Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

8 September 2022*

(Request for a preliminary ruling – Directive 93/13/EEC – Unfair terms in consumer contracts – Article 6(1) and Article 7(1) – Mortgage credit agreements – Effects of a finding that a term is unfair – Period of limitation – Principle of effectiveness)

In Joined Cases C-80/21 to C-82/21,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy dla Warszawy – Śródmieścia w Warszawie (District Court of Warsaw-Śródmieście, Warsaw, Poland), made by decisions of 13 October (C-82/21) and 27 October 2020 (C-80/21 and C-81/21), received at the Court on 8 February (C-80/21) and 9 February 2021 (C-81/21 and C-82/21), in the proceedings

E.K.,

S.K.

v

D.B.P. (C-80/21),

and

B.S.,

W.S.

v

M. (C-81/21),

and

B.S.,

Ł.S.

v

* Language of the case: Polish.

M. (C-82/21),

THE COURT (Ninth Chamber),

composed of S. Rodin (Rapporteur), President of the Chamber, J.-C. Bonichot and O. Spineanu-Matei, Judges,

Advocate General: A.M. Collins,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 17 March 2022,

after considering the observations submitted on behalf of:

– E.K. and S.K., by M. Jusypenko, adwokat,

– D.B.P., by S. Dudzik, M. Kruk-Nieznańska, T. Spyra, A. Wróbel and A. Zapala, radcowie prawni,

– B.S. and W.S., by J. Wędrychowska, adwokat,

– B.S. and Ł.S, by M. Skrobacki, radca prawny,

– M., by A. Beneturski, adwokat, A. Cudna-Wagner, P. Gasińska, radcowie prawni, B. Miąskiewicz, adwokat, and J Wolak, radca prawny,

– the Polish Government, by B. Majczyna and S. Żyrek, acting as Agents,

– the Finnish Government, by H. Leppo, acting as Agent,

– the Spanish Government, by A. Ballesteros Panizo, A. Gavela Llopis and J. Ruiz Sánchez, acting as Agents,

– the European Commission, by N. Ruiz García, M. Siekierzyńska and A. Szmytkowska, acting as Agents,

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

gives the following

Judgment

1 These requests for a preliminary ruling concern 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).

2 The requests have been made in three sets of proceedings between, first, E.K. and S.K., on the one hand, and D.B.P., on the other hand (Case C-80/21), secondly, B.S. and W.S., on the one hand, and M., on the other hand (Case C-81/21) and, thirdly, B.S. and Ł.S., on the one hand, and M., on the

other hand (Case C-82/21), concerning a request by the former, in their capacity as consumers, seeking the annulment of the credit agreements concluded with the banks D.B.P. and M., on the ground that those contracts contain unfair terms.

Legal framework

European Union law

3 Article 6(1) of Directive 93/13 is worded as follows:

'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.'

4 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.'

Polish law

The Civil Code

5 Article 5 of the Kodeks cywilny (civil code), in the version applicable to the disputes in the main proceedings ('the Civil Code'), provides:

'A right may not be exercised in a manner which would be contrary to its social and economic purpose or to the principles of community coexistence. Any such act or omission by the entitled person shall not be treated as an exercise of the right and shall not be protected.'

6 Article 58 of the Civil Code provides:

'1. A legal transaction which is contrary to the law or intended to circumvent the law shall be invalid, unless the relevant provision provides otherwise, in particular that the invalid terms of the legal transaction are to be substituted by relevant provisions of law.

2. A legal transaction which is *contra bonos mores* shall be invalid.

3. Where only part of the legal transaction is affected by the invalidity, the transaction shall remain in force as regards the remainder, except where circumstances show that without the terms affected by the invalidity the transaction would not be performed.'

7 Article 65 of that code is worded as follows:

‘1. A declaration of intent should be interpreted in accordance with the principles of social conduct and with established customs, taking into account the circumstances in which the intent was expressed.

2. Regard should be had to the contracts to determine the common intent of the parties and the specified objective of those contracts rather than focussing on the literal meaning of the terms used.’

8 Article 117(1) and (2) of that code state:

‘1. Subject to the exceptions provided for by statute, property-related claims shall be subject to limitation.

2. Following the lapse of the period of limitation, a person against whom a claim may be pursued may avoid the duty to satisfy it, unless he waives his right to use the defence of limitation. However, waiving the defence of limitation before the lapse of the period of limitation shall be invalid.’

9 Article 118 of that code provides:

‘Unless a specific provision provides otherwise, the period of limitation shall amount to six years, and for claims concerning periodical payments as well as for claims connected with conducting business activity, it shall be three years. However, the end of the limitation period shall be the last day of the calendar year unless the limitation period is shorter than two years.’

10 Article 118 of the Civil Code, in the version in force until 8 July 2018, was worded as follows:

‘Unless a specific provision provides otherwise, the period of limitation shall amount to 10 years, and for claims concerning periodic payments as well as for claims connected with conducting business activity, it shall be 3 years.’

11 Article 120(1) of that code provides:

‘The limitation period shall commence on the day when the claim becomes due. Where the claim becoming due is dependent on the entitled person undertaking a specified act, the limitation period shall commence on the day when the claim would have become due if the entitled person had undertaken that act at the earliest possible opportunity.’

12 Article 123(1) of that code is worded as follows:

‘The limitation period shall be interrupted: (1) by any act before a court of law or other authority appointed to try cases or to enforce claims of a given kind or before an arbitration court, which activity is taken up directly to pursue or to establish or to satisfy or to secure a claim; (2) by the acknowledgement of a claim by a person against whom the claim may be pursued; (3) by initiating mediation.’

13 According to Article 358(1) to (3) of that code:

‘1. If the subject matter of the obligation is a sum of money expressed in a foreign currency, the debtor may render performance in Polish currency, unless the law, a judicial decision giving rise to the obligation or a legal act provides for performance of the obligation in a foreign currency.

2. The value of the foreign currency shall be calculated in accordance with the average rate determined by the National Bank of Poland on the day of the claim’s maturity, unless legislation, a obligation or a legal act provides otherwise.

3. In the event of late payment, the creditor may claim performance in Polish currency at the average price set by the National Bank of Poland on the day on which the payment is made.’

14 Article 358(1) of the Civil Code, in the version in force until 23 January 2009, provided:

‘Subject to the exceptions provided for by the law, pecuniary obligations in the territory of the Republic of Poland may be expressed only in Polish currency.’

15 Article 385^1 of that code is worded as follows:

‘1. Terms of a contract concluded with a consumer which have not been individually negotiated shall not be binding on the consumer if his rights and obligations are set forth in a way that is contrary to good practice and grossly infringes his interests (unlawful terms). This shall not apply to terms setting out the principal obligations to be performed by the parties, including price or remuneration, so long as they are worded clearly.

2. If a contractual term is not binding on the consumer pursuant to paragraph 1, the contract shall otherwise continue to be binding on the parties.

3. The terms of a contract which have not been individually negotiated are those over the content of which the consumer had no actual influence. This shall refer in particular to contractual terms taken from a standard contract proposed to a consumer by a contracting party.

4. The burden of proving that a term has been negotiated individually shall lie with the person relying thereon.’

16 According to Article 385^2 of that code:

‘The compliance of contractual terms with good practice shall be assessed according to the state of affairs at the time when the contract was concluded, taking into account its content, the circumstances in which it was concluded and also other contracts connected with the contract which contains the provisions being assessed.’

17 Article 405 of that code is worded as follows:

‘Any person who, without legal grounds, obtains an economic advantage at the expense of another person shall be required to restore that advantage in kind and, where that is not possible, to return the value thereof.’

18 Article 410 of the Civil Code states:

‘1. The provisions of the preceding articles shall apply in particular to an undue obligation.

2. An obligation shall be undue where the person who performed it was in no way obliged or was not obliged to the person for whom he performed it, or where the basis of the obligation ceased to exist or the intended objective of the obligation was not attained, or where the legal transaction requiring performance of the obligation was invalid and did not become valid after the obligation was performed.’

19 Article 442^1(1) of that code is worded as follows:

‘A claim for redress of the damage caused by an unlawful act shall be time-barred after three years from the date on which the injured party learned or, by exercising due diligence, could have learned of the damage and of the person liable to redress it. However, this period may not be longer than 10 years from the date on which the event causing the damage occurred.’

20 Article 442^1(1) of that code, in the version in force until 26 June 2017, provided:

‘A claim for redress of the damage caused by an unlawful act shall be time-barred after three years from the date on which the injured party learned of the damage and of the person liable to redress it. However, this period may not be longer than 10 years from the date on which the event causing the damage occurred.’

The Banking Law

21 Article 69(1) of the ustawa prawo bankowe (banking law), of 29 August 1997 (Dz. U. of 1997, No 140, position 939), in the version applicable to the disputes in the main proceedings, is worded as follows:

‘Under a loan agreement, a bank shall undertake to make available to the borrower, for the period stipulated in the agreement, an amount of money intended for a specified purpose, and the borrower shall undertake to use that money on the terms laid down in the agreement, to repay the amount of the loan used, plus interest, on specific reimbursement dates and to pay a commission on the loan granted.’

22 Article 69(2) of the banking law, in the version applicable to the disputes in the main proceedings, provides:

‘The loan agreement must be drawn up in writing and specify, inter alia: (1) the parties to the agreement; (2) the amount and currency of the loan; (3) the purpose for which the loan was granted; (4) the terms and date of reimbursement of the loan; (5) the rate of interest payable on the loan and the conditions for changing it; (6) the security for reimbursement of the loan; (7) the scope of the bank’s powers as regards monitoring the use and reimbursement of the loan; (8) the dates on which and the manner in which the money is made available to the borrower; (9) the amount of the commission; if provided for in the agreement; (10) the conditions under which the agreement may be amended and terminated.’

The disputes in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

Case C-80/21

23 E.K. and S.K. are consumers who concluded four mortgage agreements with D.B.P., a bank, in 2006 and 2008 to finance the costs of purchasing four homes in Poland. One of those agreements, concluded on 8 July 2008, was denominated in Swiss francs (CHF), for a sum of CHF 103 260 (approximately EUR 100 561) and was repayable in 360 months, namely, until 4 August 2038 ('the contract in Case C-80/21'). It was a variable interest rate loan with an initial annual rate of 3.80%. The loan was to be repaid in equal monthly instalments.

24 On that occasion, E.K. and S.K. agreed to the 'Terms of the loan', which govern the payment and repayment of the loan and contain clauses on the terms of payment and, in particular, on the conversion into CHF.

25 According to those clauses, first, the amount of the loan must be paid in zlotys (PLN) and, for the purpose of converting the amount of the loan, the bank applies the buying rate of CHF, published in D.B.P.'s 'Table of Exchange Rates', on the date of payment of the amount of the loan or monthly instalment. Secondly, the loan can also be paid in CHF or in another currency with the agreement of the bank. Thirdly, if the borrower fails to comply with the conditions for granting loans or creditworthiness, the bank may withdraw from the contract or reduce the amount of the loan granted if it has not been paid in full. Fourthly, the loan is to be repaid by debiting the borrower's bank account with an amount in PLN equivalent to the current monthly instalment in CHF, the outstanding arrears and other claims of the bank in CHF, calculated by applying the selling rate of CHF, published in the 'Table of Exchange Rates', applied by the bank two working days before the due date of each loan repayment.

26 During the process of concluding the contract in Case C-80/21, E.K. and S.K. contacted the bank by means of remote communication and most of the loan documents were signed by the agents appointed by E.K. and S.K. without any of the clauses of that contract having been negotiated with D.B.P.. E.K. and S.K. asked D.B.P. to send them a draft contract to sign by email, but those requests went unanswered, so that the contract in Case C-80/21 was signed on behalf of E.K. and S.K.

27 Taking the view that the contract in Case C-80/21 contained unfair terms, they brought an action before the Sąd Rejonowy dla Warszawy – Śródmieścia w Warszawie (District Court of Warsaw-Śródmieście, Warsaw, Poland), seeking an order against D.B.P. to pay them the sum of PLN 26 274.90 (approximately EUR 5 716), plus statutory default interest from 30 July 2018 until the day of payment.

28 In the course of the proceedings before the referring court, E.K. and S.K. were informed, by that court, of the consequences of a possible annulment of the contract in Case C-80/21. They stated that they understood and accepted the legal and financial consequences of the annulment of that contract and consented to its annulment by the referring court.

29 The referring court states that Polish case-law almost invariably holds that conversion clauses, in particular those relating to the possibility for a borrower to repay the loan in CHF or in another currency with the bank's consent ('the conversion clauses'), are unlawful. However, most national

courts consider conversion clauses to be only partly unfair, in particular in so far as they make the payment and repayment of the loan in CHF conditional on the bank's express consent and, once they are found to be invalid, the bank would not render performance of the contract impossible.

30 The referring court points out, first, that the practice in the case-law according to which it is possible to annul the part of the conversion clauses under which the payment and repayment of the loan may be made in CHF only with the consent of the bank, so as to allow the borrower to carry out those operations in CHF without that prior authorisation, amounts to revising the content of an unfair term, which is contrary to the Court's case-law.

31 Moreover, that court observes that such a practice reduces the deterrent effect resulting from the annulment of an unfair term, inasmuch as it assures the undertaking imposing such terms that, in the worst case, the national court will make a change to them which will allow the contract to continue to be performed without that undertaking ever suffering any other negative consequences. It would not ensure the protection of consumers who, on the basis of the content of the contract, would be convinced that they would be obliged to repay the loan only in PLN, unless the bank expressly agrees on repayment in CHF, until a national court decides otherwise.

32 Secondly, by noting the position of the Sąd Najwyższy (Supreme Court, Poland), the referring court also refers to national case-law according to which, where only certain terms of a contract are unfair, and therefore not binding on the consumer, the annulment of those terms does not preclude other terms of the contract from being amended in such a way that, ultimately, the contract can be performed. More specifically, the national court must interpret the wishes of the parties and consider that, from the outset, the amount of loan was fixed not in CHF but in PLN. However, according to that court, that case-law, based essentially on Article 65(2) of the Civil Code, may be contrary to Articles 6 and 7 of Directive 93/13. In a situation where the consumer has accepted the nullity of the contract, such a national practice would, in particular, run up against the prohibition on the court amending a contract other than by declaring the unfair terms void.

33 Thirdly, the referring court, in so far as E.K. and S.K. have accepted that the contract in Case C-80/21 should be declared void, envisages a third solution. As a first step, the national court would consider that the conversion clauses, in their entirety, are unfair contractual terms which are not binding on the parties and without which the contract could not exist. As a second step, it could then find that such an agreement which does not contain the necessary provisions concerning the arrangements for repayment of the loan and the making available of the funds to the borrower is contrary to the law and therefore void, so that all the services rendered in execution of the agreement are undue and returnable. However, that court observes that such a solution would be contrary to the interpretation by the national courts of the relevant national provisions.

34 In those circumstances, the Sąd Rejonowy dla Warszawy – Śródmieścia w Warszawie (District Court of Warsaw-Śródmieście, Warsaw) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Articles 6(1) and 7(1) of [Directive 93/13] be interpreted as precluding a judicial interpretation of national legislation under which a court finds that a contractual term is unfair not in its entirety, but only in the part thereof which renders the term unfair, as a result of which that term remains partially effective?

(2) Must Articles 6(1) and 7(1) of [Directive 93/13] be interpreted as precluding a judicial interpretation of national legislation under which a court, having found that a contractual term is unfair, without which the contract could not continue in existence, may modify the remainder of the contract by interpreting the parties' declarations of intent, in order to prevent the contract, which is beneficial to the consumer, from being invalid?'

Case C-81/21

35 On 3 February 2009, B.S. and W.S., two consumers, concluded a mortgage loan agreement with M., a banking institution, for an amount of PLN 340 000 (approximately EUR 73 971), intended for natural persons and indexed to the CHF, with a view to acquiring a home ('the contract in Case C-81/21'). The duration of the loan was 360 months, from 3 February 2009 to 12 February 2039, and was repayable in equal monthly instalments. It was a variable rate loan. The monthly instalments were to be paid in PLN, after being converted using the selling rate published in the bank's 'Table of Exchange Rates'. Early repayment of the entire loan or of a monthly instalment, as well as repayment of more than one monthly instalment, entailed conversion of the repayment amount at the selling rate of CHF published in the bank's 'Table of Exchange Rates' in force at the date and time of repayment.

36 On 18 February 2012, the parties concluded an amendment to the contract in case C-81/21, allowing B.S. and W.S. to repay the monthly loan instalments directly in CHF.

37 Taking the view that the contract in Case C-81/21 contained unfair terms, the latter brought an action before the Sąd Rejonowy dla Warszawy – Śródmieścia w Warszawie (District Court of Warsaw-Śródmieście, Warsaw) on 23 July 2020, seeking an order that M. pay to them the sums of PLN 37 866.11 (approximately EUR 8 238) and CHF 5 358.10 (approximately EUR 5 215), plus statutory default interest, as well as the excess part of the principal payments and the loan insurance premium.

38 From 1 June 2010 to 12 January 2020, B.S. and W.S. paid M. an amount equivalent to PLN 219 169.44 (approximately EUR 47 683) as repayment of the loan. According to the national court, if certain clauses of the contract in Case C-81/21 were to be regarded as not binding on B.S. and W.S., while the other provisions of the contract remained applicable, the total amount of payments made during that period would have been PLN 43 749.97 (approximately EUR 9 518) lower. Moreover, if the exchange rate used for repayment had been the average rate of the National Bank of Poland instead of the rate used by M., B.S. and W.S. would have paid PLN 2 813.45 (approximately EUR 611) and CHF 2 369.79 (approximately EUR 2 306) less than the sum of the monthly instalments actually paid during that period.

39 The referring court states that, according to almost settled Polish case-law, conversion clauses, which are derived from standard contracts and have not, as such, been individually negotiated, are regarded as unlawful on the basis of Article 385^1(1) of the Civil Code. The dispute before that court nevertheless concerns the consequences of such a finding.

40 In that regard, that court observes that previous national case-law has often held that the only consequence of the unenforceability of conversion clauses in relation to consumers is the conversion of the principal and monthly instalments on the basis of an exchange rate other than that of the bank against which an action is brought. In the judgment of 3 October 2019, *Dziubak* (C-260/18, EU:C:2019:819), the Court held that Article 6(1) of Directive 93/13 must be interpreted as precluding gaps in a contract caused by the removal of the unfair terms contained in that

contract from being filled solely on the basis of national provisions of a general nature which provide that the effects expressed in a legal transaction are to be supplemented, inter alia, by the effects arising from the principle of equity or from established customs, which are neither supplementary provisions nor provisions applicable where the parties to the contract so agree.

41 The referring court states that, in Polish case-law, two opposing views prevail. According to the first view, a loan agreement indexed to a foreign currency must be treated, after removal of the conversion clauses, as a loan agreement denominated in PLN. According to the second view, the removal of such clauses renders the contract void in its entirety. It notes, however, that when the new version of Article 358 of the Civil Code was already in force, a third option was developed according to which the finding of unfairness of the conversion clauses does not necessarily mean that the whole indexation mechanism at issue can be contested, so that the clauses declared unlawful are annulled to the extent that their content is unlawful. Thus, the recognition of the unfairness of the conversion clauses could lead to the annulment of the contract as a whole or to the annulment of part of its clauses, provided that, without the unfair clauses, the contract could be maintained in the original form intended by the contracting parties.

42 The referring court considers, in the light of the relevant case-law of the Court, that where the national court finds a term to be unfair, it must find that the term is not binding on the consumer from the outset and in its entirety. It should then examine whether the contract can be performed without the unfair term. If that is the case, that court should simply decide that the contract remains without the unfair terms and the question of the application of a supplementary provision of national law would not arise. If, by contrast, that court were to hold that the contract cannot exist without the unfair term and must therefore be annulled, it would have to consider whether that would be to the detriment of the consumer. If that is not the case or if the consumer consents to the annulment of the contract, the national court would be obliged to annul the contract in its entirety and could not complement it with a supplementary provision of national law.

43 In the present case, B.S. and W.S., who have stated that they understand the legal and financial consequences of the invalidity of the contract in Case C-81/21 and accept them, request, if the national court were to consider that the contract in Case C-81/21 can continue to exist without the conversion clause, reimbursement of the excess part of the monthly instalments paid. If, by contrast, that court were to consider that the contract in Case C-81/21 cannot continue to exist without the conversion clause, they seek repayment of all the monthly instalments paid. In the light of the principles established by the case-law of the Court of Justice and the scope of the claim made by B.S. and W.S., the referring court considers that it is in fact obliged to opt for one of those two solutions, without being able to have recourse to a supplementary provision of national law, in order to avoid infringing Article 6(1) of Directive 93/13. However, those two possibilities seem to run counter to the solution advocated by the national courts following the entry into force on 24 January 2009, namely, after the conclusion of the contract in Case C-81/21, of the new version of Article 358 of the Civil Code.

44 In those circumstances, the Sąd Rejonowy dla Warszawy – Śródmieścia w Warszawie (District Court of Warsaw-Śródmieście, Warsaw) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Articles 6(1) and 7(1) of [Directive 93/13] be interpreted as precluding a judicial interpretation of provisions of national legislation under which a court, where it finds that a contractual term is unfair, without that rendering the agreement invalid, may supplement the content of the agreement with a supplementary provision of national law?

(2) Must Articles 6(1) and 7(1) of [Directive 93/13] be interpreted as precluding a judicial interpretation of national legislation under which a court, where it finds that a contractual term is unfair, with the result that the agreement is invalid, may supplement the content of the agreement with a supplementary provision of national law, in order to prevent the agreement from being invalid, even though the consumer consents to its being invalid?'

Case C-82/21

45 On 4 August 2006, B.S. and Ł.S., two consumers, concluded a mortgage loan agreement with M., a banking institution, for PLN 600 000 (approximately EUR 130 445), intended for natural persons and indexed to the CHF for the purpose of purchasing a home ('the contract in Case C-82/21'). The duration of the loan was 360 months, from 8 August 2006 to 5 August 2036. The loan was repayable in degressive monthly instalments at a variable interest rate. In this case, the monthly instalments were to be paid in PLN, after being converted using the CHF selling rate published in M.'s 'Table of Exchange Rates' in force on the date of payment. It was also provided that early repayment of the entire loan or of one monthly instalment or of an amount exceeding that of one monthly instalment would result in the conversion of the amount of the repayment at the CHF selling rate, as published in that table.

46 On 8 December 2008, B.S. and Ł.S. concluded an amendment to the contract in Case C-82/21 which defined the interest rate as the '3M LIBOR' rate, plus a fixed bank margin of 0.57% over the entire term of the loan.

47 Taking the view that the contract in Case C-82/21 contained unfair terms, in particular in that it provided for the conversion of the loan principal and instalments at the CHF rate and empowered M. to change the interest rate on the loan, B.S. and Ł.S. brought an action before the Sąd Rejonowy dla Warszawy – Śródmieścia w Warszawie (District Court of Warsaw-Śródmieście, Warsaw), seeking repayment of PLN 74 414.52 (approximately EUR 16 285), plus statutory default interest from 30 July 2019 until the date of payment. In addition, B.S. and Ł.S. argue that, if the loan agreement in Case C-82/21 were considered void in its entirety, a consequence which they understand and accept, M. would have to reimburse them the entire monthly instalments of the loan and, in that case, they request that M. be ordered to pay them an amount of PLN 72 136.01 (approximately EUR 15 787), corresponding to all the monthly instalments paid in the period from 5 October 2006 to 5 March 2010.

48 On the basis of the line of national case-law according to which clauses in a loan agreement of the kind complained of by B.S. and Ł.S. are unlawful and must lead to the annulment of the agreement in its entirety, the referring court is considering annulling the contract in Case C-82/21. Such annulment would nevertheless operate *ex tunc*, so that all the services provided in performance of it would have to be reimbursed, pursuant to Article 405 of the Civil Code, read in conjunction

with Article 410(1) of that code. However, M. invokes the statute of limitations for the action of B.S. and Ł.S. According to the referring court, in so far as, in the present case, the action of those parties is based on a property claim, it is indeed obliged to examine whether that action is, in whole or in part, statute-barred, in application of the general rule on the limitation of claims which, in the case of claims arising before 9 July 2018, are subject to a limitation period of 10 years.

49 In that regard, that court considers that the fundamental question in assessing the validity of the limitation period relied on by M. consists in determining the starting point of the limitation period for such an action for the recovery of sums unduly paid. According to the case-law of the Polish courts established on the basis of Article 120(1) of the Civil Code, the starting point is the date on which the undue payment was made. In that regard, the time at which the party making the payment became aware of the undue nature thereof and the time at which he actually requested the debtor to return it are irrelevant for the purpose of determining that starting point. The referring court states that those considerations also apply to disputes concerning the restitution of a payment unduly made pursuant to invalid contractual terms where a party was not aware that those terms were invalid.

50 However, when applied to the action brought by B.S. and Ł.S., those considerations should lead the referring court to hold that the right to reimbursement of each monthly instalment paid more than 10 years before the date on which those parties brought their action for such reimbursement, that is to say before 7 August 2009, is time-barred. The referring court doubts whether such an outcome is compatible with Directive 93/13.

51 According to the referring court, that interpretation of Article 120(1) of the Civil Code is incompatible with the principle of effectiveness, inasmuch as the latter precludes an action for restitution from being made subject to a time limit which begins to run irrespective of whether the consumer was, or could reasonably have been, aware at that time of the unfairness of a term of the contract relied on in support of his or her action for restitution. Such an interpretation would make it excessively difficult for the consumer to exercise the rights conferred by Directive 93/13.

52 According to the referring court, the limitation period for the consumer's right to reimbursement must not begin to run until the consumer becomes aware of the unfairness of the contractual term or, at the very least, before the time at which he ought reasonably to have become aware of it, so that the restrictive interpretation of Article 120(1) of the Civil Code does not meet the requirements of Directive 93/13. It adds that the other provisions of national law do not make it possible to remedy such a restrictive interpretation.

53 In addition, the referring court states that national case-law and literature consider that, in the event of annulment of the agreement, the bank's right to obtain immediate repayment of the amount of the loan takes effect only from the time when the borrower has finally decided to accept the effects of the annulment of the loan agreement. The result would be that, in practice, the consumer's right to reimbursement of the undue payment resulting from a void loan agreement would have to be regarded as being at least partially time-barred, whereas the bank's analogous right would generally not be. Such a situation would be particularly disadvantageous for consumers, would not offer the guarantees required by Directive 93/13 and would undermine the principle of equivalence.

54 According to the referring court, that principle is also disregarded in so far as the limitation period for the consumer's right to reimbursement of sums unduly paid under EU law begins to run earlier than if the latter had claimed a similar right on the basis of the national provisions on tortious liability. In the latter case, under Article 442^1(1) of the Civil Code, the limitation period can only begin to run from the time when the injured party becomes aware of the damage and the identity of the person liable to make good that damage.

55 In those circumstances, the Sąd Rejonowy dla Warszawy – Śródmieścia w Warszawie (District Court of Warsaw-Śródmieście, Warsaw) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Articles 6(1) and 7(1) of [Directive 93/13] be interpreted as precluding a judicial interpretation of national legislation to the effect that a consumer's claim for the reimbursement of amounts unduly paid on the basis of an unfair term in a contract concluded between a seller or supplier and a consumer is subject to a ten-year limitation period which begins to run from the date of each performance by the consumer, even in the case where the consumer was not aware of the unfair nature of that term?'

The procedure before the Court

56 By decision of the President of the Court of 14 April 2021, Cases C-80/21 to C-82/21 were joined for the purposes of the written and oral phases of the proceedings and of the judgment.

Consideration of the questions referred

The first question in Case C-80/21

57 By this question, the referring court asks, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as precluding national case-law according to which the national court may declare a term of a contract concluded between a consumer and a seller or supplier to be unfair, not in its entirety, but only those elements of the term which give it an unfair character, so that that term remains partially effective after the removal of those elements.

58 In order to answer that question, it should first be noted that, in accordance with Article 6(1) of Directive 93/13, it is for the national courts to exclude the application of unfair terms so that they do not produce binding effects with regard to the consumer, unless the consumer objects (judgment of 26 March 2019, *Abanca Corporación Bancaria and Bankia*, C-70/17 and C-179/17, EU:C:2019:250, paragraph 52 and the case-law cited).

59 Next, according to the Court's case-law, where the national court finds that an unfair term in a contract concluded between a seller or supplier and a consumer is void, Article 6(1) of Directive 93/13 must be interpreted as precluding a rule of national law which allows the national court to modify that contract by revising the content of that term (judgment of 26 March 2019, *Abanca Corporación Bancaria and Bankia*, C-70/17 and C-179/17, EU:C:2019:250, paragraph 53 and the case-law cited).

60 Finally, if it were possible for the national court to review the content of unfair terms in such a contract, such an option would be likely to undermine the achievement of the long-term objective referred to in Article 7 of Directive 93/13. Such an option would help to eliminate the deterrent effect on sellers or suppliers of the mere non-application to consumers of such unfair terms, in so far as they would remain tempted to use those terms, in the knowledge that, even if they were to be invalidated, the contract could nevertheless be modified, in so far as necessary, by the national court so as to guarantee the interests of those sellers or suppliers (judgment of 26 March 2019, *Abanca Corporación Bancaria and Bankia*, C-70/17 and C-179/17, EU:C:2019:250, paragraph 54 and the case-law cited).

61 In the present case, it is clear from the order for reference that the part of the conversion clauses which are unfair under Polish case-law relates to the bank's consent to the payment and repayment of the loan in CHF.

62 In that regard, the Court has held that Article 6(1) and Article 7(1) of Directive 93/13 do not preclude the national court from removing only the unfair element of a term from a contract concluded between a seller or supplier and a consumer where the objective of deterrence pursued by that directive is ensured by national legislative provisions regulating its use, in so far as that element consists of a separate contractual obligation which is capable of being examined individually for its unfairness. By contrast, those provisions preclude the national court from deleting only the unfair element of a term of a contract concluded between a seller or supplier and a consumer where such deletion would amount to revising the content of that term by affecting its substance (see, to that effect, judgment of 29 April 2021, *Bank BPH*, C-19/20, EU:C:2021:341, paragraph 80 and the case-law cited).

63 In the present case, there is nothing in the file before the Court to indicate that there are national provisions governing the use of a conversion clause which help to ensure the deterrent effect sought by Directive 93/13, or that the unfair part of the conversion clause constitutes a separate contractual obligation, so that the removal of that part would not amount to revising that clause by altering its substance. It is, however, for the national court to ascertain whether the conditions set out in the case-law cited in the preceding paragraph of the present judgment are satisfied.

64 It follows from the foregoing considerations that Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as precluding national case-law according to which the national court may declare unfair, not the entire term of a contract concluded between a consumer and a seller or supplier, but only those parts of it which are unfair, so that that term remains partially effective after the removal of those parts, where such removal would be tantamount to revising the content of the term by affecting its substance, which is a matter for the referring court to determine.

The first question in Case C-81/21

65 By this question, the referring court asks, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as precluding national case-law according to which the national court may, after finding that an unfair term contained in a contract concluded between a consumer and a seller or supplier which does not result in the invalidity of that contract in its entirety, is void, replace a supplementary provision of national law for that term.

66 It should be noted that the purpose of Article 6(1) of Directive 93/13, and in particular its second part, is not to annul all contracts containing unfair terms, but to replace the formal balance which the contract establishes between the rights and obligations of the parties to the contract with an effective balance capable of restoring equality between them, it being noted that the contract in question must, in principle, continue to exist without any modification other than that resulting from the removal of the unfair terms. Provided that the latter condition is satisfied, the contract at issue may, under Article 6(1) of Directive 93/13, be maintained in so far as, in accordance with the rules of national law, such a continuation of the contract without the unfair terms is legally possible, which must be verified according to an objective approach (judgment of 3 October 2019, *Dziubak*, C-260/18, EU:C:2019:819, paragraph 39).

67 The exceptional possibility of replacing an unfair term which has been annulled with a supplementary national provision is limited to cases in which the removal of that unfair term would oblige the national court to invalidate the contract in question as a whole, thereby exposing the consumer to particularly harmful consequences, so that the latter would be penalised (see, to that effect, judgment of 3 October 2019, *Dziubak*, C-260/18, EU:C:2019:819, paragraph 48 and the case-law cited).

68 Therefore, where a contract may remain in force after the removal of unfair terms, the national court cannot replace those terms with a supplementary national provision.

69 It follows that Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as precluding national case-law according to which the national court may, after declaring an unfair term contained in a contract concluded between a consumer and a seller or supplier to be void but which does not entail the nullity of that contract as a whole, replace that term with a supplementary provision of national law.

The second question in Case C-80/21 and the second question in Case C-81/21

70 By these questions, which must be considered together, the national court asks, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as precluding national case-law according to which the national court may, after finding that an unfair term contained in a contract concluded between a consumer and a seller or supplier is void and that the contract in its entirety is invalid, replace the annulled term either with an interpretation of the wishes of the parties in order to avoid the annulment of the contract, or with a supplementary provision of national law, even though the consumer has been informed of the consequences of the annulment of that contract and has accepted them.

71 It should be noted, in the first place, that, as is clear from paragraph 67 of the present judgment, the exceptional possibility of replacing an unfair term which has been annulled with a supplementary national provision is limited to cases in which the removal of that unfair term would oblige the court to invalidate the contract as a whole, thereby exposing the consumer to particularly prejudicial consequences, such that the latter would be penalised.

72 In the second place, it should be pointed out that that possibility of substitution, which derogates from the general rule that the contract at issue can remain binding on the parties only if it can continue in existence without the unfair terms that it contains, is limited to supplementary provisions of national law or those which are applicable where the parties so agree and is based, in

particular, on the ground that such provisions are presumed not to contain unfair terms (judgment of 3 October 2019, *Dziubak*, C-260/18, EU:C:2019:819, paragraph 59 and the case-law cited).

73 In the third place, as regards the importance to be attached to the consumer's intention to rely on Directive 93/13, the Court has made it clear, in relation to the national court's obligation to remove, if necessary of its own motion, unfair terms pursuant to Article 6(1) of Directive 93/13, that that court is not required to exclude the possibility that the term in question may be applicable if the consumer, after having been informed of it by the court, does not intend to assert its unfair or non-binding status, thus giving his or her free and informed consent to the term in question (see, to that effect, judgment of 3 October 2019, *Dziubak*, C-260/18, EU:C:2019:819, paragraph 53 and the case-law cited).

74 In the fourth and last place, the Court also held that Article 6(1) of Directive 93/13 must be interpreted as meaning that, first, the consequences for the consumer's situation caused by the annulment of a contract as a whole, as referred to in the judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282), must be assessed in the light of the circumstances existing or foreseeable at the time when the dispute arose, and that, secondly, for the purposes of that assessment, the wishes expressed by the consumer in that regard are decisive (judgment of 3 October 2019, *Dziubak*, C-260/18, EU:C:2019:819, paragraph 56 and the case-law cited). Those expressed wishes cannot, however, prevail over the assessment, which is a matter for the sovereign power of the court seised, of whether the implementation of the measures provided for, where appropriate, by the relevant national legislation does indeed make it possible to re-establish the legal and factual situation which would have been that of the consumer in the absence of that unfair term (see, to that effect, judgment of 2 September 2021, *OTP Jelzálogbank and Others*, C-932/19, EU:C:2021:673, paragraph 50).

75 In the present case, first, it is apparent from the file submitted to the Court that both E.K. and S.K., in Case C-80/21, and B.S. and W.S., in Case C-81/21, were informed of the consequences of annulling the loan agreements as a whole and that they consented to such annulment.

76 Secondly, subject to verification by the referring court, it does not appear from the file before the Court that there are supplementary provisions of Polish law intended to replace the unfair terms which have been removed. The referring court asks the Court a priori about the possibility of replacing the unfair terms removed by provisions of national law of a general nature, which are not intended to apply specifically to contracts concluded between a seller or supplier and a consumer.

77 The Court has held that Article 6(1) of Directive 93/13 must be interpreted as precluding gaps in a contract caused by the removal of the unfair terms contained in that contract from being filled solely on the basis of national provisions of a general nature, which are neither supplementary provisions nor provisions applicable in the event of the agreement of the parties to the contract (see, to that effect, judgment of 3 October 2019, *Dziubak*, C-260/18, EU:C:2019:819, paragraph 62).

78 In any event, as is apparent from paragraph 75 of this judgment, in the present case the consumers concerned in the main proceedings were informed of the consequences of the annulment in their entirety of the loan agreements which they had concluded and accepted them. In those circumstances, in view of the decisive nature of the consumers' wishes, as noted in paragraph 74 of the present judgment, it does not appear that the condition that annulment of the agreement

in its entirety would expose the consumers concerned to particularly harmful consequences, which is required in order for the national court to be authorised to replace the unfair term which has been annulled with a supplementary provision of national law, has been satisfied. However, it is for the referring court to verify that.

79 As regards the possibility of substituting a judicial interpretation for an unfair term which has been declared void, that must be excluded.

80 In that regard, it is sufficient to note that national courts are required only to disapply an unfair contractual term so that it does not have binding effects on the consumer, without being empowered to revise its content. That contract must continue in existence, in principle, without any amendment other than that resulting from the removal of the unfair terms, in so far as, in accordance with the rules of national law, such continuity of the contract is legally possible (see, to that effect, judgment of 14 June 2012, *Banco Español de Crédito*, C-618/10, EU:C:2012:349, paragraph 65 and the case-law cited).

81 As regards the possibility of maintaining in force a contract which cannot remain in force after the removal of an unfair term, notwithstanding the fact that the consumer concerned has accepted its nullity, the Court held, first, that Directive 93/13 precludes national legislation which prevents the court seised of the case from granting an application for annulment of a contract based on the unfairness of a term, where it is found that that term is unfair and that the contract cannot continue to exist without that term (see, to that effect, judgment of 14 March 2019, *Dunai*, C-118/17, EU:C:2019:207, paragraph 56).

82 Secondly, the Court has also held that that directive does not preclude a Member State from providing, in compliance with EU law, for national legislation allowing a contract concluded between a seller or supplier and a consumer which contains one or more unfair terms to be declared void in its entirety where that proves to provide better protection for the consumer (judgment of 15 March 2012, *Pereničová and Perenič*, C-453/10, EU:C:2012:144, paragraph 35).

83 It follows from that case-law that a national court is not entitled to revise the content of an unfair term which has been annulled in order to maintain in force a contract which cannot remain in force after the removal of that term, where the consumer concerned has been informed of the consequences of the annulment of the contract and has accepted the consequences thereof.

84 It follows from all the foregoing considerations that Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as meaning that they preclude national case-law according to which the national court may, after finding that an unfair term contained in a contract concluded between a consumer and a seller or supplier is invalid and that the contract as a whole is void, replace the annulled term either with an interpretation of the wishes of the parties in order to avoid the annulment of the contract, or with a supplementary provision of national law, even though the consumer has been informed of the consequences of the annulment of that contract and has accepted them.

The single question in Case C-82/21

85 By this question, the referring court asks, in essence, whether Directive 93/13, read in the light of the principle of effectiveness, must be interpreted as precluding national case-law according to which the 10-year limitation period for a consumer's action for repayment of sums unduly paid to a seller or supplier in performance of an unfair term contained in a loan agreement begins to

run on the date of each performance by that consumer, even though the consumer was not in a position, at that date, to assess the unfairness of the contractual term himself or herself or was not aware of the unfairness of the term, and regardless of the fact that the contract had a repayment period, in this case 30 years, which is much longer than the statutory limitation period of 10 years.

86 In that regard, it should be noted that, in accordance with settled case-law, in the absence of specific EU legislation on the subject, the detailed rules for implementing the consumer protection provided for by Directive 93/13 are a matter for the domestic legal order of the Member States by virtue of the principle of their procedural autonomy. However, those rules must not be less favourable than those governing similar domestic actions (principle of equivalence); nor may they be framed in such a way as to make it in practice impossible or excessively difficult to exercise the rights conferred by EU law (principle of effectiveness) (judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 27 and the case-law cited).

87 As regards the principle of effectiveness, it should be noted that each case in which the question arises as to whether a national procedural provision renders the application of EU law impossible or excessively difficult must be analysed in the light of the place of that provision in the proceedings as a whole, the way in which they are conducted and their particular features, before the various national authorities. In that context, it is appropriate to take into consideration, where appropriate, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 28 and the case-law cited).

88 In addition, the Court has stated that the obligation on the Member States to ensure the effectiveness of the rights that individuals derive from EU law, particularly the rights deriving from Directive 93/13, implies a requirement for effective judicial protection, also guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union, which applies, inter alia, to the definition of detailed procedural rules relating to actions based on such rights (judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 29 and the case-law cited).

89 As regards the analysis of the characteristics of the limitation period at issue in the main proceedings, the Court has stated that that analysis must cover the duration of the limitation period and the detailed rules for its application, including the mechanism adopted to start the period running (judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 30 and the case-law cited).

90 While the Court has held that an application brought by a consumer for a declaration that a term contained in a contract concluded between him or her and a seller or supplier is unfair cannot be subject to any limitation period (see, to that effect, judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 38 and the case-law cited), it stated that Article 6(1) and Article 7(1) of Directive 93/13 do not preclude national legislation which makes a claim by such a consumer for the restitutionary effects of such a finding subject to a limitation period, provided that the principles of equivalence and effectiveness are observed (see, to that effect, judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 39 and the case-law cited).

91 It must therefore be held that the imposition of a limitation period on claims for restitution brought by consumers with a view to enforcing rights which they derive from Directive 93/13 is not, in itself, contrary to the principle of effectiveness, provided that its application does not in practice make it impossible or excessively difficult to exercise the rights conferred by that directive (judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 40 and the case-law cited).

92 As regards the length of the limitation period to which a claim by a consumer for repayment of sums unduly paid on the basis of unfair terms within the meaning of Directive 93/13, it should be noted that the Court has already had occasion to rule on the compatibility with the principle of effectiveness of limitation periods shorter than that at issue in the main proceedings, of three and five years, which were imposed on actions seeking to assert the restitutionary effects of a finding that a contractual term was unfair. Provided that they are established and known in advance, those periods are, in principle, sufficient to allow the consumer concerned to prepare and bring an effective action. Thus, limitation periods of three to five years are not, in themselves, incompatible with the principle of effectiveness (judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 41 and the case-law cited).

93 Consequently, it must be held that, in so far as it is established and known in advance, a limitation period of 10 years, such as that at issue in the main proceedings, for a claim brought by a consumer for the restitution of sums unduly paid, on the basis of unfair terms within the meaning of Directive 93/13, does not appear to be such as to render the exercise of the rights conferred by Directive 93/13 practically impossible or excessively difficult. A period of that length is, in principle, sufficient in practice to enable the consumer to prepare and bring an effective action to enforce the rights which he or she derives from that directive, in particular in the form of restitutionary claims based on the unfairness of a contractual term.

94 However, account must be taken of the consumer's weaker position vis-à-vis the seller or supplier as regards both bargaining power and the level of knowledge, a situation which leads him or her to accept terms and conditions drawn up in advance by the seller or supplier, without being able to exercise any influence on their content. Similarly, it is important to note that consumers may be unaware of the unfairness of a term in a mortgage loan agreement or may not perceive the extent of their rights under Directive 93/13 (judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 45 and the case-law cited).

95 In that context, the Court held that loan agreements, such as that at issue in the main proceedings, are generally performed over long periods of time and, therefore, if the event which triggers the 10-year limitation period is any payment made by the borrower, which it is for the national court to ascertain, it cannot be ruled out that, at least in respect of some of the payments made, the limitation period will run even before the contract in question comes to an end, so that such a limitation period regime is liable systematically to deprive consumers of the possibility of claiming the return of payments made under terms contrary to that directive (see, to that effect, judgment of 22 April 2021, *Profi Credit Slovakia*, C-485/19, EU:C:2021:313, paragraph 63).

96 Thus, as regards the starting point of the limitation period at issue in the main proceedings, there is a non-negligible risk that, in view of the way in which that period is determined by national case-law, the consumer will not be able to assert his or her rights under Directive 93/13 effectively.

97 It is clear from the information provided by the referring court that the limitation period of 10 years begins to run from the date of each payment made by the consumer concerned, even though the latter was not in a position, at that date, to assess for himself or herself the unfairness of the contractual term or was not aware of the unfairness of that term, and irrespective of the fact that the contract had a repayment period, in this case 30 years, which is much longer than the statutory limitation period of 10 years.

98 It should be noted that a limitation period may be compatible with the principle of effectiveness only if the consumer had the opportunity to become aware of his or her rights before that period began to run or expired (judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 46 and the case-law cited).

99 The imposition of a limitation period of 10 years, such as that at issue in the main proceedings, on a claim brought by a consumer for the restitution of sums unduly paid, on the basis of an unfair term, within the meaning of Directive 93/13, in a loan agreement concluded with a seller or supplier, which begins to run from the date of each performance by that consumer, even though the latter was not in a position, at that date, to assess the unfairness of the contractual term or was not aware of the unfairness of that term, and without taking account of that fact that the contract had a repayment period, in this case 30 years, which was much longer than the statutory limitation period of 10 years, is not such as to afford the consumer effective protection. Such a period therefore makes it excessively difficult to exercise the rights which that consumer derives from Directive 93/13 and therefore infringes the principle of effectiveness.

100 It follows that Directive 93/13, read in the light of the principle of effectiveness, must be interpreted as precluding national case-law according to which the 10-year limitation period for a consumer's action for the restitution of sums unduly paid to a seller or supplier in performance of an unfair term contained in a loan agreement begins to run on the date of each performance by the consumer, even though the consumer was not in a position, at that date, to assess the unfairness of the contractual term himself or herself or was not aware of the unfairness of the term, and regardless of the fact that the contract had a repayment period, in this case 30 years, which is much longer than the statutory limitation period of 10 years.

Costs

101 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Ninth Chamber) hereby rules:

1. **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:

   precluding national case-law according to which the national court may declare unfair not the entire term of a contract concluded between a consumer and a seller or supplier, but only those parts of it which are unfair, so that the term remains partially effective after the removal of those parts, where such removal would be tantamount to

revising the content of the term by affecting its substance, which is a matter for the national court to determine.

2. Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as:

precluding national case-law according to which the national court may, after finding that an unfair term contained in a contract concluded between a consumer and a seller or supplier is void and does not result in the annulment of that contract as a whole, replace that term with a supplementary provision of national law.

3. Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as:

precluding national case-law according to which the national court may, after finding that an unfair term contained in a contract concluded between a consumer and a seller or supplier is void and that the contract as a whole is void, replace the annulled term either by interpreting the parties' wishes in order to avoid the annulment of the contract, or by applying to the annulled unfair term a supplementary provision of national law, even though the consumer has been informed of the consequences of the annulment of that contract and has accepted them.

4. Directive 93/13, read in the light of the principle of effectiveness, must be interpreted as:

precluding national case-law according to which the 10-year limitation period for a consumer's action for the restitution of sums unduly paid to a seller or supplier in performance of an unfair term contained in a credit agreement with a duration of 30 years begins to run on the date of each performance by the consumer, even though the consumer was not in a position, at that date, to assess the unfairness of the contractual term himself or herself or was not aware of the unfairness of the term, and regardless of the fact that the contract had a repayment period, in this case 30 years, which is much longer than the statutory limitation period of 10 years.

[Signatures]