Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

31 May 2018 *

(Reference for a preliminary ruling — Consumer protection — Unfair terms in consumer contracts — Directive 93/13/EEC — Article 7(1) — Loan agreements denominated in foreign currency — National legislation providing for specific procedural requirements when the fairness of terms is challenged — Principle of equivalence — Charter of Fundamental Rights of the European Union — Article 47 — Right to effective judicial protection)

In Case C-483/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Törvényszék (Budapest High Court, Hungary), made by decision of 29 August 2016, received at the Court on 6 September 2016, in the proceedings

**Zsolt Sziber**

v

**ERSTE Bank Hungary Zrt.,**

intervener:

**Mónika Szeder,**

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Rosas, C. Toader, A. Prechal (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: N. Wahl,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 24 October 2017,

after considering the observations submitted on behalf of:

– ERSTE Bank Hungary Zrt., by T. Kende and P. Sonnevend, ügyvédek,

– the Hungarian Government, by M.Z. Fehér, acting as Agent,

– the European Commission, by A. Cleenewerck de Crayencour and A. Tokár, acting as Agents,

* Language of the case: Hungarian.

after hearing the Opinion of the Advocate General at the sitting on 16 January 2018,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 169 TFEU, Articles 20, 21, 38 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), Article 7(1) and (2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), read in the light of Article 8 of that directive and of recital 47 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66, and corrigenda OJ 2009 L 207, p. 14; OJ 2010 L 199, p. 40, and OJ 2011 L 234, p. 46).

2 The request has been made in proceedings between Mr Zsolt Sziber and ERSTE Bank Hungary Zrt. ('ERSTE Bank') concerning an application for a declaration of unfairness of terms inserted into a loan agreement, for the purchase of a dwelling, paid out and repaid in Hungarian forints (HUF), but registered in Swiss francs (CHF) on the basis of the exchange rate in force on the day of payment.

## Legal context

### *EU law*

*Directive 87/102/EEC*

3 Under Article 2(1)(a) of Council Directive 87/102/EEC of 22 December 1986 on the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48), that directive is not to apply to credit agreements or agreements promising to grant credit intended primarily for the purpose of acquiring or retaining property rights in land or in an existing or projected building.

*Directive 93/13/EEC*

4 The 24th recital of Directive 93/13 states:

'... the courts or administrative authorities of the Member States must have at their disposal adequate and effective means of preventing the continued application of unfair terms in consumer contracts'.

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

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

6 Under Article 7(1) of the directive:

'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.'

*Directive 2008/48*

7 Article 2(2)(a) of Directive 2008/48 provides:

'This Directive shall not apply to the following:

(a) credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on immovable property or secured by a right related to immovable property'.

***Hungarian law***

*The previous Civil Code*

8 Article 239/A(1) of the a polgári törvénykönyvről szóló 1959. évi IV. törvény (Law No IV of 1959 on the Civil Code), in the version in force until 14 March 2014 ('the previous Civil Code'), stated:

'The parties may institute proceedings seeking a declaration of invalidity of the contract or of any term of the contract (partial invalidity) without having at the same time to request application of the consequences of the invalidity.'

*The Civil Code*

9 Under Article 6:108 of the a polgári törvénykönyvről szóló 2013. évi V. törvény (Law No V of 2013 on the Civil Code), in force since 15 March 2014:

'1. No right may be based on an invalid contract, nor may a claim be brought for contractual performance. Further to an application to that effect by one of the parties, the court shall determine the other legal consequences of invalidity, in accordance with the provisions on limitation and adverse possession.

2. The parties may bring an action for a declaration of invalidity of the contract without also having to request application of the consequences of invalidity.

3. The court may rule on the legal consequences of invalidity and may also diverge from the parties' claims but may not apply a solution to which both parties are opposed.'

*Law DH1*

10 Article 1(1) of a Kúriának a pénzügyi intézmények fogyasztói kölcsönszerződéseire vonatkozó jogegységi határozatával kapcsolatos egyes kérdések rendezéséről szóló 2014. évi XXXVIII. törvény (Law No XXXVIII of 2014 governing specific matters relating to the decision of the Kúria (Supreme Court, Hungary) to harmonise the case-law on loan agreements concluded between credit institutions and consumers ('Law DH1') provides:

'This Law shall apply to consumer loan agreements concluded with consumers between 1 May 2004 and the date of entry into force of this Law. In the application of this Law, the concept of "consumer loan agreement" shall cover any foreign-currency-based (denominated or granted in foreign currency and repaid in HUF) or HUF-based 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, for the purposes of Article 3(1) or Article 4(1).'

11 Article 3(1) and (2) of Law DH1 provides:

'1. In credit agreements concluded with consumers, terms — with the exception of contractual terms which have been individually negotiated — pursuant to which the credit 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 the provisions in 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 repayment of the loan (including payment of the instalments and all the costs, fees and commissions expressed in foreign currency).'

12 Article 4 of Law DH1 provides:

'1. In the case of loan agreements concluded with consumers which include the right to amend the contract unilaterally, the terms of that contract — with the exception of those that have been negotiated individually — which permit the unilateral increase of the interest rate or the unilateral increase of costs and commissions shall be deemed to be unfair.

2. The contractual terms referred to in paragraph 1 shall be void if the credit institution has not … commenced civil proceedings …, or if the court has dismissed the action or discontinued the examination of the case, unless, in the case of the contractual terms concerned, it is possible to bring the proceedings … but those proceedings have not been commenced or, if they have been commenced, the court has not found the contractual term to be void under paragraph 2a.

2a. A contractual term as referred to in paragraph 1 shall be void if a court has found that it is void under the special law on the settlement of accounts in proceedings brought in the public interest by the supervisory authority.

3. In the cases referred to in paragraphs 2 and 2a, the credit institution shall carry out a settlement of accounts with the consumer as provided for in the special law.'

*Law DH2*

13 Article 37 of A [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 provisions governing the settlement of accounts referred to in Law No XXXVIII of 2014 governing specific matters relating to the decision of the Kúria (Supreme Court) to harmonise the case-law on loan agreements concluded between credit institutions and consumers, and concerning a number of other provisions ('Law DH2') states:

'1. 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. If the parties request determination of the legal consequences of total or partial invalidity, they must also indicate what legal consequence the court should apply. As regards the application of the legal consequences, the parties must put forward an express, quantitatively defined claim which also includes the settlement of accounts between them.

2. Taking account of the provisions of paragraph 1 with regard to the contracts to which this Law applies, the action must be declared inadmissible without the parties being ordered to appear or the examination of the case must be discontinued in proceedings in progress for a declaration of total or partial invalidity of the contract under Article 239/A(1) of the [previous Civil Code] or Article 6:108(2) of the [Civil Code], provided that the conditions laid down in this Law are satisfied. The action shall not be declared inadmissible without an order for the parties to appear nor shall the examination of the case be discontinued, if the party concerned, in addition to seeking a declaration of total or partial invalidity of the contract, has also sought another form of order in the same proceedings; in that case, the claim for a declaration of invalidity shall be deemed not to stand. The same course of action shall be followed in proceedings resumed after a stay has ended.

3. If, in proceedings in progress, the action may no longer be declared inadmissible without an order for the parties to appear, examination of the case must be discontinued if the party concerned does not seek in his application (or, where applicable, in his counterclaim), within 30 days of notification of the request sent to him by the court for rectification of the defects, determination of the legal consequences of total or partial invalidity of the contract, and does not indicate which legal consequence should be applied. The examination of the case shall not be discontinued if the party concerned, in addition to seeking a declaration of total or partial invalidity of the contract, has also sought another form of order in the same proceedings; in that case, the claim for a declaration of invalidity shall be deemed not to stand.'

14 Article 37/A(1) of Law DH2 provides as follows:

'When determining the legal consequences of invalidity, the court, applying the provisions on the settlement of accounts laid down in this Law — taking as the basis the data in the settlement of accounts audited under Article 38(6) — shall stipulate the payment obligations of the parties.'

15 Article 38(6) of the same law provides:

'The settlement of accounts shall be deemed to be audited if:

(a) within the period laid down in this Law, the consumer has not submitted a complaint to the credit institution regarding the settlement of accounts or has not submitted a complaint alleging that the credit institution has not performed that settlement of accounts;

(b) within the period laid down in this Law, the consumer has not brought proceedings before the Pénzügyi Békéltető Testület [Hungarian Financial Arbitration Committee];

(c) within the period laid down in this Law, neither the consumer nor the credit institution have commenced the non-contentious proceedings referred to in Article 23(1) or the contentious proceedings referred to in Article 23(2) of this Law;

(d) the decision which brought to an end the non-contentious proceedings referred to in Article 23(1) or the contentious proceedings referred to in Article 23(2), brought by the consumer or the credit institution, has become final.'

*Law DH3*

16 Under Article 3(1) of 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 DH3');

'Loan agreements concluded with consumers shall be amended by operation of this Law, in accordance with its provisions.'

17 Article 10 of Law DH3 provides:

'As regards foreign currency mortgage loan agreements and foreign currency based mortgage loan agreements concluded with consumers, the credit 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 DH2], to convert into a loan denominated in HUF the debt under foreign currency mortgage loan agreement or 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 DH2]. For the purposes of that conversion, whichever of the following two interest rates is the most favourable to the consumer on the reference date ("Conversion into HUF") 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 official exchange rate set by the National Bank of Hungary on 7 November 2014.'

18 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 apply to the amount of the consumer's debt derived from foreign currency loan agreement or from foreign currency-based loan agreement, calculated in accordance with the settlement of accounts under [Law DH2].

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 DH2] must be established in accordance with the provisions of this Law.'

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

19 On 7 May 2008, Mr Sziber, as debtor, and Ms Mónika Szeder, as joint debtor, contracted, with ERSTE Bank, a loan for the purchase of a dwelling, denominated in CHF and paid out and reimbursed in HUF. The loan agreement in question was registered in CHF on the basis of the exchange rate of the day and a mortgage security agreement was attached. That loan agreement contains terms stipulating, on the one hand, a differential between the exchange rate applicable to the advance of the loan and that applicable to the repayment, respectively the buying rate of exchange applied by ERSTE Bank and the selling rate charged by it ('the difference in exchange rates'), and, on the other, the option for ERSTE Bank to amend the contract unilaterally, enabling it to increase interest, fees and costs ('the power to make unilateral amendments').

20 In his application, Mr Sziber asked the referring court, principally, to declare the loan agreement in question void, in that, first, the obligation under the contract was impossible to perform, since it did not include either the amounts of the various instalments or the respective amounts of the capital borrowed and the interest and since it would not be possible to pay a sum in foreign currency to a credit account in HUF; second, the exchange rate applicable to the foreign currency conversion was not clearly stipulated in the contract, and third, ERSTE Bank had failed to satisfy the requirement to carry out an adequate credit assessment in relation to the debtor's creditworthiness, taking account, inter alia, of the exchange rate risk. Moreover, the consumer was unable to evaluate the extent of the exchange rate risk on the basis of the unclear and unintelligible information provided to him.

21 In the alternative, Mr Sziber requested the Fővárosi Törvényszék (Budapest High Court, Hungary) to declare the invalidity of certain contractual terms. He argued first, that the term in point VII.2 of the agreement was unfair in so far as the magnitude of the exchange risk could not fully be appreciated by the consumer, who was not given clear and intelligible information. Second, the term in point VIII.13 of the agreement was, in his view, unfair because it allowed a banking communication to become part of that contract, ERSTE Bank having thus been given the right to complete the contract, thereby creating a contractual imbalance between the parties. Third, point II.1 of the loan agreement at issue, concerning the calculation of the instalments in accordance with the bank's official information, point III.2, concerning the interest rate and the degree of variation of the interest rate, and point III.3 thereof, concerning the right to increase the interest rate, were unfair.

22 The referring court indicated to Mr Sziber that he was required, having regard, inter alia, to Article 37 of Law DH2, to regularise his application by, on the one hand, stating the legal consequences that he was seeking in the event of a finding that the loan agreement in question was invalid and, on the other, by completing the settlement of accounts referred to in Article 38(6) of Law DH2, in order to specify the amounts he considers to have paid by reason of any unfair terms other than those already taken into account in that settlement, namely the terms referred to in Articles 3 and 4 of Law DH1.

23 Yet although the referring court notes that Mr Sziber has repeatedly amended his application, he did not, despite the request made to that effect by that court, submit an amendment to his claim. That court states that, as a result, it would be necessary, in principle, to terminate the procedure, without examining the substance of the dispute.

24 However, in response to a question put by the Court, the referring court stated that the dispute is still pending before it.

25 The referring court asks whether EU law does not preclude the provisions of Laws DH1 and DH2 whereby, first, two terms contained in the majority of agreements denominated in foreign currency, namely those relating to the difference in exchange rates and the option to amend the contract unilaterally, are deemed unfair and the financial institution is obliged to provide a settlement calculation relating to those terms and, second, the consumer is obliged to specify the legal consequences he seeks to attach to the full or partial invalidity of the loan agreement in question and to quantify those claims as regards any unfair terms other than those two terms, while borrowers who have concluded loan agreements that are not denominated in foreign currency are not required to provide such details and quantification.

26 In addition, the referring court notes that, in the case of those borrowers, it is possible to request the often more favourable application of the legal consequence of invalidity of restoring the situation prevailing prior to the conclusion of the loan agreement in question, while Article 37 of Law DH2 excludes that recourse as regards loan agreements coming within its scope.

27 In those circumstances, the Fővárosi Törvényszék (Budapest High Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Must the following provisions of EU law, namely, Article 169(1) and (2) [TFEU], read in the light of Article 169(3) thereof; Article 38 of the [Charter]; Article 7(1) and (2) of [Directive 93/13], read in the light of Article 8 of that directive, and recital 47 of [Directive 2008/48], be interpreted

as precluding rules of national law (and their application) that impose additional requirements

prejudicial to a party to proceedings, whether applicant or defendant, who, in the period from 1 May 2004 to 26 July 2014, has, in the capacity of a consumer, entered into a credit agreement containing an unfair contractual term allowing [an option of unilateral amendment] or an unfair contractual term relating to [a difference in exchange rates],

where those additional requirements stipulate, inter alia, in order that the rights arising from the invalidity of those agreements concluded with consumers may effectively be upheld before the courts and in order that the court may be able to examine the substance of a case, a civil procedural document must be presented (primarily a claim, amendment of a claim or a plea of invalidity relied on by way of defence contesting the order against the consumer, amendment of that plea, a counterclaim by the defendant or amendment of that counterclaim) with certain mandatory content,

whereas a party to the proceedings who has not entered into a credit agreement or who, in that period, has, in the capacity of a consumer, entered into a credit agreement of a different kind from that described above, does not have to present such a document satisfying certain mandatory requirements as to content?

(2) Irrespective of whether the Court answers [the first question], which is formulated in more general terms than this question, in the affirmative or the negative, must the provisions of EU law listed [in the first question] be interpreted as precluding the following obligatory additional requirements [(a) to (c)] from applying to a party to proceedings who has, in the capacity of a consumer, entered into a credit agreement, as referred to [in the first question]:

(a) in judicial proceedings, a claim, an amendment of a claim or a plea of invalidity relied upon by way of defence contesting the order against the consumer, amendment of that plea, a counterclaim by the defendant or an amendment of that counterclaim which must be presented by a party to proceedings, whether applicant or defendant, that has entered into a credit agreement, in the capacity of a consumer, as referred to [in the first question], will be admissible, that is to say, will be examined as to its substance, only if, in that document,

the party not only requests the court to declare invalid in whole or in part the consumer credit agreement referred to [in the first question], but also requests the court to apply the legal consequences associated with total invalidity,

whereas another party to proceedings who has not, in the capacity of a consumer, entered into a credit agreement or who, in that period, has, in the capacity of a consumer, entered into a credit agreement of a different kind from that described above, does not have to present such a document satisfying certain mandatory requirements as to content?

(b) in judicial proceedings, a claim, an amendment of a claim or a plea of invalidity relied upon by way of defence contesting the order against the consumer, amendment of that plea, a counterclaim by the defendant or amendment of that counterclaim that must be presented by a party to proceedings, whether applicant or defendant, who in the capacity of a consumer has entered into a credit agreement, as referred to [in the first question], will be admissible, that is to say, will be examined as to its substance, only if, in that document,

the applicant does not, in addition to seeking a declaration that the credit agreement entered into as a consumer, as referred to [in the first question], is wholly invalid, request the court to apply, among the legal consequences associated with total invalidity, that of judicially restoring the situation as it stood before the credit agreement was concluded,

whereas another party to proceedings who has not, in the capacity of a consumer, entered into a credit agreement or who, in that period, has, in the capacity of a consumer, entered into a credit agreement of a different kind from that described above, does not have to present such a document satisfying certain mandatory requirements as to content?

(c) in judicial proceedings, a claim, amendment of a claim or a plea of invalidity relied upon by way of defence contesting the order against the consumer, amendment of that plea, a counterclaim by the defendant or amendment of that counterclaim that must be presented by a party to proceedings, whether applicant or defendant, who has, in the capacity of a consumer, entered into a credit agreement, as referred to [in the first question], will be admissible, that is to say, will be examined as to its substance, only if that document includes,

for the period from the beginning of the contractual legal relationship to the date the application is lodged, a settlement calculation, extremely complex from a mathematical point of view (as prescribed by national provisions), that must be made also taking into account the rules regulating currency conversion into HUF,

and that settlement calculation must include a detailed breakdown, arithmetically verifiable, indicating the payments due under the credit agreement, payments made by the applicant, the payments due leaving aside the void clause, and the difference between those figures; and specifying the grand total that the party who, in the capacity of a consumer, entered into the credit agreement, as referred to [in the first question], still owes to the credit institution or paid in excess,

whereas another party to proceedings who has not, in the capacity of a consumer, entered into a credit agreement or who, in that period, has, in the capacity of a consumer, entered into a credit agreement of a different kind from that described above, does not have to present such a document satisfying certain mandatory requirements as to content?

(3) Must the provisions of EU law listed [in the first question] be interpreted as meaning that infringement of those provisions by means of the imposition of the additional requirements referred to [in the first and second questions]

at the same time constitutes an infringement of Articles 20, 21 and 47 of the Charter …,

taking into account likewise … that the courts of the Member States must apply EU law in the field of consumer protection even in cases without any cross-border elements, that is to say, in purely internal situations, in accordance with the judgments of 5 December 2000, *Guimont*, C-448/98, EU:C:2000:663, paragraph 23, and of 10 May 2012, *Duomo Gpa and Others*, C-357/10 to C-359/10, EU:C:2012:283, paragraph 28, and the order of 3 July 2014, *Tudoran*, C-92/14, EU:C:2014:2051, paragraph 39, or must the present situation be regarded as a cross-border situation merely because the credit agreements referred to [in the first question] are "foreign currency-based credit agreements"?'

## Consideration of the questions referred

### *Preliminary observations*

28 As a preliminary point, it must be noted that neither Directive 2008/48, referred to by the referring court in its questions, nor its predecessor, Directive 87/102, which, according to the information available in the file, is relevant *ratione temporis* in the light of the circumstances of the case, is applicable in the main proceedings. In that regard, it should be noted, first, that Article 2(2)(a) of the first directive provides that that directive does not apply to credit agreements secured by a mortgage or by another comparable security commonly used in a Member State on immovable property or secured by a right related to immovable property and, second, that Article 2(1)(a) of the second directive provides that it does not apply to credit agreements intended primarily for the purpose of acquiring or retaining property rights in land or in an existing or projected building. However, it is clear from the order for reference that the agreement at issue in the main proceedings is secured by a mortgage and was taken out for the acquisition of a dwelling.

29 Directive 93/13, however, is directed against unfair terms in consumer contracts. It is therefore appropriate, having regard to the subject matter of the dispute in the main proceedings, to interpret that directive, read in the light of the relevant provisions of the Charter, in particular Article 47 thereof, which enshrines the right to effective judicial protection.

### *The first and second questions*

30 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 7 of Directive 93/13 must be interpreted as precluding national legislation which lays down specific procedural requirements, such as those at issue in the main proceedings, for actions brought by consumers who concluded loan agreements denominated in foreign currency, containing a term concerning the difference in exchange rates and/or a term concerning the power to make unilateral amendments.

31 It should be pointed out, as a preliminary point, that, in accordance with Article 6(1) of the directive, Member States are to provide that unfair terms used in a contract concluded with a consumer by a seller or supplier are not, as provided for under their national law, to be binding on the consumer and that the contract is to continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.

32 As regards the inferences to be drawn from the finding of unfairness of a contract provision between a consumer and a professional, national courts are merely required to exclude the application of an unfair contractual term in order that it may not produce binding effects with regard to the consumer (see, to that effect, 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 28 and the case-law cited). 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, not in abolishing all contracts containing unfair terms (see, to that effect, judgment of 15 March 2012, *Pereničová and Perenič*, C-453/10, EU:C:2012:144, paragraph 31).

33 Furthermore, it is apparent from Article 7(1) of Directive 93/13, read in conjunction with recital 24 of that directive, that the Member States must ensure that judicial and administrative bodies have adequate and effective means to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers. In that respect, the Court recalled the nature and significance

of the public interest constituted by the protection of consumers, who are in a position of weakness vis-à-vis sellers or suppliers, (see, to that effect, judgment of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 56 and the case-law cited).

34 On that point, the Court has stated, inter alia, that, while it is for the Member States, by means of their national legislation, to define the detailed rules under which the unfairness of a contractual clause is established and the actual legal effects of that finding are produced, the fact remains that such a finding must allow the restoration of the legal and factual situation that the consumer would have been in if that unfair term had not existed, by, inter alia, creating a right to restitution of advantages wrongly obtained, to the consumer's detriment, by the seller or supplier on the basis of that unfair term (judgment of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 66).

35 While the Court has thus previously circumscribed, in a number of respects and taking account of the requirements set out in Article 6(1) and Article 7(1) of Directive 93/13, the manner in which national courts must guarantee the protection of rights which consumers derive from that directive, the fact remains that, in principle, EU law does not harmonise the procedures which apply for the assessment of an allegedly unfair contractual term, and that those procedures are therefore a matter for the national legal order, provided that they are not less favourable than those governing similar situations subject to domestic law (principle of equivalence) and that they afford effective judicial protection, as provided for in Article 47 of the Charter (see, to that effect, judgment of 14 April 2016, *Sales Sinués and Drame Ba*, C-381/14 and C-385/14, EU:C:2016:252, paragraph 32 and the case-law cited).

36 It is in the light of those principles that the questions referred by the national court must be examined.

37 As regards, first, the principle of equivalence, it must be observed that, in the present case, special rules apply to the group of consumers having concluded, with a financial institution during a defined period, a loan agreement denominated in foreign currency containing terms referred to in Article 3(1) and/or Article 4(1) of Law DH1; the first of those terms should be regarded, under those provisions, as unfair and void, while the second is presumed to be unfair.

38 Under Article 37(1) of Law DH2, conclusions to be presented by the consumer in contentious judicial proceedings against a contract containing both terms referred to in Article 3(1) and Article 4(1) of Law DH1 can be examined and upheld in substantive terms only if, first, the borrower also requests that the legal consequences of invalidity be applied, second, if the borrower does not request the court to apply, among the legal consequences associated with total invalidity, that of judicially restoring the situation as it stood before the agreement at issue was concluded and, third, if the borrower submits a settlement of accounts showing the amounts unduly charged.

39 According to the referring court, those three conditions do not apply to actions concerning consumer loan agreements which do not contain terms concerning the difference in exchange rates or the power to make unilateral amendments. The provisions in force in those situations, in particular paragraph 1 of Article 239/A of the previous Civil Code and Article 6:108 of the Civil Code, do not require that the applicant indicate the legal consequences which it asks the national court to apply to a possible total or partial invalidity of the loan agreement in question or that he quantify his claims in the form of a settlement of accounts such as that required by the rules at issue.

40 Since, under national law, it is for the consumer to fulfil specific conditions in the case of disputes under Article 37 of Law DH2 in order for the action to be admissible and so that the consumer can obtain a decision on the merits of the case, the referring court asked the consumer to supplement his application under that provision. However, the procedure applicable to the cases referred to in the previous paragraph would not require a consumer to meet such requirements.

41 In that respect, it should be underlined that, in order to ascertain whether those two procedures govern similar situations, within the meaning of the case-law cited in paragraph 35 of this judgment, it is solely for the national court, which has direct knowledge of the detailed procedural rules applicable, to ascertain whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics (see, to that effect, judgment of 12 February 2015, *Baczó and Vizsnyiczai*, C-567/13, EU:C:2015:88, paragraph 44 and the case-law cited).

42 In those circumstances, assuming that similarity between the two actions has been established, it is necessary to examine whether the procedural rules for the actions based on Directive 93/13, such as those at issue in the main proceedings, are less favourable than those for the actions based exclusively on national law.

43 As the Advocate General has, in essence, observed in point 47 of his Opinion, the imposition of additional procedural requirements on consumers deriving rights from EU law does not, in itself, mean that those procedural requirements are less favourable. Indeed, it is important to analyse the situation taking account of the role of the procedural dispositions concerned in the procedure viewed as a whole, of the conduct of that procedure and of the special features of those provisions, before the national instances (see, to that effect, judgment of 27 June 2013, *Agrokonsulting-04*, C-93/12, EU:C:2013:432, paragraph 38 and case-law cited).

44 In that regard, it is apparent from the very wording of Article 3(1) and Article 4(1) of Law DH1 that the Hungarian legislature intended that two types of terms in the majority of loan agreements denominated in foreign currency and concluded between a consumer and a seller or supplier should be regarded as unfair, one relating to the difference in exchange rates, the other to the power to make unilateral amendments. According to the explanations given by the Hungarian Government, in order, when applying the official exchange rate set by the National Bank of Hungary for the foreign currency concerned, to calculate the excess payment by the consumer in light of the unfairness of those terms, the financial institution is to draw up a statement of accounts which the consumer may, if necessary, contest.

45 It is apparent from the file submitted to the Court that, given the large number of consumer loan agreements denominated in foreign currency in Hungary which contain the two terms referred to in the preceding paragraph, the national legislature, by adopting, in particular, Law DH2, sought to shorten and simplify the procedure before the national courts. Indeed, in similar cases which do not involve rights derived from EU law, a finding of invalidity of one or more unfair terms is not sufficient of its own definitively to resolve the dispute, a second procedure being necessary if the consumer wants the national court to determine the legal consequences of total or partial invalidity of the contract in question and any amounts unduly paid.

46 Furthermore, it is apparent from Article 38(6) of Law DH2 that the statement of accounts issued by the financial institution becomes final where the consumer does not contest it. According to the explanations given by the Hungarian Government at the hearing, there is no obligation on the consumer to calculate the excess payment, except in cases where he relies on the invalidity of allegedly unfair terms other than the two terms covered by that law. In such a case, it would be for the consumer to specify the amount he considers he has unduly paid as a result of the application of those other terms.

47 However, such a requirement which, according to the Hungarian Government, is merely a specific expression of the general rule applicable to civil procedural law, in accordance with which an application must be specific and quantified, does not appear to be less favourable than the rules applicable to similar actions based on national law, which it is, however, for the referring court to ascertain.

48 In those circumstances, the procedural requirements at issue in the main proceedings, having regard to their place in the system put in place by the Hungarian legislature seeking to resolve, within a reasonable time, a plethora of cases relating to loan agreements denominated in foreign currency and containing unfair terms, cannot, in principle, be regarded as less favourable than those relating to similar claims that do not concern rights deriving from EU law. Therefore, subject to the verification the referring court is called upon to make, such requirements cannot be regarded as incompatible with the principle of equivalence.

49 As regards, second, the principle of effective judicial protection, it must be pointed out that the obligation of Member States to lay down detailed procedural rules to ensure respect for the rights which individuals derive from Directive 93/13 against the use of unfair terms implies a requirement for effective judicial protection, also guaranteed by Article 47 of the Charter. That protection must be assured both as regards the designation of courts having jurisdiction to hear and determine actions based on EU law and as regards the definition of detailed procedural rules relating to such actions (see, to that effect, judgment of 17 July 2014, *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraph 35 and the case-law cited).

50 However, the Court has recognised that consumer protection is not absolute (judgment of 26 January 2017, *Banco Primus*, C-421/14, EU:C:2017:60, paragraph 47). Thus, the fact that a particular procedure comprises certain procedural requirements that the consumer must respect in order to assert his rights does not mean that he does not enjoy effective judicial protection. Although Directive 93/13 requires that the national court hearing disputes between consumers and sellers or suppliers take positive action unconnected with the parties to the contract, the need to comply with the principle of effective judicial protection does not, in principle, prevent that court from calling on the consumer to produce certain evidence in support of his claim (see, by analogy, judgment of 1 October 2015, *ERSTE Bank Hungary*, C-32/14, EU:C:2015:637, paragraph 62).

51 Although it is true that the procedural rules at issue in the main proceedings require an additional effort from the consumer, the fact remains that those rules, in so far as they intend to unblock the judicial system, in view of the length of the proceedings at issue, are a response to an exceptional situation and pursue a general interest in the proper administration of justice. Those rules are, in themselves, likely to prevail over private interests (see, to that effect, judgment of 12 February 2015, *Baczó and Vizsnyiczai*, C-567/13, EU:C:2015:88, paragraph 51 and the case-law cited), provided that they do not go beyond what is necessary to achieve their objective.

52 In the present case, having regard to the objective of unblocking the judicial system, it does not appear, which it is nevertheless for the referring court to ascertain, that the rules requiring the consumer to submit a claim containing actual figures consisting, at least in part, in a statement of accounts previously established by the financial institution concerned and to specify the legal consequence that he requests the national court to apply if the loan agreement in question, or some of its terms, is invalid, are so complex and include such onerous requirements that they disproportionately affect the consumer's right to effective judicial protection.

53 Moreover, as regards the question whether the fact that the consumer cannot request the court to order the restoration of the situation prior to the conclusion of the loan agreement in question, Article 37 of Law DH2, which provides that a declaration of the invalidity of the loan agreements covered by Law DH1 can be sought only if the consumer also requests a declaration of validity or effectiveness of the agreement up to the time of delivery of the judgment by the national court, is contrary to the right to effective judicial protection, it is for the referring court to ascertain whether, in such circumstances, it may be considered that, in accordance with the case-law of the Court cited in paragraph 34 of this judgment, that a finding that terms of that agreement are unfair will restore the legal and factual situation that the consumer would have been in had those unfair terms not existed, including giving rise to a right to restitution of advantages wrongly obtained, to his detriment, by the seller or supplier on the basis of those unfair terms.

54 In that regard, in reply to the Court's questions, ERSTE Bank and the Hungarian Government stated, at the hearing, that the consumer is in a position during the special procedure laid down in Article 37 of the Law DH2, not only to seek reimbursement of sums unduly paid by reason of the application by the financial institution of the two specific terms referred to in Articles 3 and 4 of Law DH1, but also to seek reparation for the consequences resulting from the application to him of other terms that may be unfair. If that is the case, or if there is another effective procedural path open to the consumer to request reimbursement of the sums unduly paid under those provisions, a matter which it is for the referring court to ascertain, the effectiveness of the protection intended by Directive 93/13 does not preclude procedural rules such as those at issue in the main proceedings.

55 In the light of the foregoing, the answer to the first and second questions is that Article 7 of Directive 93/13 must be interpreted as meaning that it does not preclude, in principle, national legislation which lays down specific procedural requirements, such as those at issue in the main proceedings, in respect of actions brought by consumers who concluded loan agreements denominated in foreign currency, containing a term on the difference in exchange rates and/or a term on the power to make unilateral amendments, provided that a finding that terms in such an agreement were unfair would restore the legal and factual situation that the consumer would have been in had those unfair terms not existed.

### *The third question*

56 By its third question, the referring court asks, in essence, whether Directive 93/13 must be interpreted as meaning that it also applies to situations which do not have a cross-border element.

57 In that regard, it should be recalled that, according to the settled case-law, the provisions of the FEU Treaty on the freedoms of movement do not apply to situations which are confined in all respects within a single Member State (see, to that effect, judgment of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 47 and the case-law cited).

58 However, as the Advocate General noted in point 70 of his Opinion, the main proceedings are concerned not with the provisions of the Treaty on the freedoms of movement, but with the EU legislation that harmonises across the Member States a specific field of law. Consequently, the rules contained in the EU legislation concerned apply irrespective of the purely internal nature of the situation at issue in the main proceedings.

59 It follows that Directive 93/13 must be interpreted as meaning that it also applies to situations without a cross-border element.

## Costs

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

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

1. **Article 7 of 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, in principle, national legislation which lays down specific procedural requirements, such as those at issue in the main proceedings, in respect of actions brought by consumers who concluded loan agreements denominated in foreign currency, containing a term stipulating a differential between the exchange rate applicable to the advance of the loan and that applicable to its repayment and/or a clause stipulating an option of unilateral amendment, enabling the**

**lender to increase interest, fees and costs, provided that a finding that terms in such an agreement were unfair would restore the legal and factual situation that the consumer would have been in had those unfair terms not existed.**

2. **Directive 93/13 must be interpreted as meaning that it also applies to situations without a cross-border element.**

[Signatures]