

4. Article 30 of Directive 2004/38 requires the Member States to take every appropriate measure with a view to ensuring that the person concerned understands the content and implications of a decision adopted under Article 27(1) of that directive but that it does not require that decision to be notified to him in a language he understands or which it is reasonable to assume he understands, although he did not bring an application to that effect.

(¹) OJ C 211, 13.6.2016.

Judgment of the Court (Second Chamber) of 20 September 2017 (request for a preliminary ruling from the Curtea de Apel Oradea — Romania) — Ruxandra Paula Andriciuc and Others v Banca Românească SA

(Case C-186/16) (¹)

(Reference for a preliminary ruling — Consumer protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Article 3(1) and Article 4(2) — Assessment of the unfairness of contractual terms — Loan agreement concluded in a foreign currency — Exchange rate risk born entirely by the consumer — Significant imbalance in the parties' rights and obligations arising under the contract — Time at which the imbalance must be assessed — Scope of the concept of terms drafted in 'plain intelligible language' — Level of information to be procured by the bank)

(2017/C 382/24)

Language of the case: Romanian

Referring court

Curtea de Apel Oradea

Parties to the main proceedings

Applicants: Ruxandra Paula Andriciuc and Others

Defendant: Banca Românească SA

Operative part of the judgment

1. Article 4(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that the concept of 'main subject matter of the contract' within the meaning of that provision, covers a contractual term, such as that at issue in the main proceedings, incorporated into a loan agreement denominated in a foreign currency which was not individually negotiated and according to which the loan must be repaid in the same foreign currency as that in which it was contracted, as that term lays down an essential obligation characterising that contract. Therefore, that clause cannot be regarded as being unfair, provided that it is drafted in plain intelligible language.
2. Article 4(2) of Directive 93/13 must be interpreted as meaning that the requirement that a contractual term must be drafted in plain intelligible language requires that, in the case of loan agreements, financial institutions must provide borrowers with sufficient information to enable them to take prudent and well-informed decisions. In that connection, that requirement means that a term under which the loan must be repaid in the same foreign currency as that in which it was contracted must be understood by the consumer both at the formal and grammatical level, and also in terms of its actual effects, so that the average consumer, who is reasonably well informed and reasonably observant and circumspect, would be aware both of the possibility of a rise or fall in the value of the foreign currency in which the loan was taken out, and would also be able to assess the potentially significant economic consequences of such a term with regard to his financial obligations. It is for the national court to carry out the necessary checks in that regard.

3. Article 3(1) of Directive 93/13 must be interpreted as meaning that the assessment of the unfairness of a contractual term must be made by reference to the time of conclusion of the contract at issue, taking account all of the circumstances which could have been known to the seller or supplier at that time, and which were such as to affect the future performance of that contract. It is for the referring court to assess, having regard to all of the circumstances of the case in the main proceedings, and taking account, in particular of the expertise and knowledge of the seller or supplier, in the present case the bank, with regard to the possible variations in the exchange rate and the risks inherent in taking out a loan in a foreign currency, of the existence of a possible imbalance within the meaning of that provision.

⁽¹⁾ OJ C 243, 4.7.2016.

Judgment of the Court (First Chamber) of 20 September 2017 (requests for preliminary ruling from the Tribunal Superior de Justicia de Castilla-La Mancha — Spain) — Elecdey Carcelen SA (C-215/16), Energías Eólicas de Cuenca SA (C-216/16), Iberenova Promociones SAU (C-220/16), Iberdrola Renovables Castilla La Mancha SA (C-221/16) v Comunidad Autónoma de Castilla-La Mancha

(Joined Cases C-215/16, C-216/16, C-220/16 and C-221/16) ⁽¹⁾

(References for a preliminary ruling — Environment — Electricity generated by wind power — Directive 2009/28/EC — Promotion of the use of energy from renewable sources — Subparagraph (k) of the second subparagraph of Article 2 — Aid scheme — Subparagraph (e) of the second subparagraph of Article 13 (1) — Administrative charges — Directive 2008/118/EC — General arrangements for excise duty — Article 1(2) — Other indirect taxes for specific purposes — Directive 2003/96/EC — Taxation of energy products and electricity — Article 4 — Minimum rate of taxation on energy — Levy imposed on turbines designed to produce electricity)

(2017/C 382/25)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-La Mancha

Parties to the main proceedings

Applicants: Elecdey Carcelen SA (C-215/16), Energías Eólicas de Cuenca SA (C-216/16), Iberenova Promociones SAU (C-220/16), Iberdrola Renovables Castilla La Mancha SA (C-221/16)

Defendant: Comunidad Autónoma de Castilla-La Mancha

Operative part of the judgment

1. Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, in particular, subparagraph (k) of the second subparagraph of Article 2 and subparagraph (e) of the second subparagraph of Article 13(1) thereof, must be interpreted as not precluding national legislation, such as that at issue in the cases in the main proceedings, which provides for the application of a levy on wind turbines designed to produce electricity;