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Notes on judgment of 27 June 2000, *Oceano Grupo Editorial S.A. v Rocio Murciano Quintero et al.*, and on judgment of 13 July 2000, *Centrosteeel S.r.l. v Adipol GmbH*

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orderly diplomatic intercourse of the hitherto hardliners with Austria will now ensue. In this vein, the French minister for Europe, *Moscovici*, has already announced that he will not be visiting Vienna on his forthcoming tour of European capitals.

If only for the sake of the (European) cause, it is high

time that diplomatic professionalism be reinstated and that Austria can once again have its voice heard. Beyond the defence of its legitimate interests, it was, after all, always Austria that tried with appropriate initiatives to participate actively in the process of European unification. For too long Austria has been barred from that process.

New Developments in the European Court of Justice's Case Law on the Direct Applicability of Community Directives

Notes on judgment of 27 June 2000, *Océano Grupo Editorial SA v Rocio Murciano Quintero et al.*, and on judgment of 13 July 2000, *Centrosteeel S.r.l. v Adipol GmbH*

*Dott Simona Augi / Dott Fabrizio Baratella, Trento**

The two European Court of Justice judgments discussed here admittedly relate to different factual situations but they deal with the subject of direct applicability of Community directives inside the national legal system, something that has already been the subject of numerous decisions but which continues to be quite topical. Community directives, in contrast to its decrees and decisions, are not directly applicable, more precisely to the extent that they are binding under the provisions of Article 249(3) of the EC Treaty (previously Article 189(3)) on the Member State to which they are addressed, for selecting ways and means of implementation while providing for a certain discretionary leeway on the part of the Member State. Basically, therefore, in any individual case no rights may be derived from directives for the protection of which judges are called upon to act. However, this principle has been formed and incorporated in the course of the Court's jurisprudence stressing that "it would be incompatible with the binding nature which Article 189 of the EC Treaty recognises basically to bar persons affected from being able to invoke obligations contained in the directive."¹

The Member State that has failed to implement the necessary measures on time, i.e. not done so within the period of time stipulated in the relevant directive cannot in turn bring a case against the citizen for non-fulfilment of obligations which it has not imposed on him. In this context, normally the "direct effect" of the directive is cited: this refers to a rule that for a long time was considered to apply only in "vertical" relations between a Member State and a

citizen but which has not been applied and extended to "horizontal" relations between private parties. Most recently, the two judgments printed here constitute an unambiguous expression of this development in the Court's case-law practice since it has held that "the national court must as far as possible in its practice interpret the national legal regulation, taking the wording and objective of the directive into account" and this has led to Community's directives being directly applicable in disputes between private parties.

1. Prerequisites for a directive's direct effect

Since Member States have continually ignored directive regulations or have not implemented them in national law properly, in the framework of the Court's jurisprudence the idea has evolved that even directives can be directly applicable under certain conditions. First of all, *expiry of the deadline* for implementation was held to be an absolute prerequisite for direct effect.² Prior to the deadline, the directive was consistently held to give rise to no direct effect and to be without any anticipatory effects. Secondly, it was clarified that *national regulations of the individual Member State must contradict the tenor of the directive*. This can happen in two ways: both in the event that the directive as a whole was not implemented as well as where it was admittedly implemented but its contents were not completely or correctly implemented in domestic law, or where the objective of the directive was not appropriately achieved as the result of an interpretation by national

^{*} *Praticanti Avvocato (I)*. The following article was written on the occasion of a study visit to the editorial department of *The European Legal Forum*.

¹ ECJ 26 February 1986 – C-152/84 – *Marshall v Southampton*.

² ECJ 10 November 1992 – C-231/87 – *Hansa Fleisch Ernst GmbH & Co KG v Landrat des Kreises Schleswig-Holstein*.

courts that was not in conformity therewith.³ Thirdly, the provisions of a directive must be *substantively unconditional and sufficiently precise* in regard to the substantive structure of norms.⁴ These prerequisites are met if the beneficiaries of the directive are clearly established, if the obligation's contents are determined and if the person under an obligation can be identified in his individual capacity. A directive can be seen as absolute if its provisions are so clear and unambiguous that the Member States in their implementation have no discretionary leeway and if it is sufficiently precise, if the matter to be regulated and the contents of the regulations applicable thereto are definite in all their details. Basically, there is now even far-reaching unanimity that directives that repeat the wording of a directly applicable norm and which additionally fix its scope as well as the deadline and method of implementation are, in fact, directly applicable. On closer observation, such a directive ultimately only bears the formal designation of the directive while it in its substantive regards displays the attributes of a Community decree, in other words, of an act where the Member State has practically not been granted any discretionary leeway.

2. The role of the judge in implementing a directive

In addition to this stipulation and the precise determination of prerequisites for direct applicability of a directive, in implementation of directives it has turned out to be necessary to define and extend the functions of each Member State's governmental organs, in particular, that of the judiciary. Such organs therefore have the task of ensuring that the directive's contents have been effectively implemented in a national regulation, of scrutinising that the latter is in conformity with the Community directive as well as in reviewing the directive's implementation as to whether the legislator has exceeded the bounds of its assigned competencies. Under this angle, the judge assumes the important task of interpreting national law in the light of the Community directive: it is therefore the judge's obligation to assess to what extent the totality of provisions decreed for the purpose of implementing the directive can be interpreted on the basis of the directive in order to achieve the results intended by the directive. This leaves the judge's opportunity of turning to the Court unaffected if he, in the framework of a pending dispute, is of the view

that preliminary questions have come up that are of essence for the decision to be taken. Secondly, it is incumbent on the judge to ignore national regulations in opposition to the provisions of a Community act or, to put it more precisely, to disapply them.⁵ The principle of domestic law yielding or being inapplicable, first formulated in reference to such sources of Community law as, like decrees, are characterised by the fact that they are self-contained regulations and directly applicable, was subsequently extended to decisions of the Court and to directly applicable directives. From this perspective, the decision in the *Océano Grupo Editorial* case ultimately attains basic significance because it grants the judge, in his official capacity, the right to take the nullity of a provision in standard business terms into account even where he is not granted such a right by his own national law system or even, explicitly, by the directive itself, and in doing so it has opened up another opportunity by which the directive's contents and especially (as the decision states) the objective can be achieved. In such a way, on the one hand, the scope of the judge's assigned tasks has been additionally expanded, the judge, as an organ of the Member State being under an obligation to ensure effective implementation of the directive's substantive contents while, on the other hand, the Member State's discretionary leeway in selecting the ways and means to achieve the objectives has been gradually pushed back. The distinction between the directive and other directly applicable Community acts is thus being constantly narrowed down and in the event of a failure to implement a directive, or of faulty implementation, alternative methods to the system of implementing a directive through national legislation are being solidified.

3. Horizontal and vertical effect of a Community directive

While the direct effect of a directive in vertical relations between the Member State and private parties has generally been recognised, the Court in its jurisprudence had never explicitly recognised horizontal directive effects. This means, that an individual can admittedly invoke the contents of a substantively unconditional and sufficiently precise directive vis-à-vis the defaulting State, and this without regard to the function in which the State is active, but that, in relations between private parties, this assertion is barred. And, in actual fact, lack of, or faulty, implementation of the directive, if one were to permit its direct applicability between private parties, would constitute a

³ ECJ 17 October 1989 – C-231/87 – *Ufficio distrettuale delle imposte dirette di Fiorenzuola d'Arda v Comune di Carpaneto Piacentino*; ECJ 30 April 1996 – C-194/94 – *CIA Security International SA v Signalson SA e Securitel SPRL*.

⁴ ECJ 26 February 1986 – C-152/84 – *Marshall v Southampton*; ECJ 16 December 1993 – C-334/92 – *Wagner v Fondo de garanzia marittima*. Also important in this context is the decision of the Italian Constitutional Court of 18 January 1991, No. 168/91.

⁵ According to the theory of multiple legal systems, the regulations of the Member States have no effect but yield in the face of the Community regulations contradicting them.

substantial discrimination of the parties' positions, since it would then work for the benefit of the party seeking to protect his rights derived from the directive by turning to the Court and would disfavour the party put under an obligation by the directive and supposedly not complying with the directive's provisions. In reality, the Court in its rulings seems to have persistently softened up the distinction between vertical and horizontal effects of a directive. Symptomatic for this trend have been the two decisions discussed here - *Centrosteel* and *Océano Grupo Editorial*. In these judgments, the judge is said to have the task of interpreting the national regulation in the light of the objectives of the non-implemented directive and, where there is an obvious contradiction between the two provisions, not to apply the aberrant national provision. If one party is accorded effective legal protection at the expense of its adversary then one arrives in this way at the same result as in the case of direct applicability of directives in relations between private parties. It therefore seems that, even though the Court has never explicitly made a pronouncement in these terms, one can no longer distinguish between horizontal and vertical directive effects but rather it is now only possible to distinguish indirect effects of a directive if they have been implemented in a national statute within the deadline and direct applicability of a directive if that deadline has passed without any action being taken. One must therefore recognise that this Community instrument has been given substantially greater weight and together with decrees and decisions of the Court has contributed to the process of evening out and standardising the various national legal systems of the Member States on the basis of *ius commune europae*.

4. Further ramifications of failure to implement a directive

4.1. State liability for damage caused by failure to implement the directive

In case of failure to implement by a Member State, the individual can raise claim to compensation for damage incurred by him due to lack of implementation by the State. This principle of State liability has its basis in Article 10 of the EC Treaty (previously Article 5 of the EC Treaty). Due to this, the Member States are obliged to take "all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from actions taken by its institutions." This is nonetheless a protective instrument that can only be invoked by individuals under certain circumstances: first of all, the objective specified by the directive must simultane-

ously grant individuals rights; secondly, the contents of such rights must be capable of determination on the basis of the directive's provisions; finally, between a State's violation of its obligation and the damage caused to the offended party there must be some causal connection. The decision in the *Francoovich* case,⁶ now considered historic, was followed by other decisions that have achieved considerable significance since they have made the prerequisites for invoking damage compensation by a person in relation to the defaulting State more precise. Especially in the *Brasserie du Pêcheur* and *Factortame* cases,⁷ it was established that a State can only be found liable in case of "obvious and significant" violation and further clarified when an appropriate relationship obtains between the amount of damage compensation and the damage caused to a citizen. In the same way, in the *Palmisani* case,⁸ the Court decided and ruled that the compensation must be "adequate" and that therefore there may not be any conditions, and especially no time limits, put on it which are less favourable than if domestic liability claims had been invoked (Principle of equal treatment). Most recently, in the *Gozza v Università degli Studi di Padova* it was additionally stressed that the "damage consequences of delayed implementation of the directive (...) are remedied by retroactive, complete reimbursement of measures to carry it out, provided the directive has been properly implemented," if the beneficiaries cannot show that they suffered any more extensive damage that must therefore be compensated.⁹ The principle of State liability consequently takes its place with the principle of direct vertical applicability of directives in the total corpus of protective instruments granted to the citizen by the Court's persistent practice and which constitute a "minimum guarantee" available to the citizen at any time if, in case of failure to implement a directive, the national law applicable to the case is in contradiction with rights granted to the individual by the directive in question.

4.2. Default by the State and the Court's sanctions

Where a directive was not implemented by a Member State, the European Commission ultimately has the

⁶ ECJ 19 November 1991 - C-6/90 - *Francoovich et al v Repubblica Italiana*.

⁷ ECJ 5 March 1996 - joined cases C-46/93 and C-48/93, *Brasserie du Pêcheur SA v Bundesrepublik Deutschland* and *The Queen v Secretary of State for Transport, ex parte Factortame Ltd et al*.

⁸ ECJ 10 July 1997 - C-261/95 - *Palmisani v Istituto nazionale della previdenza sociale (INPS)*; cf. also ECJ 10 July 1997 - C-373/95 - *Maso et al e Gazzetta et al v Istituto nazionale della previdenza sociale (INPS)*.

⁹ ECJ 3 October 2000 - C-371/97 - *Gozza v Università degli Studi di Padova*.

authority under Article 226 of the EC Treaty (previously: Article 169 of the EC Treaty) to turn to the Court. On the basis of this regulation, the State is first of all to be informed by the Commission in a statement giving reasons, and to which the State must respond and justify the delay or where it in any case can explain what measures were adopted in time in order to implement the directive's contents in national law. According to the Court's usual practice,¹⁰ however, the State has no opportunity to invoke regulations, customary practice or the special situation of the domestic legal system in order to justify non-compliance with obligations and deadlines stemming from the EC Treaty and Community directives. Should the Member State fail to respond and if the deadline set by the European Commission, which starts to run when the statement giving reasons is served on the State in question, is passed, then the case against the Member State is opened before the Court. Should the latter rule in a judgment that the directive was not implemented, then the State must under Article 228 of the EC Treaty (previously Article 171 of the EC Treaty) "take the measures emerging from the Court's decision." Should the State not heed this, then sanctions can be applied.¹¹

5. Discussion of the Court's judgments

5.1. The *Océano Grupo Editorial* decision

The Court issued the first judgment in the *Océano Grupo Editorial* case on the basis of a preliminary ruling request from the Juzgado de Primera Instancia Barcelona relating to the relevance of a clause on a jurisdiction agreement *proprio motu*. This clause was in a purchase contract relating to an encyclopaedia and which was concluded between the publishing house *Océano Grupo Editorial*, the plaintiff and various buyers and which instead of the court of the consumer's residence had declared Juzgado de Primera Instancia Barcelona, where the plaintiff had its registered offices, as the sole venue for all disputes.¹² It was argued that such a clause, although not explicitly mentioned in the appendix to Directive 93/13/EEC,¹³ where clauses assumed to constitute abuse were listed, nonethe-

less met the requirements for invalidity stipulated in the Spanish implementation regulation.¹⁴ On disproportionately disadvantageous clauses, Article 3(1) of Directive 93/13/EEC stipulated: "A contract clause not individually negotiated is deemed to be abusive if it despite the precept of good faith and to the disadvantage of the consumer causes a significant and unjustified disproportion of the parties' rights and obligations." The Spanish directive implementation regulation provides in Article 10(4) of Law 26/1984 that the "clauses (...) disproportionately or unfairly disadvantaging the consumer or entailing for the consumer a lack of proportion between the rights and obligations of the parties are void in law." On the basis of these legal regulations, the Court is of the opinion¹⁵ that a contract in which the trader reserves the possibility of choosing the forum of jurisdiction for disputes about the contract puts the consumer in a weak position since his participation in legal proceedings is made excessively difficult. It is therefore obvious that the consumer, particularly in disputes of negligible value, would prefer to forego being defended rather than to have to conduct legal proceedings of uncertain outcome and which would in any case involve the consumer in costs incommensurate with the sum in dispute. Regarding the issue of whether the invalidity of the abusive clause and, in this case, of the jurisdiction agreement *proprio motu* are to be judged in full conformity with a legal system providing the consumer with extensive protection by, for instance, providing for third-party (e.g. consumer protection association) options to use class-action suits to represent the interests of individuals. In its decision, the Court stated¹⁶ that effective consumer protection can only be achieved if the judge has the option of declaring an abusive clause void in law even if the consumer has not himself invoked the clause's abusive character.¹⁷ In any other way, the objective of the directive could not be attained according to which the Member States under Article 7(1)+(2) must ensure that "appropriate

¹⁰ ECJ 18 May 1994 – C-303/93 – *Commission v Italy*; ECJ 28 September 1994 – C-65/94 – *Commission v Belgium*.

¹¹ Cf. in this context ECJ 4 July 2000 – C-387/97 – *Commission v Greece*; this decision appears to be the only current case of this type.

¹² With Article 14(2) of the European Convention on Jurisdiction and Enforcement of Judgments in Commercial and Civil Matters of 27 September 1968 contracted out.

¹³ Directive of the Council of 5 April 1993 on Abusive Clauses in Consumer Contracts.

¹⁴ Ley General 26/1984 para la Defensa de los Consumidores y Usuarios, Boletín Oficial del Estado, n 176, 24 July 1984. Complete implementation of the Directive was by act of 13 April 1998, no 8, Ley 7/1998 sobre Condiciones Generales de la Contratación, Boletín Oficial del Estado, no 89 of 14 April 1998.

¹⁵ Lines 22 and 24 of the Decision.

¹⁶ Line 28 of the Decision.

¹⁷ The Italian law implementing Directive 93/13/EEC on the contrary explicitly regulates in Article 1469 *quinquies* c.c. the judge's duty to respect the invalidity of abusive clauses in law. In doctrine and jurisprudence, on the other hand, there is controversy over whether the judge's authority of reviewing the possible invalidity of the clause at all stages of the proceedings and at every instance of appeal only obtains if one of the parties has brought suit for execution of the contract. In that case, it would actually be his task to review the prerequisites for the contract's validity and, where required, to declare the clauses in it to be void. Otherwise, the application principle and the prohibition of *ne ultra petita partium* would be violated. Accordingly, German regulations in Articles 9 et seq. of the Standard Business Terms Act (ABGB) provides that abusive clauses must be respected in law.

and effective means are available to put an end to the use of abusive clauses by a trader in contracts concluded with consumers.”

5.2. The *Centrosteeel* decision

The purpose of a directive must, as the Court has argued,¹⁸ always be taken into account by a national court even if the directive has not been implemented or has been implemented inadequately. What has been said above has been further clarified in the *Centrosteeel v Adipol* decision where it was mainly a question of invalidity of a commercial agent's contract due to lack of registration of the agent in a national register set up for that purpose. The local court in Brescia, the trial court, submitted the preliminary question to the Court of whether Italy's national regulation,¹⁹ according to which the validity of a commercial agent's contract is dependent upon registration of the agent in a register provided for that purpose, was compatible with Directive 86/653/EEC.²⁰ It must first be mentioned that the Court with its *Bellone* decision²¹ had already had to decide on a comparable case and had determined that the directive was contrary to a national regulation making the validity of the commercial agent's contract dependent upon the basic precondition of being entered in the register. As was made clear in the decision, the directive aiming at restricting the freedom of establishment provided no formal criterion for the validity of the contract and opened up the possibility for Member States to require written form. Subsequently, regulations as restrictive as the Italian one in the present case resulted in the fact that the non-registered commercial agent, particularly after contractual relations between the parties had ended, were deprived of legal contract protection. The local court in Brescia however assumed that a directive that had not been implemented accordingly cannot establish obligations at the expense of individuals and submitted the further preliminary legal question to the Court on whether it was not possible, by invoking the discrepancy between the national regulation of the matter and the provisions of the EC Treaty on the right to establish and the right to provide services, directly applicable in the Member States, likewise to come to the conclusion that registration of commercial

agents in the register specially set up for this purpose was no longer a prerequisite for validity.²² On this issue, the Court remarks²³ that it already constituted a permanent element of Court jurisprudence that Community directives bind Member States directly by imposing on them the obligation to achieve the aim intended by the directive and otherwise leave them at liberty on the ways and means to do so. In order for this objective to be attained in an appropriate manner, it is nonetheless not only necessary that the legislator implement the directive with corresponding measures but also that all organs of State likewise cooperate with active contributions in implementing Community law.²⁴ In the present case, the Court cited the *Bellone* decision and the *Océano Grupo Editorial* decision in stressing that the domestic judge when applying national law, and regardless of whether it involves norms decreed prior to or after the directive, must interpret them as far as possible in the light of the Directive's wording and objectives in order to achieve its intended purpose and must therefore heed Article 189(3) of the EC Treaty (now Article 249(3) of the EC Treaty).

6. Conclusions

Taking account of the considerations on direct applicability of directives in the horizontal relation between private parties as well, on the one hand, and the analysis of the two concrete cases decided by the Court, on the other hand, a conclusion can be drawn. In the *Océano Grupo Editorial* decision, the parties, sued in separate litigations for payment of instalments on the encyclopaedia, although they had not themselves raised objections as to the invalidity of the abusive jurisdiction agreement, have been given effective protection of their personal contractual position since the judge was granted the authority to recognise the clause's invalidity in law even if the national law in question had not provided for any such thing. In the *Centrosteeel* decision, the commercial agent whose commercial agent's contract had been held to be void because he had not been entered in the national register provided for this purpose had his claim to payment of a commission upheld

¹⁸ Lines 30 et seq. of the *Océano Grupo Editorial* decision.

¹⁹ Particularly Articles 2 and 9 of the Law of 3 May 1985, No. 204, in GURI, No. 119, 22 May 1985, at 3623.

²⁰ Directive 86/653/EEC of the Council of 18 December 1986 on Coordination of Legal Regulations of the Member States relating to Self-Employed Commercial Agents, implemented in Italy in two stages by legal decree (*decreto legge*) of 10 September 1991, No. 303, and by legal decree (*decreto legge*) of 15 February 1999, No. 65.

²¹ ECJ 30 April 1998 – C-215/95 – *Bellone v Yokohama S.p.A.*

²² Especially Articles 43-48 EC Treaty (previously Articles 52-58 EC Treaty) on freedom to establish and Articles 49-55 EC Treaty (previously Articles 59-66 EC Treaty) on freedom to provide services.

²³ Lines 15 et seq.

²⁴ Most especially in the famous *Simmenthal* decision (ECJ 9 March 1978 – C-106/77) the Court made it clear that the obligation to cooperate under Article 5 of the EC Treaty (now Article 10 of the EC Treaty) implies that all organs of State implement Community law accordingly in national law by actively contributing such as, for instance, by means of developed administrative practice of transmitting administrative ordinances, something shown in the elimination of legal uncertainty.

although domestic law did not accord him any such right. In both cases, the Court in its decision, to the effect that the domestic judge must interpret domestic law according to the contents and, beyond that, according to the objective and spirit of the directive (as becomes clear in the first judgment), allowed that in the present case the directive's provisions are also directly applicable in relations between private parties. Therefore, a directive, after passing the implementation deadline, has direct effect in the Member State's national law system and is de facto comparable to a Community decree.

ECJ 27 June 2000 – C-240/98 and 244/98 – Océano Grupo Editorial SA v Rocío Quintero et al.²⁵
Council Directive 93/13/EEC – Unfair terms in consumer contracts – Jurisdiction clause – Power of the national court to examine of its own motion whether that clause is unfair

The protection provided for consumers by Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts entails the national court being able to determine of its own motion whether a term of a contract submitted to it is unfair when making its preliminary assessment as to whether a claim should be allowed to proceed before the national courts.

The national court is obliged, when it applies national law provisions pre-dating or post-dating the said Directive, to interpret those provisions, so far as possible, in the light of the wording and purpose of the Directive. The requirement for an interpretation in conformity with the Directive requires the national court, in particular, to favour the interpretation that would allow it to decline of its own motion the jurisdiction conferred on it by virtue of an unfair term.

Facts: Each of the defendants in the main proceedings, all of whom are resident in Spain, entered into a contract for the purchase by instalments of an encyclopaedia for personal use. The contracts contained a term conferring jurisdiction on the courts in Barcelona (Spain), a city in which none of the defendants in the main proceedings is domiciled but where the plaintiffs in those proceedings have their principal place of business. Due to the fact that the purchasers of the encyclopaedias did not pay the sums due on the agreed

dates, the sellers brought actions to obtain an order that the defendants in the main proceedings should pay the sums due. Notice of the claims was not served on the defendants since the national court had doubts as to whether it had jurisdiction over the actions in question. The national court points out that on several occasions the Tribunal Supremo (Supreme Court) has held jurisdiction clauses of the kind at issue in these proceedings to be unfair. The decisions of the national courts are inconsistent on the question of whether the court may, in proceedings concerning consumer protection, determine of its own motion whether an unfair term is void.

Extract from the decision: »(...) 19. In those circumstances the Juzgado de Primera Instancia No. 35 de Barcelona took the view that an interpretation of the Directive was necessary to enable it to reach a decision in the proceedings before it. It decided to stay the proceedings and to refer to the Court of Justice for a preliminary ruling the following question, which is identically worded in the five orders for reference:

‘Is the scope of the consumer protection provided by Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts such that the national court may determine of its own motion whether a term of a contract is unfair when making its preliminary assessment as to whether a claim should be allowed to proceed before the ordinary courts?’ (...)

21. First, it should be noted that, where a term of the kind at issue in the main proceedings has been included in a contract concluded between a consumer and a seller or supplier within the meaning of the Directive without being individually negotiated, it satisfies all the criteria enabling it to be classed as unfair for the purposes of the Directive.

22. A term of this kind, the purpose of which is to confer jurisdiction in respect of all disputes arising under the contract on the court in the territorial jurisdiction of which the seller or supplier has his principal place of business, obliges the consumer to submit to the exclusive jurisdiction of a court which may be a long way from his domicile. This may make it difficult for him to enter an appearance. In the case of disputes concerning limited amounts of money, the costs relating to the consumer's entering an appearance could be a deterrent and cause him to forego any legal remedy or defence. Such a term thus falls within the category of terms which have the object or effect of excluding or hindering the consumer's right to take legal action, a category referred to in subparagraph (q) of paragraph 1 of the Annex to the Directive.

23. By contrast, the term enables the seller or supplier to deal with all the litigation relating to his trade, business or profession in the court in the jurisdiction of which he has

²⁵ Case joined with ECJ 27 June 2000 – C-244/98 – *Salvat Editores SA v Emilio Viñas Feliu et al.*