



## Reports of Cases

### JUDGMENT OF THE COURT (Third Chamber)

23 April 2015 \*

(Reference for a preliminary ruling — Directive 93/13/EEC — Unfair terms — Insurance contract — Article 4(2) — Assessment of the unfairness of contractual terms — Exclusion of terms relating to the main subject-matter of the contract — Term intended to ensure that mortgage loan repayments are covered — Borrower's total incapacity for work — Exclusion from cover in the event of recognised fitness to undertake an activity, paid or otherwise)

In Case C-96/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal de grande instance de Nîmes (France), made by decision of 26 February 2014, received at the Court on 28 February 2014, in the proceedings

**Jean-Claude Van Hove**

v

**CNP Assurances SA,**

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh, C. Toader (Rapporteur), E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: N. Jääskinen,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 9 December 2014,

after considering the observations submitted on behalf of:

- CNP Assurances SA, by P. Woolfson and I. de Seze, avocats,
- the French Government, by S. Menez, D. Colas and S. Ghiandoni, acting as Agents,
- the European Commission, by M. Owsiany-Hornung and M. van Beek, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

\* Language of the case: French.

## Judgment

- 1 The request for a preliminary ruling concerns the interpretation of Article 4(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).
- 2 The request has been made in proceedings between Mr Van Hove and CNP Assurances SA ('CNP Assurances') concerning an allegedly unfair contractual term in an insurance contract that includes the definition of 'total incapacity for work' for the purposes of that company's cover of repayments on mortgage loans taken out by Mr Van Hove.

### Legal context

#### *EU law*

- 3 The nineteenth and twentieth recitals in the preamble to Directive 93/13 read as follows:

'Whereas, for the purposes of this Directive, assessment of unfair character shall not be made of terms which describe the main subject-matter of the contract nor the quality/price ratio of the goods or services supplied; whereas the main subject-matter of the contract and the price/quality ratio may nevertheless be taken into account in assessing the fairness of other terms; whereas it follows, *inter alia*, that in insurance contracts, the terms which clearly define or circumscribe the insured risk and the insurer's liability shall not be subject to such assessment since these restrictions are taken into account in calculating the premium paid by the consumer;

Whereas contracts should be drafted in plain, intelligible language, the consumer should actually be given an opportunity to examine all the terms and, if in doubt, the interpretation most favourable to the consumer should prevail.'

- 4 Article 1(1) of that directive provides:

'The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in contracts concluded between a seller or supplier and a consumer.'

- 5 Article 3(1) of that directive provides:

'A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.'

- 6 Article 4 of Directive 93/13 states:

'1. Without prejudice to Article 7, the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.

2. Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject-matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods [supplied] in exchange, on the other, in so far as these terms are in plain, intelligible language.'

7 According to Article 5 of that directive:

‘In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. ...’

*French law*

8 The seventh paragraph of Article L 132-1 of the Consumer Code, which transposes Article 4(2) of Directive 93/13 into French law, provides:

‘Assessment of the unfair character of the terms ... shall relate neither to the definition of the main subject-matter of the contract nor to the adequacy of the price or remuneration as against the goods sold or services provided in so far as these terms are in plain, intelligible language.’

9 Article L. 133-2 of that code is worded as follows:

‘Contractual terms proposed by sellers or suppliers to consumers or non-professionals must be presented and drafted in plain, intelligible language.

In the event of doubt, they shall be interpreted in the sense which is most favourable to the consumer or the non-professional. ...’

**The dispute in the main proceedings and the question referred for a preliminary ruling**

10 In July 1998, Mr Van Hove concluded two loan contracts with Crédit Immobilier de France Méditerranée for the amounts, respectively, of FRF 340 600 (EUR 51 924), repayable at a rate of EUR 434.43 per month until 31 March 2016, and FRF 106 556 (EUR 16 244), repayable at a rate of EUR 26.70 per month until 31 March 2017.

11 At the time of concluding those loan contracts, he also signed a ‘group insurance contract’ with CNP Assurances (‘the insurance contract’). The first clause of that insurance contract guarantees to cover all loan repayments ‘due from the borrowers to the contracting party in the event of death, permanent and absolute invalidity or 75% of such loan repayments in the event of total incapacity for work’.

12 Under the second clause of that contract, ‘[t]he insured person shall be regarded as being in a state of total incapacity for work if, after 90 consecutive days’ interruption of activity following an accident or illness (“the waiting period”), he finds himself unable to take up any activity, paid or otherwise’.

13 On 17 February 2010, Mr Van Hove was obliged to take a leave of absence from work due to a relapse connected with a work-related accident of 13 June 2000. Mr Van Hove’s state of health was certified as having stabilised by 17 October 2005. His rate of permanent partial incapacity for work (‘his permanent partial incapacity rate’) was assessed at 23%.

14 On 14 May 2005, he had surgery on a fistula resulting from the work-related accident. His state of health was certified as having stabilised on 4 November 2005 and his permanent partial incapacity rate was assessed at 67%. Owing to an outbreak of dizziness, he was obliged to take leave of absence from work on 3 August 2007 which was extended until 22 February 2008.

15 With effect from 1 January 2011, his permanent partial incapacity rate was set by the social security authorities at 72%. On that basis, he was allocated a monthly allowance of EUR 1057.65.

- 16 On 18 June 2012, for the purposes of assessing the cover payable by CNP Assurances, the doctor appointed by that company examined Mr Van Hove. He concluded that Mr Van Hove's state of health allowed him to carry on appropriate employment on a part-time basis. By letter of 10 July 2012, CNP Assurances informed Mr Van Hove that, with effect from 18 June 2012, it would no longer cover his loan repayments. By further letter of 29 August 2012, it maintained its refusal to make repayments, explaining to Mr Van Hove that while his state of health was no longer compatible with him returning to his former post, he was fit to carry on appropriate employment, at least on a part-time basis.
- 17 On 4 March 2013, Mr Van Hove brought proceedings before the referring court against CNP Assurances. He asks that court, primarily, on the basis, *inter alia*, of the provisions of the Consumer Code, to declare that the terms of the contract between him and CNP Assurances relating to the definition of 'total incapacity for work' and the conditions under which cover for that incapacity is acquired are unfair, and to order the defendant in the main proceedings to cover the sums which are still outstanding in connection with the two loans referred to above with effect from June 2012.
- 18 In support of his claims, Mr Van Hove argues, first, that the term of the insurance contract which makes provision of cover by the insurer conditional upon it being completely impossible for the insured person to take up any activity, paid or otherwise, is unfair because it causes a significant imbalance between the parties to that contract, to the detriment of the consumer. Secondly, he claims that the definition of 'total incapacity for work' is worded in such a way as to prevent a lay consumer from being able to grasp its full significance.
- 19 CNP Assurances asks the referring court, in essence, to dismiss Mr Van Hove's action. The definition of 'total incapacity for work', within the meaning of the contract, clearly and precisely makes provision of cover conditional upon the person concerned being in a state of total incapacity for work. It contends that, as of 18 June 2012, Mr Van Hove is no longer in a state of total incapacity for work, within the meaning of that contract, because, on that date, the medical expert appointed by that company found that he was fit to carry on an appropriate employment and fixed his functional incapacity rate at 20%. CNP Assurances states in that regard that the criteria which are taken into account for the purposes of fixing that rate are different from the criteria used by the social security authorities. Moreover, that term cannot constitute an unfair term because it concerns the very subject-matter of the contract and does not cause a significant imbalance, to the detriment of the applicant, since his loan repayments were covered for over two years.
- 20 The referring court states that, in order to resolve the dispute before it, it is necessary to rule on whether the second clause of the insurance contract constitutes an unfair term.
- 21 That court states that the Cour de cassation (Court of Cassation), by a recent judgment, found that the term relating to the provision of cover in the event of temporary total incapacity for work, which provides that daily payments are to be made during the period in which the insured person's state of health temporarily prevents him from carrying on any employment and which specifies that those payments will be made to that person until such time as he is fit to take up some form of employment, defines the main subject-matter of the contract and is covered by the seventh paragraph of Article L 132-1 of the Consumer Code. Accordingly, the tribunal de grande instance de Nîmes considers that, in the light of that judgment, the term at issue in the case before it may, by virtue of that provision, be classified as falling outside the definition of an 'unfair term'.
- 22 Moreover, while the referring court finds that, contrary to Mr Van Hove's assertions, the wording of that clause, pursuant to which the provision of cover in the event of total incapacity for work is made conditional upon the insured person being in a situation where, 'following an accident or illness ...', he finds himself unable to take up any activity, paid or otherwise', is both clear and precise. It notes nevertheless that it cannot be excluded that that term falls within the concept of an 'unfair term' within the meaning of Directive 93/13.

- 23 That court considers that that clause, in defining the concept of ‘total incapacity for work’, determines the conditions which the insured person must meet in order to receive the insurance cover. However, that clause prevents any insured person who is recognised as being fit to carry on some form of employment from receiving that cover, even if such employment is unpaid. According to the referring court, the purpose of an insurance policy, such as that at issue in the dispute before it, is to ensure that the commitments made by the borrower continue to be honoured in the event that his state of health no longer allows him to carry on an activity which will provide him with the necessary income to meet his obligations.
- 24 In so far as that clause would have the effect of preventing the borrower from receiving the cover normally provided in the event of total incapacity for work if he is declared fit to carry on some form of employment, even if that employment cannot provide him with any income whatsoever, that clause would frustrate part of the purpose of the insurance policy. The referring court considers, therefore, that the second clause of the insurance contract could be construed as causing a significant imbalance in the rights and obligations of the parties to that contract, to the detriment of the consumer.
- 25 In those circumstances, the tribunal de grande instance de Nîmes decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 4(2) of Directive [93/13] be interpreted as meaning that the concept of a term relating to the definition of the main subject-matter of a contract, which appears in that provision, covers a term of an insurance contract intended to ensure that loan repayments payable to the lender will be covered in the event of the borrower’s total incapacity for work if that term prevents the insured person from receiving that cover in the event that he is declared fit to carry on unpaid activity?’

### **The question referred for a preliminary ruling**

- 26 At the outset, it must first be recalled that, according to established case-law, the system of protection established by Directive 93/13 is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier as regards both his bargaining power and his level of knowledge, which leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of those terms (see, inter alia, judgment in *Kušionová*, C-34/13, EU:C:2014:2189, paragraph 48 and the case-law cited).
- 27 Secondly, as regards such a position of weakness, Directive 93/13 requires Member States to provide for a mechanism ensuring that every contractual term not individually negotiated may be reviewed in order to determine whether it is unfair. Accordingly, it is for the national court to determine, taking account of the criteria laid down in Articles 3(1) and 5 of Directive 93/13, whether, having regard to the particular circumstances of the case, such a term meets the requirements of good faith, balance and transparency laid down by that directive (see judgment in *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraph 40 and the case-law cited).
- 28 Likewise, although it is for the referring court alone to rule on the classification of those terms in accordance with the particular circumstances of the case, the fact remains that the Court has jurisdiction to elicit from the provisions of Directive 93/13, in this case the provisions of Article 4(2) thereof, the criteria that the national court may or must apply when examining contractual terms (judgment in *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraph 45).
- 29 By its question, the referring court asks, in essence, whether Article 4(2) of Directive 93/13 must be interpreted as meaning that a term of an insurance contract intended to ensure that loan repayments payable to the lender will be covered in the event of the borrower’s total incapacity for work, will, if that term prevents the insured person from receiving that cover in the event that he is declared fit to carry on an activity, paid or otherwise, fall within the exception set out in that provision.



- 30 Article 4(2) of Directive 93/13 provides that the assessment of the unfair nature of the terms is to relate neither to the definition of the main subject-matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as those terms are drafted in plain, intelligible language.
- 31 The Court has already held that that provision must be strictly interpreted, since it lays down an exception to the mechanism for reviewing the substance of unfair terms, such as that provided for by the system of consumer protection put in place by Directive 93/13 (judgments in *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraph 42, and *Matei*, C-143/13, EU:C:2015:127, paragraph 49).
- 32 It is in that context that the question referred by the referring court must be examined. In order to answer that question, it is necessary to consider, first, whether a term, such as that at issue in the main proceedings, falls within the main subject-matter of an insurance contract and, secondly, whether such term is drafted in plain, intelligible language.

*The concept of the ‘main subject-matter of the contract’*

- 33 Contractual terms falling within the concept of ‘the main subject-matter of the contract’, within the meaning of Article 4(2) of Directive 93/13, must be understood as being those that lay down the essential obligations of the contract and, as such, characterise it (see, to that effect, judgments in *Caja de Ahorros y Monte de Piedad de Madrid*, C-484/08, EU:C:2010:309, paragraph 34, and *Kásler et Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraph 49). By contrast, terms ancillary to those that define the very essence of the contractual relationship cannot fall within the concept of ‘the main subject-matter of the contract’, within the meaning of that provision (judgments in *Kásler et Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraph 50, and *Matei*, C-143/13, EU:C:2015:127, paragraph 54).
- 34 As regards the question whether a term falls within the main subject-matter of an insurance contract, it must be stated, first, that according to the case-law of the Court, the essentials of an insurance transaction are that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded (judgments in *CPP*, C-349/96, EU:C:1999:93, paragraph 17; *Skandia*, C-240/99, EU:C:2001:140, paragraph 37; and *Commission v Greece*, C-13/06, EU:C:2006:765, paragraph 10).
- 35 Secondly, as regards a contractual term contained in an insurance contract concluded between a seller or supplier and a consumer, the nineteenth recital in the preamble to Directive 93/13 states that, in such contracts, the terms which clearly define or circumscribe the insured risk and the insurer’s liability shall not be subject to an assessment of unfair character since those restrictions are taken into account in calculating the premium paid by the consumer.
- 36 In the present case, the referring court states that the contractual term at issue includes the definition of the concept of ‘total incapacity for work’ and determines the conditions which a borrower must meet in order to receive the payment cover in respect of his loan. In those circumstances, it cannot be ruled out that such a term will circumscribe the insured risk and the insurer’s liability and lay down the essential obligations of the insurance contract at issue, which is, however, a matter for the referring court to determine.
- 37 In that regard, the Court has had occasion to hold that the examination of a contractual term, in order to determine whether that term falls within the concept of the ‘main subject-matter of the contract’ within the meaning of Article 4(2) of Directive 93/13, must be carried out having regard to the nature, general scheme and the stipulations of the contract and its legal and factual context (see, to that effect, judgment in *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraphs 50 and 51).

- 38 It is, therefore, for the referring court to determine to what extent, having regard to those factors, the term at issue in the dispute before it lays down an essential component of the contractual framework of which it forms part, and, as such, characterises it.
- 39 If the referring court were to consider that that term forms part of the main subject-matter of the contractual framework, that court must also determine whether that term has been drafted by the seller or supplier in plain, intelligible language (see, to that effect, judgment in *Caja de Ahorros y Monte de Piedad de Madrid*, C-484/08, EU:C:2010:309, paragraph 32, and order in *Pohotovost'*, C-76/10, EU:C:2010:685, paragraph 72).

*The concept of 'plain, intelligible language'*

- 40 The Court has made it clear that the requirement of transparency of contractual terms, laid down by Directive 93/13, cannot be reduced merely to their being formally and grammatically intelligible. On the contrary, as the system of protection introduced by Directive 93/13 is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards, in particular, his level of knowledge, that requirement of transparency is to be interpreted broadly (see, to that effect, judgments in *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraphs 71 and 72, and *Matei*, C-143/13, EU:C:2015:127, paragraph 73).
- 41 Of fundamental importance to the consumer, therefore, for the purpose of complying with the requirement of transparency, is not only (i) the information given prior to the conclusion of the contract concerning the conditions as to liability, but also (ii) the information given concerning the specific features of the arrangements for covering the loan repayments payable to the lender in the event of the borrower's total incapacity for work and the relationship between those arrangements and the arrangements laid down in respect of other contractual terms, so that that consumer is in a position to evaluate, on the basis of plain, intelligible criteria, the economic consequences for him which derive from it. That is so since the consumer will decide, in the light of those two factors, whether he wishes to be contractually bound by agreeing to the terms previously drawn up by the seller or supplier (see, by analogy, judgments in *RWE Vertrieb*, C-92/11, EU:C:2013:180, paragraph 44, *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraphs 70 and 73; and *Matei*, C-143/13, EU:C:2015:127, paragraph 74).
- 42 In the present case, while the referring court considers that the wording of the clause at issue is plain and precise, it also states that the expression 'take up any activity, paid or otherwise', set out in that clause, may be understood in various ways. Apart from the interpretation suggested by CNP Assurances, according to which that expression also allows insured persons who are not gainfully employed at the time of an accident or illness to be considered as being in a state of total incapacity for work, it cannot be ruled out, as stated in paragraph 24 of the present judgment and as submitted by the French Government and the European Commission at the hearing, that that expression can be interpreted as meaning that it does not allow a person who is fit to carry on any activity whatsoever to receive cover, under the invalidity guarantee, for payments that he owes to the other contracting party.
- 43 Like the Commission, the Court notes that it cannot be ruled out, in the present case, that, even if the term is grammatically intelligible, which it falls to the referring court to assess, the scope of that term was not understood by the consumer.
- 44 The Commission states that the insurance contract was concluded in order to protect the consumer against the consequences of being unable to meet the monthly payments on his loans. Accordingly, the consumer could reasonably expect that the concept of 'activity, paid or otherwise', appearing in the insurance contract and included in the definition of 'total incapacity for work', corresponds to an employment that can, at least potentially, provide sufficient remuneration to enable him to meet the monthly payments on his loans.

- 45 As is clear from the arguments presented at the hearing, the doubts as to the lack of clarity of the term at issue in the main proceedings are reinforced by the extremely broad and vague nature of the expression ‘activity, paid or otherwise’ used in that term. Indeed, the word ‘activity’, as the Commission states, can encompass any human operation or activity carried out to achieve a specific purpose.
- 46 In the present case, as the French Government stated in its written observations, the consumer was not necessarily aware, when concluding the contract at issue in the main proceedings, of the fact that the concept of ‘total incapacity for work’, within the meaning of that contract, did not correspond to that of ‘partial permanent incapacity’ within the meaning of French social security law.
- 47 Accordingly, as regards the specific features of a contractual term, such as that at issue in the main proceedings, it is for the referring court to determine whether, having regard to all the relevant information, including the promotional material and information provided by the insurer in the negotiation of the insurance contract and, more generally, of the contractual framework, an average consumer, who is reasonably well informed and reasonably observant and circumspect, would not only be aware of the existence of the difference between the concept of ‘total incapacity for work’, within the meaning of the contract at issue in the main proceedings, and that of ‘partial permanent incapacity’, within the meaning of the national social security law, but would also be able to assess the potentially significant economic consequences, for him, resulting from the limitation of the cover included in the insurance policy in accordance with the requirements of the case-law referred to in paragraph 41 above.
- 48 The fact that the contract at issue in the main proceedings forms part of a broader contractual framework and is related to the loan contracts could be also relevant in this context. The consumer cannot be required, when concluding related contracts, to have the same vigilance regarding the extent of the risks covered by that insurance contract as he would if he had concluded that contract and the loan contracts separately.
- 49 Should the referring court come to the conclusion that a term, such as that at issue in the main proceedings, does not fall within the exception provided in Article 4(2) of Directive 93/13, it must be recalled that, under Article 5 of that directive, if the wording of a contractual term is not clear, the interpretation most favourable to the consumer shall prevail.
- 50 Therefore, the answer to the question referred is that Article 4(2) of Directive 93/13 must be interpreted as meaning that a term of an insurance contract intended to ensure that loan repayments payable to the lender will be covered in the event of the borrower’s total incapacity for work falls within the exception set out in that provision only where the referring court finds:
- first, that, having regard to the nature, general scheme and the stipulations of the contractual framework of which it forms part, and to its legal and factual context, that term lays down an essential component of that contractual framework, and, as such, characterises it, and,
  - secondly, that that term is drafted in plain, intelligible language, that is to say that it is not only grammatically intelligible to the consumer, but also that the contract sets out transparently the specific functioning of the arrangements to which the relevant term refers and the relationship between those arrangements and the arrangements laid down in respect of other contractual terms, so that that consumer is in a position to evaluate, on the basis of precise, intelligible criteria, the economic consequences for him which derive from it.



## Costs

- 51 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**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 a term of an insurance contract intended to ensure that loan repayments payable to the lender will be covered in the event of the borrower's total incapacity for work falls within the exception set out in that provision only where the referring court finds:**

- **first, that, having regard to the nature, general scheme and the stipulations of the contractual framework of which it forms part, and to its legal and factual context, that term lays down an essential component of that contractual framework, and, as such, characterises it, and,**
- **secondly, that that term is drafted in plain, intelligible language, that is to say that it is not only grammatically intelligible to the consumer, but also that the contract sets out transparently the specific functioning of the arrangements to which the relevant term refers and the relationship between those arrangements and the arrangements laid down in respect of other contractual terms, so that that consumer is in a position to evaluate, on the basis of precise, intelligible criteria, the economic consequences for him which derive from it.**

[Signatures]