

Questions referred

1. Are Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ('the Unfair Contract Terms Directive') ⁽¹⁾ to be interpreted as meaning that, in the examination of a trader's contractual claim for compensation brought against a consumer based on the consumer's unjustified withdrawal from the contract, the application of supplementary national law is precluded if the trader's general terms and conditions ('the GTCs') contain an unfair term which, in addition to the provisions of supplementary national law, grants the trader an optional right to flat-rate compensation against a consumer who has acted in breach of contract?

If Question 1 is answered in the affirmative:

2. Is such an application of supplementary national law also precluded in the cases where the trader does not base its claim for compensation against the consumer on that term?

If Questions 1 and 2 are answered in the affirmative:

3. Is it contrary to the abovementioned provisions of EU law that, in the case of a term containing several provisions (for example, alternative sanctions in the event of unjustified withdrawal from the contract), those parts of the term which, in any event, are consistent with the supplementary national law and are not to be regarded as unfair continue to exist as part of the contract?

⁽¹⁾ OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the *Verwaltungsgerichtshof* (Austria) lodged on 11 October 2021 — *Funke Sp. zo.o.*

(Case C-626/21)

(2022/C 37/18)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant on a point of law: Funke Sp. zo.o.

Defendant authority before the Verwaltungsgericht Wien (Austria): Landespolizeidirektion Wien

Questions referred

Are

- Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, ⁽¹⁾ as amended by Regulation (EC) No 765/2008 ⁽²⁾ and Regulation (EC) No 596/2009, ⁽³⁾ in particular Article 12 and Annex II,
- Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, in particular Articles 20 and 22, and
- Commission Implementing Decision (EU) 2019/417 of 8 November 2018 laying down guidelines for the management of the European Union Rapid Information System 'RAPEX' established under Article 12 of Directive 2001/95/EC on general product safety and its notification system ⁽⁴⁾ to be interpreted as meaning that

1. the right of an economic operator to complete a RAPEX notification arises directly from those provisions?
2. the European Commission is competent to decide on such a request?

or

3. the authority of the Member State concerned is competent to decide on such a request?

(If Question 3 is answered in the affirmative)

4. the (national) judicial protection against such a decision is sufficient where it is not afforded to everyone but only to the economic operator affected by the (obligatory) measure against the (obligatory) measure taken by the authority?

⁽¹⁾ OJ 2002 L 11, p. 4.

⁽²⁾ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ 2008 L 218, p. 30).

⁽³⁾ Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part Four (OJ 2009 L 188, p. 14).

⁽⁴⁾ OJ 2019 L 73, p. 121.

**Request for a preliminary ruling from the Verwaltungsgericht Wiesbaden (Germany) lodged on
15 October 2021 — OQ v Land Hesse**

(Case C-634/21)

(2022/C 37/19)

Language of the case: German

Referring court

Verwaltungsgericht Wiesbaden

Parties to the main proceedings

Applicant: OQ

Defendant: Land Hesse

Joined party: SCHUFA Holding AG

Questions referred

1. Is Article 22(1) of Regulation (EU) 2016/679 ⁽¹⁾ to be interpreted as meaning that the automated establishment of a probability value concerning the ability of a data subject to service a loan in the future already constitutes a decision based solely on automated processing, including profiling, which produces legal effects concerning the data subject or similarly significantly affects him or her, where that value, determined by means of personal data of the data subject, is transmitted by the controller to a third-party controller and the latter draws strongly on that value for its decision on the establishment, implementation or termination of a contractual relationship with the data subject?
2. If Question 1 is answered in the negative, are Articles 6(1) and 22 of Regulation (EU) 2016/679 to be interpreted as precluding national legislation under which the use of a probability value — *in casu*, in relation to a natural person's ability and willingness to pay, in the case where information about claims against that person is taken into account — regarding specific future behaviour of a natural person for the purpose of deciding on the establishment, implementation or termination of a contractual relationship with that person (scoring) is permissible only if certain further conditions, which are set out in more detail in the grounds of the request for a preliminary ruling, are met?

⁽¹⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).