

### Question referred

Must Article 21(2a) of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders <sup>(1)</sup> in conjunction with the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that a third-country national who has been refused a long-stay visa and who cannot exercise the right to move freely within the territories of the other Member States under Article 21(1) of the Convention implementing the Schengen Agreement must have the right to an effective remedy before a tribunal?

<sup>(1)</sup> OJ 2000 L 239, p. 19.

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### Request for a preliminary ruling from the Sąd Okręgowy w Gdańsku (Poland) lodged on 16 January 2020 — I.W. and R.W. v Bank BPH Spółka Akcyjna

(Case C-19/20)

(2020/C 191/04)

*Language of the case: Polish*

### Referring court

Sąd Okręgowy w Gdańsku

### Parties to the main proceedings

*Applicants:* I.W. and R.W.

*Defendant:* Bank BPH Spółka Akcyjna

### Questions referred

1. Must Article 3(1) and (2) in conjunction with Article 4(1) and Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ... <sup>(1)</sup> be interpreted as meaning that the national court is obliged to declare that a term in a contract concluded with a consumer is unfair (within the meaning of Article 3(1) of the directive) including where, as a result of an amendment to the contract made by the parties by way of an annex, that term has been amended such that it is no longer unfair and a finding that the term in its original wording was unfair may result in the annulment (invalidation) of the entire contract?
2. Must Article 6(1), in conjunction with Article 3(1), the second sentence of Article 3(2) and Article 2 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ... be interpreted as permitting a national court to find that only certain elements of a contract term relating to the exchange rate fixed by the bank for the currency to which the loan extended to the consumer is indexed (such as in the main proceedings) are unfair, namely, by eliminating the provision allowing the bank's margin, which is a component of the exchange rate, to be determined unilaterally and in an unclear manner, where leaving an unambiguous provision referring to the average exchange rate announced by the central bank (the Narodowy Bank Polski — National Bank of Poland), which does not require the eliminated term to be replaced with any legal provision, [...] will result in real balance between the consumer and the trader being restored, although it will change the essence of the provision concerning the performance by the consumer of his obligation in a manner that is advantageous to him?
3. Must Article 6(1) in conjunction with Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ... be interpreted as meaning that, even if the national legislature has introduced measures to prevent the continued use of unfair contract terms, such as that at issue in the main proceedings, by introducing provisions which require banks to stipulate in detail the methods and time limits for determining the exchange rate on the basis of which the amount of credit and principal and interest payments are calculated, and the rules for converting amounts into the currency in which the loan was disbursed or is to be repaid, the public interest militates against the finding that only certain elements of the term in question are unfair in the manner described in Question 2?

4. Should the annulment of the contract referred to in Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ..., as a result of the exclusion of unfair terms as defined in Article 2(a) in conjunction with Article 3 of the directive, be understood as a sanction resulting from a constitutive court decision made at the express request of the consumer with consequences from the date of conclusion of the contract, that is to say, *ex tunc*, and do restitution claims by the consumer and the trader become due and payable upon the judgment becoming final?
5. Must Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ... in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union of 30 March 2010 (OJ 2010 C 83, p. 389) be interpreted as imposing an obligation on the national court to inform a consumer who has requested that a contract be annulled in connection with the elimination of unfair terms of the legal consequences of such a judgment, including possible restitution claims by the trader (bank), even if such claims have not been raised in the proceedings in question, and also claims whose validity has not been clearly established, even if the consumer is represented by a professional legal representative?

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(<sup>1</sup>) OJ 1993 L 95, p. 29.

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**Request for a preliminary ruling from the Oberlandesgericht Köln (Germany) lodged on 23 January 2020 — Biofa AG v Sikma D. Vertriebs GmbH und Co. KG**

(Case C-29/20)

(2020/C 191/05)

*Language of the case: German*

**Referring court**

Oberlandesgericht Köln

**Parties to the main proceedings**

*Applicant:* Biofa AG

*Defendant:* Sikma D. Vertriebs GmbH und Co. KG

**Question referred**

Where an active substance is approved in an implementing regulation adopted pursuant to Article 9(1)(a) of Regulation (EU) No 528/2012, (<sup>1</sup>) can it be taken as given in court proceedings in a Member State that the substance on which the approval is based is intended within the meaning of Article 3(1)(a) of Regulation (EU) No 528/2012 to act by any means other than mere physical or mechanical action, or is it for the adjudicating national court to establish in fact whether the preconditions for the application of Article 3(1)(a) of Regulation (EU) No 528/2012 are fulfilled even after an implementing regulation has been adopted?

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(<sup>1</sup>) Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ 2012 L 167, p. 1).

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**Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 29 January 2020 — E v Finanzamt N**

(Case C-45/20)

(2020/C 191/06)

*Language of the case: German*

**Referring court**

Bundesfinanzhof