

2. that a foreign student have the option of bringing an exceptional appeal, in conditions of extreme urgency, where he or she demonstrates that he or she has exercised all due diligence and that compliance with the time limits imposed in order to conduct an ordinary procedure (for suspension/annulment) could hamper the pursuit of the studies in question, in the context of which, concomitantly with the suspension, he or she may request that other interim measures be ordered to ensure the effectiveness of the right to obtain authorisation if he or she fulfils the general and specific conditions, as guaranteed in Article 5(3) of Directive 2016/80/EU?

If the answer to that question is in the negative, must the same negative answer be given where failure to adopt a decision in a short period of time risks causing the person concerned irretrievably to lose a year of study?

3. that the remedy in the form of an appeal against the decision refusing to grant the visa allow the court to substitute its own assessment for that of the administrative authority and to review the decision of that authority, or is it sufficient to have a review of legality which allows the court to censure any illegality, particularly a manifest error of assessment, by setting aside the administrative authority's decision?

(¹) The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings

Request for a preliminary ruling from the Sąd Okręgowy w Warszawie (Poland) lodged on 10 May 2023 — AJ v Bank BPH S.A.

(Case C-301/23, Bank BPH)

(2023/C 296/20)

Language of the case: Polish

Referring court

Sąd Okręgowy w Warszawie

Parties to the main proceedings

Applicant: AJ

Defendant: Bank BPH S.A.

Questions referred

1. Must Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, (¹) and the principle of effectiveness, be interpreted as precluding a judicial interpretation of national legislation pursuant to which a consumer may not effectively seek a declaration from a court that a contract concluded by him or her contains contractual terms which are not binding on him or her or that that contract is invalid in its entirety?
2. Are Articles 4(2) and 5 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts to be interpreted as meaning that the requirement that the contractual terms be drafted in plain, intelligible language is satisfied in relation to a credit agreement linked to a foreign currency exchange rate in the case where the bank has provided the borrower with:
 - a historical chart of the exchange rate of that foreign currency against the national currency showing that that exchange rate has changed by several dozen percentage points over several years, and
 - a simulation showing the effect of an increase of several dozen percentage points in the exchange rate of the foreign currency on the amount of the loan instalments?
3. Must Articles 4(2) and 5 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as meaning that the requirement that the contractual terms be drafted in plain, intelligible language should be analysed against the model of the average consumer, or should the individual situation and characteristics of the consumer at the time of the conclusion of the contract be taken into account, including, in particular, his or her knowledge, education and experience?

4. Must Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as meaning that a contractual term which provides that the margin applied by a bank is to be the arithmetic mean of the margins applied by several other specifically named commercial banks is contrary to the requirement of good faith and causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer?
5. Must Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and the principle of effectiveness, be interpreted as precluding a judicial interpretation of national legislation pursuant to which the national court may declare that the consumer is not bound only by the unfair element of the contractual term (providing for modification of the average rate of the National Bank of Poland by a spread margin), which does not constitute a separate contractual obligation, but that he or she is bound by the rest of that contractual term?
6. Must Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as meaning that the obligation on the national court to inform the consumer of the legal consequences which the declaration of invalidity of a contract may have covers only claims for restitution arising from the invalidity of the contract or as meaning that that obligation covers any hypothetical legal consequences (even if they are doubtful, debatable or unlikely) which may result from the invalidity of the contract?

(¹) OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Landgericht Duisburg (Germany) lodged on 17 May 2023 — YV v Mercedes-Benz Group AG
(Case C-308/23, Mercedes-Benz Group)

(2023/C 296/21)

Language of the case: German

Referring court

Landgericht Duisburg

Parties to the main proceedings

Applicant: YV

Defendant: Mercedes-Benz Group AG

Questions referred

1. Can an element of design in a vehicle which senses temperature, vehicle speed, engine speed (RPM), transmission gear, manifold vacuum or any other parameter for the purpose of modulating the parameters of the combustion process in the engine depending on the result of the sensing operation reduce the effectiveness of the emission control system within the meaning of Article 3(10) of Regulation No 715/2007 (¹) and thus constitute a defeat device within the meaning of Article 3(10) of Regulation No 715/2007 even where the modulation of the parameters of the combustion process effected by the element of design based on the result of the sensing operation increases emissions of a certain harmful substance, such as nitrogen oxide, while at the same reducing emissions of one or more other harmful substances, such as particulates, hydrocarbons, carbon monoxide and/or carbon dioxide?
2. If Question 1 is to be answered in the affirmative: Under what conditions does the element of design constitute a defeat device in such a case?