



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

18 January 2024*

(Reference for a preliminary ruling – Directive 93/13/EEC – Unfair terms in consumer contracts – Article 3(1) – Article 6(1) – Article 7(1) – Article 8 – Enforcement order which has acquired the force of *res judicata* – Power of the court to assess of its own motion whether a term is unfair when supervising enforcement proceedings – National register of standard business terms which are held to be unlawful – Terms which are linguistically different from those contained in that register, but which have the same meaning and the same effect)

In Case C-531/22,

concerning a request for a preliminary ruling under Article 267 TFEU, from the Sąd Rejonowy dla Warszawy-Śródmieścia w Warszawie (Warsaw District Court – Warsaw City Centre, Poland), by decision of 5 July 2022, received at the Court on 9 August 2022, in the proceedings

Getin Noble Bank S.A.,

TF,

C2,

PI

v

TL,

In the presence of:

EOS,

Zakład Ubezpieczeń Społecznych,

MG,

Komornik Sądowy AC,

THE COURT (Ninth Chamber),

* Language of the proceedings: Polish

composed of O. Spineanu-Matei, President of the Chamber, S. Rodin (Rapporteur) and L.S. Rossi, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure and further to the hearing on 13 September 2023,

after considering the observations submitted on behalf of:

- Getin Noble Bank S.A., by M.Ł. Hejmej, M. Przygodzka, A. Szczeńniak, J. Szewczak, Ł. Żak, adwokaci, and M. Pugowski, aplikant radcowski,
- TF, by M. Czugan, M. Jaroch-Konwent, W. Kołosz, A. Pakos and K. Zawadzanko, radcowie prawni,
- the Polish Government, by B. Majczyna, M. Kozak and S. Żyrek, acting as Agents,
- the European Commission, by U. Małecka and N. Ruiz García, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(1), Article 6(1), Article 7(1) and (2), and Article 8 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), the principles of legal certainty, effectiveness, proportionality and *res judicata* and the right to be heard.
- 2 The request has been made in enforcement proceedings between Getin Noble Bank S.A., TF, C2 and PI, four creditors, and TL, their debtor, regarding an order for payment issued to that debtor.

Legal framework

European Union law

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

'A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.'

4 Article 4(1) of that directive provides:

‘Without prejudice to Article 7, the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and 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 or of another contract on which it is dependent.’

5 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.’

6 Under Article 7(1) and (2) of the directive:

‘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.’

7 Article 8 of Directive 93/13 provides:

‘Member States may adopt or retain the most stringent provisions compatible with the Treaty in the area covered by this Directive, to ensure a maximum degree of protection for the consumer.’

Polish law

8 Article 189 of the ustawa – Kodeks postępowania cywilnego (Law on the Code of Civil Procedure), of 17 November 1964 (Dz. U. No 43, item 296), in the version applicable to the dispute in the main proceedings (‘the Code of Civil Procedure’) states:

‘An applicant may bring a declaratory action before a court in order to establish the existence of a legal relationship or right, provided that the applicant has a legitimate interest.’

9 Article 505(1)³² of the Code of Civil Procedure provides:

‘In his or her application, the applicant shall state the evidence in support of his or her claims. The evidence shall not be attached to the application.’

10 Article 758 of the Code of Civil Procedure provides:

‘The district courts and the court enforcement officers attached to those courts are competent in matters of enforcement.’

11 Article 804(1) of the Code of Civil Procedure provides:

‘An enforcement authority is not entitled to examine the legitimacy and enforceability of the obligation referred to in an enforceable instrument.’

12 Under Article 840(1) of the Code of Civil Procedure:

‘The debtor may seek, by way of appeal, the annulment, in whole or in part, or the limitation of the enforceable effect of the enforcement instrument where:

- (1) he or she disputes the facts that gave rise to the enforcement terms imposed, in particular where he or she contests the existence of the obligation found by a simple enforcement instrument, other than a judicial decision or where he or she contests the transfer of an obligation despite there being a formal document that attests to it;
- (2) following the issue of a simple enforcement instrument, a fact has occurred that led to the extinction of the obligation or the impossibility of performing it; if the instrument is a judicial decision, the debtor may equally base his or her action on the facts arising after the arguments were closed, on the objection that the service has been performed, where reliance on that objection in the case in question was inadmissible *ex lege*, and on the objection of set off.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 13 On 9 January 2006, TL, a consumer, concluded a loan agreement with Getin Noble Bank, for the period from 9 January 2009 to 16 January 2016, denominated in Polish zlotys (PLN), indexed to the Swiss franc (CHF) and corresponding to the equivalent in Polish zlotys of CHF 15 645.27 (approximately EUR 16 270). Under that loan agreement, the amount of the loan granted by Getin Noble Bank was converted, on the date on which the loan agreement was concluded, on the basis of the buying rate of the indexing currency concerned, as set out in that bank’s foreign currency exchange rate table, and the total debt was accordingly to be repaid in Polish zlotys after the conversion of that debt denominated in that indexing currency on the basis of the selling rate of that currency in force on the date of payment to that bank.
- 14 On 13 May 2008, TL concluded another loan agreement with the same bank in Polish zlotys indexed to the Swiss franc and corresponding to the equivalent in Polish zlotys of CHF 36 299.30 (approximately EUR 37 740) for a period of 120 months. That loan agreement adopted, in essence, the loan agreement terms referred to in the previous paragraph.
- 15 On the ground of TL’s failure to make payments, Getin Noble Bank terminated those two loan agreements and brought two actions against TL before the Sąd Rejonowy Lublin-Zachód w Lublinie (District Court, Lublin West, Poland), on 28 December and 3 June 2016 respectively, by way of the electronic order for payment procedure, requesting TL to pay the sums due under those loan agreements, plus interest and costs.
- 16 In support of its claims, Getin Noble Bank referred to the loan agreements which it had concluded with TL without being able to attach them to those two actions on account of the procedural rules governing electronic order for payment procedures contained in Article 505(1)³² of the Code of Civil Procedure and the technical characteristics of the system for administering those

procedures, which do not allow any evidence to be presented. Therefore, the Sąd Rejonowy Lublin-Zachód w Lublinie (District Court, Lublin West) did not have either the power or the technical possibility of requiring Getin Noble Bank to submit those loan agreements.

- 17 The Sąd Rejonowy Lublin-Zachód w Lublinie (District Court, Lublin West) issued two orders for payment which were not contested by TL and thus became final before the order for their enforcement was issued. That enabled enforcement proceedings to be initiated in respect of TL's immovable property, which were carried out by a court enforcement officer under the supervision of the Sąd Rejonowy dla Warszawy-Śródmieścia w Warszawie (Warsaw District Court – Warsaw City Centre, Poland), which is the referring court.
- 18 In those enforcement proceedings, the referring court was therefore the first national court before which the loan agreements at issue in the main proceedings were presented.
- 19 After examining the content of those loan agreements, the referring court expressed doubts as to the validity of those agreements in view of the potentially unfair conversion terms contained in them, without which those agreements cannot be implemented and must be regarded as null and void.
- 20 The referring court considers that the case in the main proceedings raises the question whether a national court must carry out, of its own motion, a review of the unfairness of the terms of agreements concluded with consumers on the basis of which enforcement proceedings are initiated, that is to say, a question which was similar to that raised in the cases which gave rise to the judgments of 17 May 2022, *SPV Project 1503 and Others* (C-693/19 and C-831/19, EU:C:2022:395), and of 17 May 2022, *Ibercaja Banco* (C-600/19, EU:C:2022:394).
- 21 That court notes that TL did not oppose the orders for payment referred to in paragraph 17 of the present judgment and, therefore, no longer has any legal remedy which would enable him, in practice, to contest the obligations arising from the orders for payment. First, an application to oppose enforcement made against an enforcement order constituted by a judicial decision cannot legitimately make it possible, under Article 840(1)(1) of the Code of Civil Procedure, to challenge the validity of the obligation which is the subject of that order. Second, the bringing by a debtor of an action for a declaration that an agreement is void or an action seeking to establish the unenforceability of the unfair terms of that agreement would not, in practice, alter his situation, since such an action cannot result, under Article 189 of the Code of Civil Procedure, in the annulment of a final order for payment. Under Article 365(1) of the Code of Civil Procedure, a final judgment, including a judgment issuing an order for payment in an electronic order for payment procedure, is binding on all courts.
- 22 If the referring court were required, under EU law, to examine, of its own motion, whether the terms contained in the loan agreements concerned are unfair, it is uncertain whether Article 7(1) of Directive 93/13 and the principles of effectiveness, proportionality and legal certainty must be interpreted as meaning that they allow the effects of the entry of a contractual term in the national register of standard business terms which are held to be unlawful ('the national register of unlawful terms') to be extended, in particular where the consumer concerned does not assert his or her rights arising from that directive, to a seller or supplier which was not party to the proceedings which led to the making of that entry.

- 23 A comparison of the content of the contractual terms at issue in the main proceedings with that of the contractual terms of banks other than Getin Noble Bank entered in the national register of unlawful terms leads to the conclusion that there are significant similarities between them, such that they have an equivalent scope and have the same consequences for consumers.
- 24 The referring court considers that, according to the case-law arising from the judgment of 21 December 2016, *Biuro podróży 'Partner'* (C-119/15, EU:C:2016:987), there is nothing to prevent the effects of the entry of a particular contractual term in the national register of unlawful terms from applying, first, to all sellers or suppliers which use that term, and not only the seller or supplier which was party to the proceedings for a declaration of the unfairness of that term and for entry of that term in the register, and, second, to every term which is materially identical but not necessarily linguistically identical. Nevertheless, the referring court has doubts as to whether that interpretation of EU law applies to all proceedings in which one of the parties is a consumer who has concluded an agreement with the seller or supplier concerned and not only to administrative proceedings initiated to impose penalties on sellers or suppliers for using terms entered in the national register of unlawful terms, such as the case giving rise to that judgment.
- 25 The referring court states, on the other hand, that the Sąd Najwyższy (Supreme Court, Poland) issued resolution III CZP 175/15, on 20 November 2015, under which an entry in the national register of unlawful terms does not produce effects in respect of sellers or suppliers other than the seller or supplier concerned in the proceedings for entry in that register, in order to comply with the right to be heard of those other sellers or suppliers.
- 26 In those circumstances, the Sąd Rejonowy dla Warszawy-Śródmieścia w Warszawie (Warsaw District Court – Warsaw City Centre) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Are Articles 6(1) and 7(1) of Directive [93/13] and the principles of legal certainty, inviolability of final court judgments, effectiveness, and proportionality to be interpreted as precluding national legislation which provides that a national court may not carry out, of its own motion, a review of unfair contractual terms and attach consequences thereto where it is supervising enforcement proceedings conducted by a court enforcement officer pursuant to a final and enforceable order for payment issued in proceedings in which no evidence is taken?
- (2) Are Articles 3(1), 6(1) and 7(1) and (2), and 8 of Directive [93/13], Article 47 of the [Charter] and the principles of legal certainty, effectiveness and proportionality, and the right to be heard by a court, to be interpreted as precluding a judicial interpretation of national legislation under which the entry of an unfair term in the [national register of unlawful terms] renders that term unfair in any proceedings involving a consumer, including:
- in respect of a seller or supplier other than that against which proceedings for entry of an unfair term in the [national register of unlawful terms] were under way,
 - in respect of a term which is not linguistically identical but which has the same meaning and produces the same effect vis-à-vis the consumer?’

Procedure before the Court

- 27 In its order for reference, the referring court requested that the reference for a preliminary ruling which gave rise to the present judgment be dealt with under an expedited procedure, in accordance with Article 105 of the Rules of Procedure of the Court of Justice. In support of its request for application of an expedited procedure, the referring court submitted that the court enforcement officer responsible for conducting enforcement proceedings in the main case had seized the immovable property which was the subject of those proceedings and that an auction of that property was to be carried out following the submission of requests by the creditors which may result, first, in TL being deprived of that immovable property and, second, in the creditors receiving sums which are not due to them. Although TL may possibly, in future, exercise his rights by an action for damages, that would not ensure that his rights are fully protected.
- 28 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure.
- 29 It must be borne in mind that such an expedited procedure is a procedural instrument intended to address matters of exceptional urgency (judgment of 21 December 2021, *Randstad Italia*, C-497/20, EU:C:2021:1037, paragraph 37 and the case-law cited).
- 30 In the present case, the President of the Court decided on 15 December 2022, after hearing the Judge-Rapporteur and the Advocate General, that it was not appropriate to grant the request referred to in paragraph 27 of the present judgment.
- 31 First, the mere fact that the proceedings in the main case are proceedings for enforcement necessitating rapid resolution cannot, in itself, establish the urgency required in Article 105 of the Rules of Procedure (see, to that effect, order of the President of the Court of 5 October 2018, *Addiko Bank*, C-407/18, EU:C:2018:825, paragraph 12).
- 32 Second, the President of the Court did take into consideration, in a case in which the applicants in the main proceedings had lodged an objection to mortgage enforcement in respect of their immovable property, the fact that, in view of the rules of the national civil procedure concerned, implementation of the enforcement proceedings exposed them to the risk of losing their main residence. He therefore upheld the request for application of an expedited procedure, stating that, in such a situation, the national law concerned only provided the wronged debtor with protection of a purely compensatory nature and did not enable the restoration of the previous situation in which he had the status of owner of his residence (see, to that effect, order of the President of the Court of 5 October 2018, *Addiko Bank*, C-407/18, EU:C:2018:825, paragraph 13).
- 33 However, in the present case, it is not at all apparent from the request for application of an expedited procedure or from the request for a preliminary ruling that TL now runs an imminent risk of losing his main residence in the enforcement proceedings at issue in the main case. The referring court did not indicate to the Court that the immovable property at issue in the main proceedings is TL's main residence, and, in any case, TL appears to reside at a different address from that of the immovable property (see, to that effect, order of the President of the Court of 5 October 2018, *Addiko Bank*, C-407/18, EU:C:2018:825, paragraph 14).

The jurisdiction of the Court and the admissibility of the request for a preliminary ruling

- 34 In the first place, Getin Noble Bank claims, in essence, that the Court does not have jurisdiction to rule on the request for a preliminary ruling, since the questions for a preliminary ruling concern a national enforcement procedure, which do not fall within the scope of EU law.
- 35 It must be noted in that regard that it follows from Article 19(3)(b) TEU and from the first paragraph of Article 267 TFEU that the Court has jurisdiction to give preliminary rulings concerning the interpretation of EU law or the validity of the acts of EU institutions.
- 36 However, it is clear from the very wording of the questions referred for a preliminary ruling by the national court that, contrary to what Getin Noble Bank claims, those questions concern the interpretation of provisions of Directive 93/13 and of the Charter as well as general principles of EU law and not the interpretation of provisions of Polish law. The Court therefore has jurisdiction to rule on the request for a preliminary ruling.
- 37 In the second place, Getin Noble Bank maintains, in essence, that the request for a preliminary ruling is, in any event, inadmissible.
- 38 First, the referring court does not have jurisdiction to rule on a dispute between the parties by a decision which constitutes a ‘judgment’ within the meaning of Article 267 TFEU, and must be regarded as being an ‘administrative body’ where it acts in connection with the supervision of enforcement proceedings. Second, the questions referred for a preliminary ruling are imprecise, too general and hypothetical in nature. The first question does not state either the supervisory measure to which it relates or the manner of giving effect to any answers which the Court might give. Moreover, the parties to the supervisory proceedings do not have any legal basis for obtaining a decision on the merits. The second question does not take into account the fact that, although the position of the consumer concerned on the maintenance of the terms which the referring court considers to be unfair must be obtained, that court does not have jurisdiction to assess that consumer’s intention in that regard, and the consumer has, in any case, been inactive in the present case.
- 39 Getin Noble Bank therefore disputes, in essence, that the referring court has jurisdiction, under Polish law, to carry out, of its own motion, a review of the unfairness of contractual terms in the loan agreements at issue in the main proceedings. Such a line of argument, which concerns substantive aspects, in no way enables the admissibility of the request for a preliminary ruling to be called into question (see, to that effect, judgment of 17 March 2021, *An tAire Talmhaíochta Bia agus Mara and Others*, C-64/20, EU:C:2021:207, paragraph 27 and the case-law cited).
- 40 In the light of the foregoing considerations, the Court has jurisdiction to rule on the request for a preliminary ruling and the request is admissible.

The questions referred for a preliminary ruling

The first question

- 41 By its first question, the referring court asks, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as precluding national legislation which provides that a national court may not carry out, of its own motion, a review of the unfairness of terms

contained in an agreement concluded with the consumer and attach consequences thereto where it is supervising enforcement proceedings based on a decision issuing a final order for payment having the authority of *res judicata*.

- 42 It should be recalled at the outset that, as is clear from the Court’s case-law, the imbalance which exists between the consumer and the seller or supplier may be corrected only by positive action unconnected with the actual parties to the contract concerned, the national court being required to assess of its own motion whether a contractual term falling within the scope of Directive 93/13 is unfair as soon as it has the legal and factual elements necessary for that task available to it (judgment of 22 September 2022, *Vicente (Actions for the recovery of lawyers’ fees)*, C-335/21, EU:C:2022:720, paragraph 52).
- 43 While the Court has defined, in a number of respects and taking account of the requirements of Articles 6(1) and 7(1) of Directive 93/13, the way in which national courts must ensure that the rights which consumers derive from that directive are protected, the fact remains that, in principle, EU law does not harmonise the procedures applicable to examining whether a contractual term is unfair and that those procedures accordingly fall within the domestic legal system of the Member States. That is so in the case in the main proceedings as regards the procedural rules under Polish law governing enforcement proceedings which, in the absence of harmonisation, is a matter for the legal order of that Member State (see, by analogy, judgment of 22 September 2022, *Vicente (Actions for the recovery of lawyers’ fees)*, C-335/21, EU:C:2022:720, paragraph 53).
- 44 However, in accordance with the principle of sincere cooperation enshrined in Article 4(3) TEU, the detailed procedural rules governing actions for safeguarding an individual’s rights under EU law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render impossible in practice or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (judgment of 22 September 2022, *Vicente (Actions for the recovery of lawyers’ fees)*, C-335/21, EU:C:2022:720, paragraph 54).
- 45 As regards the principle of effectiveness, it follows from the Court’s case-law that every case in which the question arises 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 concerned, its progress and its special features, viewed as a whole, and, where relevant, 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. From that point of view, the Court has held that the need to comply with the principle of effectiveness cannot be stretched so far as to make up fully for the complete inaction on the part of the consumer concerned (judgment of 17 May 2022, *Unicaja Banco*, C-869/19, EU:C:2022:397, paragraph 28).
- 46 In addition, the Court has stated that the obligation on the Member States to ensure the effectiveness of the rights that individuals derive from EU law, particularly the rights deriving from Directive 93/13, implies a requirement for effective judicial protection, reaffirmed in Article 7(1) of that directive and also guaranteed in Article 47 of the Charter, which applies, inter alia, to the definition of detailed procedural rules relating to actions based on such rights (judgment of 17 May 2022, *Unicaja Banco*, C-869/19, EU:C:2022:397, paragraph 29).

- 47 In that respect, the Court has ruled that, without effective review of whether the terms of the contract concerned are unfair, observance of the rights conferred by Directive 93/13 cannot be guaranteed (judgment of 17 May 2022, *Unicaja Banco*, C-869/19, EU:C:2022:397, paragraph 30).
- 48 It follows that the conditions laid down in the national laws, to which Article 6(1) of Directive 93/13 refers, may not adversely affect the substance of the right that consumers acquire under that provision not to be bound by a term deemed to be unfair (judgment of 17 May 2022, *Unicaja Banco*, C-869/19, EU:C:2022:397, paragraph 31).
- 49 The referring court states that orders for payment, such as those at issue in the main proceedings, are issued, after being requested by the creditor concerned in an electronic order for payment procedure, by Polish courts, without their having the legal and technical possibility of consulting the agreements on the basis of which those orders are issued and, therefore, of reviewing of their own motion whether those agreements contain unfair terms. Where those orders for payment are not contested by the debtor concerned within two weeks of their notification, they are enforceable and have acquired the force of *res judicata*, which means that the court under whose supervision the court enforcement officer concerned conducts the enforcement proceedings is not empowered to carry out that review of its own motion.
- 50 It should be noted, in that regard, that effective protection of the rights conferred on the consumer by Directive 93/13 can be guaranteed only provided that the national procedural system concerned allows the court, during the order for payment proceedings or the enforcement proceedings, to check of its own motion whether the terms of the contract concerned are unfair (judgment of 17 May 2022, *Impuls Leasing România*, C-725/19, EU:C:2022:396, paragraph 49).
- 51 The Court has held that, in a case in which no examination of its own motion by the court of the potentially unfair nature of terms in the contract concerned is provided for at the stage of the enforcement proceedings, a national law must be regarded as undermining the effectiveness of the protection intended by Directive 93/13 if it does not provide for such an assessment when the order is granted or, in the case where such an assessment is provided for only when an objection is lodged against the order granted, if there is a significant risk that the consumer concerned will not lodge the objection required, either because of the particularly short period provided for that purpose, or because they might be dissuaded from defending themselves in view of the costs which legal proceedings would entail in relation to the amount of the disputed debt, or because the national legislation does not lay down the obligation that all the information must be communicated to them which is necessary to enable them to determine the extent of their rights (judgment of 17 May 2022, *Impuls Leasing România*, C-725/19, EU:C:2022:396, paragraph 50).
- 52 It follows, first, that the Polish legislation governing the issue of an order for payment and the enforcement proceedings would not be consistent with the principle of effectiveness if it did not provide for any examination, of its own motion, by a court of the potentially unfair nature of the terms contained in the contract concerned.
- 53 Second, although Polish law provides for such an examination only where the consumer concerned disputes an order for payment, it will be for the referring court to assess whether there is a significant risk that that consumer will not lodge the objection required, either because of the particularly short period provided for that purpose, or in view of the costs which legal

proceedings would entail in relation to the amount of the disputed debt, or because that law does not lay down the obligation that all the information must be communicated to the consumer which is necessary to enable him to determine the extent of his rights.

- 54 As regards the two-week period for lodging such an objection laid down in the national legislation at issue in the main proceedings, the Court has held that such a period creates the risk referred to in the previous paragraph (see, to that effect, order of 6 November 2019, *BNP Paribas Personal Finance SA Paris Sucursala București and Secapital*, C-75/19, EU:C:2019:950, paragraphs 31 and 33).
- 55 Even if a party were not obliged to state the reasons for his or her objection to the order for payment under Polish law, as Getin Noble Bank claims, that two-week period would nonetheless appear to be particularly short for the consumer concerned to be able to assess the legal consequences of his or her decision to lodge an objection against that order.
- 56 If the referring court were to hold that there is a significant risk that an objection to the orders for payment at issue in the main proceedings will not be lodged in view of the circumstances referred to in paragraph 53 of the present judgment, it should be remembered, as regards the fact that those orders have acquired the force of *res judicata*, that, in order to ensure stability of the law and legal relations, as well as the sound administration of justice, it is important that judicial decisions which have become definitive, after all rights of appeal have been exhausted or after expiry of the time limits provided to exercise those rights, can no longer be called into question (see, to that effect, judgment of 17 May 2022, *Unicaja Banco*, C-869/19, EU:C:2022:397, paragraph 32).
- 57 Moreover, consumer protection is not absolute. In particular, EU law does not require a national court to disapply domestic rules of procedure conferring finality on a decision, even if to do so would make it possible to remedy an infringement of a provision, regardless of its nature, contained in Directive 93/13, subject, however, in accordance with the case-law set out in paragraph 44 above, to compliance with the principles of equivalence and effectiveness (judgment of 17 May 2022, *Unicaja Banco*, C-869/19, EU:C:2022:397, paragraph 33).
- 58 In a situation where a review of the court's own motion of the unfairness of contractual terms was deemed to have taken place and to have the force of *res judicata*, without, however, that review containing any statement of reasons, the Court has held that the requirement of effective judicial protection necessitates that the court hearing the enforcement proceedings is able to assess, including for the first time, whether the contractual terms which served as the basis for an order for payment issued by a court at the request of a creditor, and against which the debtor did not lodge an objection, are unfair (see, to that effect, judgment of 17 May 2022, *SPV Project 1503 and Others*, C-693/19 and C-831/19, EU:C:2022:395, paragraphs 65 and 66).
- 59 The same applies a fortiori where no review by a court of its own motion of unfair contractual terms contained in the agreement concerned is deemed to have taken place, which appears to be so in the present case.
- 60 The fact that TL was passive during the proceedings conducted before the Polish courts does not release the referring court from its obligation to carry out that review of its own motion, if it establishes that TL did not lodge an objection to the orders for payment at issue in the main

proceedings in view of the circumstances referred to in paragraph 53 of the present judgment, since that objection was the only procedural remedy available to TL to challenge the unfairness of the contractual terms at issue in the main proceedings.

- 61 In the light of all the foregoing, the answer to the first question is that Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as precluding national legislation which provides that a national court may not carry out, of its own motion, a review of the unfairness of terms contained in an agreement and draw inferences therefrom where it is supervising enforcement proceedings based on a decision issuing a final order for payment which has the force of *res judicata*:
- if that legislation does not provide for such a review when the order for payment is issued, or
 - where such an assessment is provided for only when an objection is lodged against the order for payment concerned, if there is a significant risk that the consumer concerned will not lodge the objection required, either because of the particularly short period provided for that purpose, or in view of the costs which legal proceedings would entail in relation to the amount of the disputed debt, or because the national legislation does not lay down the obligation that all the information must be communicated to that consumer which is necessary to enable that consumer to determine the extent of his or her rights.

The second question

- 62 By its second question, the referring court asks, in essence, whether Article 3(1), Article 6(1), Article 7(1) and (2), and Article 8 of Directive 93/13 must be interpreted as precluding national case-law according to which the entry of a contractual term in the national register of unlawful terms renders that term unfair in any proceedings involving a consumer, including in respect of a seller or supplier other than that against which proceedings for entry of an unfair term in the register of unlawful terms were under way and in respect of a term which is not linguistically identical to the term which has been registered, but which has the same meaning and produces the same effect vis-à-vis the consumer concerned.
- 63 According to settled case-law of the Court, the system of protection introduced by Directive 93/13 is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his or her bargaining power and his or her level of knowledge (judgment of 21 September 2023, *mBank (Polish register of unlawful terms)*, C-139/22, EU:C:2023:692, paragraph 34).
- 64 Therefore, first, under Article 3(1) of that directive, a contractual term which has not been individually negotiated is to be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under that contract, to the detriment of the consumer concerned, while, under Article 6(1) of that directive, such an unfair term does not bind that consumer. That latter provision 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 (judgment of 21 September 2023, *mBank (Polish register of unlawful terms)*, C-139/22, EU:C:2023:692, paragraph 35 and the case-law cited).

- 65 Next, given the nature and significance of the public interest constituted by the protection of consumers who are in such a position of weakness, Article 7(1) of that directive, read in conjunction with the 24th recital thereof, obliges the Member States to provide for adequate and effective means to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers (judgment of 21 September 2023, *mBank (Polish register of unlawful terms)*, C-139/22, EU:C:2023:692, paragraph 36).
- 66 As is apparent from Article 7(2) of Directive 93/13, the aforementioned means are to include the possibility for persons or organisations having a legitimate interest under national law in protecting consumers to take action in order to obtain a judicial decision as to whether contract terms drawn up for general use are unfair and, where appropriate, to have those terms prohibited (judgment of 21 September 2023, *mBank (Polish register of unlawful terms)*, C-139/22, EU:C:2023:692, paragraph 37).
- 67 However, since the dispute in the main proceedings does not concern such persons or organisations, there is no need to answer the second question with regard to Article 7(2) of Directive 93/13.
- 68 According to recital 12 of that directive, it provides for only partial and minimum harmonisation of national laws on unfair terms, leaving the Member States the option, with due regard for the FEU Treaty, to afford the consumer concerned a higher level of protection through national provisions that are more stringent than those of the directive. In addition, under Article 8 of the directive, Member States may adopt or retain the most stringent provisions compatible with that Treaty in the area covered by that directive, to ensure a maximum degree of protection for that consumer (judgment of 21 September 2023, *mBank (Polish register of unlawful terms)*, C-139/22, EU:C:2023:692, paragraph 39 and the case-law cited).
- 69 So far as concerns the national register of unlawful terms, the Court has held that a mechanism such as that register, consisting in establishing a list of terms which must be regarded as unfair, is one of the more stringent measures that Member States may adopt or retain under Article 8 of Directive 93/13 and that that register meets, in principle, the interest of consumer protection (judgment of 21 September 2023, *mBank (Polish register of unlawful terms)*, C-139/22, EU:C:2023:692, paragraph 40 and the case-law cited).
- 70 Since the establishment of such a register was not required by Directive 93/13, the choice of means used to achieve its particular objectives and, therefore, the determination of the legal effects that entry in that register of unlawful terms may produce fall within the competences of the Member States.
- 71 Provided that the national register of unlawful terms is managed in a transparent manner in the interest not only of consumers, but also sellers or suppliers, and that it is kept up to date, in keeping with the principle of legal certainty, the establishment of that register is compatible with EU law (judgment of 21 September 2023, *mBank (Polish register of unlawful terms)*, C-139/22, EU:C:2023:692, paragraph 43 and the case-law cited).
- 72 Moreover, the application of the mechanism of the register of unlawful terms presupposes an assessment by the competent national court of the equivalence of the contested contractual term with a standard business term held to be unlawful and included in that register, the seller or supplier concerned having the option to challenge that equivalence before a national court in order to determine whether, in the light of all the relevant circumstances of the individual case at

issue, that contractual term is materially identical to the term entered in such a register, having regard, inter alia, to the effects it produces (judgment of 21 September 2023, *mBank (Polish register of unlawful terms)*, C-139/22, EU:C:2023:692, paragraph 44 and the case-law cited). Such a national scheme does not therefore disregard the rights of the defence of the seller or supplier concerned (see, by analogy, judgment of 21 December 2016, *Biuro podróży 'Partner'*, C-119/15, EU:C:2016:987, paragraph 43).

- 73 Furthermore, although, under Article 8 of Directive 93/13, Member States remain free to make provision, in their national law, for a more extensive examination than that which their courts must carry out under that directive, or simplified procedures to assess whether a contractual term, such as that at issue in the main proceedings, is unfair, the national court is nevertheless, as a general rule, required to inform the parties to the dispute of that assessment and to invite each of them to set out their views on that matter, with the opportunity to challenge the views of the other party, in accordance with the formal requirements laid down in that regard by the national rules of procedure (judgment of 21 September 2023, *mBank (Polish register of unlawful terms)*, C-139/22, EU:C:2023:692, paragraph 45).
- 74 The referring court states that Polish law may be interpreted as meaning that the entry of a contractual term in the register of unlawful terms renders that term unfair in any proceedings involving a consumer, including in respect of a seller or supplier other than that against which proceedings for entry of that unfair term in the national register were under way, and where the term concerned is not linguistically identical to the term which has been registered but has the same meaning and produces the same effect vis-à-vis the consumer concerned.
- 75 In that regard, it should be recalled that a finding that a disputed contractual term is unfair based on a comparison of the content of that term with that of a term entered in the national register of unlawful terms is capable of swiftly contributing to unfair terms used in a significant number of contracts ceasing to have effects vis-à-vis the consumers who are parties to those contracts (judgment of 21 September 2023, *mBank (Polish register of unlawful terms)*, C-139/22, EU:C:2023:692, paragraph 41).
- 76 Moreover, in a case concerning administrative proceedings brought against a seller or supplier, the Court held that Article 6(1) and Article 7 of Directive 93/13, read in conjunction with Articles 1 and 2 of Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJ 2009 L 110, p. 30), and in the light of Article 47 of the Charter, must be interpreted as not precluding the use of standard contract terms with content identical to that of terms which have been declared unlawful by a judicial decision having the force of law and which have been entered in a national register of unlawful terms from being regarded, in relation to another seller or supplier which was not a party to the proceedings culminating in the entry in that register, as an unlawful act (judgment of 21 December 2016, *Biuro podróży 'Partner'*, C-119/15, EU:C:2016:987, paragraph 47).
- 77 The same applies, a fortiori, to a dispute between sellers or suppliers and a consumer, such as the consumer in the main proceedings, in which the content of a potentially unfair term is to be enforced.
- 78 In the light of all the foregoing, the answer to the second question must be that Article 3(1), Article 6(1), Article 7(1) and Article 8 of Directive 93/13 must be interpreted as not precluding national case-law according to which the entry of a contractual term in the national register of

unlawful terms renders that term unfair in any proceedings involving a consumer, including in respect of a seller or supplier other than that against which proceedings for entry of that unfair term in the register of unlawful terms were under way and in respect of a term which is not linguistically identical to the term which has been registered, but which has the same meaning and produces the same effect vis-à-vis the consumer concerned.

Costs

- 79 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Ninth Chamber) hereby rules:

1. Article 6(1) and Article 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 preclude national legislation which provides that a national court may not carry out, of its own motion, a review of the unfairness of terms contained in an agreement concluded with the consumer and draw inferences therefrom where it is supervising enforcement proceedings based on a decision issuing a final order for payment which has the force of *res judicata*:

- if that legislation does not provide for such a review when the order for payment is issued, or
- where such an assessment is provided for only when an objection is lodged against the order for payment concerned, if there is a significant risk that the consumer concerned will not lodge the objection required, either because of the particularly short period provided for that purpose, or in view of the costs which legal proceedings would entail in relation to the amount of the disputed debt, or because the national legislation does not lay down the obligation that all the information must be communicated to that consumer which is necessary to enable that consumer to determine the extent of his or her rights.

2. Article 3(1), Article 6(1), Article 7(1) and Article 8 of Directive 93/13

must be interpreted as meaning that they do not preclude national case-law according to which the entry of a contractual term in the national register of unlawful terms renders that term unfair in any proceedings involving a consumer, including in respect of a seller or supplier other than that against which proceedings for entry of that unfair term in the register of unlawful terms were under way and in respect of a term which is not linguistically identical to the term which has been registered, but which has the same meaning and produces the same effect vis-à-vis the consumer concerned.

[Signatures]