



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

13 September 2018*

(Reference for a preliminary ruling — Consumer protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Directive 2008/48/EC — Order for payment procedure founded on a promissory note that secures the obligations arising from a consumer credit agreement)

In Case C-176/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy w Siemianowicach Śląskich I Wydział Cywilny (District Court, Siemianowice Śląskie (First Civil Division), Poland), made by decision of 17 February 2017, received at the Court on 6 April 2017, in the proceedings

Profi Credit Polska S.A. w Bielsku Białej

v

Mariusz Wawrzosek,

THE COURT (Second Chamber),

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

Advocate General: J. Kokott,

Registrar: R. Šereš, Administrator,

having regard to the written procedure and further to the hearing on 1 March 2018,

after considering the observations submitted on behalf of:

- the Polish Government, by B. Majczyna, B. Czech and S. Żyrek, acting as Agents,
- the European Commission, by A. Cleenewerck de Crayencour, K. Herbout-BorczaK, G. Goddin and N. Ruiz García, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 April 2018,

gives the following

* Language of the case: Polish.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) and of Articles 17(1) and 22(1) 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 at 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 Profi Credit Polska and Mariusz Wawrzosek that relate to an application seeking an order for payment and founded on a promissory note signed by Mr Wawrzosek in respect of the payment of sums allegedly due pursuant to a consumer credit agreement granted by that company.

Legal context

EU law

Directive 93/13

- 3 The 24th recital of Directive 93/13 states that ‘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’.
- 4 In accordance with Article 1(1), the purpose of Directive 93/13 is to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in contracts concluded between a seller or supplier and a consumer.
- 5 As set out in Article 3(1) of Directive 93/13:

‘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.’
- 6 Article 6(1) of Directive 93/13 is worded as follows:

‘Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.’
- 7 Article 7(1) of Directive 93/13 provides:

‘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 87/102/EEC

- 8 Article 10 of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48) provided:

‘The Member States which, in connection with credit agreements, permit the consumer:

- (a) to make payment by means of bills of exchange including promissory notes;
- (b) to give security by means of bills of exchange including promissory notes and cheques,

shall ensure that the consumer is suitably protected when using these instruments in those ways.’

Directive 2008/48

- 9 As stated in Article 1, the purpose of Directive 2008/48 is to harmonise certain aspects of the rules of the Member States concerning agreements covering credit for consumers.

- 10 Article 3(c) of Directive 2008/48 defines ‘credit agreement’ as ‘an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments’.

- 11 Article 17 of Directive 2008/48, headed ‘Assignment of rights’, provides in paragraph 1:

‘In the event of assignment to a third party of the creditor’s rights under a credit agreement or the agreement itself, the consumer shall be entitled to plead against the assignee any defence which was available to him against the original creditor, including set-off where the latter is permitted in the Member State concerned.’

- 12 Article 22 of Directive 2008/48, headed ‘Harmonisation and imperative nature of this Directive’, states in paragraph 1:

‘In so far as this Directive contains harmonised provisions, Member States may not maintain or introduce in their national law provisions diverging from those laid down in this Directive.’

- 13 Article 29 of Directive 2008/48 provides that Directive 87/102 is to be repealed with effect from 11 June 2010.

Polish law

- 14 Article 484¹ of the ustawa — Kodeks postępowania cywilnego (Law on the Code of Civil Procedure) of 17 November 1964 (Dz. U. 1964, No 4), consolidated text, as amended (‘the kpc’), provides:

‘...

2. The court shall decide a case under the order for payment procedure upon a written request by the applicant set out in the application initiating proceedings.

3. Examination of the case shall take place in chambers ...’

15 As set out in Article 485(2) of the kpc:

‘The court shall also issue an order for payment against a person bound by obligations under a duly completed promissory note ... where there is no doubt as to its authenticity and content.’

16 Article 486(1) of the kpc states:

‘If there is not sufficient basis for the issue of an order for payment, the President shall set a date for the hearing, unless the case can be examined in chambers.’

17 Article 491(1) of the kpc provides:

‘By the order for payment, the court shall instruct the defendant to settle the claim in full, plus costs, within two weeks of service of the order for payment, or to lodge an objection within that period.’

18 Article 492 of the kpc states:

‘1. On being issued, the order for payment shall have the status of a provisional enforcement order that is enforceable without an enforcement clause. ...

...

3. An order for payment issued on the basis of a promissory note ... shall be enforceable immediately upon expiry of the period for satisfying the claim. In the event that an objection is lodged, the court may, at the request of the defendant, suspend enforcement of the order ...’

19 As set out in Article 493(1) of the kpc:

‘The objection shall be raised before the court which issued the order for payment. The defendant must indicate in the objection whether he disputes the order in whole or in part, set out the complaints, which, if they are not to be precluded, must be asserted prior to any submission on the substance of the case, and adduce facts and evidence. ...’

20 Article 385¹ of the ustawa — Kodeks cywilny (Law on the Civil Code) of 23 April 1964 (Dz. U. 1964, No 16), consolidated text, as amended, provides:

‘1. Provisions of a contract concluded with a consumer which have not been agreed individually shall not be binding on the consumer if they define his rights and obligations in a way that is contrary to good practice, grossly infringing his interests (prohibited contractual provisions). This shall not to apply to provisions defining the principal obligations of the parties, including price or remuneration, if they are worded explicitly.

2. If a contractual provision is not binding on the consumer pursuant to paragraph 1, the contract shall otherwise continue to be binding on the parties.

...’

21 Article 101 of the ustawa prawo wekslowe (Law on Bills of Exchange and Promissory Notes) of 28 April 1936 (Dz. U. 1936, No 37), as amended, provides:

‘A promissory note shall contain:

(1) the term “promissory note” in the body of the document, in the language in which it has been issued;

- (2) an unconditional promise to pay a determinate sum of money;
- (3) a statement of the time of payment;
- (4) a statement of the place of payment;
- (5) the name of the person to whom or to whose order payment is to be made;
- (6) a statement of the date on which and of the place where the promissory note has been issued;
- (7) the signature of the person issuing the promissory note.'

22 As set out in Article 19(4) of the *ustawa o kosztach sądowych w sprawach cywilnych* (Law on Court Costs in Civil Matters) of 28 July 2005 (Dz. U. 2005, No 167):

'Where an objection is lodged against an order for payment issued under the order for payment procedure, three quarters of the court fee shall be payable by the defendant.'

23 Directive 2008/48 has been transposed into Polish law by the *ustawa o kredycie konsumenckim* (Law on Consumer Credit) of 12 May 2011 (Dz. U. 2014, No 1497, consolidated version), as amended. Article 41 of that law provides:

1. A promissory note ... of a consumer submitted to a creditor for the purposes of discharging or securing an obligation under a consumer credit agreement shall contain the clause "not to order" or another clause having the same meaning.

2. If the creditor accepts a promissory note ... that does not contain the clause "not to order" and that promissory note ... is transferred to another person, the creditor shall be obliged to make good the damage caused to the consumer by payment of the promissory note ...'

3. Paragraph 2 shall also apply where the promissory note or cheque comes into the possession of another person against the creditor's will.'

The main proceedings and the question referred for a preliminary ruling

24 By standard-form agreement of 3 December 2015, Profi Credit Polska, a company established in Bielsko-Biała (Poland) ('the financial institution' or 'the creditor'), granted a consumer loan to Mr Wawrzosek ('the debtor'). That standard-form agreement contained a clause requiring the debtor to issue a promissory note as security for the creditor's claims under the agreement. Repayment of the loan was thus secured by a promissory note signed by the debtor, in an amount that was not specified.

25 Following failure by the debtor to make payment, the financial institution informed him that the promissory note had been completed in the amount that remained payable. It applied to the referring court for an order for payment against the debtor, in respect of the sum of PLN 3 268.38 (roughly EUR 753) set out on the promissory note. The financial institution annexed to its application the promissory note, duly completed and signed, and the document terminating the loan agreement.

26 The referring court explains that, although the standard-form agreement at issue is not in the case file, it is aware of the terms of the contractual clause requiring the debtor to issue a promissory note as security for payment. It states that that clause is worded identically in all the loan agreements concluded by Profi Credit Polska that have given rise, before it, to numerous applications for orders for payment.

- 27 The referring court states that the order for payment procedure founded on a promissory note is frequently used by businesses in Poland in order to achieve recovery of debts owed to them. The practice entails annexing to the application only the duly completed promissory note, and not any other document — including the consumer credit agreement — which attests to the existence of the contractual relationship that precedes its signature ('the underlying relationship').
- 28 The referring court points out that the order for payment procedure rests on the presumption that the factual basis for the applicant's claim has been fully proved by documents referred to in Article 485 of the kpc that are annexed to the application, which include a promissory note. Consequently, for the purpose of issuing an order for payment, it is sufficient to establish that the promissory note has been correctly drawn up, in compliance with the conditions set out in Articles 1 et seq. and 101 of the Law on Bills of Exchange and Promissory Notes, as amended.
- 29 The referring court observes that, by virtue of the applicable national legislation, the order for payment procedure consists of two stages. In the first stage, whilst the assessment of the promissory note's validity can be carried out by the court of its own motion, that assessment is confined to examination of whether the promissory note is formally valid, since it is apparent from Article 485(2) of the kpc that the court dealing with the application is to issue an order for payment against a debtor under 'a duly completed promissory note ... where there is no doubt as to its authenticity and content'. In the second stage, if the debtor under the negotiable instrument has lodged an objection against the order for payment, he may contest not only the obligation under that instrument but also the underlying relationship that exists, including for example the consumer credit agreement.
- 30 The referring court is uncertain whether the order for payment procedure applied on the basis of a promissory note is consistent with Directive 93/13.
- 31 According to the referring court, the present case differs from the cases which gave rise to the judgments of 14 June 2012, *Banco Español de Crédito* (C-618/10, EU:C:2012:349), and of 18 February 2016, *Finanmadrid EFC* (C-49/14, EU:C:2016:98), in which the national courts had before them the contractual documents establishing the rights and obligations of the contracting parties, and were therefore able to exclude the application of the unfair terms contained in those documents.
- 32 By contrast, it considers that, in the case before it, whilst it has the task of examining the legal relationship between the parties, that examination is confined to the area defined by the relationship under the negotiable instrument. It explains that under the applicable national legislation its review can relate only to the content of the promissory note. Thus, even though the underlying relationship is known to it, on account of the national legislation it cannot review the documents recording that relationship. The consumer alone therefore has the task of lodging an objection against the order for payment in order for it to be established whether certain terms are unfair or the obligations to provide information have not been complied with.
- 33 It was in those circumstances that the Sąd Rejonowy w Siemianowicach Śląskich I Wydział Cywilny (District Court, Siemianowice Śląskie (First Civil Division), Poland) decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Must the provisions of ... Directive 93/13 ..., in particular Articles 6(1) and 7(1), and the provisions of Directive 2008/48 ..., in particular Articles 17(1) and 22(1), be construed as precluding the assertion of a claim, established by means of a duly completed promissory note, by a seller or supplier (the creditor) against a consumer (the debtor) in the course of order for payment proceedings pursuant to Article 485(2) et seq. of the [kpc], in conjunction with Article 41 of the Law [of 12 May 2011 on Consumer Credit], under which the national court may examine the effectiveness of the claim arising from the promissory note exclusively from the point of view of compliance with the formal requirements applicable to the promissory note, without examining the relationship underlying it?'

Consideration of the question referred

- 34 First of all, it should be pointed out that, whilst Article 17(1) of Directive 2008/48 refers to the assignment of the creditor's rights to a third party, it is not in dispute, in the circumstances at issue in the main proceedings, that the beneficiary of the promissory note and the creditor are the same legal entity.
- 35 In addition, whilst Directive 87/102, which was repealed by Directive 2008/48, covered promissory notes in Article 10, Directive 2008/48 — as the Advocate General has observed in point 34 et seq. of her Opinion — no longer refers to those instruments.
- 36 As Directive 2008/48 did not effect harmonisation in the field of promissory notes as security for consumer credit, Article 22(1) thereof is not applicable either in circumstances such as those at issue in the main proceedings.
- 37 Therefore, the questions asked by the referring court will be answered solely in the light of the provisions of Directive 93/13.
- 38 By its question, the referring court asks, in essence, whether Articles 6(1) and 7(1) of Directive 93/13 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which permits issue of an order for payment founded on a formally valid promissory note that secures a claim arising from a consumer credit agreement, where the court dealing with an application for an order for payment does not have the power to examine whether the terms of that agreement are unfair.
- 39 First of all, it should be recalled that Article 6(1) of Directive 93/13 requires Member States to lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier are, as provided for under their national law, not to be binding on the consumer.
- 40 Given 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, Directive 93/13, as is apparent from Article 7(1) thereof, read in conjunction with its 24th recital, 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 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).
- 41 To this end, the national court has the task of purely and simply excluding the application of an unfair contractual term in order that it does not produce any binding effect with regard to the consumer, without being authorised to revise its content (judgment of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 57 and the case-law cited).
- 42 Against that background, it should, in the first place, be pointed out that, whilst, in accordance with settled case-law, a national court is bound to assess of its own motion whether a contractual term falling within the scope of Directive 93/13 is unfair and by so doing to compensate for the imbalance existing between the consumer and the seller or supplier, that is so only if the national court has available to it the legal and factual elements necessary for that task (see, to that effect, judgments of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 52 and the case-law cited, and of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 58).

- 43 The Court has already had occasion to make it clear, in the cases which gave rise to the judgments of 14 June 2012, *Banco Español de Crédito* (C-618/10, EU:C:2012:349), and of 18 February 2016, *Finanmadrid EFC* (C-49/14, EU:C:2016:98), and to the order of 21 June 2016, *Aktiv Kapital Portfolio* (C-122/14, not published, EU:C:2016:486), that those grounds also apply, as in the circumstances at issue in the main proceedings, in respect of an order for payment procedure.
- 44 Indeed, effective protection of the rights conferred on the consumer by Directive 93/13 can be guaranteed only if the national procedural system allows the court, during the order for payment proceedings or the enforcement proceedings concerning an order for payment, to check of its own motion whether terms of the contract concerned are unfair (see, to that effect, judgment of 18 February 2016, *Finanmadrid EFC*, C-49/14, EU:C:2016:98, paragraph 46, and order of 21 June 2016, *Aktiv Kapital Portfolio*, C-122/14, not published, EU:C:2016:486, paragraph 30).
- 45 In the present instance, the referring court explains that its review in the first stage of the order for payment procedure is confined to the relationship under the negotiable instrument, in the narrow sense, that is to say, to the promissory note, and cannot relate to the underlying relationship.
- 46 In addition, it states that it does not have available to it all the factual and legal elements arising from the loan agreement at issue.
- 47 It follows that, in circumstances such as those at issue in the main proceedings, a national court is not in a position to examine whether a contractual term is unfair as long as it does not have available to it all the factual and legal elements for that purpose.
- 48 In the second place, still in respect of the first stage of the procedure, the Polish Government submits that, under Article 486(1) of the kpc, if there is not sufficient basis for the issue of an order for payment, the president of the formation of the court dealing with the case may set a hearing date, unless the case can nevertheless be examined in chambers. It states that, when a hearing date is set, the oral stage of the proceedings is organised under the ordinary procedure or the special procedure applicable thereto, enabling examination of both the relationship under the negotiable instrument and the underlying relationship, including the consumer credit agreement.
- 49 That said, first, as is apparent from the very wording of that provision, the power of the president of the formation of the court dealing with the case to set a hearing date — in derogation from the rule that, in accordance with Article 484¹ of the kpc, the case is to be examined in chambers — is subject to the condition that there is not ‘sufficient basis for the issue of an order for payment’.
- 50 According to the information provided by the referring court, that condition is not met in the main proceedings.
- 51 Second, the referring court points out that, in the first stage of the procedure, it follows from Article 485(2) of the kpc that its jurisdiction is limited to examining whether the promissory note is formally valid. It states that in the proceedings pending before it the promissory note at issue is valid.
- 52 In any event, whilst, under Article 267 TFEU, the Court has jurisdiction to draw from Article 7 of Directive 93/13 the criteria which define the framework for a court to assess of its own motion whether the obligations resulting from that directive have been complied with, it is the referring court which must determine whether a provision such as Article 486(1) of the kpc is capable of providing it, where appropriate, with such a framework.
- 53 In the third place, the referring court states that the legal relationship resulting from the consumer credit agreement is examined only if the consumer lodges an objection against the order for payment.

- 54 Whilst the proceedings before the referring court relate only to the first stage of the procedure, that procedure must nevertheless, as the Advocate General has observed in point 28 of her Opinion, be examined in its entirety, including both the first stage before the objection is lodged and the subsequent second stage.
- 55 Indeed, every case in which the question arises as to whether a national procedural provision affects the right to an effective remedy must be analysed by reference to the role of that provision in the procedure as a whole before the various national bodies, the procedure's conduct and its special features (see, to that effect, judgment of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 50 and the case-law cited).
- 56 When the second stage of the procedure is initiated, that is to say, when the consumer lodges an objection against the order for payment, the national court is in a position to have available to it the legal and factual elements necessary for examining of its own motion whether a contractual term falling within the scope of Directive 93/13 is unfair.
- 57 Whilst the Court has already 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, on condition, however, that they are not less favourable than those governing similar situations subject to domestic law (principle of equivalence) and that they provide for a right to an effective remedy, as required by Article 47 of the Charter of Fundamental Rights of the European Union (see, to that effect, judgments of 14 September 2017, *The Trustees of the BT Pension Scheme*, C-628/15, EU:C:2017:687, paragraphs 58 and 59 and the case-law cited, and of 31 May 2018, *Sziber*, C-483/16, EU:C:2018:367, paragraph 35 and the case-law cited).
- 58 As regards the principle of equivalence, and as the Advocate General has observed in point 55 of her Opinion, the Court does not have anything before it that is capable of giving rise to doubt as to the compliance of the legislation at issue in the main proceedings with that principle.
- 59 So far as concerns the right to an effective remedy, the obligation resulting from Article 7(1) of Directive 93/13 to lay down detailed procedural rules that ensure observance of the rights which individuals derive from Directive 93/13 combating the use of unfair terms implies a requirement that there be a right to an effective remedy, a requirement also enshrined in Article 47 of the Charter of Fundamental Rights. The right to an effective remedy must apply both as regards the designation of courts having jurisdiction to hear and determine actions based on EU law and as regards the detailed procedural rules relating to such actions (see, to that effect, judgment of 31 May 2018, *Sziber*, C-483/16, EU:C:2018:367, paragraph 49 and the case-law cited).
- 60 It is apparent from Articles 492 and 493(1) of the kpc that, where the debtor raises an objection against the order for payment before the court which has issued it, that court may suspend enforcement of the order for payment.
- 61 As the Advocate General has noted in point 77 of her Opinion, in order to determine whether a procedure, such as that at issue in the main proceedings, infringes a right to an effective remedy, the referring court must, as is apparent from the Court's case-law, determine whether the detailed rules of the opposition procedure which national law lays down give rise to a significant risk that the consumers concerned will not lodge the objection required (see, to that effect, judgments of 14 June 2012, *Banco Español de Crédito*, C-618/10, EU:C:2012:349, paragraph 54; of 14 March 2013, *Aziz*, C-415/11, EU:C:2013:164, paragraph 58; and of 18 February 2016, *Finanmadrid EFC*, C-49/14, EU:C:2016:98, paragraph 52).

- 62 Indeed, 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 7 December 2017, *Banco Santander*, C-598/15, EU:C:2017:945, paragraph 46 and the case-law cited).
- 63 The adequate and effective means that are to guarantee consumers a right to an effective remedy must include the possibility of bringing an action or lodging an objection under reasonable procedural conditions, so that the exercise of their rights is not subject to conditions, in particular time limits or costs, which reduce exercise of the rights guaranteed by Directive 93/13 (see, to that effect, judgment of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 46 and the case-law cited).
- 64 It is apparent from all the information available to the Court that whilst, under Article 491 et seq. of the kpc, the defendant in the first stage of the procedure has the right to contest the order for payment, exercise of that right of objection is subject to particularly restrictive conditions.
- 65 First, it is evident from Article 491(1) of the kpc that the time limit for lodging an objection is two weeks. Furthermore, under Article 493(1) of the kpc, the defendant must indicate in the objection whether he disputes the order in whole or in part, set out the complaints on pain of inadmissibility and adduce facts and evidence.
- 66 As the Advocate General has observed in point 79 of her Opinion, such procedural requirements in so brief a period give rise to a significant risk that the consumer will not lodge an objection or that it will be inadmissible.
- 67 Second, it is apparent from Article 19(4) of the Law of 28 July 2005 on Court Costs in Civil Matters that the defendant must pay three quarters of the court fee where he lodges an objection against the order for payment, so that the seller or supplier has to pay only one quarter of that fee.
- 68 As the Advocate General has observed in point 80 of her Opinion, such fees are in themselves capable of deterring a consumer from lodging an objection. The consumer is penalised all the more if he must, in any event, pay costs three times greater than the opposing party.
- 69 There is a significant risk that the consumers concerned will not lodge the objection required, be it because of the particularly short period prescribed 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 they are unaware of or do not appreciate the extent of their rights, or indeed because of the limited content of the application for the order for payment lodged by the seller or supplier, and thus the incomplete nature of the information available to them (see, to that effect, judgment of 18 February 2016, *Finanmadrid EFC*, C-49/14, EU:C:2016:98, paragraph 52 and the case-law cited, and order of 21 June 2016, *Aktiv Kapital Portfolio*, C-122/14, not published, EU:C:2016:486, paragraph 37).
- 70 It follows that detailed procedural rules such as those at issue in the main proceedings, in that they require the consumer to adduce within two weeks of service of the order for payment the factual and legal elements that enable the court to carry out the assessment and penalise him by the way in which the court fee is calculated, give rise to such a risk.
- 71 In the light of the foregoing considerations, the answer to the question referred is that Article 7(1) of Directive 93/13 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which permits issue of an order for payment founded on a valid promissory note that secures a claim arising from a consumer credit agreement, where the court dealing with an application for an order for payment does not have the power to examine whether the terms of that

agreement are unfair, if the detailed rules for exercising the right to lodge an objection against such an order do not enable observance of the rights which the consumer derives from that directive to be ensured.

Costs

- ⁷² 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:

Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which permits issue of an order for payment founded on a valid promissory note that secures a claim arising from a consumer credit agreement, where the court dealing with an application for an order for payment does not have the power to examine whether the terms of that agreement are unfair, if the detailed rules for exercising the right to lodge an objection against such an order do not enable observance of the rights which the consumer derives from that directive to be ensured.

[Signatures]