Reports of Cases

ORDER OF THE COURT (Sixth Chamber)

26 November 2020 *

(Reference for a preliminary ruling – Article 99 of the Rules of Procedure – Consumer protection – Directive 93/13/EEC – Articles 3 and 6 to 8 – Directive 2008/48/EC – Article 22 – Unfair terms in consumer contracts – Examination by the national court of its own motion – National order for payment procedure)

In Case C-807/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski rayonen sad (Sofia District Court, Bulgaria), made by decision of 4 November 2019, received at the Court on 4 November 2019, in the proceedings brought by

'DSK Bank' EAD,

'FrontEx International' EAD,

THE COURT (Sixth Chamber),

composed of L. Bay Larsen, President of the Chamber, C. Toader (Rapporteur) and M. Safjan, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– 'DSK Bank' EAD, by V. Mihneva, acting as Agent,

– the European Commission, by Y.G. Marinova, G. Goddin and N. Ruiz García, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

makes the following

* Language of the case: Bulgarian.

Order

1 This request for a preliminary ruling concerns the interpretation of Articles 6 to 8 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) and Article 22(1) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66).

2 The request has been made in two disputes between, on the one hand, DSK Bank and FrontEx International and, on the other hand, consumers who were not parties to the proceedings, in the context of order for payment procedures.

Legal framework

European Union law

Directive 93/13

3 Article 3(1) of Directive 93/13 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.'

4 According to Article 6 of that directive:

'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.

2. Member States shall take the necessary measures to ensure that the consumer does not lose the protection granted by this Directive by virtue of the choice of the law of a non-Member country as the law applicable to the contract if the latter has a close connection with the territory of the Member States.'

5 Article 7(1) of that directive provides:

'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.'

6 Article 8 of that directive states:

'Member States may adopt or retain the most stringent provisions compatible with the Treaty in the area covered by this Directive, to ensure a maximum degree of protection for the consumer.'

Directive 2008/48

7 Recitals 9 and 10 of Directive 2008/48 are worded as follows:

'(9) Full harmonisation is necessary in order to ensure that all consumers in the Community enjoy a high and equivalent level of protection of their interests and to create a genuine internal market. Member States should therefore not be allowed to maintain or introduce national provisions other than those laid down in this Directive. However, such restriction should only apply where there are provisions harmonised in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation. Accordingly, Member States may, for instance, maintain or introduce national provisions on joint and several liability of the seller or the service provider and the creditor. Another example of this possibility for Member States could be the maintenance or introduction of national provisions on the cancellation of a contract for the sale of goods or supply of services if the consumer exercises his right of withdrawal from the credit agreement. In this respect, Member States, in the case of open-end credit agreements, should be allowed to fix a minimum period needing to elapse between the time when the creditor asks for reimbursement and the day on which the credit has to be reimbursed.

(10) The definitions contained in this Directive determine the scope of harmonisation. The obligation on Member States to implement the provisions of this Directive should therefore be limited to its scope as determined by those definitions. However, this Directive should be without prejudice to the application by Member States, in accordance with Community law, of the provisions of this Directive to areas not covered by its scope. …'

8 Article 10(2) of that directive, entitled 'Information to be included in credit agreements', contains a number of details which the credit agreement must specify in a clear and concise manner.

9 Article 17 of that directive provides:

'1. In the event of assignment to a third party of the creditor's rights under a credit agreement or the agreement itself, the consumer shall be entitled to plead against the assignee any defence which was available to him against the original creditor, including set-off where the latter is permitted in the Member State concerned.

2. The consumer shall be informed of the assignment referred to in paragraph 1 except where the original creditor, by agreement with the assignee, continues to service the credit vis-à-vis the consumer.'

10 According to Article 22(1) of that directive:

'In so far as this Directive contains harmonised provisions, Member States may not maintain or introduce in their national law provisions diverging from those laid down in this Directive.'

Bulgarian law

The GPK

11 Article 410(1) and (2) of the grazhdanski protsesualen kodeks (Code of Civil Procedure), as published in DV No 83 of 22 October 2019 ('the GPK'), provides:

'(1) An applicant may apply for an order for payment:

1. on the grounds of monetary claims or claims to fungible goods, provided the district court (Rayonen sad) has jurisdiction to hear the application;

…

(2) The application must request an enforcement order and must fulfil the requirements of Article 127(1) and (3) and Article 128, Sections 1 and 2. The application must also give details of a bank account or some other payment method.'

12 Article 411 of the GPK states:

'(1) The application must be brought before the district court (Rayonen sad) of the district in which the debtor has his permanent address or registered office; that court shall, of its own motion, review its territorial jurisdiction within a period of three days. …

(2) The court shall examine the application at a hearing concerning aspects of procedure and shall issue an order for payment within the period provided for in paragraph 1, except in cases where:

1. the application does not fulfil the requirements of Article 410 and the applicant does not remedy the irregularities within three days of notification;

2. the application is unlawful or contrary to accepted principles of morality;

3. the debtor does not have a permanent address or registered office in the territory of the Republic of Bulgaria;

4. the debtor does not have his habitual residence or place of business in the territory of the Republic of Bulgaria.

(3) If the application is granted, the court shall issue an order for payment, a copy of which shall be served on the debtor.'

13 Article 414(1) and (2) is worded as follows:

'(1) The debtor may lodge a written objection against the order for payment or parts of the order. Grounds for objection need not be stated other than in the cases referred to in Article 414a.

(2) Objections shall be lodged within 2 weeks of service of the order. That period may not be extended.'

14 Article 418, concerning immediate enforcement, provides:

'(1) If the application is accompanied by a document referred to in Article 417 on which the claim is based, the creditor may ask the court to issue an enforcement order for immediate payment.

(2) The enforcement order shall be granted after the court has determined the formal validity of the document and established that there is a claim enforceable against the debtor. …'

15 According to Article 419(1) to (3):

'(1) The order granting an application for immediate enforcement shall be individually actionable. That action shall be brought within two weeks of service of the enforcement order.

(2) The individual action against the order for immediate enforcement must be brought at the same time as the objection against the enforcement order issued. That action may be based only on considerations connected with the acts referred to in Article 417.

(3) The bringing of an action against the order for immediate enforcement shall not have suspensory effect on enforcement.'

16 Article 420, entitled 'Suspension of enforcement', provides:

'(1) The objection against the order for payment shall not have suspensory effect on enforcement in the circumstances set out in Article 417(1) to (9), except where the debtor provides the creditor with appropriate security in accordance with Articles 180 and 181 of the Law on obligations and contracts [zakon za zadalzheniyata i dogovorite].

(2) Where an application for suspension supported by written evidence is submitted within the time limit for lodging an objection, a court which has ordered immediate enforcement may suspend it, even in the absence of security within the meaning of paragraph 1.

(3) The decision taken on the basis of the application for suspension may be challenged by means of an individual action.'

The Law amending and supplementing the GPK

17 The Zakon za izmenenie i dopalnenie na GPK (Law amending and supplementing the GPK), DV No 100 of 20 December 2019 ('the Law amending the GPK'), provides:

'§1. In Article 7 [of the GPK], the following paragraph 3 is inserted:

"The court shall examine of its own motion whether unfair terms are used in a contract concluded with a consumer. It shall give the parties the opportunity to make observations on those questions."

…'

18 In Article 410 of the GPK, the Law amending and supplementing the GPK inserts the following paragraph 3:

'Where the claim arises out of a contract concluded with a consumer, the contract, if it is in written form, shall be attached to the application, together with all addenda and annexes, as well as the general conditions applicable, if any.'

19 In Article 411(2) of the GPK, the Law amending and supplementing the GPK added a new point 3:

'The court shall examine the application at a hearing concerning aspects of procedure and shall issue an order for payment within the period provided for in paragraph 1, except in cases where:

…

3. the application is based on an unfair term in a contract concluded with a consumer or the existence of such a term can be reasonably presumed.'

20 The Law amending and supplementing the GPK amends and supplements Article 417 of the GPK as follows:

'1. In point 2, the words "the municipalities and the banks" shall be replaced by: "and the municipalities, or bank ledger excerpts to which is attached the document from which the bank's claim arises, together with all its annexes, including the general conditions applicable".

2. In point 10, the following second sentence shall be added: "Where the instrument to order provides security for a claim arising from a contract concluded with a consumer, the contract, if it is in written form, must be attached to the application, together with all its annexes, including the general conditions applicable."'

21 The Law amending the GPK supplemented Article 420(1) and (2) of the GPK as follows:

'(1) The objection against the order for payment shall not have suspensory effect on enforcement in the circumstances set out in Article 417(1) to (9), except where the debtor provides the creditor with appropriate security in accordance with Articles 180 and 181 of the Law on obligations and contracts [zakon za zadalzheniyata i dogovorite]. Where the debtor is a consumer, the security shall not exceed one third of the claim.

(2) A court which has ordered immediate enforcement may suspend it, even in the absence of security within the meaning of paragraph 1, where an application for suspension of enforcement has been submitted, supported by written evidence from which it is apparent that:

1. the claim is not due;

2. the claim is based on an unfair term in a contract concluded with a consumer;

3. the amount of the claim due under the contract concluded with the consumer was incorrectly calculated.'

The Law on consumer credit agreements

22 Article 10 of the zakon za potrebitelskia kredit (Law on consumer credit agreements), in the version in force at the time of the facts in the main proceedings (DV No 17 of 26 February 2019), transposing the provisions of Directive 2008/48, provides, in paragraph 1 thereof:

'A consumer credit agreement shall be concluded in writing, on paper or on another durable medium, in plain intelligible language, and all parts of the agreement must use a uniform character font in terms of typeface, format and size, the latter being no smaller than size 12; it shall be drawn up in duplicate, one copy for each of the parties to the agreement.'

23 According to Article 26 of that law:

'(1) The creditor may assign the claim arising from the credit agreement with the consumer to a third party only if that agreement provides for such a possibility.

(2) Where the creditor assigns to a third party the claim arising from the credit agreement with the consumer, the consumer shall be entitled to plead against that third party any objection which he could have raised against the original creditor, including any claim for set-off.'

24 Article 33 of that law provides:

'(1) In the event of late payment by the consumer, the creditor shall be entitled to interest only on the unpaid amount, such interest being calculated for the period of arrears.

(2) Where the consumer is late in making the payments due under the credit, the penalties for late payment cannot exceed the statutory interest.

(3) The creditor cannot refuse to accept partial payment of the consumer credit.'

The disputes in the main proceedings and the questions referred

25 In the case concerning DSK Bank, that bank applied to the referring court to issue an enforcement order for immediate payment, based on bank ledger excerpts of 3 October 2019, against a consumer who is not a party to the proceedings.

26 DSK Bank argued that on 8 March 2018 it had entered into a consumer credit agreement with that consumer, who was in arrears by 17 monthly payments, having due dates ranging from 20 March 2018 to 20 July 2019. As regards the last payment due, the amount set out was higher than the previous ones, that is to say 564.44 leva (BGN) (approximately EUR 288) instead of BGN 167.23 (approximately EUR 85), without any explanation being given in that regard.

27 DSK Bank also produced a copy of another consumer credit agreement concluded on 25 February 2018, intended to finance a mobile phone and a premium for a life insurance policy, the beneficiary of which is the bank. That agreement sets out the conditions for obtaining and repaying the credit, namely the payment of 18 monthly instalments, as well as general terms and conditions, and bears the consumer's signature.

28 In the case concerning FrontEx International, that undertaking claims to have acquired, by means of an agreement assigning the claim of City Cash, a claim against a consumer who concluded a credit agreement with City Cash on 15 July 2016. FrontEx International brought before the referring court an application for an order for payment against that consumer, without providing any documentation.

29 In the two cases before it, the referring court presumes the existence of unfair terms in consumer credit agreements and wishes to examine the contracts giving rise to the claims.

30 However, it states, in the first place, that, according to Bulgarian law, order for payment procedures are conducted in a summary and unilateral manner, so that, before an order for payment is made, the consumer has no opportunity to challenge it.

31 In the second place, that court refers to the case-law of the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria), from which it is apparent, inter alia, that, on the one hand, in the context of an order for payment procedure governed by Article 410 of the GPK, the court does not gather evidence, since the purpose of the procedure is not to establish the existence of the claim itself, but only to verify whether that claim is contested and, on the other hand, in the context of the procedure governed by Article 417 of the GPK, the court gives its ruling on the basis of the document submitted by the applicant, since that court is unable to examine evidence other than that referred to in that article.

32 In the third place, the referring court explains that, in view of the workload of the judges of the Sofiyski rayonen sad (Sofia District Court, Bulgaria), they are not in a position to verify whether there are unfair terms contained in the consumer credit agreements accompanying applications for the issue of an order for payment.

33 In those circumstances, the Sofiyski rayonen sad (Sofia District Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Does the fact that a national court has a significantly heavier workload than the other courts of the same instance and the judges of that court are therefore prevented from examining the documents submitted to them on the basis of which provisional enforceability is to be ordered or may be ordered and at the same time from delivering their decisions within a reasonable period of time constitute, as such, an infringement of the EU law on consumer protection or of other fundamental rights?

(2) Must the national court refuse to issue decisions, which may result in enforcement if the consumer does not object to them, if it has a serious suspicion that the application is based on an unfair term in a consumer contract, without the case file containing any compelling evidence of that?

(3) If the second question is answered in the negative, is it permissible for the national court, if it has such a suspicion, to request additional evidence from the trading party to the contract, even though, under national law, it does not have such power in the procedure in which a potentially enforceable decision is given, so long as the debtor does not raise an objection?

(4) Are the requirements for the establishment of certain circumstances by the national court of its own motion, as introduced by EU law in connection with directives harmonising consumer law, also applicable in cases where the national legislature offers consumers additional protection (more rights) via a national law transposing a provision of a directive which allows such enhanced protection to be granted?'

34 The referring court has also requested the Court of Justice to apply the expedited procedure to the present case pursuant to Article 105(1) of the Rules of Procedure of the Court.

Procedure before the Court

35 By decision of the President of the Court of Justice of 3 December 2019, the application for an expedited ruling pursuant to Article 105(1) of the Rules of Procedure of the Court was dismissed.

36 It should be recalled, first, that the requirement to ensure that the cases before the referring court are resolved swiftly, in accordance with national law, is not in itself sufficient to justify the use of the expedited procedure under Article 105(1) of the Rules of Procedure (orders of the President of the Court of 23 December 2015, *Vilkas*, C-640/15, not published, EU:C:2015:862, paragraph 8, and of 8 June 2016, *Garrett Pontes Pedroso*, C-242/16, not published, EU:C:2016:432, paragraph 14).

37 Secondly, although the debtor is a consumer, it is settled case-law that mere economic interests, as important and legitimate as they may be, are not capable of justifying, in themselves, use of the expedited procedure (order of 10 April 2018, *Del Moral Guasch*, C-125/18, not published, EU:C:2018:253, paragraph 11 and the case-law cited).

38 Likewise, neither an individual's simple interest – regardless of how important and legitimate that interest may be – in having the scope of his rights under EU law determined as quickly as possible, nor the economically or socially sensitive nature of the case in the main proceedings means that that case must be dealt with within a short time, within the meaning of Article 105(1) of the Rules of Procedure of the Court (orders of the President of the Court of 13 April 2016, *Indėlių ir investicijų draudimas*, C-109/16, not published, EU:C:2016:267, paragraphs 8 and 9, and of 15 February 2016, *Anisimovienė and Others*, C-688/15, not published, EU:C:2016:92, paragraph 8 and the case-law cited).

39 By order of 28 May 2020, received at the Court Registry on 3 June 2020, the referring court provided clarifications concerning the legislative amendments to the GPK, which entered into force on 24 December 2019, made by the Law amending the GPK. By decision of the President of the Court of Justice of 22 June 2020, that order was placed on the case file and notified to the parties and interested parties for information.

The questions referred for a preliminary ruling

40 Under Article 99 of its Rules of Procedure, where the reply to a question may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

41 It is appropriate to apply that provision in the context of the present reference for a preliminary ruling.

The first question

42 By its first question, the referring court asks, in essence, whether EU law must be interpreted as precluding a national court, before which an application for an order for payment has been brought, from dispensing with an examination of the possible unfairness of a term of a contract concluded between a seller or supplier and a consumer on account of practical difficulties, such as its workload.

43 As a preliminary point, it must be recalled that, as is clear from the case-law, the effective protection of the rights under Directive 93/13 can be guaranteed only provided that the national procedural system allows the court, during the order for payment proceedings or the enforcement proceedings concerning an order for payment, to check of its own motion whether terms of the contract concerned are unfair (judgment of 20 September 2018, *EOS KSI Slovensko*, C-448/17, EU:C:2018:745, paragraph 45 and the case-law cited). Where a national court ruling in the course of order for payment proceedings itself finds, as in the main proceedings, that it is necessary to review whether the terms of the contracts in question are unfair, it must have a real possibility of carrying out that review.

44 It should also be recalled that the organisation of justice in the Member States, including in relation to the provisions which govern the assignment of cases, falls within the competence of those Member States. Nevertheless, when exercising that competence, the Member States are required to comply with their obligations deriving from EU law (see, to that effect, judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 36, and the case-law cited).

45 Thus, possible practical difficulties, linked to workload, cannot justify non-application of EU law. Each national court that is called upon, within the exercise of its jurisdiction, to apply provisions of EU law is under a duty to give full effect to those provisions (see, to that effect, judgments of 9 March 1978, *Simmenthal*, 106/77, EU:C:1978:49, paragraph 21, and of 11 September 2014, *A*, C-112/13, EU:C:2014:2195, paragraph 36).

46 Therefore, the fact that a national court has a significantly heavier workload than the other courts of the same instance does not release the judges of that court from the obligation to apply EU law effectively and fully.

47 In the light of the foregoing considerations, the answer to the first question is that EU law must be interpreted as precluding a national court, before which an application for an order for payment has been brought, from dispensing with an examination of the possible unfairness of a term of a contract concluded between a seller or supplier and a consumer on account of practical difficulties, such as its workload.

The second and third questions

48 By its second and third questions, which should be examined together, the referring court asks, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as precluding a national court, before which an application for an order for payment has been brought, where that court presumes that the application is based on an unfair term in a consumer credit agreement, for the purposes of Directive 93/13, from asking the creditor for additional information in order to examine whether that term is unfair, so long as the consumer does not raise an objection.

49 According to Article 6(1) of Directive 93/13 unfair contract terms are not to be binding on the consumer. Moreover, according to settled case-law, given the nature and significance of the public interest constituted by the protection of consumers, who are in a position of weakness vis-à-vis sellers or suppliers, 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 (see, to that effect, judgment of 9 July 2020, *Raiffeisen Bank and BRD Groupe Societé Générale*, C-698/18 and C-699/18, EU:C:2020:537, paragraph 52 and the case-law cited).

50 In that regard, it should be noted that the Court has already had occasion to rule on the interpretation of Articles 6 and 7 of Directive 93/13 so far as concerns the *ex officio* powers of a national court in the context of national order for payment procedures.

51 Whilst a national court is bound to assess of its own motion whether a contractual term falling within the scope of Directive 93/13 is unfair and by so doing to compensate for the imbalance existing between the consumer and the seller or supplier, that is so only if the national court has available to it the legal and factual elements necessary for that task. As the Court has already had occasion to make clear, those grounds also apply in respect of an order for payment procedure (see, to that effect, judgments of 13 September 2018, *Profi Credit Polska*, C-176/17, EU:C:2018:711, paragraphs 42 and 43, and of 11 March 2020, *Lintner*, C-511/17, EU:C:2020:188, paragraph 26, and the case-law cited).

52 In that regard, if the elements of law and fact in the file before the national court ruling in the course of the order for payment proceedings give rise to serious doubts as to the unfair nature of certain clauses which were not invoked by the consumer but which are related to the subject matter of the dispute, without it being possible to make definitive assessments in that regard, and if that court considers that it is appropriate to assess whether such clauses are unfair, then it is for that court to take, if necessary of its own motion, investigative measures in order to complete that case file, by asking the parties, in observance of the principle of *audi alteram partem*, to provide it with the clarifications or documents necessary for that purpose. It follows from this that the national court is required to take *ex officio* investigative measures provided that the elements of law and fact already contained in that file raise serious doubts as to the unfair nature of certain terms (see, to that effect, judgment of 11 March 2020, *Lintner*, C-511/17, EU:C:2020:188, paragraphs 37 and 38).

53 Thus, it follows from that case-law that, in the present case, if a national court, before which an application for an order for payment has been brought on the basis of a claim arising from terms in a contract concluded with a consumer, within the meaning of Directive 93/13, presumes that those terms are unfair, even though it does not have the possibility of carrying out a definitive assessment of those terms, it may, so long as the consumer does not raise an objection, if necessary of its own motion, ask the creditor for the evidence necessary to assess whether those terms are unfair.

54 In the light of the foregoing considerations, the answer to the second and third questions is that Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as not precluding a national court, before which an application for an order for payment has been brought, where that court presumes that the application is based on an unfair term in the consumer credit agreement, for the purposes of Directive 93/13, from asking the creditor for additional information in order to examine whether that term is unfair, so long as the consumer does not raise an objection.

The fourth question

55 As a preliminary point, it should be pointed out that it is apparent from the order for reference that the referring court is asking this fourth question in the light of Article 10(1) of the Law on consumer credit agreements, which provides for a minimum font size for the contract, Article 26 of that law, which requires the consent of the consumer for the assignment of the claim, and Article 33 of that law, which limits the penalties for late payment to the amount of statutory interest.

56 Although both Directive 93/13 and Directive 2008/48 apply to contracts concluded between a seller or supplier and a consumer, such as, inter alia, consumer credit agreements, as in the two cases before the referring court, as noted by the Commission in its written observations, the national provisions referred to by the referring court cannot be regarded as transposing Directive 2008/48.

57 It must be noted that Directive 2008/48 did not effect harmonisation in the field of bank ledger excerpts or contracts for the assignment of claims as evidence authorising the recovery of a debt arising from a consumer credit agreement (see, to that effect, order of 28 November 2018, *PKO Bank Polski*, C-632/17, EU:C:2018:963, paragraph 31 and the case-law cited).

58 On the other hand, as regards Directive 93/13, it should be noted that, according to Article 1 thereof, the purpose of that 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. According to Article 3(1) of that directive, a term is to be regarded as unfair if it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. Moreover, Article 4(2) and Article 5 of that directive lay down the requirement that contractual terms must be drafted in plain, intelligible language.

59 Accordingly, the question raised by the referring court will be answered solely in the light of the provisions of Directive 93/13.

60 By its fourth question, the referring court asks, in essence, whether Article 3 and Article 8 of Directive 93/13, read in conjunction with Article 6 and Article 7 of that directive, must be interpreted as meaning that, in the context of the examination of its own motion of the possible unfairness of the terms in a contract concluded between a seller or supplier and a consumer, which the national court carries out in order to determine whether there is a significant imbalance in the parties' obligations under that contract, that court may also take into account national provisions ensuring a higher level of consumer protection than that provided for by that directive.

61 It follows from Article 8 of Directive 93/13 that Member States may adopt or retain the most stringent provisions compatible with the TFEU in the area covered by that directive, to ensure a maximum degree of protection for the consumer. Accordingly, that directive provides for a minimum level of harmonisation. On the one hand, in the assessment of whether a contractual term is unfair, account must be taken of the legal context that determines, together with that term, the rights and obligations of the parties (judgment of 10 September 2020, *A (Subletting of social housing)*, C-738/19, EU:C:2020:687, paragraph 37 and the case-law cited).

62 On the other hand, in order to ascertain whether a term causes a 'significant imbalance' in the parties' rights and obligations under a contract to the detriment of the consumer, particular account must be taken of which rules of national law would apply in the absence of an agreement by the parties in that regard. Such a comparative analysis will enable the national court to evaluate whether and, as the case may be, to what extent, the contract places the consumer in a legal situation less favourable than that provided for by the national law in force (see, to that effect, judgment of 26 January 2017, *Banco Primus*, C-421/14, EU:C:2017:60, paragraph 59 and the case-law cited).

63 In the light of the foregoing considerations, the answer to the fourth question is that Article 3 and Article 8 of Directive 93/13, read in conjunction with Article 6 and Article 7 of that directive, must be interpreted as meaning that, in the context of the examination of its own motion of the possible unfairness of the terms in a contract concluded between a seller or supplier and a consumer, which the national court carries out in order to determine whether there is a significant imbalance in the parties' obligations under that contract, that court may also take into account national provisions ensuring a higher level of consumer protection than that provided for by that directive.

Costs

64 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.

On those grounds, the Court (Sixth Chamber) hereby rules:

1. **EU law must be interpreted as precluding a national court, before which an application for an order for payment has been brought, from dispensing with an examination of the possible unfairness of a term of a contract concluded between a seller or supplier and a consumer on account of practical difficulties, such as its workload.**

2. **Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as not precluding a national court, before which an application for an order for payment has been brought, where that court presumes that the application is based on an unfair term in the consumer credit agreement, for the purposes of Directive 93/13, from asking the creditor for additional information in order to examine whether that term is unfair, so long as the consumer does not raise an objection.**

3. **Article 3 and Article 8 of Directive 93/13, read in conjunction with Article 6 and Article 7 of that directive, must be interpreted as meaning that, in the context of the examination of its own motion of the possible unfairness of the terms in a contract concluded between a seller or supplier and a consumer, which the national court carries out in order to determine whether there is a significant imbalance in the parties' obligations under that contract, that court may also take into account national provisions ensuring a higher level of consumer protection than that provided for by that directive.**

[Signatures]