

Request for a preliminary ruling from the Fővárosi Ítéltábla (Hungary) lodged on 1 February 2017 — Teréz Ilyés, Emil Kiss v OTP Bank Nyrt., OTP Faktoring Követeléskezelő Zrt.

(Case C-51/17)

(2017/C 144/26)

Language of the case: Hungarian

Referring court

Fővárosi Ítéltábla

Parties to the main proceedings

Applicants: Teréz Ilyés, Emil Kiss

Defendants: OTP Bank Nyrt., OTP Faktoring Követeléskezelő Zrt.

Questions referred

- 1) Is a contractual term which places the exchange rate risk on the consumer and which, owing to the removal of an unfair contractual term which established a bid-offer spread and the obligation to bear the corresponding exchange rate risk, has become part of the contract with *ex tunc* effects as a consequence of the intervention of the legislature following disputes concerning validity which affected a large number of contracts considered to be a clause which is not individually negotiated within the meaning of Article 3(1) of the Directive ⁽¹⁾ and which therefore falls within the scope of the Directive?
- 2) If a contractual term which places the exchange rate risk on the consumer falls within the scope of the Directive, is the exclusion in Article 1(2) of the Directive to be interpreted as also referring to a contractual term which reflects mandatory statutory provisions within the meaning of paragraph 26 of the judgment of the Court of Justice in *RWE Vertrieb AG*, C-92/11, which have been adopted or have come into force after the conclusion of the contract? Does that exclusion also extend to a contractual term which has become part of the contract with *ex tunc* effects after the conclusion of the contract as a consequence of a mandatory statutory provision which remedies the invalidity caused by the unfairness of a contractual term which makes it impossible to perform the contract?
- 3) If, according to the replies to the above questions, it is possible to examine the unfairness of a contractual term which places the exchange rate risk on the consumer, is it to be understood that the requirement for plain intelligible language to which Article 4(2) of the Directive refers is also met if the obligation to provide information required by law and formulated in necessarily general terms is fulfilled in the terms set out in the facts, or is it also necessary to communicate information concerning the risk to the consumer of which the financial institution is aware or to which it might have access at the time the contract is concluded?
- 4) Is the fact that, at the time the contract was concluded, the contractual terms relating to the power to make unilateral amendments and to the bid-offer spread — which, years later, turned out to be unfair — appeared in the contract together with the term relating to the assumption of the exchange rate risk, so that, as a cumulative effect of those terms, the consumer had no means of foreseeing how the payment obligations or the mechanism for varying them would evolve, relevant from the point of view of the requirement for clarity and transparency and of the provisions in point 1(i) of the Annex to the Directive, for the purposes of interpreting Article 4(1) of the Directive?

- 5) If the national court declares that the contractual term which places the exchange rate risk on the consumer is unfair, is it required, when determining the legal effects in accordance with the rules of national law, also to take into account of its own motion, while respecting the right of the parties to present argument in inter partes proceedings, the unfairness of other contractual terms which have not been relied on by the applicants in their action? Does the principle that the court should act of its own motion in accordance with the case-law of the Court of Justice also apply if the applicant is a consumer or, having regard to the position occupied by the principle of the autonomy of the parties in the whole proceedings and to the particular features of the proceedings, does the principle that the parties have the right to delimit the subject matter of an action, in that case, preclude examination by the court of its own motion?

⁽¹⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts; OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Bundesverwaltungsgericht (Austria) lodged on 1 February 2017 — VTB Bank (Austria) AG

(Case C-52/17)

(2017/C 144/27)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant: VTB Bank (Austria) AG

Respondent: Österreichische Finanzmarktaufsicht

Questions referred

1. Are provisions of European Union secondary legislation (in particular, for example, Article 64 or 65(1) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ⁽¹⁾) applicable to the levying by the authorities of interest pursuant to a Member State's legal provisions under which a credit institution, on exceeding the limit for large exposures under Article 395(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, ⁽²⁾ is to have interest of 2 per cent of the excess over the limit for large exposures, calculated on an annual basis, levied on it for 30 days?
2. Does EU law (in particular, Article 395(1) and (5) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, as corrected by the Corrigendum (OJ 2013 L 321, p. 6), preclude a national provision such as that which was contained in Paragraph 97(1)(4) of the Bankwesengesetz (Law on Banking) (as amended by BGBl. (Federal Law Gazette) I No 532/2014) where, despite the fact that the conditions for applying the exemption provided for in Article 395(5) are satisfied, (absorption) interest is levied for a breach of Article 395(1)?