



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

3 October 2019*

(Reference for a preliminary ruling – Consumer protection – Unfair terms in consumer contracts – Directive 93/13/EEC – Article 3(1) – Assessment of the unfair nature of contractual terms – Article 4(2) – Article 5 – Requirement that contractual terms be drafted in plain and intelligible language – Terms requiring the payment of costs for unspecified services)

In Case C-621/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kúria (Supreme Court, Hungary), made by decision of 26 October 2017, received at the Court on 3 November 2017, in the proceedings

Gyula Kiss

v

CIB Bank Zrt.,

Emil Kiss

Gyuláné Kiss,

THE COURT (Third Chamber),

composed of A. Prechal (Rapporteur), President of the Chamber, F. Biltgen, J. Malenovský, C.G. Fernlund and L.S. Rossi, Judges,

Advocate General: G. Hogan,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 14 March 2019,

after considering the observations submitted on behalf of

- Mr Kiss, by I. Ölveczky and K. Czingula, ügyvédek,
- CIB Bank Zrt., by J. Burai-Kovács and G. Stanka, ügyvédek,
- the Hungarian Government, by M.Z. Fehér, acting as Agent,
- the United Kingdom Government, by Z. Lavery, acting as Agent, and by A. Howard, Barrister,

* Language of the case: Hungarian.

– the European Commission, by N. Ruiz García and A. Tokár, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 15 May 2019,
gives the following

Judgment

- 1 The request for a preliminary ruling concerns the interpretation of Articles 3(1), 4(2) and 5 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).
- 2 That request has been made in the context of a dispute between, primarily, Mr Gyula Kiss and CIB Bank Zrt. ('CIB') concerning a request to establish that certain terms contained in a loan agreement are unfair.

Legal context

EU law

- 3 The 12th, 13th, 16th, 19th and 20th recitals of Directive 93/13 are worded as follows:

'Whereas, however, as they now stand, national laws allow only partial harmonisation to be envisaged; whereas, in particular, only contractual terms which have not been individually negotiated are covered by this Directive; whereas Member States should have the option, with due regard for the Treaty, to afford consumers a higher level of protection through national provisions that are more stringent than those of this Directive;

Whereas the statutory or regulatory provisions of the Member States which directly or indirectly determine the terms of consumer contracts are presumed not to contain unfair terms; whereas, therefore, it does not appear to be necessary to subject [to the provisions of this Directive] the terms which reflect mandatory statutory or regulatory provisions and the principles or provisions of international conventions to which the Member States or the Community are party; whereas in that respect the wording "mandatory statutory or regulatory provisions" in Article 1(2) also covers rules which, according to the law, shall apply between the contracting parties provided that no other arrangements have been established;

...

Whereas the assessment, according to the general criteria chosen, of the unfair character of terms, in particular in sale or supply activities of a public nature providing collective services which take account of solidarity among users, must be supplemented by a means of making an overall evaluation of the different interests involved; whereas this constitutes the requirement of good faith; whereas, in making an assessment of good faith, particular regard shall be had to the strength of the bargaining positions of the parties, whether the consumer had an inducement to agree to the term and whether the goods or services were sold or supplied to the special order of the consumer; whereas the requirement of good faith may be satisfied by the seller or supplier where he deals fairly and equitably with the other party whose legitimate interests he has to take into account;

...

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 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 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.’

5 According to Article 4 of that directive:

‘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.’

6 Article 5 of Directive 93/13 provides:

‘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. ...’

Hungarian law

The Civil Code

7 Article 209/B of the Polgári Törvénykönyvről szóló 1959. évi IV. törvény (Law No IV of 1959 establishing the Civil Code) (‘the Hungarian Civil Code’) states:

‘(1) A general contractual condition or a clause in a contract concluded with a consumer is unfair where, in breach of the requirements of good faith, it unilaterally and without reason determines, to the detriment of one of the parties, the rights and obligations of the parties arising from the contract.

(2) Adverse rights and obligations shall be deemed to be determined unilaterally and without cause:

(a) if they deviate significantly from an essential provision applicable to the contract; or

(b) if they are incompatible with the object or purpose of the contract.

(3) In order to assess the unfair nature of the term, account shall be taken of all the circumstances surrounding the conclusion of the contract which led to it, as well as the nature of the services provided for and the relationship between the term concerned, on the one hand, and the other provisions of the contract or other contracts, on the other hand.

(4) Special provisions may designate terms considered unfair in a contract concluded with a consumer or to be considered unfair until proven otherwise.

(5) The provisions relating to unfair contract terms shall not apply to the provisions defining the service and its counterpart, provided that their wording is drafted in a clear and comprehensible manner for both parties.

(6) A contractual term may not be considered unfair if it is imposed by or under a legislative or regulatory provision.'

8 Article 523 of the Hungarian Civil Code provides:

'(1) Under a loan agreement, the credit institution or any other lender is required to make available to the borrower the agreed amount; the borrower is required to repay the amount in accordance with the agreement.

(2) In the absence of provisions to the contrary, if the lender is a credit institution, the debtor is required to pay interest (bank loan).'

The Hpt Law

9 Pursuant to Article 210(2) of the hitelintézetekről és a pénzügyi vállalkozásokról szóló 1996. évi CXII. törvény (Law No CXII of 1996 on credit institutions and financial undertakings) ('the Hpt Law'):

'A contract for financial services or for auxiliary financial services must identify without ambiguity the interest, the costs and any other charges or conditions, including the legal consequences of delayed performance and the methods and consequences of enforcement of the ancillary obligations which guarantee the contract.'

10 Article 212 of the Hpt Law provides:

'(1) A loan contract concluded with a consumer or private individual must include the annual equivalent rate, expressed as an annual percentage and established in accordance with a special provision.

(2) The total cost of the credit is the charge that must be paid by the consumer for the loan and it includes interest, disbursement commissions and any other cost which must be paid in connection with the use of the loan.

(3) The annual equivalent rate is the internal interest rate as a result of which the total cost of the credit and the capital that the customer must repay are equivalent to the amount of the credit less the costs paid by the customer to the credit institution at the time of disbursement.'

11 Point I.10.2.a of Annex 2 to the Hpt Law defines ‘grant of a money loan’ as follows:

‘making available, pursuant to a loan or credit contract concluded between the lender and the debtor, of the amount which the debtor must repay – with or without interest – at the time stipulated in the contract.’

12 Point I.10.3 of that annex provides:

‘The financial services activity consisting of the granting of credit and money loans includes the formalities relating to solvency assessments, the drafting of credit or loan contracts, the registration of disbursed loans, and the monitoring, supervision and recovery of loans.’

13 Point III.7 of that annex defines ‘interest’ as follows:

‘amount or other return which the debtor must pay to the lender (or the depositor) for the use of and risk associated with the deposit accepted or the loan obtained, expressed as a percentage of the amount of the deposit or loan, and which must be paid (or settled) *pro rata temporis*.’

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

14 On 16 September 2005, the applicant in the main proceedings concluded a loan contract for EUR 16 451 with the company which was the legal predecessor of CIB at an annual interest rate of 5.4% and management charges of 2.4% per annum over a period of 20 years. The applicant was also required to pay, under the terms of the contract, the sum of 40 000 Hungarian forints (HUF) (approximately EUR 125) as a disbursement commission. The Annual Percentage Rate of Charge (APRC) was fixed at 8.47%.

15 The applicant in the main proceedings brought an action before the Győri Törvényszék (Regional Court, Győr, Hungary) for a declaration that the clauses relating to the management charges and the disbursement commission were unfair on the ground that the services to be provided in return were not specified in the contract.

16 In its defence, CIB argued that it was not under any obligation to specify the services covered by the management charges and the disbursement commission. It stated, however, that the disbursement commission corresponded to the formalities carried out before the contract was concluded, while the management charges covered the formalities to be fulfilled after the contract had been concluded.

17 The Győri Törvényszék (Regional Court, Győr) declared that the clause relating to the disbursement commission was unfair but rejected the claim concerning the clause relating to the management charges.

18 Following the lodging of appeals by the applicant in the main proceedings and by CIB, the Győri Ítéltábla (Regional Court of Appeal, Győr, Hungary) confirmed the judgment delivered at first instance. As regards the clause relating to the management charges, that court stated that that clause was drafted in a clear and understandable manner, since the amount to be borne by the borrower in this respect was defined clearly and the nature of the counterpart well known. It added that those charges included services such as processing, managing, recording and collecting the loan. By contrast, as regards the disbursement commission, that court pointed out that it was difficult to determine which specific services were covered by that commission, as the cost of all of the well-known services was already included in the management charges.

19 The applicant in the main proceedings and CIB appealed in cassation to the referring court.

- 20 The applicant in the main proceedings argues that the contract does not specify in clear terms the services for which he must pay the management charges. He claims that CIB failed to establish during the proceedings that the processing and management of the loan give rise to charges that are not already covered by interest.
- 21 For its part, CIB disputes the claim that the clause relating to the disbursement commission is unfair, observing, *inter alia*, that no legal provision in force at the time of conclusion of the contract at issue in the main proceedings obliged it to specify clearly the services provided in return for that commission.
- 22 The referring court states that, at the time of the facts of the dispute in the main proceedings, the concept of ‘management charges’ was not defined in Hungarian law and that loan agreements, in general, also did not indicate the services covered by those charges. Financial institutions had recourse to two different loan models with regard to those charges, the first stipulating management charges in addition to interest and the second not providing for management charges but setting a higher interest rate to cover those charges. Furthermore, whereas the majority of financial institutions charged a disbursement commission that had to be paid only once, that court points out that the Hungarian legislation in force at the time of conclusion of the contract at issue in the main proceedings did not define the counterpart of that commission, that commission being referred to solely in Article 212 of the Hpt Law as a component of the total cost of the loan.
- 23 The referring court has doubts as to whether the clauses at issue in the main proceedings are drafted in a clear and comprehensible manner and it is uncertain as to how it should assess whether they may be unfair. Furthermore, although national case-law is not uniform on this issue, it has been held in a majority of cases that only the total cost of the loan concerned has to be clear, without it being necessary to specify the nature of all of the services provided in return.
- 24 However, it is not clear from that case-law what specific services are provided in return for management charges, nor whether those services can be distinguished from the main service, namely the provision of a sum of money and the repayment of that sum plus interest. In any event, as it includes both interest and charges, the APRC makes it possible to ascertain the total cost of the loan and to compare the different loan offers on the market.
- 25 On the other hand, according to minority case-law, the services provided in return for management charges must be specified. It would be useful for the consumer to be able to compare not only the amounts of the APRC, but also the nature of those services. In that regard, the unbundling into two components of the consideration for the main service – interest and management charges – would not be legitimate, as the basis for management charges is, moreover, different from that used for the calculation of interest. Lastly, according to that case-law, the services provided in return for the disbursement commission should be known in order to ensure that those services are not charged for twice.
- 26 Furthermore, the referring court notes that the case-law of the various Member States also differs with regard to the nature of management charges. Thus, the Bundesgerichtshof (Federal Court of Justice, Germany) takes the view that the unfairness of a clause relating to management charges can be assessed given that the interest, and not those charges, is consideration for the main service. Such a clause is unfair in the case where that credit institution passes on to the consumer alone as management charges, *inter alia*, the operating costs incurred exclusively in that institution’s own interest. By contrast, the Oberster Gerichtshof (Supreme Court, Austria) takes the view that a contractual term stipulating management charges is within the scope of the main service, which precludes any examination as to whether it is unfair.
- 27 With regard to the case in the main proceedings, the referring court takes the view that the determination of the services provided in return for the management charges and the disbursement commission is likely to be relevant for determining whether the terms of the contract concluded by

the applicant in the main proceedings are sufficiently plain and intelligible within the meaning of Article 4(2) and Article 5 of Directive 93/13. In addition, if it is found that one of those clauses is not drafted in plain, intelligible language, the question will then arise as to whether that finding must lead *ipso facto* to the conclusion that that clause is unfair or whether, in order to reach that conclusion, it is also necessary, in particular in the light of Article 3(1) of Directive 93/13, to examine whether, notwithstanding the requirement of good faith, that clause causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer.

- 28 Lastly, the referring court has doubts as to whether it is appropriate to examine only the services and their counterparts relating to the clauses in question, or whether all of the clauses of the contract should be taken into account and all of the advantages and disadvantages assessed.
- 29 In those circumstances, the Kúria (Supreme Court, Hungary) has decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- '(1) Must the requirement that contracts be drafted in plain, intelligible language, laid down [in Article] 4(2) and [in Article] 5 of [Directive 93/13], be interpreted as meaning that, in a loan contract concluded with a consumer, that requirement is satisfied by a contractual term not individually negotiated that specifies the exact amount of the charges, commissions and other costs (collectively "charges") to be borne by the consumer, their method of calculation and the time when they have to be paid but does not, however, stipulate in return what specific services are covered by those charges, or must that requirement instead be interpreted as meaning that the contract also has to indicate what those specific services are? In the latter case, is it sufficient that the content of the service provided may be inferred from the description of the charge?
- (2) Must Article 3(1) of [Directive 93/13] be interpreted as meaning that the contractual term used in the instant case in relation to charges, when it cannot be unequivocally determined, on the basis of the contract, what specific services are provided in return for those charges, causes, contrary to the requirement of good faith, a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer?'

Consideration of the questions referred for a preliminary ruling

The first question

- 30 By its first question, the referring court asks, in essence, whether Article 4(2) and Article 5 of Directive 93/13 must be interpreted as meaning that the requirement that a contractual term be drafted in plain, intelligible language must be understood as requiring that non-individually negotiated contractual terms in a loan contract concluded with a consumer, such as those at issue in the main proceedings, which specify the exact amount of management charges and of a disbursement commission to be borne by the consumer, their method of calculation and the time when they have to be paid, also have to indicate all of the services provided in return for the amounts concerned.
- 31 According to Article 4(2) of Directive 93/13, the assessment of the unfair nature of the terms may 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 hand, in so far as those terms are in plain, intelligible language.
- 32 In that regard, the Court has already held that contractual terms coming within the notion of the 'main subject matter of the contract', within the meaning of that provision, must be understood as being those that lay down the essential obligations of the contract and, as such, characterise it. By contrast,

terms ancillary to those that define the very essence of the contractual relationship cannot fall within that concept (judgment of 20 September 2017, *Andriciuc and Others*, C-186/16, EU:C:2017:703, paragraphs 35 and 36 and the case-law cited).

- 33 It is for the referring court to determine, having regard to the nature, general scheme and the stipulations of the loan agreement, and its legal and factual context, whether the term concerned constitutes an essential element of the debtor's obligations, consisting in the repayment of the amount made available by the lender (judgment of 26 February 2015, *Matei*, C-143/13, EU:C:2015:127, paragraph 54 and the case-law cited).
- 34 Moreover, it follows from the wording of Article 4(2) of Directive 93/13 that the second category of terms which cannot be examined as regards unfairness is limited in scope, because that exclusion concerns only the adequacy of the price or remuneration as against the services or goods supplied in exchange, that exclusion being explained by the fact that no legal scale or criterion exists that can provide a framework for, and guide, that review (see, to that effect, judgment of 26 February 2015, *Matei*, C-143/13, EU:C:2015:127, paragraph 55 and the case-law cited).
- 35 Terms relating to the consideration due by the consumer to the lender or having an impact on the actual price to be paid to the latter by the consumer thus do not, in principle, fall within the second category of terms, except as regards the question whether the amount of consideration or the price as stipulated in the contract are adequate as compared with the service provided in exchange by the lender (judgment of 26 February 2015, *Matei*, C-143/13, EU:C:2015:127, paragraph 56). However, in the present case, it is apparent from the file before the Court – although this is a matter for the referring court to ascertain – that the alleged unfairness of the terms at issue in the main proceedings does not concern the relationship between the amount of the management charges and the disbursement commission and the services provided in return.
- 36 In any event, whether or not the terms at issue in the main proceedings come within the scope of Article 4(2) of Directive 93/13, the same transparency requirement as that referred to in that provision also appears in Article 5 of that directive, which provides that contractual terms in writing must 'always' be drafted in plain, intelligible language. As the Court has previously held, the transparency requirement as it appears in the first of those provisions has the same scope as that referred to in the second of those provisions (see, to that effect, judgment of 30 April 2014, *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraphs 67 to 69).
- 37 Lastly, that transparency requirement must be understood as requiring not only that the relevant term should be grammatically intelligible to the consumer, but that that consumer is also in a position to evaluate, on the basis of clear, intelligible criteria, the economic consequences for him which derive from it (see, to that effect, judgment of 9 July 2015, *Bucura*, C-348/14, not published, EU:C:2015:447, paragraph 55 and the case-law cited).
- 38 In the present case, it appears from the decision to refer that the loan contract at issue in the main proceedings provided for management charges of 2.4% per annum over a period of 240 months, those charges being calculated during the first annual period on the basis of the total amount of the loan and during subsequent periods on the basis of the outstanding amount on the first day of each annual period under review. In addition, in accordance with the contract, the applicant was required to pay a sum of HUF 40 000 as a disbursement commission.
- 39 It is therefore apparent that the terms concerned enabled the applicant in the main proceedings to evaluate the economic consequences for him which derived from those terms.
- 40 It must be borne in mind, in this regard, that the Court has held, in essence, in the context of a term in a loan agreement providing for a 'risk charge', that that agreement could not be regarded as setting out transparently the reasons justifying the remuneration corresponding to that charge, since it was

disputed that the lender was required to provide real consideration in order to obtain payment of that charge (see, to that effect, judgment of 26 February 2015, *Matei*, C-143/13, EU:C:2015:127, paragraph 77).

- 41 In the present case, as regards the clause relating to the disbursement commission, it is common ground that the applicant in the main proceedings disputes the existence of any real consideration for that commission. In those circumstances, it is for the referring court to ascertain whether the person concerned has been informed of the reasons justifying the payment of that commission.
- 42 As regards the clause relating to the management charges, although the applicant in the main proceedings does not appear to claim that there is no consideration for those charges, he nonetheless maintains that the exact nature of the different corresponding services is not transparent.
- 43 Admittedly, it does not follow from the case-law referred to in paragraph 37 of this judgment that the lender is required to specify in the contract concerned the nature of all of the services provided in return for the charges provided for by one or more contractual terms. However, in the light of the protection that Directive 93/13 seeks to afford to the consumer by reason of the fact that he is in a weaker position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge, it is necessary that the nature of the services actually provided can reasonably be understood or inferred from a consideration of the contract as a whole. In addition, the consumer must be able to establish that there is no overlapping of the different charges or of the services which they cover.
- 44 In the case in the main proceedings, the referring court must examine whether that is the case in the light of all the relevant facts, including not only the terms contained in the agreement concerned, but also the promotional material and information provided by the lender in the negotiation of the loan agreement (see, to that effect, judgment of 26 February 2015, *Matei*, C-143/13, EU:C:2015:127, paragraph 75).
- 45 Therefore, the answer to the first question is that Article 4(2) and Article 5 of Directive 93/13 must be interpreted as meaning that the requirement that a contractual term be drafted in plain, intelligible language does not require that non-individually negotiated contractual terms in a loan contract concluded with a consumer, such as those at issue in the main proceedings, which specify the exact amount of management charges and of a disbursement commission to be borne by the consumer, their method of calculation and the time when they have to be paid, also have to indicate all of the services provided in return for the amounts concerned.

The second question

- 46 By its second question, the referring court asks, in essence, whether Article 3(1) of Directive 93/13 must be interpreted as meaning that a contractual term such as that at issue in the main proceedings in relation to charges for the management of the loan, when it cannot be unequivocally determined what specific services are provided in return for those charges, causes, contrary to the requirement of good faith, a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer.
- 47 It is important to make clear at the outset that, according to settled case-law, the Court's jurisdiction in that regard extends to the interpretation of the concept of 'unfair term' used in Article 3(1) of Directive 93/13, and to the criteria which the national court may or must apply when examining a contractual term in the light of the provisions of that directive, but that it is for the national court to determine, in the light of those criteria, whether a particular contractual term is actually unfair in the circumstances of the case. It follows that the Court must limit itself to providing the referring court

with guidance which the latter must take into account in order to assess whether the term at issue is unfair (judgment of 14 March 2013, *Aziz*, C-415/11, EU:C:2013:164, paragraph 66 and the case-law cited).

- 48 Given that the consumer is in a weaker position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge, Directive 93/13 requires Member States to provide for a mechanism which ensures that every contractual term not individually negotiated may be reviewed in order to determine whether it is unfair. In that context, it is for the national court to determine, taking account of the criteria laid down in Article 3(1) and Article 5 of that directive, 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, to that effect, judgment of 26 March 2019, *Abanca Corporación Bancaria and Bankia*, C-70/17 and C-179/17, EU:C:2019:250, paragraph 50 and the case-law cited).
- 49 Thus, the transparent nature of a contractual term, as required under Article 5 of Directive 93/13, is one of the elements to be taken into account in the assessment of whether that term is unfair, which is for the national court to carry out pursuant to Article 3(1) of that directive. In that context, it is for that court to assess, having regard to all the circumstances of the case, first, the possible failure to observe the requirement of good faith and, second, the possible existence of a significant imbalance to the detriment of the consumer within the meaning of that provision (see, to that effect, judgment of 20 September 2017, *Andrić and Others*, C-186/16, EU:C:2017:703, paragraph 56).
- 50 Regarding the question as to whether the requirement of good faith within the meaning of Article 3(1) of Directive 93/13 is observed, it should be stated that, in the light of the 16th recital of that directive, the national court must assess for those purposes whether the seller or supplier, dealing fairly and equitably with the consumer, could reasonably assume that the consumer would have agreed to such a term in individual contract negotiations (judgment of 14 March 2013, *Aziz*, C-415/11, EU:C:2013:164, paragraph 69).
- 51 With regard to the examination as to whether there may be a significant imbalance, this cannot be limited to a quantitative economic evaluation based on a comparison between the total value of the transaction which is the subject of the contract, on the one hand, and the costs charged to the consumer under that clause, on the other. A significant imbalance may result solely from a sufficiently serious impairment of the legal situation in which the consumer, as a party to the contract in question, is placed by reason of the relevant national provisions, whether this be in the form of a restriction of the rights which, in accordance with those provisions, he enjoys under the contract, or a constraint on the exercise of those rights, or the imposition on him of an additional obligation not envisaged by the national rules (judgment of 16 January 2014, *Constructora Principado*, C-226/12, EU:C:2014:10, paragraphs 22 and 23).
- 52 Furthermore, it follows from Article 4(1) of Directive 93/13 that the unfairness of a contractual term is to be assessed by 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.
- 53 It is in the light of those criteria that the referring court should assess whether the terms at issue in the main proceedings are unfair.
- 54 In that regard, as pointed out in paragraph 43 of the present judgment, the fact that the services provided in return for the management charges and the disbursement commission are not specified does not mean that the corresponding clauses do not meet the transparency requirement referred to in Article 4(2) and Article 5 of Directive 93/13, on condition that the nature of the services actually provided can reasonably be understood or inferred from a consideration of the contract as a whole.

- 55 With regard to the question of whether the terms at issue in the main proceedings cause, contrary to the requirement of good faith, a significant imbalance to the detriment of the consumer, it is necessary to consider, as is apparent from the referral decision, that the collection of management charges and of a disbursement commission is provided for under national law. Unless the services provided in return do not reasonably come within the scope of the services provided in connection with the management or disbursement of the loan, or the amounts of those charges and that commission to be borne by the consumer are disproportionate in relation to the amount of the loan, it does not appear, subject to verification by the referring court, that those terms adversely affect the consumer's legal position as provided for under national law. It is for the referring court also to take into account the effect of the other contractual terms in order to determine whether those clauses cause a significant imbalance to the detriment of the borrower.
- 56 Therefore, the answer to the second question is that Article 3(1) of Directive 93/13 must be interpreted as meaning that a contractual term such as that at issue in the main proceedings in relation to charges for the management of a loan contract, when it cannot be unequivocally determined what specific services are provided in return for those charges, does not in principle cause, contrary to the requirement of good faith, a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer.

Costs

- 57 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:

- 1. Article 4(2) and Article 5 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that the requirement that a contractual term be drafted in plain, intelligible language does not require that non-individually negotiated contractual terms in a loan contract concluded with a consumer, such as those at issue in the main proceedings, which specify the exact amount of management charges and of a disbursement commission to be borne by the consumer, their method of calculation and the time when they have to be paid, also have to indicate all of the services provided in return for the amounts concerned.**
- 2. Article 3(1) of Directive 93/13 must be interpreted as meaning that a contractual term such as that at issue in the main proceedings in relation to charges for the management of a loan contract, when it cannot be unequivocally determined what specific services are provided in return for those charges, does not in principle cause, contrary to the requirement of good faith, a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer.**

[Signatures]