which the consumer is unprepared or which he does not [expect]; ... the consumer is often unable to compare the quality and price of the offer with other offers; ... this surprise element generally exists not only in contracts made at the doorstep but also in other forms of contract concluded by the trader away from his business premises'.

- 4 According to the fifth recital in the preamble to the directive:

'... the consumer should be given a right of cancellation over a period of at least seven days in order to enable him to assess the obligations arising under the contract'.

- 5 Article 1(1) of the doorstep selling directive provides as follows:

'This Directive shall apply to contracts under which a trader supplies goods or services to a consumer and which are concluded:

...

– during a visit by a trader:

(i) to the consumer's home ...;

...,

where the visit does not take place at the express request of the consumer.'

- 6 Article 4 of the directive provides that:

'In the case of transactions within the scope of Article 1, traders shall be required to give consumers written notice of their right of cancellation within the period laid down in Article 5, together with the name and address of a person against whom that right may be exercised.

Such notice shall be dated and shall state particulars enabling the contract to be identified. It shall be given to the consumer:

(a) in the case of Article 1(1), at the time of conclusion of the contract;

...

Member States shall ensure that their national legislation lays down appropriate consumer protection measures in cases where the information referred to in this Article is not supplied.'

- 7 Article 5 of the doorstep selling directive provides as follows:

'1. The consumer shall have the right to renounce the effects of his undertaking by sending notice within a period of not less than seven days from receipt by the consumer of the notice referred to in Article 4, in accordance with the procedure laid down by national law.

...

2. The giving of the notice shall have the effect of releasing the consumer from any obligations

under the cancelled contract.'

8 According to Article 7 of the directive:

'If the consumer exercises his right of renunciation, the legal effects of such renunciation shall be governed by national laws, particularly regarding the reimbursement of payments for goods or services provided and the return of goods received.'

9 Article 8 of the doorstep selling directive provides as follows:

'This Directive shall not prevent Member States from adopting or maintaining more favourable provisions to protect consumers in the field which it covers.'

National rules

10 The fourth sentence of Paragraph 2(1) of the Law on the cancellation of doorstep transactions and analogous transactions (Gesetz über den Widerruf von Haustürgeschäften und ähnlichen Geschäften) of 16 January 1986 (BGBl. 1986 I, p. 122), in the version applicable to the main proceedings, provides as follows:

'If such notice is not given, the consumer's right of cancellation [Widerruf] shall not lapse until one month after both parties have performed in full their obligations under the agreement.'

11 In the application of that provision, incorrect information is equivalent to no information.

The main proceedings and the questions referred for a preliminary ruling

12 On 17 November 1992, Ms Hamilton signed, at her home, a contract for a loan with a bank – whose rights were acquired by Volksbank – in order to finance the acquisition of shares in a real property fund ('the loan contract at issue').

13 In accordance with the Law on consumer credit (Verbraucher kreditgesetz) of 17 December 1990 (BGBl. I 1990, p. 2480) that contract contained the following notice concerning the right of cancellation: '[i]f the borrower has received the loan, cancellation shall be deemed not to have taken place unless he repays the loan either within two weeks of giving notice of cancellation or within two weeks of the paying out of the loan'.

14 On 16 December 1992, the employees of Volksbank's predecessor signed the contract in question and paid the amount of the loan to Ms Hamilton, who later began to pay interest on the loan.

15 Since the promoter of the real property fund in which Ms Hamilton had bought shares filed for bankruptcy in 1997, there was a significant reduction in the monthly distributions from the fund, which had covered a substantial part of the interest payable under the loan contract at issue. Ms Hamilton therefore decided to reschedule her debt by concluding a building society savings contract and taking out a bridging loan with the effect that, at the end of April 1998, she had entirely repaid the loan to Volksbank's predecessor, which, consequently, returned the security for the loan.

16 On 16 May 2002, Ms Hamilton cancelled the loan contract at issue on the basis of the judgment in Case C-481/99 *Heininger* [2001] ECR I-9945.

17 On 27 December 2004, Ms Hamilton brought an action against Volksbank, on the one hand, for reimbursement of the interest paid under the loan contract at issue and the amount of the loan that she had paid back and, on the other, for compensation for the interest she had paid to the building society with which she had concluded the savings contract.

18 In the view of the Oberlandesgericht Stuttgart, the loan contract at issue falls under point (i) of the second indent of Article 1(1) of the doorstep selling directive, since Ms Hamilton had negotiated and signed that contract at her home.

19 However, the Oberlandesgericht Stuttgart has doubts as to whether the provisions laid down in the fourth sentence of Paragraph 2(1) of the Law on the cancellation of doorstep transactions and

analogous transactions can be regarded as 'appropriate consumer protection measures' because they provide that, in a case such as that before it, the right of cancellation is to lapse.

20 In those circumstances, the Oberlandesgericht Stuttgart decided to stay proceedings and to refer to the Court the following questions for a preliminary ruling:

- '1. May the first paragraph of Article 4 and Article 5(1) of [the doorstep selling directive] be interpreted as meaning that the national legislature is not precluded from placing a time-limit on the right of cancellation given by Article 5 of the Directive, despite the consumer having been given defective notice, so that it expires one month after both parties have performed their obligations under the agreement in full?

In the event that the Court answers the first question referred in the negative:

2. Should [the doorstep selling directive] be interpreted as meaning that the right of cancellation cannot be forfeited by the consumer – in particular after the completion of the contract – if he has not been given notice in accordance with the first paragraph of Article 4 of the Directive?

The questions referred to the Court

Admissibility

21 Volksbank considers that the reference for a preliminary ruling is inadmissible since, in its view, the loan contract at issue was not concluded at the doorstep. Consequently, it considers that the questions referred to the Court are hypothetical.

22 On the other hand, the Commission of the European Communities considers that, by the reference for a preliminary ruling, the Court is being asked to consider whether a further cancellation of the contract was possible after Ms Hamilton had cancelled the loan contract at issue by making an early repayment of the loan. The Commission states in that regard – with particular reference to paragraph 35 of *Heininger*, paragraphs 69 and 70 of the judgment in Case C-350/03 *Schulte* [2005] ECR I-9215 and paragraph 34 of the order for reference – that although the question of the cancellation of a secured credit agreement comes within the scope of the doorstep selling directive, the consequences of such a cancellation are a matter for national law, which must, however, be interpreted, as far as possible, in the light of the wording and purpose of the directive. Consequently, the Commission considers that the reference for a preliminary ruling is admissible.

23 It must be borne in mind in that regard that it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. However, the Court has no jurisdiction to give a preliminary ruling on a question submitted by a national court where it is quite obvious, *inter alia*, that the interpretation of Community law sought by that court bears no relation to the actual facts of the main action or its purpose or where the problem is hypothetical (see *Schulte*, paragraph 43 and the case-law cited).

24 On the one hand, since the questions referred to the Court in the present case concern the interpretation of the doorstep selling directive and, on the other, since the loan contract at issue (as has been pointed out in paragraph 18 of the present judgment) falls under point (i) of the second indent of Article 1(1) of the doorstep selling directive, it is not possible to assert that the questions referred are manifestly hypothetical or bear no relation to the actual facts of the main action or its purpose.

25 Consequently, the reference for a preliminary ruling is clearly admissible.

Substance

Observations submitted to the Court

26 Ms Hamilton claims that a consumer who has not been correctly informed of his right of

cancellation does not become aware of that right either by virtue of the fact that the parties have performed their obligations in full or within one month of such performance. Thus, the national rules at issue in the main proceedings do not constitute an appropriate measure for the protection of the consumer. She adds that the doorstep selling directive provides that the trader must inform the consumer of his right of cancellation and that the period of not less than seven days laid down in Article 5(1) of that directive begins to run only from the time at which the trader gives the consumer notice of that right.

27 Volksbank contends that, pursuant to the third paragraph of Article 4 of the doorstep selling directive, the appropriate consumer protection measures are those which are likely to protect the consumer from the risks inherent in a financial investment, and are unrelated to the question of cancellation of a contract concluded at the doorstep.

28 In the event that the Court does not accept that argument, Volksbank contends, on the one hand, that the judgment in *Heininger* concerned secured credit agreements and not loan contracts such as the one at issue in the main proceedings and, on the other hand, that the period for the exercise of the right of cancellation runs, in the case before the referring court, from the performance in full of the loan contract at issue and not from its conclusion, as was the case in *Heininger*.

29 The German Government points out, on the one hand, that since the contractual relationship at issue in the main proceedings, which lasted nearly six years, functioned correctly, the trader must be in a position to consider – once the contract has been performed in full and one month has elapsed after the end of such performance – that the relationship can no longer be the subject of a dispute. On the other hand, the national rules at issue in the main proceedings give the consumer sufficient time, in particular, during the entire time that the contract is in effect and for one month after both parties have performed their obligations thereunder in full, to decide to cancel a contract entered into at the doorstep. In addition, the limit in time placed on the right of cancellation is also provided for in a number of other directives intended to protect the consumer.

30 The Polish Government points out that the limit in time placed on the right of cancellation in the case of contracts concluded away from business premises, notwithstanding the lack of information or the inadequacy of information concerning the exercise of that right, is not, in principle, contrary to the doorstep selling directive. However, that limit must be arranged in such a way as to permit the consumer to become aware of his rights from sources of information other than the trader. In the view of the Polish Government, that limit, which also marks the period during which the right of cancellation may be exercised, must, pursuant to the third paragraph of Article 4 of the doorstep selling directive, be laid down in the national legislation of every Member State.

31 The Commission argues, in substance, that although it is unlawful, according to *Heininger*, to limit in time the right of cancellation which runs from the conclusion of the contract, the rules at issue in the main proceedings concern a limit in time on that right which runs from the performance in full of the contract.

The Court's answer

32 It should first be pointed out that the doorstep selling directive is primarily designed to protect consumers against the risks arising from the conclusion of contracts away from business premises (see, to that effect, *Schulte*, paragraph 66).

33 Thus, the fifth recital in the preamble to the doorstep selling directive states that the consumer should be given a right of cancellation over a period of at least seven days in order to enable him to assess the obligations arising under the contract. The fact that the minimum period of seven days must be calculated from receipt by the consumer of the notice concerning that right is explained by the fact that, if the consumer is not aware of the existence of the right of cancellation, he will not be able to exercise that right (*Heininger*, paragraph 45).

34 However, it should be pointed out, on the one hand, that according to the information provided by the national court, Ms Hamilton received incorrect information from Volksbank concerning her right to cancel the loan contract at issue with the result that, according to her written observations, she was deprived of the opportunity of exercising that right and, on the other, that the parties to the main proceedings have performed their obligations under the contract in full.

35 As the Advocate General points out in points 18 and 19 of his Opinion, incorrect information

- concerning exercise of the right of cancellation is equivalent to no information, since both situations are equally misleading for the consumer as regards his right of cancellation.
- 36 For such situations, the third paragraph of Article 4 of the doorstep selling directive provides that 'Member States shall ensure that their national legislation lays down appropriate consumer protection measures'.
- 37 The question therefore arises in the main proceedings whether a measure which provides that the right of cancellation given by Article 5(1) of that directive is to expire one month after both parties have performed in full their obligations under a long-term loan contract, when the consumer has been given defective notice concerning the exercise of that right, may none the less be regarded as an appropriate consumer protection measure within the meaning of the third indent of Article 4 of that directive.
- 38 It should be pointed out in that regard that the concept of 'appropriate consumer protection measures', to which the third paragraph of Article 4 of the doorstep selling directive refers, indicates that the Community legislature wished to give those measures a uniform scope at Community level.
- 39 Moreover, the term 'appropriate' in the abovementioned provision indicates that such measures do not seek to provide absolute protection for consumers. The Member States must exercise their discretion in accordance both with the principal aim of the doorstep selling directive and with the other provisions thereof.
- 40 Although it is true, as has been pointed out in paragraph 32 of the present judgment, that the principal aim of the doorstep selling directive is to protect consumers, it should be pointed out that both the general structure of the directive and the wording of several of its provisions indicate that such protection is subject to certain limits.
- 41 Thus, with regard, specifically, to the purpose of the time-limit for cancellation, the fifth recital in the preamble to the directive states – as has been pointed out in paragraph 33 of the present judgment – that that time-limit enables the consumer 'to assess the obligations arising under the contract' concluded at the doorstep. The reference in that recital to the concept of 'obligations arising under the contract' indicates that the consumer may cancel such a contract during the time that it is in effect.
- 42 Similarly, the provision which governs the exercise of the right of cancellation – namely, Article 5 (1) of the doorstep selling directive – provides, inter alia, that '[t]he consumer shall have the right to renounce the effects of his undertaking'. The use in that provision of the term 'undertaking' indicates, as Volksbank argued at the hearing before the Court, that the right of cancellation may be exercised as long as the consumer is not bound, at the time that the right is exercised, by any undertaking under the cancelled contract. That logic flows from one of the general principles of civil law, namely that full performance of a contract results, as a general rule, from discharge of the mutual obligations under the contract or from termination of that contract.
- 43 Moreover, according to Article 5(2) of the directive, which governs the consequences of the exercise of the right of cancellation, the giving of cancellation notice has the effect of releasing the consumer from 'any obligations under the cancelled contract'. The reference to the concept of 'obligation' in that provision indicates that the existence of the abovementioned consequences presupposes that the consumer has exercised his right of cancellation in regard to a contract which was in the process of being performed, whereas after the full performance of the contract, there is no further obligation.
- 44 Furthermore, with regard to the legal effects of cancellation, particularly in regard to the reimbursement of payment for goods or services provided and the return of goods received, Article 7 of the doorstep selling directive refers to the national laws.
- 45 It follows that an 'appropriate measure' within the meaning of the third paragraph of Article 4 of the doorstep selling directive is one which provides that the performance in full by the parties of their obligations under a long-term loan contract causes the right of cancellation to lapse.
- 46 That interpretation is not weakened by the judgments in *Heininger* and *Schulte* or in Case C-229/04 *Crailsheimer Volksbank* [2005] ECR I-9273. It can be seen from paragraphs 16 and 18 of

Heininger, paragraph 26 of *Schulte* and paragraph 24 of *Crailsheimer Volksbank* that the interpretation of the doorstep selling directive provided by the Court in those judgments concerns loan contracts which had not been fully performed. However, that is not the position in the case before the referring court.

47 With regard, specifically, to *Heininger*, the Court held in that judgment that the doorstep selling directive precludes the national legislature from imposing a time-limit, of one year from the conclusion of the contract, within which the right of cancellation provided for in Article 5 of that directive must be exercised, where the consumer has not received the information specified in Article 4 of that directive. As *Volksbank*, the German Government and the Commission were fully entitled to argue, that is not the position in the case before the referring court. In that case, the national legislature applies a time-limit of one month from the time at which the contracting parties have performed in full their obligations under a contract.

48 It should be borne in mind – with regard to the one-month time-limit provided for by the national legislation at issue in the main proceedings, which runs from the performance in full by the parties of their obligations under the contract – that, under Article 8 of the doorstep selling directive, that directive does not prevent Member States from adopting or maintaining more favourable provisions to protect consumers in the field which it covers.

49 In the light of all the foregoing, the answer to the first question referred to the Court must be that the doorstep selling directive must be interpreted as meaning that the national legislature is entitled to provide that the right of cancellation laid down in Article 5(1) of the directive may be exercised no later than one month from the time at which the contracting parties have performed in full their obligations under a contract for long-term credit, where the consumer has been given defective notice concerning the exercise of that right.

50 In view of the reply given to the first question, there is no need to answer the second question.

Costs

51 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:

Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises must be interpreted as meaning that the national legislature is entitled to provide that the right of cancellation laid down in Article 5(1) of the directive may be exercised no later than one month from the time at which the contracting parties have performed in full their obligations under a contract for long-term credit, where the consumer has been given defective notice concerning the exercise of that right.

[Signatures]

* Language of the case: German.