Reports of Cases

OPINION OF ADVOCATE GENERAL
WAHL
delivered on 15 November 2018 [1]

Case C-118/17

Zsuzsanna Dunai
v
ERSTE Bank Hungary Zrt

(Request for a preliminary ruling from the Budai Központi Kerületi Bíróság (Central District Court, Buda, Hungary))

(Reference for a preliminary ruling — Directive 93/13/EEC — Unfair terms in consumer contracts — Credit agreements denominated in foreign currencies — Unfair terms which are declared invalid — National legislation curing the invalidity by amending the content of the contracts at issue — Maintaining the validity of the remainder of those contracts — Possibility for the Supreme Court of the Member State concerned to adopt decisions aimed at unifying case-law)

Introduction

1. The present case is one of a number of requests for a preliminary ruling submitted principally by Hungarian courts on the interpretation of provisions of Directive 93/13/EEC [2] in the context of disputes concerning the validity of terms contained in loan agreements denominated in a foreign currency.

2. In particular, it follows the adoption of national legislation which, inter alia, resulted in the terms in those agreements which enabled credit institutions to determine their own buying and selling rates for the currency concerned (referred to as the '*exchange rate difference*' or 'spread') being declared invalid. That legislation also stipulates that, although a party may request that the court hearing the case excludes the application of such terms, that party may not, however, request that the court find that the loan agreement denominated in a foreign currency is invalid as a whole.

3. The referring court has doubts as to the validity of the latter prohibition. It asks whether it is able, in particular in accordance with the protection conferred by Directive 93/13, to declare that the loan agreement before it in enforcement proceedings is invalid in its entirety, since, in its view, such a possibility would serve the economic interests of the consumer.

1 Original language: French.

2 Council Directive of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), as amended by Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 (OJ 2011 L 304, p. 64) ('Directive 93/13').

4. The present request for a preliminary ruling therefore invites the Court, as an extension of the cases which have previously been brought before it,[3] to again provide some clarification as to the scope of the intervention of the courts in order to ensure the effectiveness of Directive 93/13 in the very specific context of loans denominated in foreign currencies.

Legal framework

EU law

5. Article 1(2) of Directive 93/13 provides that the 'contractual terms which reflect mandatory statutory or regulatory provisions … shall not be subject to the provisions of [that] Directive'.

6. Article 6(1) of that directive states:

'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.'

7. In accordance with Article 7(1) of Directive 93/13:

'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.'

Hungarian law

Hungarian Basic Law

8. Article 25(3) of the Alaptörvény (Hungarian Basic Law) provides that the Kúria (Supreme Court, Hungary) 'shall ensure uniformity of the application of the law by the courts and shall adopt uniformity decisions which shall be binding on the courts'.

The Law on credit institutions

9. Article 213(1) of the hitelintézetekről és a pénzügyi vállalkozásokról szóló 1996. évi CXII. törvény (Law No CXII of 1996 on credit institutions and financial undertakings, 'the Hpt') provides:

'Any consumer loan contract or home loan contract which fails to mention

…

(c) the total amount of the costs connected with the contract, including interest and ancillary costs, together with their value per annum, expressed as a percentage;

… shall be null and void.'

3 These include, inter alia, the cases which gave rise to the judgments of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282); of 20 September 2017, *Andriciuc and Others* (C-186/16, EU:C:2017:703); of 31 May 2018, *Sziber* (C-483/16, EU:C:2018:367); and, most recently, of 20 September 2018, *OTP Bank and OTP Faktoring* (C-51/17, EU:C:2018:750).

Law DH 1

10. Article 1(1) of the Kúriának a pénzügyi intézmények fogyasztói kölcsönszerződéseire vonatkozó jogegységi határozatával kapcsolatos egyes kérdések rendezéséről szóló 2014. évi XXXVIII. törvény (Law No XXXVIII of 2014 regulating specific matters relating to the decision of the Kúria (Supreme Court, Hungary) to safeguard the uniformity of the law concerning loan agreements concluded by financial institutions with consumers, 'Law DH 1') provides:

'This law shall apply to loan agreements concluded with consumers between 1 May 2004 and the date of entry into force of this law. For the purposes of this law, the concept of loan agreements concluded with consumers shall cover any foreign exchange based (linked to, or denominated in, a foreign currency and repaid in Hungarian forints [(HUF)]) or HUF based credit or loan agreement, or any financial leasing agreement, concluded between a financial institution and a consumer, if it incorporates standard contract terms or any contract term which has not been individually negotiated in accordance with Article 3(1) or Article 4(1).'

11. Article 3(1) and (2) of Law DH 1 provides:

'1. In loan agreements concluded with consumers, terms — with the exception of contractual terms which have been individually negotiated — pursuant to which the financial institution stipulates that, for the purpose of paying out the amount of finance granted for purchase of the subject of the loan or financial leasing, the buying rate is to apply, and that, for the purpose of repayment of the debt, the selling rate, or a different exchange rate from that set when the loan was paid out, is to apply, shall be void.

2. Instead of the void term referred to in paragraph 1 — without prejudice to paragraph 3 — the official exchange rate set by the National Bank of Hungary for the foreign currency concerned shall apply in relation to the disbursement and the repayment of the loan (including payment of the instalments and all the costs, fees and commissions expressed in foreign currency).'

Law DH 2

12. Article 37(1) of the Kúriának a pénzügyi intézmények fogyasztói kölcsönszerződéseire vonatkozó jogegységi határozatával kapcsolatos egyes kérdések rendezéséről szóló 2014. évi XXXVIII. törvényben rögzített elszámolás szabályairól és egyes egyéb rendelkezésekről szóló 2014. évi XL. Törvény (Law No XL of 2014 on the rules relating to the settlement of accounts referred to by Law [DH 1]), and a number of other provisions, 'Law DH 2') states:

'In relation to contracts falling within the scope of this law, the parties may apply to the court for a declaration of invalidity of the contract or of certain contractual terms ("partial invalidity") — irrespective of the grounds for such invalidity — only if they also request determination of the legal consequences of invalidity, namely a declaration of validity or effectiveness of the contract up to the time of adoption of the judgment. Failing any such request — and after the opportunity to remedy the defects has been given but not taken — the application shall be inadmissible and the substance of the case may not be examined. ...'

Law DH 3

13. Under Article 10 of the az egyes fogyasztói kölcsönszerződések devizanemének módosulásával és a kamatszabályokkal kapcsolatos kérdések rendezéséről szóló 2014. évi LXXVII. törvény (Law No LXXVII of 2014 governing various matters relating to alteration of the foreign currency in which loan agreements with consumers are denominated and the provisions relating to interest, 'Law DH 3'):

'As regards foreign currency mortgage loan agreements and foreign currency based mortgage loan agreements, the financial institution to which the debt is owed shall be required, within the period laid down for fulfilment of the obligation to settle accounts under [Law DH 2], to convert into a loan denominated in HUF the debt under a foreign currency mortgage loan agreement or a foreign currency based mortgage loan agreement concluded with a consumer, or the total debt derived from that agreement (also including interest, fees, commissions and costs charged in the foreign currency), both of which must be calculated on the basis of the settlement of accounts under [Law DH 2]. For the purposes of that conversion, whichever of the following two interest rates is the most favourable to the consumer on the reference date shall apply:

(a) the average exchange rate for the foreign currency concerned officially set by the National Bank of Hungary in the period from 16 June 2014 to 7 November 2014, or

(b) the exchange rate for the foreign currency concerned officially set by the National Bank of Hungary on 7 November 2014,

("the conversion into HUF").'

14. Article 15/A of that law provides:

'1. In proceedings in progress which were brought for a declaration of invalidity (or partial invalidity) of a loan agreement concluded with a consumer or for a determination of the legal consequences of invalidity, the provisions hereof relating to conversion into HUF shall also apply to the amount of the consumer's debt derived from a foreign currency loan agreement or from a foreign currency based loan agreement, calculated in accordance with the settlement of accounts under [Law DH 2].

2. The amount repaid by the consumer until the date of the judgment shall reduce the amount of the consumer's debt expressed in HUF on the reference date for the settlement of accounts.

3. When a loan agreement concluded with a consumer is declared valid, the specific contractual rights and obligations of the parties resulting from the settlement of accounts under [Law DH 2] must be established in accordance with the provisions of this law.'

The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

15. On 24 May 2007, Mrs Zsuzsanna Dunai concluded with the bank a loan agreement denominated in a foreign currency, in the present case Swiss francs (CHF), in the amount of CHF 115 573.

16. In accordance with the terms of that agreement, the loan had to be advanced in the national currency, in the present case HUF, by applying the daily CHF-HUF buying rate of exchange, which resulted in a payment of HUF 14 734 000. As the repayments also had to be made in HUF, however, for those purposes, the daily exchange rate was based on the selling rate of exchange. Moreover, the exchange rate risk, that is to say the risk associated with the variation in the exchange rates of the currencies concerned, consisting, in the present case, in a sharp depreciation of HUF in relation to CHF, was borne by Mrs Dunai.

17. The parties to the main proceedings concluded that agreement by notarial act, and therefore, in the event of default by the debtor, it became enforceable where there are no litigation proceedings before a Hungarian court.

18. On 12 April 2016, upon request by the bank, the notary ordered the enforcement of the agreement.

19. On 5 October 2016, Mrs Dunai lodged an objection to that enforcement before the referring court, claiming that the agreement was invalid since it did not specify the difference between the exchange rate applicable to the disbursement of the loan and the rate applicable when the loan is repaid, which, in her view, infringed Article 213(1)(c) of the Hpt.

20. The bank contended that that objection should be dismissed.

21. The referring court states that, in 2014, the Hungarian legislature adopted a number of laws, which apply to the dispute in the main proceedings, aimed at implementing a decision of the Kúria (Supreme Court) that was delivered in the interests of a uniform interpretation of civil law and in relation to loan agreements denominated in a foreign currency following the delivery of the judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282). By that decision, the Kúria (Supreme Court) held, inter alia, that terms such as that included in the loan agreement in the main proceedings, in accordance with which the buying rate applies when the loan was paid out whereas the selling rate applies when the loan was repaid, were unfair.

22. Those laws provided in particular for the deletion of the terms in those loan agreements which enabled the bank to determine its own currency buying and selling rates and the replacement thereof by the official exchange rate set by the National Bank of Hungary for the foreign currency concerned. That intervention of the legislature resulted in the difference between the various exchange rates based on those rates being eliminated.

23. The referring court states that, on account of that legislative intervention, the court seised can no longer find that the loan agreement denominated in foreign currency is invalid, because that intervention has put an end to the situation giving rise to a ground for invalidity, which therefore makes the agreement valid and, accordingly, means that the consumer is obliged to bear the financial cost resulting from the foreign exchange risk. Since it is precisely that obligation which the consumer wished to escape by bringing proceedings against the bank, the fact that the referring court considers that the agreement is valid is contrary to the consumer's interests.

24. In the referring court's view, it is clear that, by adopting a number of laws in 2014, the Hungarian legislature has expressly altered the content of loan agreements in such a way as to influence courts to rule in favour of banks. It asks whether this situation is consistent with the Court's interpretation of Article 6(1) of Directive 93/13.

25. Moreover, the referring court considers that the decisions of the Kúria (Supreme Court), delivered in the interests of a uniform interpretation of civil law, in particular Decision No 6/2013 PJE of 16 December 2013, prohibit the court from finding that loan agreements such as that at issue in the main proceedings are invalid. That court states that, when those decisions are adopted, neither recourse to a court designated by law nor compliance with the requirements of a fair trial is guaranteed. Although the procedure to be followed for those purposes does not involve hearing from parties, it gives rise to a decision which is binding on courts hearing litigation proceedings between parties.

26. The referring court refers in that context to points 69 to 75 of the Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16 to 17 March 2012), in accordance with which decisions adopted in Hungary under the 'standardisation' procedure may be contested from a human rights standpoint.

27. In those circumstances, the Budai Központi Kerületi Bíróság (Central District Court, Buda, Hungary) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Should point 3 [of the operative part] of the judgment [of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282)] be interpreted as meaning that a national court may remedy the fact that a term of a contract concluded between a seller or supplier and a consumer is invalid where the continuation of the contract is contrary to the economic interests of the consumer?

(2) Is it consistent with the powers conferred on the European Union in order to ensure a high level of consumer protection and with the fundamental EU principles of equality before the law, non-discrimination, the right to an effective judicial remedy and the right to fair legal process, for the parliament of a Member State to alter, by the adoption of an act, private law contracts in similar categories concluded between a seller or supplier and a consumer?

If the answer to the previous question is in the affirmative, is it consistent with the powers conferred on the [Union] in order to ensure a high level of consumer protection and with the fundamental EU principles of equality before the law, non-discrimination, the right to an effective judicial remedy and the right to fair legal process, for the parliament of a Member State to alter, by the adoption of an act, various parts of loan contracts denominated in a foreign currency, supposedly for consumer protection purposes but triggering an effect which is in fact contrary to the fair interests of consumer protection, in that the loan contract remains valid following those alterations and the consumer is required to continue to bear the costs resulting from the foreign exchange risk?

(3) With regard to the content of contracts concluded between a seller or supplier and a consumer, is it consistent with the powers conferred on the [Union] in order to ensure a high level of consumer protection and with the fundamental EU principles of the right to an effective judicial remedy and the right to fair legal process in respect of any civil law matter for the standardisation panel of the highest court of a Member State to direct the rulings of courts hearing such proceedings by means of "decisions adopted with a view to ensuring uniform interpretation of the law"?

If the answer to the previous question is in the affirmative, is it consistent with the powers conferred on the [Union] in order to ensure a high level of consumer protection and with the fundamental EU principles of the right to an effective judicial remedy and the right to fair legal process in respect of any civil law matter for the standardisation panel of the highest court of a Member State to direct the rulings of courts hearing such proceedings by means of "decisions adopted with a view to ensuring uniform interpretation of the law" where the appointment of judges as members of the standardisation panel is not carried out transparently, in accordance with predetermined rules, where the procedure before that panel is not public, and where it is not possible to know a posteriori the procedure followed, namely the expert evidence and academic works relied on and the way in which the various members have voted (for or against)?'

Analysis

Preliminary remarks

28. As the present case is an extension of the cases[4] which have come before the Court regarding the conditions for applying Directive 93/13 in the specific context of the consumer loan agreements denominated in a foreign currency concluded on a large scale in Hungary, it seems to me appropriate, as a preliminary point, to set out the context of this case in terms of legislation and case-law.

29. Still by way of introduction, there is also a need to rule on whether, by its questions, the actual intention of the referring court is to challenge the validity of contractual terms which reflect mandatory statutory or regulatory provisions, terms which, under Article 1(2) of that directive, are not subject to the provisions of the directive or even provisions relating to the main subject matter of the contract within the meaning of Article 4(2) of the same directive.

Outline of the relevant context in terms of legislation and case-law

30. It is important to recall that the national legislation which is challenged in the present request for a preliminary ruling follows the judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282).

31. In my view, two key lessons can be drawn from that judgment.

32. In the first place, the Court ruled that the terms 'the main subject matter of the contract' did not necessarily cover a term, incorporated into a loan agreement denominated in a foreign currency, concluded between a seller or supplier and a consumer and not individually negotiated, such as the term that was at issue in the main proceedings, which I shall call the term regarding 'exchange difference'. Consequently, such a term may be declared unfair and, therefore, its application may be excluded.

33. In the second place, contrary to the general rule that the court hearing the case cannot intervene for the purposes of amending or replacing the contested terms,[5] the Court held that Article 6(1) of Directive 93/13 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a contract concluded between a seller or supplier and a consumer cannot continue in existence after an unfair term has been deleted — which would expose the consumer to particularly unfavourable consequences, that provision did not preclude a rule of national law enabling the national court to cure the invalidity of that term by substituting for it a supplementary provision of national law.

34. In the interests of clarification, and in order to find a lasting solution from the many cases brought by consumers, by adopting Laws DH 1, DH 2 and DH 3, the Hungarian legislature made a number of amendments to the previously applicable national provisions concerning credit agreements on the basis of the principles which had been set out by the Kúria (Supreme Court) in Decision No 2/2014 PJE,

4 I refer, in particular, to the cases which gave rise to the judgments of 31 May 2018, *Sziber* (C-483/16, EU:C:2018:367), and, most recently, of 20 September 2018, *OTP Bank and OTP Faktoring* (C-51/17, EU:C:2018:750), which specifically challenged the Hungarian legislation adopted in 2014.

5 See, inter alia, judgments of 21 January 2015, *Unicaja Banco and Caixabank* (C-482/13, C-484/13, C-485/13 and C-487/13, EU:C:2015:21, paragraph 28 and the case-law cited), and of 26 January 2017, *Banco Primus* (C-421/14, EU:C:2017:60, paragraph 71 and the case-law cited).

delivered in the interests of a uniform interpretation of provisions of civil law.[6] The aim of that legislation was to take account of the many questions which had presented themselves to the Hungarian courts while the latter had been examining the terms contained in loan agreements denominated in a foreign currency.

35. Although the adoption of that new legislation was not required as such by the case-law of the Court, it can be explained by the desire to simplify and accelerate the handling of such disputes.[7]

36. That legislation provides for the deletion, in agreements denominated in a foreign currency, of terms which previously enabled the credit institution to determine its own currency buying and selling rates. Moreover, it requires that such a term be replaced, with retroactive effect, by a provision providing for the application of the official exchange rate of the currency concerned, set by the National Bank of Hungary.

37. Specifically, the Hungarian legislature therefore remedied the problems arising from the practice of *exchange difference* by declaring that the contractual terms concerned were void and amending them by legislative measures.

38. Those terms must be clearly distinguished from the terms in those agreements which stipulate that the loan must be repaid in a particular currency. The latter, which inevitably involve an exchange rate risk, are, in principle, a key element of those agreements and may therefore relate to their main subject matter.[8]

39. This was confirmed in the case which gave rise to the judgment of 20 September 2017, *Andriciuc and Others* (C-186/16, EU:C:2017:703).

40. In the latter judgment, which followed a request for a preliminary ruling from Curtea de Apel Oradea (Court of Appeal, Oradea, Romania), the Court clearly stated that the concept of 'main subject matter of the contract', within the meaning of Article 4(2) of Directive 93/13, covered a contractual term, such as the term that was at issue in the main proceedings, incorporated into a loan agreement denominated in a foreign currency which was not individually negotiated and according to which the loan must be repaid in the same foreign currency as that in which it was contracted, as that term lays down an essential obligation characterising that contract. Therefore, that term could not be regarded as being unfair, provided that it was drafted in plain intelligible language.[9]

41. To return to the case in the main proceedings, it appears that the compatibility of the new Hungarian legislative framework with Directive 93/13 has, subsequently, been challenged in new requests for a preliminary ruling.

42. In particular, in the case which gave rise to the judgment of 31 May 2018, *Sziber* (C-483/16, EU:C:2018:367), the Court was asked, inter alia, whether Article 7 of Directive 93/13 precluded that Hungarian legislation, adopted following the judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282), which imposed specific procedural requirements on actions brought by

6 *Magyar Közlöny* 2014/91, p. 10975.

7 See in particular, to that effect, my Opinion in *Sziber* (C-483/16, EU:C:2018:9, points 52 and 53).

8 See, to that effect, my Opinion in *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:85, points 60 to 65). It should be noted that, in its Decision No 2/2014 PJE, the Kúria (Supreme Court) held that 'the provision in a loan agreement denominated in a foreign currency concluded with a consumer pursuant to which the exchange rate risk is borne without any limit by the consumer, in return for a more favourable interest rate, is a provision which defines the main subject matter of the agreement the unfairness of which, as a general rule, cannot be examined. Such a provision may be examined and declared unfair only if, at the time of the conclusion of the agreement, its content was neither plain nor intelligible for an average consumer who is reasonably well informed and reasonably observant and circumspect, in view of the wording of the agreement and the information received from the credit institution. A provision relating to the credit risk is unfair, and consequently the agreement will be wholly or partially invalid, where the consumer, on account of information which is insufficient or provided late, may legitimately have believed that there was no real exchange rate risk or that he bore that risk only to a limited extent'.

9 Judgment of 20 September 2017, *Andriciuc and Others* (C-186/16, EU:C:2017:703, paragraph 41).

consumers who have concluded loan contracts denominated in a foreign currency, containing a term stipulating a differential between the exchange rate applicable to the provision of the loan and that applicable to the repayment of the loan and/or a clause providing for an option of unilateral amendment allowing the lender to increase the interest rate, commission and costs.

43. The Court answered in the negative, stating that the legislation at issue was not contrary to Article 7 of Directive 93/13 'provided that a finding of unfairness in respect of those terms in such a contract makes it possible to restore the legal and factual situation in which the consumer would have found himself had it not been for those unfair terms'.[10] It should be noted that the Court has been sensitive to the fact that, by adopting Laws DH 1 and DH 2 in particular, the Hungarian legislature intended not only to facilitate the finding that terms in contracts denominated in a foreign currency providing for a differential in exchange rates are unfair, but also to shorten and simplify the procedures to be followed before the Hungarian courts.[11]

44. Although, as is apparent from the wording of Article 3(1) and Article 4(1) of Law DH 1, the Hungarian legislature's intention was to classify as unfair only two types of terms contained in the majority of loan agreements denominated in a foreign currency and concluded between a consumer and a seller or supplier, namely that relating to the difference in exchange rates and that containing an option of unilateral amendment,[12] the fact remains that the national courts are still authorised to examine whether other terms in the agreements at issue are unfair, including those which define the main subject matter, where it is considered that those terms are not in plain intelligible language.

45. The Court confirmed its assessment of the validity of the Hungarian legislation in its recent judgment of 20 September 2018, *OTP Bank and OTP Faktoring* (C-51/17, EU:C:2018:750), by stating, in addition, that Article 4 of Directive 93/13 requires that the plainness and intelligibility of the contractual terms be assessed by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract, notwithstanding that some of those terms have been declared or presumed to be unfair and, accordingly, annulled at a later time by the national legislature.[13]

46. This series of judgments confirms that, although there is an obligation to declare void any terms found to be unfair, the court seised is not authorised, however, to annul contracts denominated in a foreign currency in their entirety. In other words, the court seised, which is led to conclude that a term relating to the difference in exchange rates is unfair and, therefore, to disregard it in favour, possibly, of a provision which is supplementary in nature, may not, at the same time, challenge the essential contractual provisions relating to the exchange rate risk.

47. In my opinion, this is the conclusion that the referring court is, in essence, seeking to challenge in the present case. I shall return to this below.

The existence of mandatory provisions within the meaning of Article 1(2) of Directive 93/13

48. Although this issue has not been raised specifically in the order for reference, it must be determined whether the legislation at issue, which consists essentially of Laws DH 1, DH 2 and DH 3, falls under Article 1(2) of Directive 93/13 or whether those laws must instead be regarded as measures which the Member States are entitled to adopt in order to ensure compliance with that directive.

10 See judgment of 31 May 2018, *Sziber* (C-483/16, EU:C:2018:367, paragraph 55).

11 See judgment of 31 May 2018, *Sziber* (C-483/16, EU:C:2018:367, paragraph 45).

12 See judgment of 31 May 2018, *Sziber* (C-483/16, EU:C:2018:367, paragraph 44).

13 See judgment of 20 September 2018 *OTP Bank and OTP Faktoring* (C-51/17, EU:C:2018:750), paragraph 83).

49. It should be pointed out that the present case and the case which gave rise to the judgment of 20 September 2018, *OTP Bank and OTP Faktoring* (C-51/17, EU:C:2018:750, both concern the impact of the abovementioned legislation, including Laws DH 1 to DH 3.

50. However, in the case which gave rise to the judgment of 20 September 2018, *OTP Bank and OTP Faktoring* (C-51/17, EU:C:2018:750), the question arose inter alia as to the extent to which terms relating to the exchange rate risk, which have become part of the contract as a result of interventions by the Hungarian legislature, could fall within the scope of Article 1(2) of Directive 93/13. In the present case, it must be determined whether it is compatible with Directive 93/13 for legislation of a Member State to declare invalid or amend unfair terms in order to prevent widespread unfair banking practices without, however, annulling the credit agreements concerned, with the result that the exchange rate risk continues to be borne by the consumer. Therefore, there is a clear link between the questions referred in each of those cases.

51. The question as to whether Article 1(2) of Directive 93/13 is applicable arises in a similar way here too.

52. Building on the findings made in the judgment of 20 September 2018, *OTP Bank and OTP Faktoring* (C-51/17, EU:C:2018:750) (resulting from the response to the second question referred for a preliminary ruling), I am of the view that the application of Article 1(2) of Directive 93/13 should be precluded here.

53. As the Court held in paragraph 50 of that judgment, in the present case, an exchange rate risk stems from the very nature of the loan agreement at issue. However, according to the information provided by the referring court, the retention of that exchange rate risk also results, at least in part, from the application of Article 3(2) of Law DH 1, read in conjunction with Article 10 of Law DH 3, in so far as those provisions of national law carry out an automatic amendment of current agreements, consisting of replacing the exchange rate of the currency in which the loan agreement was denominated with an official exchange rate set by the National Bank of Hungary.

54. As regards the replacement specifically, pursuant to Article 3(2) of Law DH 1 and Article 10 of Law DH 3, of the term relating to the difference in exchange rates with a term providing that the exchange rate set by the National Bank of Hungary, in force on the due date, is applicable between the parties to the contract, the Court took the view that the national legislature had intended to establish certain conditions relating to the obligations contained in loan agreements denominated in a foreign currency (see paragraph 62 of the judgment of 20 September 2018, *OTP Bank and OTP Faktoring*, C-51/17, EU:C:2018:750). Those terms, which reflect mandatory statutory provisions, cannot therefore fall within the scope of the directive (see paragraph 64 of that judgment).

55. However, that conclusion does not apply to other contractual terms and, in particular, to those which determine the exchange rate risk (paragraph 65 of that judgment). In the Court's assessment, the amendments in Article 3(2) of Law DH 1 and Article 10 of Law DH 3 were not intended to address in full the issue of the exchange rate risk.

56. Consequently, Article 1(2) of Directive 93/13 does not apply to provisions other than those relating to the *exchange difference*.

57. In addition, it follows, for the case in the main proceedings, that, since it cannot be ruled out from the outset that the question regarding the application of terms which determine the exchange rate risk is still relevant and does fall within the scope of Directive 93/13, the questions referred by the national court must be answered.

The first question

58. By its first question, the national court asks the Court, in essence, whether it is possible for a court, in accordance with the protection conferred by Directive 93/13, to annul in its entirety a loan agreement the continuation of which, in its view, would be contrary to the economic interests of the consumer.

59. It asks about the scope of point 3 of the operative part of the judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282), in accordance with which 'Article 6(1) of Directive 93/13 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a contract concluded between a seller or supplier and a consumer cannot continue in existence after an unfair term has been deleted, that provision does not preclude a rule of national law enabling the national court to cure the invalidity of that term by substituting for it a supplementary provision of national law'.

60. It is important to point out that, in that judgment, the Court recalled its case-law[14] in accordance with which, in principle, it is not permissible for the court under, inter alia, Article 6(1) of Directive 93/13, to adjust an unfair contractual term by revising its content. The courts hearing the case are required only to exclude the application of an unfair contractual term in order that it may not produce binding effects with regard to the consumer.

61. The contract must therefore continue in existence, in principle, without any amendment other than that resulting from the deletion of the unfair terms, in so far as, in accordance with the rules of national law, such continuity of the contract is *legally* possible.

62. In addition to the fact that there are situations where it is not legally possible to continue the contract, there are cases in which annulling the contract proves to be counterproductive from the point of view of the deterrence objective pursued by Directive 93/13.

63. For precisely that reason, the Court relaxed the rule in the judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282). That case concerned an agreement the performance of which had become impossible without the unfair contractual terms — or their replacement by statutory or regulatory provisions.

64. As is clear from paragraph 85 of the judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282), the solution adopted by the Court was therefore based on its desire to protect the consumer from the adverse consequences of annulling the contract by enabling the application of a national rule pursuant to which it was possible to substitute invalid terms in a consumer credit agreement for a supplementary provision of national law.

65. In its approach, the Court has shown that it is keen to remember the objective of restoring the effective balance between the parties, which means, inevitably, considering in particular the interests of the consumer, but which cannot lead to the contractual balance being upset or even to the contract being cancelled.[15]

66. A careful reading of the judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282), clearly shows that the principle that the contract must continue in existence normally — without any amendment other than that resulting from the deletion of the terms declared unfair — still prevails.

14 See the case-law cited in footnote 5 of the present Opinion.

15 See, to that effect, judgment of 30 May 2013, *Jőrös* (C-397/11, EU:C:2013:340, paragraph 46 and the case-law cited).

67. The exception to that principle established by that judgment, which opens up the possibility of the court using a rule of national law to cure the invalidity of the term by substituting it for a supplementary provision of national law, is, in accordance with the very wording of that judgment, subject to certain conditions being met. In the first place, that substitution must be able to lead 'to the result that the contract may continue in existence in spite of the fact that [the unfair term] has been deleted' and that it 'continues to be binding for the parties'.[16] In the second place, where the court is obliged to annul the contract in its entirety, that substitution must have the effect of preventing the consumer from being exposed to 'particularly unfavourable consequences, so that the dissuasive effect resulting from the annulment of the contract could well be jeopardised'.[17]

68. In the present case, the question referred by the national court is based on the premiss that it appears to be economically more advantageous for the consumer for the court to annul the agreement in its entirety instead of maintaining it after deleting all of the terms. It therefore originates in a biased and incorrect reading of point 3 of the operative part of the judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282).

69. As the Court pointed out in that judgment, in general, the consequence of the annulment of a loan agreement in its entirety is that the outstanding balance of the loan becomes due forthwith, which is likely to be in excess of the consumer's financial capacities and, as a result, tends to penalise the consumer rather than the lender who, as a consequence, might not be dissuaded from inserting such terms in its contracts.[18]

70. It must therefore be concluded that, in the present case, the referring court is seeking to use the judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282), to justify a solution which is contrary to the solution adopted in that judgment, namely the annulment of the contract in its entirety.

71. Upon closer inspection, it appears that what the referring court regards as harmful to the consumer is the fact that, if the validity of contracts is maintained by means of the application, by the national court hearing the case, of supplementary legislative provisions, the losses caused by the *exchange rate risk* would continue to be borne by the consumer.

72. This view is simplistic nevertheless and does not take account of all of the economic interests of consumers. The burdens stemming from the exchange rate risk cannot be considered in isolation because the economic advantages and disadvantages stemming from the contract in its entirety may be analysed only by taking account of all of the circumstances surrounding the conclusion of the contract.

73. In relation to this aspect, it seems to me important to recall that the assessment of the unfairness of a contractual term — and, therefore, the question as to whether such a term causes a 'significant imbalance' in the parties' rights and obligations arising under the contract to the detriment of the consumer, within the meaning of Article 3(1) of Directive 93/13 — must be made by reference to the *time of conclusion of the contract at issue*, taking account of all of the circumstances which could have been known to the seller or supplier at that time, and which were such as to affect the future performance of that contract.[19] That assessment cannot in any circumstances depend on the occurrence of events subsequent to the conclusion of the contract which are beyond the control of the parties, such as, for example, a variation in the exchange rate.[20]

16 Judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282, paragraph 81).

17 Judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282, paragraph 83).

18 See judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282, paragraph 84).

19 See judgment of 20 September 2017, *Andriciuc and Others* (C-186/16, EU:C:2017:703, paragraph 58).

20 See my Opinion in *Andriciuc and Others* (C-186/16, EU:C:2017:313, points 85 and 86).

74. Moreover, even on the assumption that it might validly be argued, *quod non*, that the annulment of the loan agreement at issue in its entirety may, in the light of removing the exchange rate risk resulting from it, be favourable to the economic interests of consumers, it is important to note that that fact is not, in itself, decisive and cannot justify, for the alleged purposes of ensuring the effectiveness of the protection conferred by Directive 93/13, the annulment of the loan agreement in its entirety.

75. As the Court has already had occasion to point out, the objective pursued by the EU legislature in connection with Directive 93/13 consists in restoring the balance between the parties while in principle preserving the validity of the contract as a whole, and not in annulling all contracts containing unfair terms.

76. As regards the criteria for assessing whether a contract can indeed continue to exist without the unfair terms, it must be noted that both the wording of Article 6(1) of Directive 93/13 and the requirements concerning the legal certainty of economic activities plead in favour of an objective approach in interpreting that provision, so that the situation of one of the parties to the contract, in this case the consumer, cannot be regarded as the decisive criterion determining the fate of the contract.

77. Consequently, Directive 93/13 cannot be interpreted as meaning that, when assessing whether a contract containing one or more unfair terms can continue to exist without those terms, the court hearing the case can base its decision solely on a possible advantage for the consumer of the annulment of the contract as a whole. [21]

78. If Directive 93/13, which carries out only a minimum harmonisation, does not therefore preclude a Member State from providing, in compliance with European Union law, that a contract concluded with a consumer by a seller or supplier which contains one or more unfair terms is to be void in its entirety where that will ensure better protection of the consumer, it must be pointed out that the intention of the 2014 Hungarian legislation on loans in foreign currencies is not to annul the contracts concerned, but to maintain them on a basis consistent with the interpretation which has been adopted in the case-law of the Court.

79. In that regard, it should be noted that the power of the national court to substitute terms must be defined, at the risk of compromising the long-term objective, set out in Article 7 of Directive 93/13, of discouraging sellers or suppliers from including unfair terms in contracts. [22]

80. In fact, if it were open to the national court to revise the content of unfair terms, such a power would be liable to compromise attainment of that objective. That power would contribute to eliminating the dissuasive effect for sellers or suppliers of the straightforward non-application with regard to the consumer of those unfair terms, in so far as those sellers or suppliers would still be tempted to use those terms in the knowledge that, even if they were declared invalid, the contract could nevertheless be adjusted, to the extent necessary, by the national court in such a way as to safeguard the interest of those sellers or suppliers. [23]

81. In the light of all the foregoing considerations, the answer to the first question referred for a preliminary ruling should be that Directive 93/13 must be interpreted as meaning that it does not preclude a provision of national law which, in the event of the partial invalidity of a contract concluded with a consumer as a result of one of its terms being unfair, seeks, in principle, to maintain

21 See, inter alia, judgment of 15 March 2012, *Pereničová and Perenič* (C-453/10, EU:C:2012:144, paragraphs 31 to 33).

22 See, inter alia, judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282, paragraphs 79 and 84). See, in particular, with regard to the possibility of the temporal limitation of the restitutory effects stemming from the finding of unfairness by a court in respect of a term in a contract concluded with a consumer to amounts overpaid under that term after the delivery of the judicial decision, judgment of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraphs 63 to 73).

23 See judgment of 21 January 2015, *Unicaja Banco and Caixabank* (C-482/13, C-484/13, C-485/13 and C-487/13, EU:C:2015:21, paragraph 31).

the validity of the contract without the unfair term. The court hearing the case cannot therefore remedy the fact that a term of a contract concluded between a seller or supplier and a consumer is invalid solely on the ground that the continuation of the contract would allegedly be contrary to the economic interests of the consumer.

The second question

82. It appears that the second question must be understood as seeking, in essence, to determine whether the adoption of the 2014 Hungarian legislation, which amends certain contractual terms by legislative measures, is compatible with the provisions of Directive 93/13.

83. In that regard, it is sufficient to note, following on from the foregoing considerations, that, since, in the interests of legal certainty in particular, Article 6(1) of Directive 93/13 seeks to keep consumer loan agreements in force where it is still legally possible to so by removing the terms declared unfair, nothing, quite the contrary, should prevent the court from declaring certain unfair terms invalid, but not annulling the contracts concerned.

84. In the same vein, nothing should prevent the legislature from declaring certain unfair terms invalid through laws which are aimed at preventing widespread unfair banking practices, but not annulling the contracts concerned.

85. In the present case, it appears that, by adopting Laws DH 1 to DH 3, the Hungarian legislature decided to define a framework for the purposes of removing the unfair contractual terms in credit agreements denominated in a foreign currency, agreements which were widely used in Hungary and which had been the subject of a number of disputes before the Hungarian courts.

86. This is the approach which may be taken by the Member States in order to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers, as advocated by Article 7(1) of Directive 93/13 read in conjunction with the 28th recital thereof. [24]

87. It remains to be determined whether those provisions of national law are contrary to the principle of effectiveness, namely whether they do not make it in practice impossible or excessively difficult to exercise the rights conferred on consumers by EU law.

88. In that regard, it should be noted that Law DH 1 was adopted so that the principles set out in Decision No 2/2014 PJE would be binding not only on the courts, but would also be directly applicable. [25] In that context, and as is clear from paragraph 4 of the explanatory memorandum [26] to Law DH 1, the intention of the legislature was to take account of the case-law of the Court, and in particular point 3 of the operative part of the judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282).

24 See, inter alia, judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282, paragraph 78 and the case-law cited).

25 See paragraph 1 of the explanatory memorandum in accordance with which 'the law shall render the legal interpretation by the Kúria (Supreme Court) generally applicable and binding on all. The law does not lay down new rules of substantive law, nor does it establish new principles which apply to credit, loan or financial leasing agreements, but merely codifies the Kúria's legal interpretation. This will prevent a large number of consumers from bringing long and costly legal proceedings which would also overload the judicial system'.

26 That paragraph states, inter alia, that, 'when determining the legal consequences of Decision No 2/2014 of the Kúria (Supreme Court), the law has taken provisions of EU law into account and, in particular, the provisions of Directive 93/13 on unfair terms in consumer contracts. The law has taken account of the case-law of the Court, which has the authority to interpret Directive 93/13, and in particular the principles established in the judgments [of 14 June 2012], *Banco Español de Crédito* (C-618/10, EU:C:2012:349), and [of 30 April 2014], *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282). In accordance with the case-law of the Court, the law seeks to maintain the validity of contracts which have been concluded by removing unfair terms. That approach is also consistent with one of the general principles of civil law, the principle of *pacta sunt servanda* (the binding force of contracts). The law merely amends the content of existing contracts to the extent necessary to ensure that they are able to continue in existence without the unfair terms. This would lead to the contract being declared invalid in its entirety, which would also be contrary to borrowers' interests. For that reason, it is in the context of partial invalidity that the law lays down the supplementary provisions which will become an integral part of contracts by taking the place of unfair terms'.

89. It is clear from the wording of Law DH 1 that that law relates only to the consequences of applying separate exchange rates in respect of all of the payment obligations under the loan agreement incumbent on consumers and the disbursement of the loan. The law has legal effects only in relation to that unfair term, and therefore in no way prevents a consumer from claiming that a term is invalid on the basis of it being unfair on other grounds. This is the case even if the term concerns the same elements incumbent on the consumer, other than the application of separate exchange rates, but is challenged on other grounds, provided that these can be relied on in accordance with the definition given in Article 3 of Directive 93/13.

90. Moreover, the fact that the provisions defining the exchange rate risk cannot be the subject of an examination as to whether or not they are unfair is independent from the adoption of that law and the decisions of the Kúria (Supreme Court), delivered in the interests of an interpretation in conformity with EU law, which preceded it. Such an examination is precluded by the fact that those terms fall under the definition of the main subject matter of the contract which, in principle, escapes the assessment of unfairness, unless they have not been drafted in plain, intelligible language. [27]

91. As regards Laws DH 2 and DH 3, likewise they do not concern the terms which define the exchange rate risk.

92. Law DH 2 contains detailed technical rules relating to Law DH 1 in order to make the settlement of accounts transparent for both consumers and banks. That law sets out the general rules of civil law governing the settlement of accounts; the detailed rules are in a lower-ranking measure, namely an MNB regulation (regulation of the National Bank of Hungary).

93. Law DH 3, which is the last in the list of legislative measures relating to credit denominated in a foreign currency, requires that the balance of credit denominated in a foreign currency is converted into HUF and, to that end, eliminates the exchange rate risk which is borne unilaterally by borrowers in mortgage loan agreements concluded with individuals. The law on the conversion sets out the detailed technical and legal rules for the conversion into HUF, the detailed procedural rules, the conditions of that conversion and the transformation of the consumer credit agreements subject to the conversion into HUF.

94. It is true that the law on the conversion stems from the finding made in Decision No 2/2014 PJE that, in the case of valid contracts, the exchange rate risk is borne by the borrower and the unfairness of those conditions cannot be disputed before the courts, except in the cases and in accordance with the criteria set out in the standardisation decision.

95. Therefore, the fact that the law endeavours to limit the future fluctuation in the exchange rate and to minimise its effects is independent of and additional to the foregoing.

96. In other words, the logic behind the law is precisely to grant aid to consumers by legislative intervention in order to enable them to repay their loans, despite the fact that Article 4(2) of Directive 93/13 does not authorise the examination of the unfairness of a provision relating to the exchange rate risk as a determining factor in defining the main subject matter of the contract.

97. In conclusion, I take the view that the provisions of Directive 93/13 do not preclude the adoption of national provisions such as those referred to in the main proceedings, in so far as, in the interests of legal certainty and clarity, those provisions seek to draw inferences from interpretative guidelines provided by the Court.

27 See the position of the Kúria (Supreme Court) on that point, cited above in footnote 8.

98. I therefore propose that the second question should be answered to the effect that Directive 93/13 does not preclude a Member State, for the purposes of legal certainty and consumer protection, from using legislative measures to amend certain unfair contractual terms in contracts concluded between a seller or supplier and a consumer, in so far as those amendments do not undermine the effectiveness of the protection conferred by that directive.

The third question

99. By its third question, which is divided into two parts, the referring court asks, in essence, whether it is consistent with EU law for the Kúria (Supreme Court) to deliver decisions in the interests of a uniform interpretation of provisions of law which are binding on the courts in the field of consumer protection.

100. If so, it asks whether the same conclusion is valid where the appointment of judges as members of the standardisation panel is not carried out transparently, in accordance with predetermined rules, where the procedure before that panel is not public, and where it is not possible to know a posteriori the procedure followed and, in particular, the expert evidence and academic works relied on and the way in which the various members have voted (for or against).

101. In my view, and as the European Commission has pointed out, it is legitimate to question the usefulness of that question for the resolution of the dispute.

102. It seems to me that the referring court's questions, as expressed by the third question, reflect general concerns in relation to the organisation of the Hungarian judicial system and, more specifically, the procedure known as Hungarian standardisation and the potential consequences of the binding decisions adopted by the Kúria (Supreme Court) in that context. [28]

103. To me, that aspect seems far removed from the dispute in the main proceedings, as it is pending before the referring court and the specific issue of the conclusions which may and must be drawn by the court hearing the case from the finding that a term in a contract concluded between a seller or supplier and a consumer is unfair.

104. It is important to point out that the scope of Directive 93/13 does not cover the legal procedures and instruments of the Member States which are created for the purpose of organising their judicial system and ensuring the uniformity of their national case-law.

105. Moreover, to me, those concerns bear no relation to the requirements of effective judicial protection stemming in particular from Article 19(1) TEU, which requires Member States to provide a system of legal remedies and procedures ensuring effective judicial review in the fields covered by EU law. [29]

106. Moreover, it is reasonable to ask whether any purpose is served in this case in criticising the Hungarian system of binding interpretation decisions, given that it is ultimately Laws DH 1 to DH 3 which may be problematic in the light of the protection conferred by Directive 93/13 in respect of unfair terms.

28 It should be noted that the 'interference' that might be constituted by the system of uniformity of interpretation in the judicial work of the courts hearing the case has, as the referring court pointed out, been mentioned in an Opinion adopted by the Venice Commission. See Chapter VI.5 of the report at the following address: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282012%29001-e.

29 See, for example, judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117, paragraph 34).

107. Simply from reading the order for reference, it is difficult to understand the link between, on the one hand, how that system of binding interpretation decisions is organised and, on the other, the powers and the fundamental principles of EU law mentioned therein.

108. At most, the question referred by the national court may be understood as seeking to ascertain whether the binding decisions adopted by the Kúria (Supreme Court) in the system for standardising the law are in danger, in the present case, of forcing it to act in disregard of Directive 93/13 and in breach of the principle of effective judicial protection.

109. In the present case, in order for the Court to be able to examine the questions that deal with matters relating to such procedures, it must be established that those procedures are capable of preventing the national courts from fulfilling their role in the application of EU law.

110. That may be the case, for example, if it was established that the rules governing organisation or procedure at issue prevent them from establishing all of the consequences of a finding that certain terms are unfair or even detract from the courts' ability to refer matters to the Court for a preliminary ruling, by virtue of the power granted to them in Article 267 TFEU. [30]

111. However, I note that, although the standardisation decisions adopted by the Kúria (Supreme Court) are binding on the Hungarian courts, in no way do they prevent those courts from analysing whether the contracts before them comply with EU law, or, where appropriate, from giving a decision that complies with EU law, by not applying the decision standardising the law, in accordance with the principle of the primacy of EU law.

112. Similarly, as the present proceedings demonstrate, there is nothing to stop the courts from submitting a request to the Court for a preliminary ruling under Article 267 TFEU in order to seek the interpretation of the applicable provisions of EU law. If the Court reaches a conclusion which conflicts with the findings of the decision standardising the law, an appeal may be brought in order to ensure that the future uniform application of the law is consistent with EU law.

113. To me, that conclusion seems entirely consistent with the clarification recently provided by the Court in its judgment of 7 August 2018, *Banco Santander and Escobedo Cortés* (C-96/16 and C-94/17, EU:C:2018:643), [31] with regard to the case-law of the Tribunal Supremo (Supreme Court, Spain). By that judgment, the Court confirmed that it cannot be excluded that, in their role of ensuring consistency in the interpretation of the law, and in the interests of legal certainty, the supreme courts of a Member State, such as the Tribunal Supremo (Supreme Court), may, in compliance with Directive 93/13, elaborate certain criteria in the light of which the lower courts must examine the unfairness of contractual terms.

114. In the light of all the foregoing considerations, it is proposed that the Court should answer Question 3 to the effect that the powers conferred on the Union in order to ensure a high level of consumer protection and the rights to an effective judicial remedy and to a fair trial do not preclude the standardisation decisions which are applicable to the present case and were delivered in the interests of a uniform interpretation of the law.

30 See, inter alia, judgments of 5 October 2010, *Elchinov* (C-173/09, EU:C:2010:581, paragraphs 24 to 32), and of 5 April 2016, *PFE* (C-689/13, EU:C:2016:199, paragraphs 34, 38 to 41).

31 See, also, my Opinion in *Banco Santander and Escobedo Cortés* (C-96/16 and C-94/17, EU:C:2018:216).

Conclusion

115. In the light of the foregoing considerations, I propose that the Court should answer the questions referred for a preliminary ruling by the Budai Központi Kerületi Bíróság (Central District Court, Buda, Hungary) as follows:

(1) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that it does not preclude a provision of national law which, in the event of the partial invalidity of a contract concluded with a consumer as a result of one of its terms being unfair, seeks, in principle, to maintain the validity of the contract without the unfair term. The court hearing the case cannot therefore remedy the fact that a term of a contract concluded between a seller or supplier and a consumer is invalid solely on the ground that the continuation of the contract would allegedly be contrary to the economic interests of the consumer.

(2) Directive 93/13 does not preclude a Member State, for the purposes of legal certainty and consumer protection, from using legislative measures to amend certain unfair contractual terms in contracts concluded between a seller or supplier and a consumer, in so far as those amendments do not undermine the protection conferred by that directive.

(3) The powers conferred on the European Union in order to ensure a high level of consumer protection and the rights to an effective judicial remedy and to a fair trial do not preclude the standardisation decisions which are applicable to the present case and were delivered in the interests of a uniform interpretation of the law.