



Reports of Cases

Order of the Court (Tenth Chamber) of 21 June 2016 —

Aktiv Kapital Portfolio

(Case C-122/14)¹

(Reference for a preliminary ruling — Directive 93/13/EEC — Unfair terms in consumer contracts — Order for payment procedure — Enforcement proceedings — Powers of the national court responsible for enforcement to raise of its own motion the fact that the unfair term is invalid — Principle of effectiveness — Principle of res judicata))

1. *Questions referred for a preliminary ruling — Questions the answer to which may be clearly deduced from the Court's existing case-law — Application of Article 99 of the Rules of Procedure of the Court of Justice (Art. 267 TFEU; Rules of Procedure of the Court of Justice, Art. 99) (see paras 22, 23)*
2. *Consumer protection — Unfair terms in consumer contracts — Directive 93/13 — Order for payment procedure — No possibility for the national court responsible for enforcement of the payment order to assess of its own motion the unfair nature of a term in a contract submitted to it for assessment where the consumer does not oppose that enforcement order — Unlawful — Incompatibility with the principle of effectiveness — Force of res judicata of that order — No effect (Council Directive 93/13) (see paras 26-39, operative part)*

Operative part

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which does not allow the court dealing with the enforcement of a payment order to assess of its own motion, even though it has all the elements of law and fact necessary for that purpose, the unfairness of a term in a contract concluded between a seller or supplier and a consumer which gave rise to that order, where, in the absence of opposition to the order by the consumer, the court which delivered that order was not empowered to carry out such an assessment.

¹ — OJ C 159, 26.5.2014.