

- (4) In the event that the applicant is to be recognised by judicial decision as being entitled to an additional allocation of free emission allowances, must paragraph 3 of the operative part of the judgment of the European Court of Justice of 28 April 2014 in Case C-191/14 be interpreted as meaning that:
- (a) the cross-sectoral correction factor provided for in Article 4 of, and Annex II to, Decision 2013/448/EU, in its original version, is applicable to allocations for the years 2013 to 2020 that were established by the competent authority of the Member State before 1 March 2017; and
 - (b) the cross-sectoral correction factor provided for in Article 4 of, and Annex II to, Decision 2013/448/EU, in its original version, is applicable to additional allocations for the years 2013 to 2017 that were/are awarded by judicial decision after 1 March 2017; and
 - (c) the cross-sectoral correction factor provided for in Article 4 of, and Annex II to, Decision 2013/448/EU, in the version of Decision 2017/126/EU, applicable after 1 March 2017, is applicable to additional allocations for the years 2018 to 2020 that were/are awarded by judicial decision after 1 March 2017?

⁽¹⁾ Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (notified under document C(2011) 2772) (OJ 2011 L 130, p. 1).

**Request for a preliminary ruling from the Budai Központi Kerületi Bíróság (Hungary) lodged on
4 May 2017 — VE v WD**

(Case C-232/17)

(2017/C 256/03)

Language of the case: Hungarian

Referring court

Budai Központi Kerületi Bíróság

Parties to the main proceedings

Applicant: VE

Defendant: WD

Questions referred

1. With regard to the interpretation of the opportunity to examine all the terms of a contract, referred to in the twentieth recital of Directive 93/13, and the requirement that that contract be drafted in plain, intelligible language, laid down in Articles 4(2) and 5 of the same directive, are the relevant contractual terms to be regarded as not being unfair in the case where the consumer is not given an opportunity to examine the amount of any essential element of the loan agreement (the subject matter of the agreement, that is to say the loan amount, the repayment instalments and the interest on the transaction) until after the agreement has been concluded (not because this is objectively necessary but pursuant to a stipulation to that effect which has been laid down by the seller or supplier in the standard terms and conditions of contract and has not been individually negotiated), by means of a declaration of intent by the seller or supplier which is unilateral (notwithstanding that it states that it forms part of the agreement) and legally binding on the consumer?
2. With regard to the interpretation of the opportunity to examine all the terms of a contract, referred to in the twentieth recital of Directive 93/13, and the requirement that that contract be drafted in plain, intelligible language, laid down in Articles 4(2) and 5 of the same directive, are the relevant contractual terms to be regarded as not being unfair in the case where the loan agreement communicates any essential element thereof (the subject matter of the agreement, that is to say the loan amount, the repayment instalments and the interest on the transaction) only by use of the expression 'for information purposes', without making it clear whether or not the part communicated for information purposes is legally binding or capable of forming the basis of rights and obligations?

3. With regard to the interpretation of the opportunity to examine all the terms of a contract, referred to in the twentieth recital of Directive 93/13, and the requirement that that contract be drafted in plain, intelligible language, laid down in Articles 4(2) and 5 of the same directive, are the relevant contractual terms to be regarded as not being unfair in the case where the loan agreement defines any essential element by using incorrect terminology, in particular where, in a foreign-exchange-based loan agreement (in which the credit provided for in the loan agreement is determined and recorded in a foreign currency ('the credit currency') and the obligation to pay that credit is fulfilled in the national currency ('the fulfilment currency')),

(1) the loan amount is classified as

- the amount of the line of credit, expressed in the credit currency; or
- the maximum limit of the loan amount, determined in the credit currency; or
- the financing requested by the consumer, determined in the fulfilment currency; or
- the disbursement limit, determined in the fulfilment currency?

(2) the repayment instalments are classified as the maximum foreseeable limit of the repayment instalments, expressed in the credit currency and/or in the fulfilment currency?

4. With regard to the interpretation of the opportunity to examine all the terms of a contract, referred to in the twentieth recital of Directive 93/13, and the requirement that that contract be drafted in plain, intelligible language, laid down in Articles 4(2) and 5 of the same directive, are the relevant contractual terms to be regarded as not being unfair in the case where, in a foreign-exchange-based loan agreement (not because this is objectively necessary but pursuant to a stipulation to this effect which has been laid down by the seller or supplier in the standard terms and conditions of contract and has not been individually negotiated), the [elements forming the] subject matter of the agreement, that is to say the loan amount and repayment instalments,

(1) are determined, in the credit currency, by means of a specific amount (consisting exclusively in a series of characters made up of digits ranging between 0 and 9) and, in the fulfilment currency, at most by means of an accurate calculation method?

(2) are determined, in the fulfilment currency, by means of a specific amount and, in the credit currency, at most by means of an accurate calculation method?

(3) are determined, in both the credit currency and the fulfilment currency, at most by means of an accurate calculation method?

(4) are not determined at all in the credit currency and are determined in the fulfilment currency at most by means of an accurate calculation method?

(5) are not determined at all in the fulfilment currency and are determined in the credit currency at most by means of an accurate calculation method?

4.1. In the context of Question 4(5) above, in the event that there is no need to determine any specific amount and include it in the loan agreement at the time when it is concluded, is the possibility of making an accurate calculation of the loan amount at the time when the agreement is concluded guaranteed, where (not because this is objectively necessary but pursuant to a stipulation to this effect which has been laid down by the seller or supplier in the standard terms and conditions of contract and has not been individually negotiated)

(1) the loan agreement does not contain the specific loan amount in any currency;

(2) the loan agreement contains the specific financing requested by the consumer or the specific disbursement limit, expressed in the fulfilment currency;

(3) the loan agreement does not contain the loan amount in the form of an accurate calculation method in the currency of fulfilment; and,

- (4) so far as concerns the accurate calculation of the loan amount in the credit currency, the calculation component expressed in the loan agreement is not precise, being only a maximum limit (the specific financing requested by the consumer or the specific limit of the disbursement, expressed in the fulfilment currency)?
- 4.2.
- 4.2.1. In the event that there is no need to establish specific amounts and include them in the loan agreement at the time when it is concluded, is it the case, so far as concerns an accurate calculation, that:
- (1) it is a legal requirement for the loan agreement to determine the amount of the subject matter of the agreement, that is to say the loan amount and the repayment instalments (in the case of variable-interest products, the repayment instalments corresponding to the first interest period), by means of a method for making an accurate calculation at the time when the agreement is concluded; or
 - (2) it is sufficient for the loan agreement, at the time when it is concluded, to contain objectively identifiable parameters enabling those values (the subject matter of the agreement and the repayment instalments) to be calculated at a future date (that is to say for the loan agreement (at the time when it is concluded) to prescribe only the parameters for making an accurate calculation in the future)?
- 4.2.2. In the event that it is sufficient for the amount of the subject matter of the agreement, that is to say the loan amount and the repayment instalments (in the case of variable-interest products, the repayment instalments corresponding to the first interest period) to be capable of being calculated in the credit currency at a future date, must that future date (which, logically, will be the point at which the amount of the credit advanced under the agreement is established in the credit currency) be objectively determined in the loan agreement at the time when it is concluded or may the determination of that future date be one of the discretionary powers exercised exclusively by the seller or supplier?
- 4.3. So far as concerns products based on periodically variable interest rates, is it be regarded as sufficient and therefore not unfair, in the case of repayment instalments, for the specific amounts and/or the accurate calculation method to be established in the credit currency and/or the fulfilment currency (and included in the loan agreement at the time when it is concluded) in relation to the first interest period falling within the term of the agreement, or is it a legal requirement that the accurate calculation method be established in the credit currency and/or the fulfilment currency (and included in the loan agreement at the time when it is concluded) in relation to all the interest periods falling within the term of the agreement?
- 4.4. Can an accurate calculation be guaranteed in such a way as not to be unfair only by use of the relevant mathematical formula, or is another method feasible?
- 4.4.1. In the event that an accurate calculation need not be guaranteed by use of the relevant mathematical formula, would a sufficiently precise textual description be feasible?
- 4.4.2. In the event that a clear calculation need not be guaranteed by use of the relevant mathematical formula, would it even be feasible for reference to be made to technical terms (such as annuity or linear depreciation, for example), without any further explanation?
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