OPINION OF ADVOCATE GENERAL TIZZANO
delivered on 25 September 2003 [1]

1. By an order of 5 July 2002 the Tribunal d'instance (District Court) in Vienne (France) (hereinafter 'the Tribunal d'instance') referred to the Court for a preliminary ruling four questions on the interpretation 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 (hereinafter 'the Directive' or 'Directive 87/102'). [2]

2. In essence, the referring court seeks to ascertain what obligations the Directive imposes on a lending institution as regards the provision of information to the consumer if the loan consists of a credit drawable in instalments and by means of a credit card, is repayable in monthly instalments and bears interest at a variable rate. In addition, the Court is asked to determine whether the system of consumer protection established by the Directive requires or permits the national court to raise of its own motion any failure to comply with such obligations to provide information in an action for payment brought by the lending institution against the consumer-borrower, despite the fact that the two-year period laid down in this regard by the applicable national law has expired.

I — Legal framework

Community law

3. The purpose of Directive 87/102 is to approximate the legislation of Member States concerning consumer credit in order to eliminate the distortions of competition between grantors of credit (second recital), thereby ensuring the establishment of a common market in consumer credit (fourth recital).

4. Pursuant to Article 1, the Directive applies to 'credit agreements', that is to say, agreements 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'.

1 — Original language: Italian.

2 — OJ 1987 L 42, p. 48, as amended by Council Directive 90/88/EEC of 22 February 1990 (OJ 1990 L 61, p. 14).

5. So far as the present case is concerned, the Directive establishes harmonised rules on the information that must be provided to the consumer regarding consumer credit, laying down that certain statements must be contained both in advertisements (Article 3) and in the written document by means of which the consumer credit agreement must be concluded (Article 4).

6. In particular, Article 4(2) provides that:

'The written agreement shall include:

(a) a statement of the annual percentage rate of charge;

(b) a statement of the conditions under which the annual percentage rate of charge may be amended.

In cases where it is not possible to state the annual percentage rate of charge, the consumer shall be provided with adequate information in the written agreement. This information shall at least include the information provided for in the second indent of Article 6(1).'

7. The abovementioned annual percentage rate of charge (hereinafter the 'APR') is defined in Article 1(2)(e) as 'the total cost of the credit to the consumer, expressed as an annual percentage of the amount of the credit granted and calculated in accordance with Article 1a'.

8. The part of Article 1a(1) that is of relevance to the present case provides that:

'1. (a) The annual percentage rate of charge, which shall be that equivalent, on an annual basis, to the present value of all commitments (loans, repayments and charges), future or existing, agreed by the creditor and the borrower, shall be calculated in accordance with the mathematical formula set out in Annex II.

...'

9. Also with regard to the definition of the APR and the way in which it is to be

calculated, Article 1a(6) lays down that:

'In the case of credit contracts containing clauses allowing variations in the rate of interest and the amount or level of other charges contained in the annual percentage rate of charge but unquantifiable at the time when it is calculated, the annual percentage rate of charge shall be calculated on the assumption that interest and other charges remain fixed and will apply until the end of the credit contract.'

10. The scope of these obligations to provide information is defined in Article 2 (1), under which, in particular, the provisions of the Directive do not apply to:

'...

(e) credit in the form of advances on a current account granted by a credit institution or financial institution other than on credit card accounts.

Nevertheless, the provisions of Article 6 shall apply to such credits;

...'

11. Article 6 provides:

'1. Notwithstanding the exclusion provided for in Article 2(1)(e), where there is an agreement between a credit institution or financial institution and a consumer for the granting of credit in the form of an advance on a current account, other than on credit card accounts, the consumer shall be informed at the time or before the agreement is concluded:

— of the credit limit, if any,

— of the annual rate of interest and the charges applicable from the time the agreement is concluded and the conditions under which these may be amended,

— of the procedure for terminating the agreement. This information shall be confirmed in writing.

2. Furthermore, during the period of the agreement, the consumer shall be informed of any change in the annual rate of interest or in the relevant charges at the time it occurs. Such information may be given in a statement of account or in any other manner acceptable to Member States.

...'

12. Finally, Article 15 provides that the Directive 'shall not preclude Member States from retaining or adopting more stringent provisions to protect consumers consistent with their obligations under the Treaty'.

National law

13. Under French law, consumer credit is governed by Chapter I, Title I, Volume III, of the *Code de la consommation* (Consumer Code) (hereinafter 'the Code').

14. Under Article L. 311-8 of the Code, credit agreements are to be concluded in accordance with the terms set out in a preliminary offer transmitted in duplicate to the borrower, which must indicate, inter alia, the amount of the credit, the percentage rate of charge and the total of flat-rate sums payable as well as interest (Article L. 311-10).

15. Under Article L. 311-33, a lender which grants credit without sending the borrower a preliminary offer that meets these conditions forfeits its right to interest. The borrower is therefore required to repay only the principal.

16. Pursuant to Article L. 311-9, the duration of agreements under which 'credit is granted, whether or not linked to a credit card, which allows the borrower to draw the amount of the loan in instalments, on dates of his choosing,' [3] is limited to one year, with the possibility of renewal. In such cases, the preliminary offer to which Article L. 311-8 refers is compulsory only for the initial agreement, apart from the requirement for the lender to notify the conditions for renewal of the agreement three months before it expires.

17. Under Article L. 311-37 of the Code, in the version applicable at the time of the facts in the main proceedings, 'the Tribunal d'instance shall have jurisdiction to hear

3 — Unofficial translation.

disputes arising from application of this chapter. Actions brought before it must be raised within two years of the event which gave rise to them and shall otherwise be time-barred. ...'. [4]

II — Facts and questions referred

18. Under an agreement concluded on 1 July 1993, Cofinoga Merignac S.A. (hereinafter 'Cofinoga'), a credit institution, granted Mr Sachithanathan a credit to be drawn in instalments by means of a credit card, repayable in monthly instalments and bearing a variable interest rate.

19. The agreement, which was concluded for one year, was renewed several times. According to the order for reference, the notification by which each year Cofinoga reminded the borrower of the conditions for renewal of the agreement, sent three months in advance in accordance with Article L. 311-9 of the Code (see point 16 above), mentioned only the *monthly* percentage rate of charge applicable in the month in which the letter was sent. It did not, however, state the *annual* percentage rate of charge (APR, see points 7 and 8 above) that would be in force when the renewal subsequently took effect.

20. Following the borrower's failure to pay a number of instalments on the loan, on 19 July 2000 Cofinoga demanded repayment of the balance of the loan granted to him. Having failed to obtain satisfaction, it brought an action against Mr Sachithanathan before the Tribunal d'instance on 19 November 2001 in which it sought an order requiring him to pay the amounts owed by way of principal, interest and penalties. The defendant did not enter an appearance.

21. As it took the view that the resolution of the dispute before it depended on the interpretation of certain provisions of Directive 87/102, the Tribunal d'instance submitted the following questions to the Court for a preliminary ruling:

'1. On a proper construction of [Directives 87/102 and 90/88], must a national court uphold the interpretation of its law which requires institutions which lend consumer credit to inform a borrower-consumer in writing of the current annual percentage rate of charge before each extension of a renewable agreement for credit that is drawable in instalments and bears interest at a rate that is expressed to be variable?

4 — Unofficial translation. It should be noted that pursuant to Article 16 (II-1) of Law 2001-1168 of 11 December 2001 (JORF 288 of 12 December 2001, p. 19703) the second sentence of Article L. 311-37 was amended as follows with effect for agreements concluded after enactment of that Law (see Article 16(II-3): 'Actions *for payment* brought before that court *as a result of the default of the borrower* must be raised within two years of the event which gave rise to them and shall otherwise be time-barred' (unofficial translation, italics added to indicate the insertions).

2. On a proper construction of those directives, must the national court uphold the interpretation of its law which requires lending institutions to inform that consumer of the clause concerning the variation of that annual percentage rate of charge before each renewal of such an agreement?

3. On a proper construction of those directives, is the national court to uphold the interpretation of its law which permits it to allow, without any time-limit, a plea of illegality vitiating the formation or extension of a consumer credit agreement, such as that arising from failure to state the annual percentage rate of charge, raised by the consumer or by the court of its own motion, in a dispute arising from an action for payment brought by the lending institution?

4. If not, must the national court, on a proper construction of those directives, uphold the interpretation of its law which permits it to set aside a provision of its national law which prohibits the consumer or the court of its own motion from raising a plea of illegality vitiating the formation or extension of a consumer credit agreement after a time-limit which derogates from the general law, on the grounds that this would constitute an exceptional restriction on the right of action of the consumer and undermine the effectiveness of consumer protection?'

22. In the proceedings before the Court observations were lodged by Cofinoga, the French, Belgian and United Kingdom Governments and the Commission.

III — Legal assessment

The first and second questions referred

Views of the parties

23. In its first two questions the referring court is in essence asking whether Directive 87/102 requires it to uphold the interpretation of national law according to which, before each renewal of an agreement to provide credit that is drawable in instalments and by means of a credit card, is repayable in monthly instalments and bears a variable interest rate, the lender is required to inform the borrower in writing of the current APR and the conditions under which it may be amended.

24. Cofinoga, the French Government and the United Kingdom Government [5] propose that the reply to these questions should be in the negative. In their opinion, in a case such as that before the Court the lender's obligations to provide information under Article 4 of the Directive do not relate to the renewal of the agreement.

25. They are unanimous in observing that, pursuant to Article 4(2) of the Directive, the statement of the APR (or corresponding 'adequate information') [6] and mention of the conditions under which the APR may be amended must be included *in the* written *document by means of which the agreement is concluded*. From this they deduce that the obligations to provide information under the Directive expire *when the agreement is concluded*.

26. In support of this interpretation the United Kingdom Government states, in particular, that the purpose of the obligations to provide information, as laid down in Article 4 of the Directive, is to enable the consumer to assess the cost of the credit and compare it with other credit offers before committing himself to one or other. This objective is effectively met by means of information provided before or at the time of conclusion of the agreement; subsequent information, by contrast, is totally unnecessary for achieving that objective.

27. In the light of the foregoing, and given that Article 4 does not require the lender to inform the borrower of the APR applicable at the time of renewal nor of the existence of a clause concerning variation of the rate, Cofinoga and the United Kingdom Government doubt whether a different conclusion might be derived from Article 6(2) of the Directive. That provision requires the lender to inform the borrower of any change in the annual interest rate that occurs during the currency of certain kinds of credit agreement.

28. In the opinion of both, however, and contrary to the view that the referring court appears to hold, agreements such as that in the present case fall outside the scope of the provision in question. According to Cofinoga and the United Kingdom Government, the field of application of Article 6 is explicitly defined in paragraph 1 of that article and extends only to 'the granting of credit in the form of an advance on a current account, other than on credit card accounts'. Hence, since in the present case the credit granted to the borrower is not an advance on a current account and is, moreover, linked to a credit card, it must be deduced that Article 6(2) is not applicable and that the lender is therefore not obliged to notify the borrower of changes in the annual interest rate occurring during the period of the agreement or at the time of its renewal.

5 — The latter at least for the situation in which renewal cannot be regarded, according to the national law applicable, as the conclusion of a new agreement.

6 — Which 'shall at least include the information provided for in the second indent of Article 6(1)' (second subparagraph of Article 4(2)).

29. Finally, according to Cofinoga, a different interpretation of the Directive would not be practical, because the specific provisions of French law and the nature of the relevant agreement are such that before renewal of the credit agreement the consumer could not be informed of the APR that would be applicable at the time of renewal.

30. Above all, under French law an agreement such as the one in question relating to 'a credit ... which allows the borrower to draw the amount of the loan in instalments on dates of his choosing', has a duration limited to one year and is renewable; however, renewal presupposes that the relevant conditions are communicated to the borrower three months in advance (Article L. 311-9 of the *Code de la consommation*, see point 16 above).

31. When the contractual terms and conditions lay down that the rate of interest may vary monthly, as in the present case, it is not possible to state three months in advance the APR that will be applicable at the time of renewal, precisely because the *monthlyrate* that will be applicable at the time of renewal and on which the APR forecast is based is not known when the notification provided for in Article L. 311-9 is made because it could legitimately vary during the three months after notification.

32. For their part, however, the Belgian Government and the Commission propose that the reply to the first two questions should be in the affirmative.

33. In particular, the Belgian Government, developing a line of argument on which the United Kingdom Government had also dwelt but about which it had expressed doubt, maintains essentially that the reply to the first two questions depends on the nature of the legal act for renewal of the agreement, determined on the basis of the national law applicable to the credit agreement.

34. If that act is such as merely to maintain the effects of the initial agreement, it appears that there will be no obligation to provide information. If, on the other hand, it gives rise to the conclusion of a new agreement, the information stipulated in Article 4(2) of the Directive will then be required.

35. In the present case, since from the order for reference it seems possible to infer that under French law the renewal of an agreement must be treated in the same way as the conclusion of a new one, the conclusions must be drawn that Article 4(2) requires the lender to notify the borrower of

the APR and the conditions under which it may be altered.

36. As to the Commission, it sets out from the assumption that Article 6(2) also applies to agreements such as the one in the present case.

37. In the Commission's opinion, the express mention in Article 6(1) of credit agreements 'in the form of an advance on a current account, other than on credit card accounts', serves merely to specify that Article 6(1) and (2) *also* applies to this type of agreement, despite the fact that Article 2 (1)(e) excludes them from the scope of the remaining provisions of the Directive; that mention does not, in the Commission's opinion, have the effect of excluding from the scope of Article 6 consumer credit agreements to which the Directive applies under the general provision of Article 1 (see point 4 above).

38. According to the Commission, moreover, the indication of the APR at the time of renewal as well is a necessary requirement for achieving the essential objective of the Directive, that is to say, to enable the consumer to compare different credit proposals in order to benefit from the best opportunities available in the marketplace.

Assessment

39. In the light of the positions that emerged during the hearing, it is appropriate first to ascertain whether a reply to these two questions can be derived from Article 4 of the Directive and then to address the relevance of Article 6.

— *Article 4 of the Directive*

40. As we have seen above, the Belgian Government maintains that if (as in the present case) under the applicable national law the renewal of a credit agreement is to be treated as the conclusion of a new agreement, Article 4(2)(a) requires the lender to notify the borrower of the APR again.

41. In my view, however, it is debatable even from a general point of view whether the scope and preconditions for applying harmonised rules can be determined on the basis of the national law applicable from case to case. In particular, I consider that such a manner of proceeding risks jeopardising attainment of the objectives pursued

by a directive such as the one involved in this case.

42. Directive 87/102 seeks to ensure equal conditions of competition between consumer credit institutions, laying down, inter alia, a harmonised framework of pre-contractual and contractual information that must be provided to the consumer, thereby creating a genuine common market in consumer credit (see point 3 above).

43. That objective would undoubtedly be frustrated if the content of that information and the frequency with which it had to be provided were to depend on the specific provisions of the national law applicable under the rules of private international law.

44. That, however, would precisely be the consequence of the solution advocated by the Belgian Government. If French law were applicable — assuming that the representation of that law contained in the order for reference is correct, although this is contested by Cofinoga — Article 4(2)(a) would require the APR to be notified upon renewal of the credit agreement, whereas no such obligation would exist if the contract were subject to the law of another Member State under which a change in the expiry date were not equivalent to the conclusion of a new agreement.[7]

45. In my opinion, therefore, the interpretation of Article 4 of the Directive and identification of the preconditions for its application cannot depend on the national law applicable to the credit agreement by virtue of the reference to private international law, but must be the result of an independent interpretation that takes as its basis the system established by the Directive.

46. On that supposition, we must ask ourselves whether, in the light of the wording of the Directive and the system which it establishes, extension of the expiry date of a credit agreement such as that involved in the present case, where the interest rate and essential terms, including the clause on the variation in the rate, remain unchanged, does or does not constitute the conclusion of a new agreement and is therefore governed by Article 4.

47. Posed in these terms, the question in my opinion calls for a negative reply, for the reasons which I shall now set out.

7 — Under Italian law, for example, the application of the principles laid down in Articles 1230 and 1231 of the Civil Code would lead to the conclusion, in such cases, that no new agreement comes into being and that the contractual relationship is not interrupted.

48. Taking the wording of Article 4 as a starting point, it is easy to see that, in establishing an obligation to notify the APR and the conditions under which it can be amended, this provision is referring to the moment at which the agreement is concluded and makes no mention of the 'renewal' or extension of the period of the agreement.

49. Not only that: Article 1a(4)(a), in laying down the method of calculating the APR, also stipulates that 'the annual percentage rate of charge shall be calculated *at the time the credit contract is concluded*'.[8] The subsequent paragraph 6 in turn clarifies that 'in the case of credit contracts containing clauses allowing variations in the rate of interest ... *the annual percentage rate of charge* shall be calculated on the assumption that interest and other charges *remain fixed* and will apply until the end of the credit contract'.[8]

50. Hence, in the case of both fixed-rate and variable-rate credit agreements the APR is calculated (and communicated) only initially, in other words, at the time when the agreement is concluded. In the case of variable-rate agreements, interest rate variations after conclusion of the agreement are therefore regarded as irrelevant.

8 — Emphasis added.

51. In my view, systematic reasons also militate in favour of a solution that does not depart from the text of the Directive.

52. In this regard I would point out that the system established by the Directive hinges on the obligation to communicate the actual cost of the credit and the essential elements of the agreement in the advertising relating to the agreement (Article 3) and at the time of concluding the agreement (Article 4). Such a system, as the United Kingdom Government and Cofinoga rightly point out, seeks essentially to enable the consumer *intending to take out a loan* to compare credit proposals so that he can choose the most advantageous.

53. The choice of the most advantageous offer must obviously be made *before* concluding the agreement, so that it is in this decisive phase and not subsequently that, for the purposes of the Directive, the information on the APR and the clause on variations in the interest rate must be provided.

54. The conclusion outlined here appears to me to be confirmed by Article 14(4) of the recent proposal for a harmonising directive relating to consumer credit, pre-

sented by the Commission on 11 September 2002 (hereinafter 'the proposal for a directive'). [9]

55. The new provision lays down that the consumer must be informed 'of any change to the borrowing rate ... . This information must include the new annual percentage rate of charge'.

56. To my way of thinking, the clear wording of the proposal for a directive marks above all an important innovation in the harmonised regime, indirectly confirming that in strict terms under Article 4 of Directive 87/102 notification of the APR is mandatory only at the time of concluding the agreement and not at the time of subsequent amendments as well.

57. But there is more: in establishing a requirement to notify solely the *changes* in the APR when they occur, the proposal for a directive helps to demonstrate that, *if the interest rate remains unchanged*, Community law does not require the lender to communicate the APR even when a credit agreement is renewed.

58. It therefore seems to me that there can be no basis for a wide interpretation of Article 4 that distorts its clear wording so as to read into it an obligation for the lender to communicate the APR and the clause on variations in the rate not only in the document concluding the agreement at the time of its conclusion but also at the time of renewing the credit if the interest rate and the essential elements of the agreement remain unchanged.

— *Article 6 of the Directive*

59. Before we can reply to the referring court, however, it is necessary to ask whether Article 6(2) of the Directive, which explicitly requires the lender to communicate changes in the interest rate occurring during the period of the agreement, is or is not applicable to an agreement, such as that in the present case, under which a professional lender grants a consumer-borrower a loan that is drawable in instalments, renewable and linked to a credit card.

60. As we have seen, the Commission, supported incidentally at the hearing by the representative of the French Govern-

9 — Proposal for Directive of the European Parliament and of the Council on the harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers, COM(2002) 443 final (OJ 2002 C 331 E, p. 200).

ment, asserts essentially that this provision contains a general rule that is applicable to all agreements falling within the scope of the Directive.

61. I do not find that argument convincing, however.

62. First and foremost, I believe that the French Government itself rightly objected at the hearing that in the present case it is irrelevant to ask whether notice of a change in the interest rate should have been given, as the agreement was not altered but only renewed on unchanged conditions.

63. Apart from that, however, I note, as do Cofinoga and the United Kingdom Government, that Article 6 lays down a special rule applicable solely to agreements relating to 'the granting of credit in the form of an advance on a current account, other than on credit card accounts'. Hence it does not apply to a contract such as that in the present case, which not only does not relate to the granting of credit 'in the form of an advance on a current account' but does, on the contrary, involve the provision of a credit linked to a credit card.

64. Such a conclusion is inevitable, in my view, both by virtue of the wording of the Directive and in the light of the system which it establishes.

65. As to the wording, it is easy to note first and foremost that Article 6 opens, in paragraph 1, with an unequivocal statement of its material scope. It lays down that 'notwithstanding the exclusion provided for in Article 2(1)(e), *where there is an agreement* between a credit institution or financial institution and a consumer *for the granting of credit in the form of an advance on a current account, other than on credit card accounts*,' [10] the consumer must be informed 'at the time or before the agreement is concluded' of a series of items and conditions in the agreement that are specified in detail in the remainder of the provision.

66. The opening words of the second paragraph of the article are equally unequivocal: '*furthermore, during the period of the agreement*, the consumer shall be informed of any change in the annual rate of interest or in the relevant charges at the time it occurs'. [10] Emphasis added. There can be no doubt, therefore, that this

10 — Emphasis added.

provision relates to the very credit agreement referred to in the preceding paragraph, clarifying the further and different obligations to provide information incumbent on the lender during the period following conclusion of the agreement. [11]

67. I would add that the picture that emerges from a literal interpretation of the rule is fully consistent with the broader system set out in the Directive.

68. It is a known fact that the Directive, which pursuant to Article 1 is applicable to credit agreements, provides for a minimum harmonisation of the consumer protection rules from various aspects, such as advertisements of credit offers (Article 3), *pre-contractual and contractual information* (Article 4), the legal regime relating to the goods for the purchase of which the credit agreement may be intended (Article 7), early repayment of the credit (Article 8), the consequences of assignment of the credit (Article 9), protection in the event of payment by means of bills of exchange (Article 10), relations between the borrower and the supplier of goods or services purchased by means of the credit (Article 11) and the regulation of consumer credit intermediaries (Article 12).

69. Among all the aspects I have just mentioned, however, only one is harmonised for purposes of the type of agreement mentioned in Article 2(1)(e), under which a credit institution grants an account holder 'advances on a current account ... other than on credit card accounts', that is to say, the rules on *pre-contractual and contractual information* that the credit institution must provide to the account holder-borrower. However, that harmonisation comes about not through reference to the general rules in this regard, as laid down in Article 4, but by means of an ad hoc provision, namely Article 6 of the Directive.

70. Not only does that provision define its own scope *ratione materiae* in terms expressly limited to a certain type of credit agreement, as we have seen, but it also lays down rules which, while being inspired by a common *ratio*, nevertheless frequently differ in their concrete stipulations from those contained in the general rules. In particular, the special nature of Article 6 is expressed both in the obligation to provide information not required by Article 4 [12] and in the exclusion of other obligations to provide information laid down in the general rules. [13]

11 — An examination of the other language versions confirms and even reinforces the conclusion that can be drawn from the Italian version: the opening words of the second paragraph read, in the French version, 'De plus, en cours de contrat, ...', which in English becomes 'Furthermore, during the period of the agreement, ...', in Spanish 'Además, mientras dure el contrato, ...', which corresponds in German to 'Ferner (...) während der Laufzeit des Vertrages, ...'. In all of these versions the conjunction used and the reference to the 'contract' or 'agreement' without further specification make it clear that the obligations laid down in the second paragraph relate precisely to the continued performance of the contract, the conclusion of which is governed by the first paragraph.

12 — For the record, this is the information laid down in Article 6(2).

13 — In all cases, the indication of the APR is mandatory under Article 14 but not under Article 6.

71. The fact that Article 6 constitutes a special provision vis-à-vis Article 4 and that there is a relationship of mutual exclusion between the two articles of the Directive is further confirmed in the second subparagraph of Article 4(2).

72. This provision lays down that if, at the time of concluding the agreement, it is not possible to provide an indication of the APR, the consumer must none the less be provided, in the written agreement, with 'adequate information [which] shall at least include the information provided for in the second indent of Article 6(1)'.

73. It seems obvious to me that there would be no need for an express reference if, as the Commission claims, Article 6 applied in its own right to all contracts subject to the Directive; if, by contrast, such a reference is necessary, it is precisely because of the special nature of one provision vis-à-vis the other.

74. In short, both the wording of the Directive and the system it establishes lead me to conclude that Article 6(2) applies only to the agreements indicated in Article 6 (1), in other words, I repeat once again, to agreements for the granting of credit 'in the form of an advance on a current account, other than on credit card accounts'.

75. Hence, as it is common ground that the agreement to which the present case relates does not correspond to the type of transaction envisaged by Article 6(1), in my opinion the inference must be drawn that the rules laid down in Article 6(2) cannot be relied upon as a basis for an obligation on the part of the lender to communicate to the consumer-borrower the APR and the clause relating to variations in the credit at the time of renewal of such an agreement.

76. In conclusion, I propose that the Court reply to the first two questions from the Tribunal d'instance de Vienne in the following terms:

Council Directive 87/102/EEC of 22 December 1986, as subsequently amended, does not require a national court to uphold the interpretation of its national law which requires lenders of consumer credit to inform a consumer-borrower in writing of the current annual percentage rate of charge before each renewal of an agreement for credit that is drawable in instalments and by means of a credit card and which bears interest at a rate that is stipulated to be variable.

That directive also does not oblige the national court to uphold the interpretation of its national law which requires lenders of consumer credit to inform such a consumer of the clause concerning the variation of that annual percentage rate of charge before each renewal of such an agreement.

The third and fourth questions referred

77. By its third and fourth questions the referring court seeks essentially to ascertain whether the system of protection that Directive 87/102 provides for consumers allows it:

(a) to uphold the interpretation of its national law which authorises it to raise, without any time-limit, of its own motion or following a complaint from a consumer, possible irregularities of the kind considered in the first two questions that vitiate the conclusion or renewal of a consumer credit agreement such as that in the present case (third question), or

(b) to set aside a provision of its national law which sets a time-limit for such irregularities to be raised by the court, of its own motion or following a complaint from a consumer (fourth question).

78. It may be seen, as Cofinoga and the French Government have correctly pointed out, that the third and fourth questions have been posed only in the alternative in case the reply to the first two questions might be in the affirmative.

79. Both questions presuppose that the Directive requires the lender to notify the consumer-borrower of the APR and the clause concerning variations therein at the time of renewing a credit agreement of the kind at issue, which is drawable in instalments and by means of a credit card and for which a variable interest rate has been specified. Only in that case can the conduct of the lending credit institution be classified as irregular within the meaning of the Directive and it would thus be useful to consider whether this precludes the imposition of a time-limit such as that provided for in national law which prevents the consumer from raising such an irregularity and the court from recognising it of its own motion.

80. In the light of the reply that I have suggested be given to the first two questions, I believe that the third and fourth questions are no longer of any interest for resolving the case and I therefore propose that the Court refrain from replying to them.

IV — Conclusion

81. In the light of the considerations set out above, I propose that the Court reply as follows to the questions posed by the Tribunal d'instance de Vienne by order of 5 July 2002:

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, as subsequently amended, does not require a national court to uphold the interpretation of its national law which requires lenders of consumer credit to inform a consumer-borrower in writing of the current annual percentage rate of charge before each renewal of an agreement for credit that is drawable in instalments and by means of a credit card and which bears interest at a rate that is stipulated to be variable.

That directive also does not oblige the national court to uphold the interpretation of its national law which requires lenders of consumer credit to inform such a consumer of the clause concerning the variation of that annual percentage rate of charge before each renewal of such an agreement.