# OPINION OF ADVOCATE GENERAL LÉGER

delivered on 12 July 2001 [1]

1. This reference for a preliminary ruling by the Bundesgerichtshof (Federal Court of Justice) (Germany) concerns 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 [2] and of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit. [3]

2. Three issues are raised by the two questions referred. The first is whether the doorstep-selling directive applies to mortgage loan agreements. Assuming that it does apply, the second issue relates to the operation of the right of cancellation given to the consumer. The third issue concerns Member States' discretion to place a time-limit on the right to cancel a mortgage loan agreement.

## I — Facts and procedure in the main proceedings

3. The parties to the main proceedings are Mr and Mrs Heininger, as claimants, and Bayerische Hypo- und Vereinsbank AG, as defendant. In 1993 the claimants obtained a loan of DEM 150 000 from the defendant on the security of a *Grundschuld* [4] for the same amount, in order to finance the purchase of a condominium apartment.

4. By proceedings commenced in January 1998 Mr and Mrs Heininger purported to cancel their statement of intent to conclude the loan agreement, in accordance with Paragraph 1 of the Gesetz über den Widerruf von Haustürgeschäften und ähnlichen Geschäften (Law on the Cancellation of Doorstep Transactions and Analogous Transactions, hereinafter the 'HWiG') of 16 January 1986. [5]

1 — Original language: French.

2 — OJ 1985 L 372, p. 31, hereinafter 'the doorstep-selling directive'.

3 — OJ 1987 L 42, p. 48, hereinafter 'the consumer credit directive'.

4 — See page 3 of the order for reference. In the Bürgerliches Gesetzbuch (German Civil Code), a *Grundschuld* is distinguished from a *Hypothek* by the fact that it is non-accessory (Paragraph 1192(1)). It provides better collateral than a *Hypothek* because it subsists regardless of what becomes of the debt secured.

5 — BGBl. I, p. 122.

They claim they signed the agreement under the influence of an independent estate agent acting on the defendant's behalf. The estate agent had called to their home unsolicited on a number of occasions. He had 'talked them into'[6] buying the apartment and contracting the loan without telling them of their right to cancel the contract.

5. The claimants are seeking to recover the principal and interest paid to the defendant as well as the charges incurred on the execution of the mortgage loan agreement.[7] They also claim a declaration to the effect that the loan agreement confers no rights on the defendant.

6. The Landgericht (Regional Court) (Germany) dismissed their application. That decision was upheld on appeal. The claimants have now brought their case to the Bundesgerichtshof by way of an appeal on points of law.

6 — See page 3 of the order for reference.

7 — *Realkreditvertrag*, a concept of German law.

## II — The legislative background

### A — *Community law*

The doorstep-selling directive

7. Article 1 provides:

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

— during an excursion organised by the trader away from his business premises, or

— during a visit by a trader

(i) to the consumer's home or to that of another consumer

...

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

8. Article 3(2) provides:

'This Directive shall not apply to:

(a) contracts for the construction, sale and rental of immovable property or contracts concerning other rights relating to immovable property.

...'

9. Article 4 provides:

'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.

...

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.'

10. According to Article 5(1): '[t]he 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. It shall be sufficient if the notice is dispatched before the end of such period'.

11. Finally, Article 8 provides that: '[t]his Directive shall not prevent Member States from adopting or maintaining more favourable provisions to protect consumers in the field which it covers'.

provision, by means of instalments, are not deemed to be credit agreements for the purpose of this Directive;

12. Article 1 of the directive provides:

...'

'1. This Directive applies to credit agreements.

13. Article 2 provides:

2. For the purpose of this Directive:

'1. This Directive shall not apply to:

...

(a) credit agreements or agreements promising to grant credit:

(c) "credit agreement" means an agreement whereby a creditor grants or promises to grant to a consumer a credit in the form of a deferred payment, a loan or other similar financial accommodation.

— intended primarily for the purpose of acquiring or retaining property rights in land or in an existing or projected building,

Agreements for the provision on a continuing basis of a service or a utility, where the consumer has the right to pay for them, for the duration of their

...

3. The provisions of Article 4 [8] and of Articles 6 [9] to 12 [10] shall not apply to credit agreements or agreements promising to grant credit, secured by mortgage on immovable property, in so far as these are not already excluded from the Directive under paragraph 1(a) of this Article.

...'

14. According to Article 15 '[t]his Directive shall not preclude Member States from retaining or adopting more stringent provisions to protect consumers consistent with their obligations under the Treaty'.

B — *German law* [11]

15. Paragraph 1 of the HWiG provides for a right of cancellation by the customer, the effect of which is that a transaction entered into off the trader's business premises becomes effective only if the customer does not give written notice of revocation within a time-limit of one week thereafter.

16. Under Paragraph 2(1) of the HWiG, that period does not start to run until the customer receives a written notice setting out certain points of information which, by virtue of that law, is the subject of other substantive requirements. If the notice is not given, the customer's right of cancellation does not expire until one month after both parties have performed in full.

17. Paragraph 5(2) of the HWiG makes an exception to the scope of the law by providing that where a transaction within the meaning of Paragraph 1(1) also constitutes a transaction within the scope of the Consumer Credit Law (*Verbraucherkreditgesetz*) only the provisions of the latter are to apply.

18. Paragraph 1 of the Verbraucherkreditgesetz (Consumer Credit Law Amending the German Code of Civil Procedure and

8 — This article sets out the particulars that must be contained in the credit agreement.

9 — Article 6 lays down consumer information requirements.

10 — Articles 7 to 12 deal with the rights and duties of the parties to a credit agreement and with the obligations of Member States.

11 — The HWiG and the VerbrKrG were amended by the Law of 27 June 2000 (BGBl. 2000 I, p. 897, 905-906). The amendment affected Paragraphs 1 and 7 of the VerbrKrG and Paragraphs 1 and 2 of the HWiG. The new Paragraph 19 of the VerbrKrG and the new Paragraph 9(3) of the HWiG provide that the existing versions of the two laws are to apply to agreements made prior to 1 October 2000. For the purposes of this case, the relevant versions of the HWiG and the VerbrKrG are those in force as of the date of the order for reference.

Other Laws, hereinafter the 'VerbrKrG') [12] defines its scope as follows:

'(1) This law applies to credit agreements and to credit intermediation agreements between a party acting in the course of a trade or profession who grants credit (creditor) or engages in credit arrangement or referral (credit intermediary) and a natural person, unless, under the terms of the agreement, the credit is intended for a business already being carried on by the natural person (the consumer).

(2) A credit agreement is an agreement whereby a creditor, for value, grants or promises to grant a consumer a credit in the form of a loan, deferred payment or other financial accommodation.

...'

19. Paragraph 3 of the VerbrKrG sets out the exceptions to its scope:

'(2) Nor shall...

2. Paragraph 4(1), fourth sentence, subparagraph 1(b) and Paragraphs 7, 9 and 11 to 13 apply to credit agreements in which credit is conditional on the security of a charge on land and is granted on terms normal for credits secured by a charge on land and the interim financing of same...'

20. Paragraph 7 of the VerbrKrG, which establishes a right of cancellation by the consumer, provides as follows:

'(1) The consumer's offer or acceptance of a credit agreement shall become effective only if the consumer does not give written notice of cancellation within a time-limit of one week thereafter.

(2) The timeliness or otherwise of a revocation notice shall be determined by reference to the time of sending. Time shall begin to run only when the consumer has received a clearly legible notice, to be signed separately by the consumer, advising him of the provision contained in the previous sentence, of his right of cancellation, of the loss of that right in accordance with subparagraph (3) and of the name and address of the person to whom notice of revocation should be sent. If notice is not given to the consumer as set out in the previous sentence, the right of cancellation shall not expire until after

12 — BGBl. I, p. 2840.

both parties have performed their obligations in full but not later than one year after the consumer's offer or acceptance of the credit agreement.'

## III — The questions referred

21. Considering that the main proceedings raise an issue concerning the interpretation of Community law, the Bundesgerichtshof stayed proceedings and referred the following two questions to the Court for a preliminary ruling:

'(1) Does 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, hereinafter the "doorstep-selling directive") also cover mortgage loan agreements (Paragraph 3(2)(2) of the Verbraucherkreditgesetz) and does it take precedence, as far as the right of cancellation provided for in Article 5 is concerned, over Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48, hereinafter referred to as the "consumer credit directive")?

(2) If the Court answers Question 1 in the affirmative,

Is the national legislature precluded by the doorstep-selling directive from applying the time-limit on the right of cancellation under the third sentence of Paragraph 7(2) of the Verbraucherkreditgesetz in cases where the doorstep transaction concerns the grant of a mortgage loan within the meaning of Paragraph 3(2)(2) of the Verbraucherkreditgesetz and where the notice required under Article 4 of the Directive was not given?'

22. This reference for a preliminary ruling is concerned with the protection of consumers not covered by the consumer credit directive. The issue that arises is whether an agreement, entered into by way of a doorstep transaction, whereby a trader grants a consumer a loan for the purchase of immovable property, comes within the scope of the doorstep-selling directive and is subject to the right of cancellation provided thereunder, notwithstanding the contrary provision of the VerbrKrG, the application of which ousts the HWiG.

## IV — The applicability of the doorstep-selling directive to mortgage loan agreements (first part of the first question referred)

### A — *Preliminary observations*

23. I wish to draw the Court's attention to the following consideration.

At the hearing the defendant acknowledged having encouraged Mr and Mrs Heininger to purchase a property and to take out a loan for that purpose. But it also pointed out that there was a seven-week gap between the agent's visit to the claimants' home and the actual execution of the loan agreement. It laid particular emphasis on the fact that Mr and Mrs Heininger had attended at the bank branch in order to sign the contract and complete the formalities relating to the agreement. If this claim proves correct, then the facts at issue in the main proceedings do not fall within the scope of the doorstep-selling directive.

24. On this point, it may be recalled that in proceedings under Article 234 EC, which is based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the exclusive jurisdiction of the national court. [13]

The Court is empowered only to give rulings on the interpretation or the validity of a Community provision on the basis of the facts which the national court puts before it. [14] I therefore propose that the Court confine itself to the terms of the order for reference.

25. Having made that preliminary point, I now turn to examine the request for interpretation referred to the Court.

### B — *Answer to the question referred*

26. By its first question, the national court essentially asks whether the doorstep-selling directive applies to mortgage loan agreements.

13 — See, in particular, *Salgoil* (Case 13/68 [1968] ECR 453) *Oehlschläger* (Case 104/77 [1978] ECR 791, paragraph 4); *Dumon and Froment* (Case C-235/95 [1998] ECR I-4531, paragraph 25, and *Lirussi and Bizarro* (Joined Cases C-175/98 and C-177/98 [1999] ECR I-6881, paragraph 37).

14 — See, *inter alia*, *Oehlschläger*, cited above, paragraph 4, *AC-ATEL Electronics Vertriebs* (Case C-30/93 [1994] ECR I-2305, paragraph 16), and *Phytheron International* (Case C-352/95 [1997] ECR I-1729, paragraph 11).

27. Article 3(2)(a) of that directive explicitly excludes from its scope 'contracts for the construction, sale and rental of immovable property or contracts concerning other rights relating to immovable property'.

28. The Court has never expressly ruled on whether the doorstep-selling directive applies to mortgage loan agreements. [15] Accordingly, the first task is to examine the material scope of Article 3(2)(a) in order then to decide whether or not the directive applies to contracts of this kind.

29. To answer this question, it is necessary to consider the wording and the purpose of the doorstep-selling directive.

The wording of Article 3(2)(a) of the doorstep-selling directive

30. On its face, Article 3(2) of the doorstep-selling directive does not exclude mortgage loan agreements from its scope. By contrast, Article 2(1)(a) of the consumer credit directive explicitly provides that it does not apply 'to credit agreements... intended primarily for the purpose of acquiring or retaining property rights in... an existing or projected building'. There are two points to be made in this regard.

First, the Court has consistently held that derogations from an individual right laid down in a directive must be interpreted strictly. [16]

Secondly, it may reasonably be assumed that if the authors of the doorstep-selling directive had intended to exclude credit agreements from its scope they would have included express language to that effect, as they did in the consumer credit directive.

15 — In *Travel Vac* (Case C-423/97 [1999] ECR I-2195), the Court had to consider whether the doorstep-selling directive applies to time-share contracts. There are two important points to bear in mind. First, time-share contracts have their own very specific character. They involve the purchase of a right to part-time use of a property coupled with a supply of services. Secondly, the Court did not give a clear interpretation of Article 3(2)(a) of the doorstep-selling directive in that case. It limited itself to observing, in paragraph 25 of the judgment, that since 'a contract like that at issue in the main proceedings does not only concern the right to use a time-share apartment, but also concerns the provision of separate services of a value higher than that of the right to use the property, that contract is not covered by the exception provided for in Article 3(2)(a) of Directive 85/577'. By this statement, in my opinion, the Court does not expressly exclude mortgage loan agreements from the scope of the doorstep-selling directive. I therefore take the view that the issue has not yet been resolved by the Court.

16 — *Johnston* (Case 222/84 [1986] ECR 1651, paragraph 36) and *Kreil* (Case C-285/98 [2000] ECR I-69, paragraph 20).

31. Furthermore, it is my view that credit agreements do not fall within the scope of Article 3(2)(a) of the doorstep-selling directive. On this point, I do not concur with the argument of the Spanish Government which, in its observations, contends that a mortgage loan agreement made with a view to the purchase of the property charged is a contract concerning rights relating to immovable property on the ground that it creates a right *in rem* over the property.

One must not confuse the object of the credit agreement (i.e. the loan) with the sale of the property. A mortgage loan agreement is concerned not with property rights but with the advance of a sum of money. These are two quite distinct elements. By virtue of their subject-matter, mortgage loan agreements do not fall under Article 3(2)(a) of the doorstep-selling directive.

32. Consequently, since they deal with rights *in personam* and not with rights *in rem* over real property, mortgage loan agreements cannot be excluded from the scope of the doorstep-selling directive on the basis of a literal reading of Article 3(2)(a).

The purpose of the doorstep-selling directive

33. The second series of observations is concerned with the objectives of the doorstep-selling directive. The directive explicitly refers to the vulnerability of consumers where this type of commercial practice is employed.

According to the fourth recital, '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 except*;[17] whereas the consumer is often unable to compare the quality and price of the offer with other offers; whereas this surprise element generally exists... in contracts made at the doorstep...'. Appropriate measures should therefore be taken '*to protect consumers*[18] against unfair commercial practices in respect of doorstep selling'.[19]

34. So the aim of the doorstep-selling directive is clear. It is intended to protect consumers who are placed in a position of weakness due to the element of surprise produced by a visit of a trader which did not take place at their express request.

17 — Emphasis added.
18 — Emphasis added.
19 — Third recital.

35. The objective of consumer protection has also been a constant and central concern in the Court's case-law.

36. In *Dietzinger* [20] the Court held that the doorstep-selling directive 'is designed to protect consumers by enabling them to withdraw from a contract concluded on the initiative of the trader rather than of the customer, where the customer may have been unable to see all the implications of his act'. [21] The Court subsequently confirmed this interpretation in *Berliner Kindl Brauerei*. [22]

37. In that case the Court also stated that the 'sole restriction which the [doorstep-selling directive] places on the types of contract falling within its scope *ratione materiae* is that they must concern the supply of goods or services, provided that the purposes pursued by the consumers can be regarded as outside their trade or profession. It seeks to protect such consumers by conferring upon them a general right to terminate a contract which has been entered into, not on the initiative of the customer but of the trader, when the customer may not have been able to appreciate all the implications'. [23]

38. The purpose of the doorstep-selling directive is thus to protect the consumer not 'because he purchases certain goods but because of the way in which the goods are purchased or the contract concluded'. [24]

39. I should add that in Member States where such contracts are executed before an official whose function is to satisfy himself as to the parties' consent, legal certainty is safeguarded by the involvement of this third party and by the measure of formality entailed.

40. I mention this in order to define the scope of the interpretation I am proposing in this case. This is that the application of the doorstep-selling directive should be restricted solely to mortgage loan agreements entered into in this type of commercial relationship. I do not suggest that the Court extend the benefit of the doorstep-selling directive to cover all mortgage loan agreements.

41. The doorstep-selling directive therefore applies only to those mortgage loan agreements which are entered into on the doorstep.

20 — Case C-45/96 [1998] ECR I-1199.
21 — Paragraph 19.
22 — Case C-208/98 [2000] ECR I-1741.
23 — Paragraph 24.
24 — Opinion of Advocate General Alber in *Travel Vac*, cited above, paragraph 21.

## V — Application of Article 5 of the doorstep-selling directive (second part of the first question referred)

42. If the doorstep-selling directive does apply to a mortgage loan agreement, the national court essentially asks whether Article 5 of the directive must be interpreted as meaning that a consumer who has entered into such an agreement in the circumstances specified by the directive may exercise the right of cancellation provided for by that article.

43. Before answering this question, I wish to comment on the form of words employed by the referring court. That court inquires whether there is a relationship of 'precedence' as between the doorstep-selling directive and the consumer credit directive. The use of the term 'precedence' in the order for reference is inapt, to my mind. It seems to derive from considerations which relate exclusively to national law.

44. The VerbrKrG goes further than the consumer credit directive. There is no right of cancellation under the directive. The VerbrKrG, on the other hand, does confer such a right on the consumer.

45. The HWiG expressly provides that the VerbrKrG takes precedence where a commercial transaction falls within the scope of both laws. The relationship between these two laws is thus indeed expressed in terms of precedence. [25]

46. The question does not arise in the same terms before this Court. As the Commission notes in its observations, 'the issue of the relationship between the two directives is not a matter of precedence...'. [26]

47. Article 2(1)(a) of the consumer credit directive does not apply here. To inquire as to a relationship of precedence between the two directives presupposes that they both apply to the case. But that is not the position.

48. I therefore take the view that the right of cancellation provided for by the doorstep-selling directive applies to mortgage loan agreements entered into as doorstep transactions.

49. The referring court then asks about the period within which this right of cancella-

25 — The order for reference reveals that there have been difficulties in German law with interpreting the application of these two laws and that the academic authorities are in disagreement on the 'precedence' question.

26 — At page 8.

tion may be exercised and about the Community law requirements on information to be supplied to the consumer.

## VI — The issue of the time-limit for the exercise of the right of cancellation and the Community law requirements on information to be supplied to the consumer (second question referred)

50. By this second question, the national court essentially asks whether the doorstep-selling directive precludes national legislation which places a time-limit on the right of cancellation, even where the consumer has not received the notice provided for under Article 4 of the directive.

51. This question raises an issue which is very much bound up with the manner in which the national legislature transposed the doorstep-selling directive and the consumer credit directive into its domestic law.

52. Under Paragraph 7 of the VerbrKrG the consumer has one week in which to give written notice of cancellation of the agreement. Two distinct circumstances are contemplated.

The first is where the trader has given the customer a 'clearly legible notice'.[27] The period then begins to run only upon the consumer receiving the notice.

The second is where the consumer has received no notice. In this case, the right of cancellation does not expire until the contract has been performed in full. The Law provides for a further limitation of the right by setting a time-limit of one year after the consumer's offer or acceptance of the credit agreement.

53. In other words, the VerbrKrG goes further than the doorstep-selling directive. It provides a mechanism for the cancellation of credit agreements where the right to information has not been observed, something the directive does not do.

54. However, the question to be answered is whether the national provisions referred to above satisfy the Community law requirements on consumer information as laid down in the doorstep-selling directive. These may be readily identified.

27 — See Paragraph 7(2) of the VerbrKrG.

55. Article 4 of the doorstep-selling directive is meant to be explicit. It provides that 'traders shall be required to give consumers written notice of their right of cancellation within the period laid down in Article 5...'.

56. Article 5(1) of the doorstep-selling directive gives the consumer a period of not less than seven days from receipt of the information within which to renounce the effects of his undertaking.

57. It is clear from these provisions that a time-limit is expressly prescribed only in the case where the consumer's right to information has been observed.

58. The doorstep-selling directive is silent as to the period, if any, to be accorded to the consumer in the case where the trader has failed to comply with his information obligation. It merely requires national legislation to lay down 'appropriate consumer protection measures' [28] in that situation.

59. In addition, it is clear from Article 4 that this information obligation rests on the trader, who is 'required' to comply with it. The obligation is one of result.

60. Failure to comply with the requirement constitutes an infringement of an individual right enshrined in the originating directive.

The following point must be emphasised. If the consumer is not informed of the existence of a right of cancellation, it is impossible for him to exercise it. The effectiveness of this right thus depends entirely on the action of the trader. The doorstep-selling directive places a special responsibility on his shoulders because the consumer's right is dependent on his conduct. Non-compliance by the trader can thwart the application of the directive.

61. As the claimants argue in their observations, [29] to impose a time-limit for the exercise of the right of cancellation where notice of the right has not been given, in the case of credit agreements made on the

28 — Article 4, third paragraph.

29 — Page 6.

doorstep, would render the intended protection meaningless.

62. In the present case, the one-year time-limit laid down by the national legislation is at variance with the mandatory nature of the right to information. Without notice of the existence of a right of cancellation the consumer is kept in the dark about his right to go back on his initial decision to contract. That being so, the fixing of a time-limit is tantamount to implicitly authorising the trader to avoid an obligation flowing from the EC Treaty and explicitly laid down in the doorstep-selling directive.

63. At the hearing the defendant argued that the right of cancellation had to be subject to a time-limit in the interest of legal certainty.

64. That argument must be rejected. The defendant is bound to observe the consumer's right to information. That requirement is not implicit. To allow a limitation of time would be to encourage the trader in his dereliction of duty *vis-à-vis* the consumer.

65. I therefore take the view that a time-limit must not be imposed on the consumer's right of cancellation of a mortgage loan agreement where the consumer has not received notice of his right to exercise it.

## VII — Whether the temporal effect of the judgment should be limited

66. In their observations both the defendant and the German Government drew the Court's attention to the financial consequences that would ensue if the right of cancellation was not subject to a time-limit. They maintain that to apply the right of cancellation provided for under the doorstep-selling directive to mortgage loan agreements would represent a significant financial risk for the lending institutions and one they certainly do not wish to absorb themselves.

67. Since I am suggesting that the Court answer the question referred in the affirmative, I have to consider whether the conditions for limiting the temporal effects of the judgment are met.

68. According to the settled case-law, 'the Court may exceptionally, having regard to

the general principle of legal certainty inherent in the Community legal order and the serious difficulties which its judgment may create as regards the past for legal relations established in good faith, find it necessary to limit the possibility for interested parties, relying on the Court's interpretation of a provision, to call in question those legal relations...'. [30]

In this case, the third paragraph of Article 4 of the doorstep-selling directive requires the Member States to lay down appropriate consumer protection measures in cases where the trader fails to discharge his information obligation. It was legitimate for the defendant to believe that the limitation of the right of cancellation under Paragraph 7 of the VerbrKrG was applicable.

69. With that in mind, the Court is therefore 'concerned to establish that the two essential criteria were fulfilled for deciding to impose such a limitation, namely that those concerned should have acted in good faith and that there should be a risk of serious difficulties.' [31]

In the light of that paragraph, the defendant was reasonably entitled to assume that the right of cancellation was subject to a time-limit where the information obligation had not been discharged.

70. The 'good faith' condition means that it must have been reasonably possible for the parties concerned to have been mistaken as to the applicability [32] or scope [33] of the Community provision interpreted.

71. On the other hand, I doubt whether the second condition of 'serious difficulties' is satisfied. The defendant has certainly outlined the reasons why the judgment could have unbearable consequences for banks which have engaged in this form of mortgage lending. However, it has not adduced any specific evidence in support of its contention. I am therefore unable, on the basis of the available evidence, to suggest that the Court limit the temporal effects of its judgment.

30 — Case C-57/93 *Vroege* [1994] ECR I-4541, paragraph 21, and Case C-128/93 *Fisscher* [1994] ECR I-4583, paragraph 18.

31 — *Vroege*, paragraph 21, and *Fisscher*, paragraph 18. A perusal of the case-law also brings to light a third and equally important criterion: 'a limitation of the effects in time of an interpretative preliminary ruling can only be in the actual judgment ruling upon the interpretation sought' (*Vroege*, paragraph 31). This condition clearly is fulfilled in this case since the Court has never previously given judgment on the application of the doorstep-selling directive to mortgage loan agreements and on whether the right of cancellation can be limited in time where notice of that right has not been given.

32 — See, *inter alia*, Case C-262/88 *Barber* [1990] ECR I-1889, paragraph 43.

33 — See, *inter alia*, Case 61/79 *Denkavit Italiana* [1980] ECR 1205, paragraphs 19 to 21.

## Conclusion

72. In the light of these considerations, I propose that the Court give the following answers to the questions referred by the Bundesgerichtshof:

(1) A mortgage loan agreement with a view to the purchase of immovable property, entered into by way of a doorstep transaction, falls within the scope of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.

(2) Directive 85/577 precludes national legislation limiting in time the right of cancellation where the consumer's right to information under Article 4 of the directive has not been observed.