Questions referred

1. In terms of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, ([1]) in particular Articles 6(1) and 7(1) of the directive, is the following ruling compliant with EU law in order to ensure protection for consumers and users and compliance with the relevant Community case-law: the ruling by the Supreme Court in judgments 44 to 49 of 23 January 2019, which establishes the unambiguous criterion that a term in a consumer mortgage loan agreement that has not been negotiated and that stipulates that all the costs of arranging the mortgage are to be borne by the borrower is unfair, and which apportions the various expenses that are involved in the unfair term found to be void between the bank that imposed the term and the borrower, in order to limit repayments of amounts wrongly paid under national legislation?

   And, in terms of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, in particular Articles 6(1) and 7(1) of the directive, in order to ensure protection for consumers and users and compliance with the relevant Community case-law, is it compliant with EU law for the Supreme Court to adopt an inclusive interpretation of a term that is void for unfairness if the term can be severed and its effects abolished without affecting the continued existence of the mortgage loan agreement?

2. Also, as regards Article 394 of the Ley de Enjuiciamiento Civil (Law on Civil Procedure), which establishes the principle that the costs of proceedings are to be borne by the unsuccessful party, can it be held that where an unfair expenses clause is declared void but the effects of voiding the term are limited to apportioning the expenses in question, it is contrary to the EU legal principles of effectiveness and the non-binding nature of unfair terms to conclude that a claim has been upheld in part, and could such a conclusion be interpreted as producing an inverse deterrent effect, which thus fails to protect the legitimate interests of consumers and users?

([1]) OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 26 June 2020 — Ferimet S.L. v Administración General del Estado

(Case C-281/20)

(2020/C 320/12)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Ferimet S.L.

Defendant: Administración General del Estado

Questions referred

1. Must Article 168 and related provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, ([1]) the principle of tax neutrality arising from that directive, and the associated case-law of the Court of Justice be interpreted as not allowing a trader to deduct input VAT where, under the reverse charging of VAT, known in EU law as the reverse charge procedure, the documentary evidence (invoice) issued by that trader for the goods he or she has purchased states a fictitious supplier, although it is not disputed that the trader in question did actually make the purchase and used the purchased materials in the course of his or her trade or business?

2. In the event that a practice such as that described above — of which the interested party must have been aware — can be characterised as abusive or fraudulent for the purposes of refusing the deduction of input VAT, is it necessary, in order for the deduction to be refused, to prove in full the existence of a tax advantage that is incompatible with the guiding objectives of 'VAT regulation?'

3. Lastly, if such proof is required, must the tax advantage which would be grounds for refusing the deduction and which must be identified in the specific case in question relate exclusively to the taxpayer (who purchased the goods), or could that advantage be one which relates to other parties involved in the transaction?

(1) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Audiencia Nacional (Spain) lodged on 1 July 2020 — GE Auto Service Leasing GMBH v Tribunal Económico Administrativo Central

(Case C-294/20)

(2020/C 320/13)

Language of the case: Spanish

Referring court

Audiencia Nacional

Parties to the main proceedings

Applicant: GE Auto Service Leasing GMBH

Defendant: Tribunal Económico Administrativo Central

Questions referred

1. Must it be accepted as lawful for a taxable person, following repeated requests from the tax authority that it establish compliance with the conditions for entitlement to a refund, to fail to comply with those requests without any reasonable justification and, after it has been refused a refund, for that person to defer the submission of documents until the review procedure or legal action?

2. Can a situation where a taxable person does not provide the tax authority with the necessary information on which it bases its right when it has been permitted and formally required to do so, and that taxable person fails to provide that information without reasonable justification and the information is instead submitted voluntarily at a later date to a review body or a court, be regarded as an abuse of rights?

3. Does a non-established taxable person, either on the ground that it failed to submit the relevant information for establishing its right to a refund on time and without reasonable justification, or on the ground that it engaged in abusive practices, lose its right to a refund once the period stipulated or granted for that purpose has elapsed and the tax authority has issued a decision refusing the refund?

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 28 July 2020 — UW v Ryanair DAC

(Case C-346/20)

(2020/C 320/14)

Language of the case: German

Referring court

Amtsgericht Hamburg