



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

19 December 2019*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — European order for payment procedure — Regulation (EC) No 1896/2006 — Provision of additional documents to support the claim — Unfair terms in consumer contracts — Directive 93/13/EEC — Review by the court seised in the context of an application for a European payment order)

In Joined Cases C-453/18 and C-494/18,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Juzgado de Primera Instancia No 11 de Vigo (Court of First Instance No 11, Vigo, Spain) and by the Juzgado de Primera Instancia No 20 de Barcelona (Court of First Instance No 20, Barcelona, Spain), made by decisions of 28 June and 17 July 2018, received at the Court on 11 and 27 July 2018, in the proceedings

Bondora AS

v

Carlos V.C. (Case C-453/18),

XY (C-494/18),

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, M. Safjan, L. Bay Larsen, C. Toader (Rapporteur) and N. Jääskinen, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

- the Spanish Government, by M. García-Valdecasas Dorrego, acting as Agent,
- the Latvian Government, by I. Kucina and V. Soņeca, acting as Agents,
- the Hungarian Government, by M. Fehér and Z. Wagner, acting as Agents,
- the European Parliament, by S. Alonso de León and T. Lukácsi, acting as Agents,

* Language of the case: Spanish.

- the Council of the European Union, by J. Monteiro, S. Petrova Cerchia and H. Marcos Fraile, acting as Agents,
- the European Commission, by J. Baquero Cruz, N. Ruiz García and M. Heller, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 31 October 2019,

gives the following

Judgment

- 1 These requests for a preliminary ruling relate to the interpretation of Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), Article 7(2)(d) and (e) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ 2006 L 399, p. 1) and Article 38 of the Charter of Fundamental Rights of the European Union (‘the Charter’) and to the validity of Regulation No 1896/2006.
- 2 The request have been made in two European order for payment proceedings between Bondora AS and, first, Mr Carlos V.C. and, second, XY, concerning the recovery by Bondora of claims arising from loan contracts.

Legal context

European Union law

Directive 93/13

- 3 Article 1 of Directive 93/13 provides:

‘1. 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.

2. The contractual terms which reflect mandatory statutory or regulatory provisions and the provisions or principles of international conventions to which the Member States or the Community are party, particularly in the transport area, shall not be subject to the provisions of this Directive.’

- 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 Article 6 of that directive states:

‘1. Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.

...'

6 Article 7 of that directive provides:

'1. Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.

2. The means referred to in paragraph 1 shall include provisions whereby persons or organisations, having a legitimate interest under national law in protecting consumers, may take action according to the national law concerned before the courts or before competent administrative bodies for a decision as to whether contractual terms drawn up for general use are unfair, so that they can apply appropriate and effective means to prevent the continued use of such terms.

...'

Regulation No 1896/2006

7 Recitals 9, 13, 14 and 29 of Regulation No 1896/2006 are worded as follows:

'(9) The purpose of this Regulation is to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure, and to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.

...

(13) In the application for a European order for payment, the claimant should be obliged to provide information that is sufficient to clearly identify and support the claim in order to place the defendant in a position to make a well-informed choice either to oppose the claim or to leave it uncontested.

(14) In that context, it should be compulsory for the claimant to include a description of evidence supporting the claim. For that purpose the application form should include as exhaustive a list as possible of types of evidence that are usually produced in support of pecuniary claims.

...

(29) Since the objective of this Regulation, namely to establish a uniform rapid and efficient mechanism for the recovery of uncontested pecuniary claims throughout the European Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the Regulation, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.'

8 Article 1(1)(a) of that regulation provides:

‘The purpose of this regulation is:

(a) to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure’.

9 Article 2(1) of Regulation No 1896/2006 states:

‘This Regulation shall apply to civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal. ...’

10 Under Article 3(1) of that regulation:

‘For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised.’

11 Article 5 of that regulation provides:

‘For the purposes of this Regulation, the following definitions shall apply:

...

(3) “court” means any authority in a Member State with competence regarding European orders for payment or any other related matters;

(4) “court of origin” means the court which issues a European order for payment.’

12 Article 7 of that regulation provides:

‘1. An application for a European order for payment shall be made using standard form A as set out in Annex I.

2. The application shall state:

(a) the names and addresses of the parties, and, where applicable, their representatives, and of the court to which the application is made;

(b) the amount of the claim, including the principal and, where applicable, interest, contractual penalties and costs;

(c) if interest on the claim is demanded, the interest rate and the period of time for which that interest is demanded unless statutory interest is automatically added to the principal under the law of the Member State of origin;

(d) the cause of the action, including a description of the circumstances invoked as the basis of the claim and, where applicable, of the interest demanded;

(e) a description of evidence supporting the claim;

(f) the grounds for jurisdiction;

and

(g) the cross-border nature of the case within the meaning of Article 3.

...'

13 Pursuant to Article 8 of Regulation No 1896/2006:

'The court seized of an application for a European order for payment shall examine, as soon as possible and on the basis of the application form, whether the requirements set out in Articles 2, 3, 4, 6 and 7 are met and whether the claim appears to be founded. This examination may take the form of an automated procedure.'

14 Article 9 of that regulation provides:

'1. If the requirements set out in Article 7 are not met and unless the claim is clearly unfounded or the application is inadmissible, the court shall give the claimant the opportunity to complete or rectify the application. The court shall use standard form B as set out in Annex II.

2. Where the court requests the claimant to complete or rectify the application, it shall specify a time limit it deems appropriate in the circumstances. The court may at its discretion extend that time limit.'

15 Article 12 of that regulation, entitled 'Issue of a European order for payment', provides:

'1. If the requirements referred to in Article 8 are met, the court shall issue, as soon as possible and normally within 30 days of the lodging of the application, a European order for payment using standard form E as set out in Annex V.

The 30-day period shall not include the time taken by the claimant to complete, rectify or modify the application.

2. The European order for payment shall be issued together with a copy of the application form. It shall not comprise the information provided by the claimant in Appendices 1 and 2 to form A.

3. In the European order for payment, the defendant shall be advised of his options to:

(a) pay the amount indicated in the order to the claimant;

or

(b) oppose the order by lodging with the court of origin a statement of opposition, to be sent within 30 days of service of the order on him.

4. In the European order for payment, the defendant shall be informed that:

(a) the order was issued solely on the basis of the information which was provided by the claimant and was not verified by the court;

(b) the order will become enforceable unless a statement of opposition has been lodged with the court in accordance with Article 16;

(c) where a statement of opposition is lodged, the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event.

5. The court shall ensure that the order is served on the defendant in accordance with national law by a method that shall meet the minimum standards laid down in Articles 13, 14 and 15.’

16 Article 16 of that regulation is worded as follows:

‘1. The defendant may lodge a statement of opposition to the European order for payment with the court of origin using standard form F as set out in Annex VI, which shall be supplied to him together with the European order for payment.

2. The statement of opposition shall be sent within 30 days of service of the order on the defendant.

3. The defendant shall indicate in the statement of opposition that he contests the claim, without having to specify the reasons for this.

...’

17 In accordance with Section 11 of standard form A in Annex I to Regulation No 1896/2006, additional statements and information may be added, if necessary.

Spanish law

18 The 23rd final provision of Ley 1/2000 de Enjuiciamiento Civil (Law 1/2000 on the Code of Civil Procedure), of 7 January 2000 (BOE No 7, of 8 January 2000, p. 575) (‘the LEC’), which introduces measures for the application in Spain of Regulation No 1896/2006, states, in paragraphs 2 and 11:

‘2. The application for a European order for payment shall be made using standard form A in Annex I to Regulation No 1896/2006, without it being mandatory to bring any documents which, where applicable, will be inadmissible.

...

11. Procedural matters pertaining to the issue of a European order for payment which are not provided for in Regulation No 1896/2006 shall be governed by the provisions of [the LEC] concerning the order for payment procedure.’

19 Article 815(4) of the LEC provides:

‘If the claim for recovery of a debt is based on a contract between a business or professional person and a consumer or user, the Letrado de la Administración de Justicia (judicial officer), before making an order for payment, shall notify the court so that the latter may examine whether any of the terms on which the application is based, or which have determined the amount payable, are unfair.

The court shall examine of its own motion whether any of the terms on which the application is based, or which have determined the amount payable, may be considered to be unfair. If the court finds that any of the terms may be considered to be unfair, it shall hear the parties within 5 days. After hearing the parties, the court shall rule as appropriate by means of an order within the next 5 days. Representation by a lawyer or court agent shall not be mandatory during that procedure.

If any of the contractual terms is found to be unfair, the order made shall stipulate the consequences of that finding and rule either that the claim is inadmissible or that the proceedings are to continue without the application of the terms considered to be unfair.

If the court finds that there are no unfair terms, it shall make a ruling to that effect and the Letrado de la Administración de Justicia (judicial officer) shall proceed to issue an order for payment against the debtor as laid down in paragraph 1.

In any event, an appeal may lie directly against the order made.'

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

Case C-453/18

- 20 Bondora entered into a loan agreement in the amount of EUR 755.27 with a consumer, Mr Carlos V.C. On 21 March 2018, that company lodged an application with the referring court for a European order for payment against Mr V.C.
- 21 Taking the view that the claim was based on a loan agreement concluded between a professional and a consumer, in accordance with Article 815(4) of the LEC, the referring court asked Bondora to provide the documents supporting the claim corresponding to the means of proof set out in Section 10 of standard form A, namely the loan agreement and the determination of the amount of the claim, in order to be able to ascertain whether the contractual terms contained in that agreement were unfair.
- 22 Bondora refused to provide those documents, arguing that, first, under paragraph 2 of the 23rd final provision of the LEC, in the case of a request for a European order for payment, it is not necessary to provide the documents supporting the claim and, second, that Articles 8 and 12 of Regulation No 1896/2006 make no reference to any submission of documents for the issue of a European order for payment.
- 23 The referring court considers that an interpretation of the rules such as that cited in the previous paragraph is likely to give rise to difficulties if the amount of the claim brought is based on an agreement concluded with consumers. In fact, the creditor company, contrary to the provision in Article 815(4) of the LEC, has not attached to the application for a European order for payment the documents necessary to assess the possible unfairness of a clause on which the application is based or which determines the amount payable. However, that court points out that Article 815(4) of the LEC transposed into Spanish law the case-law of the Court of Justice concerning Directive 93/13 and, in particular, the judgments of 14 June 2012, *Banco Español de Crédito* (C-618/10, EU:C:2012:349), and of 21 April 2016, *Radlinger and Radlingerová* (C-377/14, EU:C:2016:283), so that the Spanish court may examine *ex officio* the alleged unfairness of the contractual terms giving rise to the claims.
- 24 In those circumstances, the Juzgado de Primera Instancia No 11 de Vigo (Court of First Instance No 11, Vigo, Spain), decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- (1) Is Article 7(1) of [Directive 93/13] and the case-law interpreting that directive, to be construed as meaning that that article of the directive precludes a national provision, like the 23rd final provision of [the LEC], which provides that it is not necessary to submit documents with the application for a European order for payment and that, where documents are submitted, they will be ruled inadmissible?
- (2) Is Article 7(2)(e) of [Regulation No 1896/2006] to be construed as meaning that that provision does not preclude a creditor institution from being required to submit documents substantiating its claim based on a consumer loan entered into between a seller or a supplier and a consumer,

where the court considers it essential to examine the documents in order to determine whether there are unfair terms in the contract between the parties, thereby complying with the provisions of [Directive 93/13] and the case-law interpreting that directive?’

Case C-494/18

- 25 Bondora entered into a loan agreement in the amount of EUR 1 818.66 with XY. On 17 May 2018, Bondora lodged an application with the referring court for a European order for payment against XY.
- 26 On standard form A in Annex I to Regulation No 1896/2006, Bondora pointed out that XY was a consumer and that it held the loan agreement which formed the basis for such a request and the determination of the amount of the claim.
- 27 As soon as it was established that one of the parties was a consumer, the referring court asked Bondora to complete Section 11 of that standard form A, entitled ‘Additional statements and further information’, indicating the breakdown of the claim at issue and the terms of the agreement supporting that claim.
- 28 Bondora refused to provide that information, arguing that, under Article 7(2) of Regulation No 1896/2006, it was not required to provide more evidence to support the claim. Indeed, in accordance with paragraph 2 of the 23rd final provision of the LEC, in the case of an application for a European order for payment, it is not necessary to provide the documents supporting that claim. That company also argued that other courts had previously granted such requests for injunctive relief without asking it to satisfy other requirements.
- 29 The referring court has doubts as to the interpretation of Regulation No 1896/2006 in the light of consumer protection and the case-law of the Court. In its view, a European order for payment issued without the possible existence of unfair terms having been verified may undermine the requirement of consumer protection enshrined in Article 38 of the Charter, read in conjunction with Article 6(1) TEU.
- 30 Moreover, in the view of that court, Article 38 of the Charter, Article 6(1) TEU and Articles 6(1) and 7(1) of Directive 93/13 do not preclude a national provision, such as paragraph 2 of the 23rd final provision of the LEC, in so far as it allows the court to acquaint itself with the content of the ancillary terms of the agreement in question in order to be able to carry out, of its own motion, a review of unfair terms.
- 31 In contrast, it is of the opinion that, if the interpretation of Regulation No 1896/2006 allowed that no further clarification could be requested to ascertain whether unfair terms had been applied, that regulation would be invalid due to breach of Article 6(1) TEU and Article 38 of the Charter.
- 32 In those circumstances, the Juzgado de Primera Instancia No 20 de Barcelona (Court of First Instance No 20, Barcelona, Spain) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Is national legislation such as paragraph [2] of the 23rd final provision of the LEC, which does not permit a contract or an itemisation of the debt to be provided or required in a claim in which the defendant is a consumer and where there is evidence that the sums being claimed could be based on unfair terms, compatible with Article 38 of the Charter, Article 6(1) [TEU] and Articles 6(1) and 7(1) of Directive [93/13]?’
- (2) Is it compatible with Article 7(2)(d) of Regulation [No 1896/2006] to require the applicant, in a claim against a consumer, to specify the itemisation of the debt he is claiming in Section 11 of standard form A [in Annex 1 to Regulation No 1896/2006]? Is it also compatible with that

provision to require that the content of the contractual terms on the basis of which the applicant is making a claim against a consumer, beyond the principal subject matter of the contract, be reproduced in Section 11 in order to assess whether they are unfair?

- (3) If the answer to the second question is negative, is it permissible, under the current wording of Regulation No 1896/2006, to ascertain *ex officio*, prior to the issue of a European payment order, whether an agreement with a consumer contains unfair terms and if so, on what legal basis may that assessment be carried out?
- (4) In the event that it is not possible to ascertain *ex officio*, under the current wording of Regulation No 1896/2006, the existence of unfair terms prior to issuing a European payment order, the Court of Justice is requested to rule on the validity of that regulation in the light of Article 38 of the Charter and Article 6(1) [TEU].'

Procedure before the Court

- 33 By decisions of the President of the Court of 6 September 2018 and of the Court of 18 June 2019, Cases C-453/18 and C-494/18 were joined.

Consideration of the questions referred

The first and second questions in Cases C-453/18 and C-494/18 and the third question in Case C-494/18

- 34 By its first and second questions in Cases C-453/18 and C-494/18 and its third question in Case C-494/18, the referring courts ask, in substance, whether Article 7(2)(d) and (e) of Regulation No 1896/2006 and Article 6(1) and Article 7(1) of Directive 93/13, as interpreted by the Court and read in the light of Article 38 of the Charter, must be interpreted as allowing a 'court', within the meaning of that regulation, seised in the context of a European order for payment procedure, to request from the creditor additional information relating to the terms of the agreement relied on in support of the claim at issue, in order to carry out an *ex officio* review of the possible unfairness of those terms and, consequently, whether they preclude national legislation which declares the additional documents provided for that purpose to be inadmissible.
- 35 As a preliminary point, it is appropriate to note that, pursuant to Article 2(1) of Regulation No 1896/2006, that regulation is to apply in cross-border disputes. Under Article 3(1) of that regulation, a dispute is cross-border where at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised. In the present case, subject to the verifications to be carried out by the referring courts, it appears from information in the file submitted to the Court that Bondora is a company having its registered office in Estonia. Accordingly, Regulation No 1896/2006 is applicable.
- 36 In the first place, it must be noted, as is apparent from Article 1 of Regulation No 1896/2006, read in conjunction with recitals 9 and 29 of that regulation, that the purpose of that regulation is to simplify, accelerate and reduce costs in cross-border disputes concerning uncontested pecuniary claims by establishing a European order for payment procedure.
- 37 It is precisely in order to ensure the objective of rapidity and uniformity in that procedure that the application for an order is made using the standard form A set out in Annex I to Regulation No 1896/2006, in accordance with Article 7 of that regulation, paragraph 2 of which lists the information that must be included in that application. In particular, Article 7(2)(d) and (e) of

Regulation No 1896/2006 provides that the application for an order is to include the cause of action, including a description of the circumstances relied on as the basis of the claim and, where applicable, the interest claimed, as well as a description of the evidence supporting the claim.

- 38 By virtue of Article 8 of that regulation, the court seized of the application for an order is to examine, as soon as possible and on the basis of standard form A, whether the conditions set out, in particular, in Article 7 of Regulation No 1896/2006 are met and whether the application appears well founded. In such a case, it is to issue the European order for payment in accordance with Article 12 of that regulation. If the conditions set out in Article 7 are not met, under Article 9(1) of Regulation No 1896/2006 the court is to enable the applicant to complete or rectify the application, using standard form B in Annex II.
- 39 In the second place, it must be determined whether, in the context of such a European order for payment procedure, the court hearing the application for an order for payment is subject to the requirements of Article 6(1) and Article 7(1) of Directive 93/13, as interpreted by the Court and read in the light of Article 38 of the Charter.
- 40 In that regard, it must be borne in mind that the system of protection implemented by the directive is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his or her bargaining power and his or her 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 (judgment of 27 February 2014, *Pohotovost*, C-470/12, EU:C:2014:101, paragraph 39 and the case-law cited). In addition, Article 38 of the Charter provides that European Union policies must ensure a high level of consumer protection. That requirement applies to the implementation of Directive 93/13 (judgment of 27 February 2014, *Pohotovost*, C-470/12, EU:C:2014:101, paragraph 52).
- 41 Second, under Article 6(1) of Directive 93/13, Member States are to provide that unfair terms used in a contract concluded with a consumer by a seller or supplier are, as provided for under their national law, not to be binding on the consumer.
- 42 Third, given the nature and significance of the public interest constituted by the protection of consumers, Directive 93/13, as is apparent from Article 7(1) thereof, read in conjunction with its 24th recital, obliges the Member States to provide for adequate and effective means to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers (judgment of 13 September 2018, *Profi Credit Polska*, C-176/17, EU:C:2018:711, paragraph 40 and the case-law cited).
- 43 It must be borne in mind that, in accordance with settled case-law of the Court, the national court is required to assess of its own motion whether a contractual term falling within the scope of Directive 93/13 is unfair, compensating in this way for the imbalance which exists between the consumer and the seller or supplier, where it has available to it the legal and factual elements necessary to that end (judgments of 4 June 2009, *Pannon GSM*, C-243/08, EU:C:2009:350, paragraph 32, and of 13 September 2018, *Profi Credit Polska*, C-176/17, EU:C:2018:711, paragraph 42 and the case-law cited).
- 44 In that regard, it is necessary to point out that, in the context of national order for payment procedures, the Court has ruled that Article 7(1) of Directive 93/13 precludes national legislation permitting the issue of an order for payment where the court hearing an application for an order for payment does not have the power to examine the possible unfairness of the terms of that agreement, since the rules governing the exercise of the right to object to such an order do not ensure that the rights of the consumer under that directive are respected (see, to that effect, judgment of 13 September 2018, *Profi Credit Polska*, C-176/17, EU:C:2018:711, paragraph 71, and order of 28 November 2018, *PKO Bank Polski*, C-632/17, EU:C:2018:963, paragraph 49).

- 45 Thus, the Court has held that a court seised of an application for an order for payment must determine whether the detailed rules of the opposition proceedings which national law lays down give rise to a significant risk that the consumers concerned will not lodge the objection required (see, to that effect, judgment of 13 September 2018, *Profi Credit Polska*, C-176/17, EU:C:2018:711, paragraph 61 and the case-law cited).
- 46 Those requirements also apply when a ‘court’, within the meaning of Regulation No 1896/2006, receives an application for a European order for payment within the meaning of that regulation.
- 47 It must therefore be determined whether Regulation No 1896/2006 allows the court seised of an application for a European order for payment to ask the creditor, for the purpose of an *ex officio* examination of the possible unfairness of the terms of the agreement, in accordance with the requirements flowing from Articles 6(1) and 7(1) of Directive 93/13, for additional information on the terms relied on in support of its claim.
- 48 In that regard, it must be noted that, although Article 7(2) of Regulation No 1896/2006 governs exhaustively the conditions to be met by the application for a European order for payment (judgment of 13 December 2012, *Szyrocka*, C-215/11, EU:C:2012:794, paragraph 32), the fact remains that the applicant must also use standard form A, in Annex I to that regulation, in order to make such an application for an order, in accordance with Article 7(1) of that regulation. However, it follows, on the one hand, from Section 10 of standard form A that the applicant may state and describe the type of evidence available, including documentary evidence, and, on the other, from Section 11 of that form that additional information may be added to that expressly required by the preceding points of that form, so that the form makes it possible to provide additional information relating to the terms relied on in support of the claim, consisting in particular in the reproduction of the entire agreement or the production of a copy thereof.
- 49 In addition, Article 9(1) of Regulation No 1896/2006 provides that the court hearing the application is to have the power to request the creditor to complete or rectify the information provided on the basis of Article 7 of Regulation No 1896/2006, using standard form B in Annex II to that regulation.
- 50 It follows that the court seised must be able, under Articles 7(1) and 9(1) of Regulation No 1896/2006, to request additional information from the creditor concerning the terms relied on in support of its claim, such as the reproduction of the entire agreement or the production of a copy thereof, in order to be able to examine the possible unfairness of such terms, in accordance with Article 6(1) and Article 7(1) of Directive 93/13 (see, to that effect, judgment of 6 September 2018, *Catlin Europe*, C-21/17, EU:C:2018:675, paragraphs 44 and 50).
- 51 A different interpretation of Article 7(2)(d) and (e) of Regulation No 1896/2006 would be likely to allow creditors to circumvent the requirements flowing from Directive 93/13 and Article 38 of the Charter.
- 52 It must also be pointed out that the fact that a national court requires the applicant to produce the content of the document or documents on which his or her application is based simply forms part of the evidential framework of the proceedings, since the purpose of such a request is merely to verify the basis of the action, such that it does not infringe the principle that the subject matter of an action is defined by the parties (see, by analogy, judgment of 7 November 2019, *Profi Credit Polska*, C-419/18 and C-483/18, EU:C:2019:930, paragraph 68).
- 53 Consequently, Article 7(2)(d) and (e) of Regulation No 1896/2006, read in conjunction with Articles 6(1) and 7(1) of Directive 93/13, as interpreted by the Court and in the light of Article 38 of the Charter, precludes national legislation, such as that at issue in the main proceedings, which declares inadmissible additional documents extra to the standard form A in Annex I to Regulation No 1896/2006, such as a copy of the agreement at issue.

54 In the light of all the foregoing considerations, the answer to the first and second questions in Cases C-453/18 and C-494/18 and the third question in Case C-494/18 must be that Article 7(2)(d) and (e) of Regulation No 1896/2006 and Article 6(1) and Article 7(1) of Directive 93/13, as interpreted by the Court and read in the light of Article 38 of the Charter, must be interpreted as allowing a ‘court’, within the meaning of that regulation, seised in the context of a European order for payment procedure, to request from the creditor additional information relating to the terms of the agreement relied on in support of the claim at issue, in order to carry out an *ex officio* review of the possible unfairness of those terms and, consequently, that they preclude national legislation which declares the additional documents provided for that purpose to be inadmissible.

The fourth question in Case C-494/18

55 In view of the answer to the first and second questions in Cases C-453/18 and C-494/18 and to the third question in Case C-494/18, there is no need to answer that fourth question.

Costs

56 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 (First Chamber) hereby rules:

Article 7(2)(d) and (e) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure and Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, as interpreted by the Court and read in the light of Article 38 of the Charter of Fundamental Rights of the European Union, must be interpreted as allowing a ‘court’, within the meaning of that regulation, seised in the context of a European order for payment procedure, to request from the creditor additional information relating to the terms of the agreement relied on in support of the claim at issue, in order to carry out an *ex officio* review of the possible unfairness of those terms and, consequently, that they preclude national legislation which declares the additional documents provided for that purpose to be inadmissible.

[Signatures]