

Pleas in law and main arguments

1. The General Court failed to raise ex officio the lack of an adequate statement of reasons.

The General Court erred in law by failing in its duty to raise ex officio a plea pertaining to the adequacy of the statement of reasons in the contested acts and thus to assess such point of law. The General Court concluded that ‘the teratogenic effect, and not the subacute toxicity by inhalation, is the decisive factor for the assessment of the unacceptable risks for human health posed by Pareva’s PHMB’ (paragraph 133) in spite of the fact that there is no reference to that factor in the statement of reasons pertaining to the contested acts. In accordance with the settled case law of the Court, the General Court had a duty to consider and conclude on whether the contested acts were vitiated by a failure of the Defendant to provide an adequate statement of reasons by reference to the alleged teratogenicity factor as required by Article 296 TFEU.

2. The General Court distorted the clear sense of the facts

The General Court distorted the clear sense of the facts by holding that the substance at issue is teratogenic and that the Appellant did not contest that the teratogenicity effect was the decisive human health factor in the adoption of the contested acts. That conclusion manifestly distorted the facts on record before the General Court and the statements made at the oral hearing, which consequently led to a distortion of the General Court’s assessment of the lawfulness of the contested acts.

Request for a preliminary ruling from the Győri Ítéltábla (Hungary) lodged on 23 November 2021 — MJ v AxFina Hungary Zrt.

(Case C-705/21)

(2022/C 64/30)

Language of the case: Hungarian

Referring court

Győri Ítéltábla

Parties to the main proceedings

Appellant: MJ

Respondent: AxFina Hungary Zrt.

Questions referred

1. Do Article 6(1) and Article 7(1) of Council Directive 93/13/EEC on unfair terms in consumer contracts preclude an interpretation of national law to the effect that the legal consequences of invalidity derived from an unfair term in a consumer contract, where the unfair term relates to the principal subject of the transaction and, as a result, the (loan) contract cannot continue to exist without the term considered to be unfair, are that, after it has declared that the contract as a whole is invalid — in other words, that the contract as a whole cannot ⁽¹⁾ continue in existence and cannot create binding legal effects for the consumer — the national court
 - (a) declares that the contract is valid and in so doing converts into Hungarian forints the account currency of the loan granted, which constitutes the main subject matter of the contract, and replaces that sum denominated in the account currency with the amount in forints that the consumer has effectively received from the lender, and at the same time calculates (replaces) the ordinary interest on the principal amount so determined in a different manner from the method that was used to calculate that interest in the contract declared invalid, such that the ‘initial’ interest rate at the time when the contract was concluded is equal to the value of the Budapest interbank lending rate in forints (BUBOR), used as a reference rate, which was in force at the time when the contract was concluded, plus the interest rate differential set in the original contract (denominated in foreign currency),
 - (b) declares that the contract is valid and in so doing sets a ceiling on the conversion rate between the foreign currency and the Hungarian forint, in other words, reduces the exchange rate risk actually assumed by the consumer as a result of the unfair term in the contract to a level which the court considers reasonable and which the consumer may have taken into consideration when the contract was concluded, leaving the interest rate set in the contract unchanged until the date of the mandatory conversion into forints stipulated by a subsequent law?

2. For the purposes of answering question 1, is it significant that the declaration of validity which is made under Hungarian law
- (a) is made in a factual situation in which a contract between the parties still exists, in other words, in which the continuation of the contract is intended to enable the legal relationship between the parties to continue to exist in the future by means of a retroactive correction of the terms considered to be unfair — while also recalculating, by means of the amended terms, the performance carried out up to that point — and thereby also protects the consumer from the particularly harmful effects of an obligation to repay the total amount immediately;
 - (b) or is made in a factual situation in which the contract between the parties to be examined in the proceedings relating to an unfair contract term no longer exists — because the contract has expired, because the creditor terminated the contract early on the ground of non-payment of instalments or on the ground that the amount paid is insufficient, or, in any event, because the real situation is that neither party considers the contract to be valid or because the issue of the invalidity of the contract can no longer be raised on account of a previous judicial decision — in other words, a situation in which the declaration of validity of the contract with retroactive effect does not serve to keep the contract in existence in the interests of the consumer but rather to enable the discharge of mutual obligations and the termination of the legal relationship by means of correction of the term(s) declared unfair?
3. In the event of an affirmative reply to question 1(a) or (b), and taking account also of the matters set out in question 2, do the relevant provisions of Directive 93/13/EEC preclude, in the factual situation described in question 2(a), the continued existence of the contract, effected through substitution of the unfair term, until the date of the amendment laid down by the legislature in the Law on conversion into forints, by means of national statutory provisions pursuant to which:
- unless otherwise provided (which is not the case in the present instance), monetary debts must be paid in the legal tender of the place of performance of the obligation;
 - interest is chargeable in contractual relationships, subject to the exception laid down by the provision;
 - the interest rate is to be equal to the central bank base rate, subject to the exception laid down in the provision.

(¹) OJ 1993 L 95, p. 29, Special edition in Hungarian Chapter 15 Volume 002 P. 288.

Request for a preliminary ruling from the Cour de cassation (France) lodged on 24 November 2021 — Recamier SA v BR

(Case C-707/21)

(2022/C 64/31)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant: Recamier SA

Respondent: BR

Questions referred

1. Is Article 33(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (⁽¹⁾ (Brussels I)) to be interpreted as meaning that the autonomous definition of *res judicata* covers all the conditions and effects of *res judicata* or that certain conditions and effects may be determined by the law of the court seised and/or the law of the court which gave the decision?
2. In the first scenario, are applications made before the courts of two Member States to be regarded, in the light of the autonomous definition of *res judicata*, as having the same cause of action where the applicant pleads identical facts but relies on different pleas in law?