



Reports of Cases

Case C-448/17

EOS KSI Slovensko s. r. o.
0076
Ján Danko and Margita Danková

(Request for a preliminary ruling from the Krajský súd v Prešove)

(Reference for a preliminary ruling — Consumer credit agreement — Directive 93/13/EEC — Unfair terms — Article 4(2) and Article 5 — Obligation to draft terms in plain intelligible language — Article 7 — Actions brought before the courts by persons or organisations having a legitimate interest in protecting consumers against the use of unfair terms — National law making the possibility for a consumer protection association to intervene in the proceedings subject to the consumer's consent — Consumer credit — Directive 87/102/EEC — Article 4(2) — Obligation to indicate the annual percentage rate in the written agreement — Agreement containing only a mathematical formula for calculating the annual percentage rate without the information necessary to make that calculation)

Summary — Judgment of the Court (Eighth Chamber), 20 September 2018

1. *Consumer protection — Unfair terms in consumer contracts — Directive 93/13 — Means to prevent the use of unfair terms — Procedural autonomy — Principle of equivalence — National legislation making the possibility for a consumer protection association to intervene in support of the consumer in an order for payment procedure subject to the condition that the consumer challenges that order — Unlawful — Condition*

(Council Directive 93/13)

2. *Consumer protection — Unfair terms in consumer contracts — Directive 93/13 — 77506 /Order for payment procedure — National legislation providing, at the stage when an order for payment is issued, to review the unfairness of the terms of a contract — Authorisation of an official who does not have the status of magistrate to issue that order — Right to lodge opposition subject to very short time-limit — Requirement to state reasons for the opposition brought by the consumer — Unlawful — Condition*

(Council Directive 93/13)

3. *Consumer protection — Unfair terms in consumer contracts — Directive 93/13 — Scope — Terms defining the main subject-matter of the contract or concerning the price or the remuneration and the services or goods supplied as consideration — Term relating to the cost of consumer credit — Term drafted in plain intelligible language — Criteria for assessment — No mention of interest rate, the annual percentage rate or the information necessary to calculate the latter — Decisive factor in the assessment by the national court*

(Council Directive 93/13, Art. 4(2))

1. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read together with the principle of equivalence, must be interpreted as meaning that it precludes national legislation, such as that at issue in the main proceedings, which prevents a consumer protection organisation from intervening, in the interests of the consumer, in proceedings seeking an order for payment concerning an individual consumer or lodging an objection in the absence of a challenge to that order by the consumer if that legislation in fact subjects intervention by consumer associations, in disputes falling within the scope of Union law, to less favourable conditions than those applicable to disputes exclusively within the scope of national law, which is for the referring court to ascertain.

(see para. 43, operative part 1)

2. Directive 93/13 must be interpreted as meaning that it precludes national legislation, such as that in the main proceedings, which, although providing, at the stage at which the order for payment is made against the consumer, for an assessment of the unfair nature of the terms in a contract concluded between a seller or supplier and a consumer, first, entrusts the power to grant that order to an administrative officer of a court who is not a magistrate and, second, provides for a period of 15 days within which to lodge a statement of opposition and requires that the latter contain reasons on the substance, where there is no provision for such an assessment by the court of its own motion at the stage of enforcement of that order, which is for the referring court to ascertain.

The fact that the national legislation confers jurisdiction regarding the grant of orders for payment to officials who do not have the status of magistrate does not compromise the effectiveness of Directive 93/13, so long as an assessment by a court ensuring that there are no unfair terms in the contract concerned is provided for at the stage of enforcement of the order for payment or when an objection is lodged.

That being the case, as stated in paragraph 46 of the present judgment, the existence of such a review only if an objection is lodged preserves the effectiveness of Directive 93/13 only if consumers are not dissuaded from lodging such an objection.

In the present case, the national legislation at issue in the main proceedings provides only for a period of 15 days within which a consumer may lodge an objection against the order for payment and also requires him to give reasons in the statement opposition.

Therefore, there is a significant risk with such legislation that the consumer concerned does not lodge an objection and that, therefore, the court does not undertake of its own motion an assessment as to the inclusion of unfair terms in the contract concerned.

(see paras 50-54, operative part 2)

3. Article 4(2) of Directive 93/13 must be interpreted as meaning that, first, where a consumer credit agreement does not mention the annual percentage rate of charge and contains only a mathematical formula for the calculation of the annual percentage rate of charge without the information necessary to make that calculation and, second, does not mention the rate of interest, such a fact is decisive evidence in the assessment undertaken by the national court concerned as to whether the term of that agreement relating to the total cost of the credit is drafted in plain intelligible language, within the meaning of that provision.

The failure to mention the APR in a credit agreement may be a decisive factor in the assessment by a national court of whether a term of a credit agreement concerning the cost of that credit is drafted in plain, intelligible language within the meaning of Article 4 of Directive 93/13. If that is not the case, a national court is empowered to assess the unfair nature of such a term within the meaning of Article 3 of Directive 93/13 (see, to that effect, judgment of 16 November 2010, *Pohotovost'*, C-76/10, EU:C:2010:685, paragraphs 71 and 72).

It must be added that a credit agreement, such as that at issue in the main proceedings, which contains only a mathematical formula for the calculation of the APR without the information necessary to make that calculation must be treated in the same way as a case in which the credit agreement fails to mention the APR.

In such a situation, the consumer cannot be regarded as having full knowledge of the terms of the future performance of the agreement entered into at the time of concluding such an agreement, and, therefore, as having all the information which could have a bearing on the extent of his liability.

(see paras 65-68, operative part 3)