

- the articles ‘internal account in euros’ and ‘internal account in Swiss francs’ describe the transactions carried out in each payment period to the credit and the debit of each account, and the contract explains in transparent terms the actual functioning of the foreign currency conversion mechanism in transparent terms; and although there is no express reference in the offer to the ‘exchange risk’ which is borne by the borrower since he does not receive income in the account currency, or any explicit reference to the ‘interest rate risk’?
5. If the answer to the fourth question is in the affirmative, does Directive 93/13, interpreted in the light of the principle of effectiveness of Community law, preclude national case-law according to which a term or set of terms, such as those at issue in the main proceedings, are ‘plain [and] intelligible’ for the purposes of the directive, when in addition to the elements referred to in the fourth question there is only a simulation of a reduction of 5.37% of the payment currency by reference to the account currency, in an agreement having an initial duration of 25 years, without any reference to terms such as ‘risk’ or ‘difficulty’?
 6. Is the burden of proving the ‘plain [and] intelligible’ nature of a term for the purposes of Directive 93/13 borne, including in respect of the circumstances attending the conclusion of the contract, by the professional party or by the consumer?
 7. If the burden of proving the plain and intelligible nature of the term is borne by the professional party, does Directive 93/13 preclude national case-law in which it was held that, in the presence of documents relating to sales techniques, it is for the borrowers to prove, first, that they were the addressees of the information contained in those documents and, second, that it was the bank that communicated that information to them, or, conversely, does it require that that evidence constitutes a presumption that the information contained in those documents was transmitted, including orally, to borrowers, a rebuttable presumption that it is for the professional party, which must assume responsibility for the information communicated by the intermediaries which it has chosen, to rebut?
 8. May the existence of a significant imbalance be characterised in an agreement such as that at issue in the main proceedings in which both parties bear an exchange risk, when, first, the professional party has greater means than the consumer to foresee the exchange risk and when, second, the risk borne by the professional party is subject to an upper limit while that borne by the consumer is not?

(¹) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Tribunal de grande instance de Paris (France) lodged on 22 October 2019 — AV v BNP Paribas Personal Finance SA, Procureur de la République

(Case C-779/19)

(2020/C 19/27)

Language of the case: French

Referring court

Tribunal de grande instance de Paris

Parties to the main proceedings

Applicant: AV

Defendants: BNP Paribas Personal Finance SA, Procureur de la République

Questions referred

1. Does Directive 93/13, ⁽¹⁾ interpreted in the light of the principle of effectiveness, preclude, in a case such as that in the main proceedings, the application of limitation rules, in the following cases: (a) for a declaration that a term is unfair; (b) for any restitutions; (c) where the consumer is the applicant; and (d) where the consumer is the defendant, including to a counter-claim?
2. If the answer to the first question is wholly or partly negative, does Directive 93/13, interpreted in the light of the principle of effectiveness, preclude, in a case such as that at issue in the main proceedings, the application of national case-law which fixes the starting-point of the limitation period at the date of acceptance of the loan offer, rather than at the date on which serious financial difficulties arise?
3. Do terms such as those at issue in the main proceedings, which provide in particular that the Swiss franc is the account currency and the euro the settlement currency, and have the effect that the exchange risk is borne by the borrower, come within the main subject matter of the agreement within the meaning of Article 4(2) of Directive 93/13, where there is no dispute as to the amount of the exchange charges and where there are terms providing for the possibility for the borrower, on fixed dates, to exercise an option to convert the loan into euros according to a predetermined formula?
4. Does Directive 93/13, interpreted in the light of the principle of effectivity of Community law, preclude national case-law in which a term or set of terms, such as those at issue in the main proceedings, are considered to be 'plain [and] intelligible' for the purposes of the directive, on the grounds that:
 - the preliminary loan offer sets out in detail the exchange transactions carried out during the life of the credit and makes clear that the euro/Swiss franc exchange rate will be that applicable two working days before the date of the event that determines the transaction and which is published on the website of the European Central Bank;
 - it is stated in the offer that the borrower agrees to the Swiss franc/euro and euro/Swiss franc exchange transactions necessary for the transaction and repayment of the credit, and that the lender will convert the balance of the monthly payments after payment of the charges associated with the credit into Swiss francs;
 - the offer states that, if the exchange transaction results in a sum lower than the amount payable in Swiss francs, the amortisation of the capital will be less rapid and any unpaid capital in respect of a repayment period will be entered on the debit side of the account in Swiss francs, and that it is made clear that the amortisation of the capital of the loan will change according to upwards or downwards variations in the exchange rate applied to the monthly payments that that change may result in the extension or reduction of the loan amortisation period and, where appropriate, alter the total repayment cost;
 - the articles 'internal account in euros' and 'internal account in Swiss francs' describe the transactions carried out in each payment period to the credit and the debit of each account, and the contract explains in transparent terms the actual functioning of the foreign currency conversion mechanism in transparent terms; and although there is no express reference in the offer to the 'exchange risk' which is borne by the borrower since he does not receive income in the account currency, or any explicit reference to the 'interest rate risk'?
5. If the answer to the fourth question is in the affirmative, does Directive 93/13, interpreted in the light of the principle of effectiveness of Community law, preclude national case-law according to which a term or set of terms, such as those at issue in the main proceedings, are 'plain [and] intelligible' for the purposes of the directive, when in addition to the elements referred to in the fourth question there is only a simulation of a reduction of 5.37% of the payment currency by reference to the account currency, in an agreement having an initial duration of 25 years, without any reference to terms such as 'risk' or 'difficulty'?
6. Is the burden of proving the 'plain [and] intelligible' nature of a term for the purposes of Directive 93/13 borne, including in respect of the circumstances attending the conclusion of the contract, by the professional party or by the consumer?

7. If the burden of proving the plain and intelligible nature of the term is borne by the professional party, does Directive 93/13 preclude national case-law in which it was held that, in the presence of documents relating to sales techniques, it is for the borrowers to prove, first, that they were the addressees of the information contained in those documents and, second, that it was the bank that communicated that information to them, or, conversely, does it require that that evidence constitutes a presumption that the information contained in those documents was transmitted, including orally, to borrowers, a rebuttable presumption that it is for the professional party, which must assume responsibility for the information communicated by the intermediaries which it has chosen, to rebut?
8. May the existence of a significant imbalance be characterised in an agreement such as that at issue in the main proceedings in which both parties bear an exchange risk, when, first, the professional party has greater means than the consumer to foresee the exchange risk and when, second, the risk borne by the professional party is subject to an upper limit while that borne by the consumer is not?

(¹) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Tribunal de grande instance de Paris (France) lodged on 22 October 2019 — BW, CX v BNP Paribas Personal Finance SA, Procureur de la République

(Case C-780/19)

(2020/C 19/28)

Language of the case: French

Referring court

Tribunal de grande instance de Paris

Parties to the main proceedings

Applicants: BW, CX

Defendants: BNP Paribas Personal Finance SA, Procureur de la République

Questions referred

1. Does Directive 93/13, (¹) interpreted in the light of the principle of effectiveness, preclude, in a case such as that in the main proceedings, the application of limitation rules, in the following cases: (a) for a declaration that a term is unfair; (b) for any restitutions; (c) where the consumer is the applicant; and (d) where the consumer is the defendant, including to a counter-claim?
2. If the answer to the first question is wholly or partly negative, does Directive 93/13, interpreted in the light of the principle of effectiveness, preclude, in a case such as that at issue in the main proceedings, the application of national case-law which fixes the starting-point of the limitation period at the date of acceptance of the loan offer, rather than at the date on which serious financial difficulties arise?
3. Do terms such as those at issue in the main proceedings, which provide in particular that the Swiss franc is the account currency and the euro the settlement currency, and have the effect that the exchange risk is borne by the borrower, come within the main subject matter of the agreement within the meaning of Article 4(2) of Directive 93/13, where there is no dispute as to the amount of the exchange charges and where there are terms providing for the possibility for the borrower, on fixed dates, to exercise an option to convert the loan into euros according to a predetermined formula?