



## Reports of Cases

### JUDGMENT OF THE COURT (Third Chamber)

1 October 2015\*

(Reference for a preliminary ruling — Directive 93/13/EEC — Unfair terms in consumer contracts concluded between a seller or supplier and a consumer — Mortgage loan agreement — Article 7(1) — Stopping the use of unfair terms — Adequate and effective means — Acknowledgement of the debt — Notarised instrument — Affixation of the enforcement clause by a notary — Enforceable order — Notary's obligations — Examination by the national court of its own motion of unfair terms — Judicial review — Principles of equivalence and effectiveness)

In Case C-32/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Törvényszék (Hungary), made by decision of 13 December 2013, received at the Court on 23 January 2014, in the proceedings

**ERSTE Bank Hungary Zrt.**

v

**Attila Sugár,**

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh, C. Toader (Rapporteur), E. Jarašiūnas, and C.G. Fernlund, Judges,

Advocate General: P. Cruz Villalón,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 5 February 2015,

after considering the observations submitted on behalf of:

- ERSTE Bank Hungary Zrt., by L. Wallacher, ügyvéd,
- the Hungarian Government, by M.Z. Fehér and G. Szima, acting as Agents,
- the German Government, by T. Henze and D. Kuon, acting as Agents,
- the European Commission, by K. Talabér-Ritz and M. van Beek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 June 2015,

\* Language of the case: Hungarian.

gives the following

### **Judgment**

- 1 The request for a preliminary ruling concerns the interpretation of Article 7 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).
- 2 The reference has been made in proceedings between ERSTE Bank Hungary Zrt. ('ERSTE Bank') and Mr Sugár concerning an application by the latter to have set aside the enforcement clause affixed by a notarial act to the acknowledgement of the debt signed by Mr Sugár on the basis of a loan agreement and a mortgage guarantee contract concluded by the parties.

### **Legal context**

#### *EU law*

- 3 According to Article 1(1) of Directive 93/13:

'The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in contracts concluded between a seller or supplier and a consumer.'

- 4 Article 6(1) of Directive 93/13 provides:

'Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.'

- 5 Article 7(1) and (2) of that directive provides:

'1. Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.

2. The means referred to in paragraph 1 shall include provisions whereby persons or organisations, having a legitimate interest under national law in protecting consumers, may take action according to the national law concerned before the courts or before competent administrative bodies for a decision as to whether contractual terms drawn up for general use are unfair, so that they can apply appropriate and effective means to prevent the continued use of such terms.'

### *Hungarian law*

#### The Civil Code

- 6 Paragraph 200 of Law No IV of 1959 establishing the Civil Code (a Polgári Törvénykönyvről szóló 1959. évi IV. törvény) ('the Civil Code'), in the version in force on the date on which the contract at issue in the main proceedings was concluded, provides:

'1. The parties to a contract may determine the content of their contract freely. They may waive by mutual consent the provisions relating to contracts where such waiver is not prohibited by law.

2. Contracts which breach legal provisions and contracts concluded by evading a legal provision shall be void, save where a different legal consequence is provided for by law. A contract shall also be void if it is manifestly in breach of accepted principles of good custom and practice.'

- 7 Under Paragraph 209(1) of the Civil Code:

'Standard contract terms and terms in a consumer contract which have not been individually negotiated are to be regarded as unfair if, contrary to the requirements of good faith, they establish the parties' rights and obligations arising under the contract unilaterally and unjustifiably, to the detriment of the contracting party which did not stipulate those terms.'

- 8 Under Paragraph 209/A(1), unfair terms may be challenged by the injured party.
- 9 According to Paragraph 209/A(2), unfair terms which appear in consumer contracts as standard contract terms, or which the seller or supplier has drafted unilaterally and without individual negotiation, shall be void. Nullity may be invoked only in favour of the consumer.

#### The Civil Procedure Code

- 10 Under Paragraph 163 of Law No III of 1952 establishing the Civil Procedure Code (a polgári perrendtartásról szóló 1952. évi III. törvény; 'the Civil Procedure Code'), the court may determine the facts which it considers to be common knowledge. The same is true for facts about which the court has direct knowledge. The court may also take account of factual evidence even if it has not been submitted by the parties, but the court is required to inform the parties of that evidence at the hearing.
- 11 Under Paragraph 366 of the Civil Procedure Code, where the termination or limitation of enforcement is not permitted within the framework of judicial enforcement proceedings, in accordance with Paragraph 41 or 56 of Law LIII of 1994 on Judicial Enforcement (a bírósági végrehajtásról szóló 1994. évi LIII. törvény), a debtor who is prejudiced by the enforcement may bring an action for the termination or limitation of enforcement against the applicant for enforcement.
- 12 Paragraph 369 of the Code of Civil Procedure provides:

'An action may be brought for the termination or limitation of enforcement initiated by a document with an enforcement clause or by an enforcement order that is treated as equivalent if:

(a) the claim to be enforced did not arise validly;

...'

- 13 According to Paragraph 370 of that code, the court hearing the action for termination or limitation of enforcement may grant a stay of enforcement.

The Law on judicial enforcement

- 14 Under Paragraph 13(1) of the Law on judicial enforcement:

‘(1) The enforcement order may be issued if the decision to be enforced if it:

- (a) contains a claim (sum of money),
- (b) is final or is enforceable provisionally, and
- (c) the time limit for compliance has expired. ...’

- 15 Paragraph 23/C of that law governs the procedure by which the notary is to affix an enforcement clause to a notarial document he drafted himself. According to Paragraph 23/C(1), the notary drawing up the document shall affix an enforcement clause on a notarial document, if it contains:

- an undertaking of an obligation to provide a service for consideration or a unilateral undertaking;
- the names of the creditor and the debtor;
- the subject matter, quantity (amount) and legal basis for the obligation;
- the manner of and time-limit for compliance.

- 16 Paragraph 23/C(2) and (5) of the Law on judicial enforcement provides

‘2. If an obligation is subject to fulfilment of a condition or a time limit, enforceability of the obligation shall require that compliance with such condition or time limit also be attested by an authentic instrument.

...

5. Enforcement may be effected pursuant to this Paragraph if the claim contained in a notarial document is subject to judicial enforcement, and if the time limit for satisfaction of the claim has already expired. ...’

- 17 Paragraph 31/E(2) of that law provides that the procedures conducted by notaries, as non-contentious civil procedures, are to have the same effect as court proceedings. Decisions adopted by notaries are to have the same effect as local court decisions.

- 18 Paragraph 56(1) of the Law on judicial enforcement provides that, by order, the court ordering the enforcement must exclude or, where appropriate, limit the enforcement if it finds, on the basis of authentic instruments, that the enforcement decision has been derogated from or amended by a final decision, or if a final decision has pronounced that the claim for which enforcement is sought, evidenced by an instrument to which an enforcement clause has been affixed, did not arise validly.

- 19 In accordance with Paragraph 211(2) of that law, if the court has endorsed a document with an enforcement clause in breach of the law, that enforcement clause must be cancelled.

20 Paragraph 212 of that law provides :

‘(1) The court which ordered enforcement may revoke the enforcement order or cancel the enforcement clause at any time by order on application by either party or on the basis of a report by the enforcement officer tasked with enforcement or of its own motion.

(2) Such order shall be served on the parties, who may appeal against the order.’

21 Paragraph 224/A of the Law on judicial enforcement provides:

‘Where it is for the notary to order the enforcement, the present provisions shall be applied by adapting them as follows:

(a) “court ordering the enforcement” shall mean the notary; “decision issue by the court ordering the enforcement” shall mean the decision adopted by the notary;

...’

The Law on notaries

22 Paragraph 1(1)(2) and (4) of Law No XLI of 1991 on notaries (a közjegyzőkről szóló 1991. évi XLI. Tv) (‘the Law on Notaries’) defines the powers of notaries as follows:

‘(1) The law confers the status of public official on notaries so that they may provide parties with impartial legal services in order to prevent litigation.

(2) The notary shall issue authentic instruments concerning legal transactions and legally relevant acts, hold documents for safe keeping, receive on behalf of parties money, valuables and securities in order to transfer them to those entitled, and in connection with procedures falling within his remit, ensure equality of treatment for the parties, brief the parties to assist them in the exercise of their rights and performance of their obligations.

...

(4) The notary shall carry out tasks in the administration of justice in the exercise of the State’s activity of dispensing justice, within the framework of the powers conferred on him by law.’

23 Paragraph 3(1) and (2) of that law provide:

‘(1) The notary is required to refuse his services where it is incompatible with his obligations, in particular where his services are requested in respect of a legal transaction which is unlawful, or which is intended to circumvent the law, or the purpose of which is prohibited or in abuse of the law.

(2) If, during the procedure, the notary finds evidence which gives rise to doubts, without it being necessary to refuse his services, he is required to bring that evidence to the attention of the parties and to make a written record of it. If the party raises an objection to that evidence, the notary shall refuse his services.’

24 Paragraph 112(1) of that law is drafted in identical terms to Paragraph 23/C of the Law on judicial enforcement, as regards the information which must be set out in an authentic instrument in order for the enforcement clause to be affixed.

### **Facts in the main proceedings and the questions referred for a preliminary ruling**

- 25 On 18 December 2007, by authentic instrument, ERSTE Bank and Mr Sugár concluded a loan agreement for CHF 30 687 to finance the purchase of immoveable property. The contract is guaranteed by a mortgage on the property.
- 26 On 19 December 2007, on the basis of the loan contract, Mr Sugár signed an acknowledgement of debt, drawn up as a notarised document in favour of ERSTE Bank. The case-file states that, if Mr Sugár fails to fulfil his contractual obligations, that document confers on ERSTE Bank the right to terminate the loan agreement and to recover the debt arising under that contract on the basis of a statement that the debt is payable drawn up by ERSTE Bank itself indicating the amount of the debt.
- 27 Since Mr Sugár defaulted on the payments, ERSTE Bank terminated the loan agreement and requested the affixation of the enforcement clause on the acknowledgement of debt. On 13 December 2011, taking the view that the legal requirements had been met, the notary affixed the enforcement clause to that instrument, which had the consequence of making it enforceable and, thereby, conferring on it a character similar to that of a judicial decision.
- 28 On 5 June 2013, Mr Sugár requested the notary to cancel the enforcement clause affixed to the authentic instrument containing the acknowledgement of debt relating to the loan agreement concluded with ERSTE Bank, arguing in particular, that that agreement contained unfair terms. In addition, Mr Sugár challenged the legality of the declaration terminating the agreement and claimed that the enforcement clause ordered enforcement of obligations which did not arise from the acknowledgement of debt. He also stated that he had lodged an application to exclude enforcement and an action for annulment.
- 29 By decision of 13 June 2013, the notary rejected the application to cancel the enforcement clause, on the ground that it was not vitiated by any irregularity, since the authentic instrument concerned contained an acknowledgment of debt, the name of the creditor and that of the debtor, the legal basis of the claim and the amount of the debt, its method of enforcement and the period prescribed for that purpose. Furthermore, he found that the instrument stated that the claim depended on the fulfilment of a condition and the date on which it had occurred. The notary also pointed out that, since notarial proceedings are non-contentious, he had only limited discretion concerning the evidence and that he was not able to give a decision on a dispute between the parties concerning the lawfulness of the termination of the contract or its terms, since that falls within the exclusive jurisdiction of the courts.
- 30 Mr Sugár brought an action before the Fővárosi Törvényszék (Budapest Municipal Court) to have the notary's decision set aside and for the cancellation of the enforcement clause. In support of that action, he argues in particular that the acknowledgement of debt concerned contains unfair contract terms and incorrect information, that the amount of the debt is established in a foreign currency, while the loan was granted in forints and was determined solely on the basis of ERSTE Bank's internal database. He takes the view that affixing the enforcement clause is an abuse of rights, since the party applying for enforcement presents a unilateral instrument, the validity of which may be examined only in adversarial proceedings.
- 31 The referring court states that, according to the Law on judicial enforcement, the notary is to affix the enforcement clause, which thereby becomes an enforceable order. However, during the procedure for affixing the enforcement clause the notary is merely to verify that the instrument to be enforced complies with the formal and substantive requirements, without being able to examine the possible unfairness of the terms in the loan agreement which serve as a basis for that instrument. It is only in appeal proceedings to exclude or limit enforcement that a consumer may rely on the unfairness of the contractual terms, which, according to the referring court, may be contrary to the objectives pursued by Directive 93/13.

32 In those circumstances, the Fővárosi Törvényszék decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- ‘(1) Does a procedure of a Member State comply with Article 7(1) of Directive 93/13 if, under that procedure, in the event of a breach by the consumer of an obligation contained in a document in due form drawn up by a notary, the other party to the contract avoids *inter partes* proceedings before a court and asserts its claim to the amount it indicates by issuing what is known as an enforcement clause, without any examination being possible of the unfairness of a term of the underlying contract?
- (2) In such a procedure may the consumer request the cancellation of the enforcement clause already issued on the basis that there was no examination of the unfairness of a term of the underlying contract, whereas, according to the judgment in Case C-472/11, in court proceedings the court must inform the consumer if it finds that a term is unfair?’

### **Consideration of the questions referred for a preliminary ruling**

- 33 By its questions, which it is appropriate to examine together, the referring court asks essentially whether Article 7(1) of Directive 93/13 must be interpreted as meaning that it precludes national legislation, such as that at issue in the main proceedings, which enables a notary who has drafted, in due form, an authentic instrument concerning a contract concluded between a seller or supplier and a consumer, to affix the enforcement clause to that instrument or to refuse to cancel it although there has been no review of the unfairness of the terms of that contract at any stage.
- 34 The order for reference states that those questions are related to the existence in national law of a procedure according to which the notary, at the creditor’s request, may affix an enforcement clause on the authentic instrument containing the debtor’s obligation, without carrying out an examination of the validity of that instrument, subject to compliance with a limited set of formal requirements relating to the content of that instrument, such as those laid down in Paragraph 23/C of the Law on judicial enforcement. Thus, under that paragraph, the instrument must indicate the undertaking to provide a service and the consideration, the names of the creditor and the debtor, the subject-matter, its amount and legal basis, and lastly, the means of enforcement and the time-limit.
- 35 In the present case, in the dispute in the main proceedings, the enforcement order consists in a notarised declaration acknowledging the debt signed by Mr Sugár, following the conclusion of a mortgage loan agreement between him and ERSTE Bank.
- 36 The affixing of the enforcement clause on that instrument, on the basis of information provided exclusively by the creditor, in fact enables the creditor to obtain, in the absence of any contentious proceedings before a judge, the enforcement of the contract. Pursuant to Article 31/E(2) of the Law on judicial enforcement, a notarised document containing the enforcement clause produces the same effect as a judgment of a local court.
- 37 The documents before the Court also state that, under Paragraphs 211(2) and 224/A of the Law on judicial enforcement, the notary may cancel an enforcement clause affixed ‘in breach of the law’. However, as the Hungarian Government has pointed out in its written submissions, that procedure does not concern the validity of contractual terms, but only the review of the lawfulness of the affixation of the enforcement clause.
- 38 Thus it follows that, under national law, a review by the notary of the validity of the terms of the agreement is not possible in the procedure for affixing the enforcement clause or in the procedure for cancelling it.

- 39 In order to determine whether such legislation is compatible with the requirements of Directive 93/13, it should be recalled that, the system of protection established by that directive is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier as regards both his bargaining power and his level of knowledge, which leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of those terms (see, *inter alia*, judgment in *Kušionová*, C-34/13, EU:C:2014:2189, paragraph 48 and the case-law cited).
- 40 As regards such a weaker position, Article 6(1) of Directive 93/13 provides that unfair terms are not to be binding on the consumer. That is a mandatory provision which aims to replace the formal balance which the contract establishes between the rights and obligations of the parties with an effective balance which re-establishes equality between them (see judgment in *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraph 23 and the case-law cited).
- 41 In that context, the Court has stated on several occasions that the national court is required to assess of its own motion whether a contractual term falling within the scope of the directive is unfair, compensating in this way for the imbalance which exists between the consumer and the seller or supplier, where it has available to it the legal and factual elements necessary for that task (see, *inter alia*, judgments in *Aziz*, C-415/11, EU:C:2013:164, paragraph 46; *Barclays Bank*, C-280/13, EU:C:2014:279, paragraph 34; and *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraph 24).
- 42 The Court has also held that Articles 6(1) and 7(1) of Directive 93/13 must be interpreted as meaning that the national court which has found of its own motion that a contractual term is unfair is not obliged, in order to be able to draw the consequences arising from that finding, to wait for the consumer, who has been informed of his rights, to submit a statement to that effect, provided always that the principle of *audi alteram partem* has been complied with (see, to that effect, judgment in *Banif Plus Bank*, C-472/11, EU:C:2013:88 paragraph 36).
- 43 Furthermore, the Court has held that the directive precludes legislation of a Member State which does not allow the court before which an application for an order for payment has been brought to assess of its own motion, in *limine litis* or at any other stage during the proceedings, even though it already has the legal and factual elements necessary in that regard, whether a term concerning interest on a late payment contained in a contract concluded between a seller or supplier or consumer is unfair where that consumer has not lodged an objection (judgment in *Banco Español de Crédito*, C-618/10, EU:C:2012:349, paragraph 57).
- 44 In its case-law, the Court has also held that the legislation of a Member State does not comply with Directive 93/13 where, while not providing in mortgage enforcement proceedings for grounds of objection based on the unfairness of a contractual term on which the right to seek enforcement is based, did not permit the court before which declaratory proceedings had been brought, which had jurisdiction to assess the unfairness of such a term, to grant interim relief, including, in particular, the staying of those enforcement proceedings, (see, to that effect, judgments in *Aziz*, C-415/11, EU:C:2013:164, paragraph 64, and *Barclays Bank*, C-280/13, EU:C:2014:279, paragraph 36).
- 45 Finally, the Court has ruled as being contrary to Directive 93/13, national legislation which does not allow the court responsible for the enforcement, in mortgage enforcement proceedings, either to assess of its own motion or at the consumer's request, the unfairness of a term contained in the contract which gives rise to the debt claimed and which constitutes the basis of the right to enforcement, or to grant interim relief capable of staying or terminating the mortgage enforcement proceedings, where such relief is necessary to ensure the full effectiveness of the final decision of the court hearing the declaratory proceedings before which the consumer argues that that term is unfair (see order in *Banco Popular Español and Banco de Valencia*, C-537/12 and C-116/13, EU:C:2013:759, paragraph 60, and judgment in *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraph 28).

- 46 As regards the simplified notarial enforcement procedure at issue in the main proceedings, the European Commission has argued that the possibility for a notary to initiate the enforcement of a contract, without examining in the procedure for affixing the enforcement clause or that for its cancellation, the unfairness of the various clauses, may infringe Directive 93/13, as interpreted by the case-law cited in the preceding paragraphs and, in particular, by the judgments in *Banco Español de Crédito* (C-618/10, EU:C:2012:349) and *Banif Plus Bank* (C-472/11, EU:C:2013:88), the latter also being mentioned by the referring court in its second question. The Commission submits that since the notarial procedure has effects similar to those of court proceedings, the notary should therefore also be able to determine of his own motion the unfairness of the contractual terms where he has available to him all the elements of law and fact necessary for that purpose.
- 47 However, as the Advocate General stated, in particular in paragraphs 65 to 67 and 72 of his Opinion, it must be held that that case-law falls within the specific framework of the exercise of the judicial function and that, having regard to the fundamental differences between it and the notarial function, cannot be transposed to the latter.
- 48 Furthermore, it must be pointed out that Directive 93/13 does not contain any provision concerning the role which may or must be devolved to notaries concerning the review of unfair contract terms. Thus, that directive does not regulate the issue of whether, in circumstances in which national legislation attributes notaries with the power to affix the enforcement clause to an authentic instrument concerning a contract, and subsequently to cancel it when it has expired, the authority should be extended to notaries to exercise powers which fall directly within the scope of the judicial function.
- 49 It follows that, in the absence of harmonisation of national mechanisms for enforcement under EU law, and the role assigned to notaries within it, it is for the national legal order of each Member State to establish such rules, in accordance with the principles of procedural autonomy, provided, however, that those rules are not less favourable than those governing similar domestic law (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness) (see, to that effect, judgments in *Aziz*, C-415/11, EU:C:2013:164, paragraph 50; *Pohotovost'*, C-470/12, EU:C:2014:101, paragraph 46; and *Kušinová*, C-34/13, EU:C:2014:2189, paragraph 50).
- 50 As regards the principle of equivalence, the Court does not have before it any evidence which might raise doubts as to the compliance of the legislation at issue in the main proceedings with that principle.
- 51 As far as concerns the principle of effectiveness, the Court has already held that every case in which the question arises as to whether a national procedural provision makes the application of EU law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national bodies. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (see, in particular, judgment in *Pohotovost'*, C-470/12, EU:C:2014:101, paragraph 51 and the case-law cited).
- 52 Therefore, it must be established whether, in a situation such as that at issue in the main proceedings, the relevant national provisions, analysed in their context by taking account of all the existing remedies, are able to guarantee that adequate and effective means exist to stop the use of unfair terms in consumer contracts and that such terms are not binding on them, as provided for by Articles 6(1) and 7(1) of Directive 93/13.

- 53 In that regard, the Hungarian Government essentially argues that the simplified enforcement procedure at issue in the main proceedings does not exclude any review of unfair terms, whether by notaries themselves or by the national courts.
- 54 It must be stated that, taking account of the particular confidence that, as a general rule, consumers place in notaries, in their capacity as impartial advisors, and the fact that documents drafted by them are not vitiated by illegality, there is a substantial risk that consumers will be less vigilant when those documents are drafted regarding the existence of unfair terms and the consequences of a simplified notarial enforcement procedure, such as that at issue in the main proceedings. Furthermore, where such a procedure has been initiated by the seller or supplier, the consumer may not have, without the intervention of a notary, all the relevant information enabling him to defend himself before the national courts in the context of that procedure.
- 55 As regards the legislation at issue in the main proceedings, it should be pointed out that, in accordance with Paragraph 1 of the Law on notaries, the latter are required, in particular, to brief the parties in procedures falling within their remit, to assist them in the exercise of their rights and fulfilment of their obligations in order to prevent any litigation.
- 56 In addition, under Article 3(1) and (2) of that law, the notary is required to verify the conformity with the law and the unfairness of a legal transaction and to inform the parties in writing if he finds information which gives rise to doubts.
- 57 It follows from that, in the Hungarian procedural system, particularly at the stage of drafting an authentic instrument concerning a contract concluded between a seller or supplier and a consumer, the notary appears to be authorised to play a preventive role with respect to unfair terms in that contract and that he is, also, explicitly called on to ensure by his advice equal treatment in all the proceedings falling within his competence, including that of enforcement.
- 58 It follows from the foregoing that the general provisions of the Law on notaries appear, in principle, subject to verifications to be made by the referring court, to be such as to contribute to compliance with the requirements laid down in Articles 6(1) and 7(1) of Directive 93/13.
- 59 It should be noted, as the Advocate General stated in paragraph 84 of his Opinion, that adequate and effective means to stop the use of unfair terms in consumer contracts must include provisions enabling the latter to be guaranteed effective judicial protection by making it possible for them to bring legal proceedings against the disputed contract including in the enforcement phase and under reasonable procedural conditions so that the exercise of their rights is not subject to conditions, in particular time-limits or costs which make it excessively difficult or impossible to exercise the rights guaranteed by Directive 93/13. It is in the context of those judicial procedures, that the case-law of the Court, cited in paragraphs 41 to 45 of the present judgment, must be applied in full.
- 60 In the present case, it is clear from the order for reference that Mr Sugár may both bring an action under Article 209/A(1) of the Civil Code challenging the validity of the contract and may initiate proceedings under Article 369 of the Civil Procedure Code to exclude or limit the enforcement. In the latter procedure the consumer may, under Paragraph 370 of the Civil Procedure Code, request the suspension of the enforcement of the contract at issue in the main proceedings.
- 61 Moreover, it is clear from the information provided to the Court, in particular by the Hungarian Government, that it is for the referring court to verify whether, notwithstanding the wording of Paragraphs 369 and 370 of the Civil Procedure Code, the national courts may and must, in the context of those procedures, examine the unfairness of contractual terms and, in accordance with Paragraph 163 thereof and in compliance with the case-law of the Kúria (Supreme Court), raise of its own motion cases involving manifest ground for invalidity which may be established on the basis of the available evidence.

- 62 Although Directive 93/13 requires that the national court hearing disputes between consumers and sellers or suppliers take positive action unconnected with the parties to the contract (judgments in *Asbeek Brusse and de Man Garabito*, C-488/11, EU:C:2013:341, paragraph 39 and the case-law cited, and *Pohotovost*, C-470/12, EU:C:2014:101, paragraph 40 and the case-law cited), the need to comply with the principle of effectiveness cannot be stretched so far as to make up fully for the total inertia on the part of the consumer concerned (see, to that effect, judgment in *Kušionová*, C-34/13, EU:C:2014:2189, paragraph 56).
- 63 Therefore, the fact that the consumer may rely on the protection of legislative provisions on unfair terms only if he brings court proceedings cannot be regarded in itself, contrary to what the Commission argues, as contrary to the principle of effectiveness. The effective legal protection guaranteed by Directive 93/13 is based on the premiss that one of the parties to the contract will bring an action before the national courts.
- 64 However, it is for the referring court, which alone has direct knowledge of the procedural rules of actions in its own national legal system and which alone has jurisdiction to interpret national law, to determine whether, in the circumstances of the dispute in the main proceedings, those rules guarantee effective legal protection for the consumer.
- 65 Having regard to all of the foregoing considerations, the answer to the questions referred is that Articles 6(1) and 7(1) of Directive 93/13 must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which allows a notary who drew up, in due form, an authentic instrument concerning a contract concluded between a seller or supplier and a consumer, to affix the enforcement clause to that instrument or to refuse to cancel it when no review of the unfairness of the contractual terms has been performed at any stage.

### Costs

- 66 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which allows a notary who drew up, in due form, an authentic instrument concerning a contract concluded between a seller or supplier and a consumer, to affix the enforcement clause to that instrument or to refuse to cancel it when no review of the unfairness of the contractual terms has been performed at any stage.**

[Signatures]