Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 5 March 2020[1]

Joined Cases C-698/18 and C-699/18

SC Raiffeisen Bank SA
v
JB (C-698/18)
and
BRD Groupe Société Générale SA
v
KC (C-699/18)

(Requests for a preliminary ruling
from the Tribunalul Specializat Mureș (Specialised Court, Mureș, Romania))

(References for a preliminary ruling — Directive 93/13/EEC — Finding that contractual terms are unfair — Personal loan agreement — Judicial arrangements — Ordinary legal action not subject to any limitation period — Ordinary legal action of a personal and pecuniary nature subject to a limitation period — Objective point in time at which the consumer knows of the existence of the unfair term)

1. These requests for a preliminary ruling concern the interpretation of Directive 93/13/EEC[2] in the specific context of credit agreements that have been performed in full. To be precise, these requests will give the Court of Justice an opportunity to determine in clear terms whether that directive continues to apply once a contract has been performed in full and, as the case may be, whether an action for reimbursement of the amounts paid under contractual terms found to be unfair can be subject to a three-year limitation period that begins to run from the time when the contract came to an end. It is therefore, in essence, a matter of determining the temporal scope of the protection that the directive gives to consumers.

I. Legal context

A. EU law

2. According to Article 2(b) of Directive 93/13, 'consumer' means any natural person who, in contracts covered by that directive, is acting for purposes which are outside his trade, business or profession.

1 Original language: French.

2 Council Directive of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

3. Article 6(1) of that directive 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.'

B. Romanian law

4. Article 1(3) of Legea nr. 193/2000 privind clauzele abuzive din contractele încheiate între profesioniști și consumatori (Law No 193/2000 on unfair terms in contracts between professional persons and consumers) of 6 November 2000 (*Monitorul Oficial al României* No 560 of 10 November 2000), republished in 2012 (*Monitorul Oficial al României* No 543 of 3 August 2012), as most recently amended in 2014 ('Law No 193/2000'), prohibits professional persons from including unfair terms in consumer contracts. Article 6 of that law provides furthermore that unfair terms do not produce effects as regards the consumer.

5. Article 12(1) and (4) of that law provides:

'1. Where a professional person is found to have used a standard form contract containing unfair terms, the supervisory bodies referred to in Article 8 shall bring proceedings before the court where that professional person has his address or principal place of business, as applicable, and shall apply for an order requiring the contracts in the process of being performed to be varied by removal of the unfair terms.

…

4. The provisions of paragraphs 1 to 3 shall not affect the right of a consumer against whom a standard form contract containing an unfair term is relied on to plead that the term is void, either by bringing an action or by raising an objection, in the circumstances laid down by the legislation.'

6. Article 993 of the 1864 Codul civil (Civil Code), which applied when the contracts in the main proceedings were concluded, provides, in particular, that a person who pays a debt in error, believing himself to owe that amount, is entitled to recover that amount from the creditor.

7. Under Article 1 of Decretul nr. 167/1958 privitor la prescripția extinctivă (Decree No 167/1958 on the limitation of actions) of 10 April 1958 (*Monitorul Oficial al României* No 19 of 21 April 1958), as republished:

'The right of action in pecuniary matters shall become time-barred if it is not exercised within the time limit laid down by law.

The time-barring of a right of action concerning a primary right causes the right of action concerning ancillary rights to become time-barred.'

8. Under Article 2 of that decree, 'a plea that a legal act is void can be made at any time, by bringing an action or by raising an objection'.

9. Article 7 of that decree provides:

'The limitation period shall begin to run on the date on which the right of action or the right to apply for enforcement arises.

In respect of obligations requiring to be satisfied at the request of the creditor and those with no fixed period for performance, the limitation period shall begin to run on the date on which the legal relationship comes into being.'

10. Article 8 of that decree states:

'The limitation period for a right of action for compensation for damage suffered as the result of an unlawful act shall begin to run on the date on which the injured party became aware or should have become aware both of the damage and of the person liable for it.

The preceding paragraph shall apply likewise in the case of unjust enrichment.'

II. The disputes in the main proceedings and the questions referred for a preliminary ruling

A. Case C-698/18, Raiffeisen Bank

11. In June 2008, the applicant in the main proceedings concluded a credit agreement with SC Raiffeisen Bank SA ('Raiffeisen Bank') for 84 months expiring in 2015, by which time the loan was repaid in full.

12. Taking the view that a number of contractual terms were unfair, in December 2016 the applicant brought an action before the Judecătoria Târgu Mureș (Court of First Instance, Târgu Mureș, Romania) for a declaration that those terms were unfair, reimbursement of the sums paid pursuant to those terms and the payment of statutory interest.

13. By way of an objection, Raiffeisen Bank argued that the applicant lacked standing to bring proceedings, claiming that he no longer had the status of consumer within the meaning of Law No 193/2000 because, at the time when he lodged the application, the contractual relationship between the parties had ended, the credit agreement having come to an end the previous year as a result of being performed in full.

14. At first instance, the national court upheld the applicant's action in its entirety.

15. Considering itself to have been adversely affected by that decision, Raiffeisen Bank appealed to the referring court, reiterating its argument that the applicant had lost the status of consumer before proceedings were brought, as a result of the loan agreement having been performed in full and therefore having come to an end.

16. In that context, the Tribunalul Specializat Mureș (Specialised Court, Mureș, Romania) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling in the two cases concerned:

'(1) Do the provisions of [Directive 93/13], in particular the 12th, 21st and 23rd recitals and Articles 2(b), 6(1), 7(2) and 8 of that directive, permit, in accordance with the principle of procedural autonomy and the principles of equivalence and effectiveness, a set of means of legal recourse that consists in an ordinary legal action, not subject to any limitation period, to establish the unfairness of certain terms in a consumer contract and an ordinary legal action of a personal and pecuniary nature that is subject to a limitation period, which is used in pursuit of the directive's aim of eliminating the effects of all obligations arising and performed under clauses which are found to be unfair to consumers?

(2) In the event that the first question is answered in the affirmative, do those same provisions preclude an interpretation, derived from application of the principle of the certainty of civil law legal relationships, according to which the objective point in time by which the consumer must have known or should have known of the existence of the unfair terms is the time at which the loan agreement with that consumer came to an end?'

B. Case C-699/18, BRD Groupe Société Générale

17. In May 2003, the applicant in the main proceedings and another party, as joint borrower, concluded a credit agreement with BRD Groupe Société Générale SA. In March 2005, the loan was regarded as having been discharged by an early repayment and the credit agreement came to an end.

18. More than 10 years later, in July 2016, the applicant brought an action before the Judecătoria Târgu Mureş (Court of First Instance, Târgu Mureş) for a declaration that terms of that agreement were unfair. The applicant also sought annulment of those terms and reimbursement of all amounts paid under them, as well as payment of statutory interest on the amounts reimbursed.

19. BRD Groupe Société Générale claimed that the applicant no longer had the status of consumer given that, on the date on which the legal proceedings commenced, the relationship between the parties had ended and the agreement had been terminated, by early repayment, for 11 years.

20. At first instance, the national court upheld the applicant's action in part.

21. Considering itself to have been adversely affected by that decision, BRD Groupe Société Générale appealed to the referring court, reiterating its argument that the applicant had lost the status of consumer 11 years before the proceedings were brought, as a result of the credit agreement having come to an end through the early repayment.

22. In those circumstances, the Tribunalul Specializat Mureş (Specialised Court, Mureş) decided to stay the proceedings and to refer two questions to the Court for a preliminary ruling, identical to those referred in Case C-698/18. The referring court nevertheless points out that, in Case C-699/18, the applicant brought the action for a declaration that the contractual clauses were unfair 11 years after the credit agreement came to an end, that is to say, after expiry of the three-year limitation period laid down by the national legislature in which to exercise pecuniary rights.

III. Procedure before the Court of Justice

23. By decision of the President of the Court of 12 December 2018, Cases C-698/18 and C-699/18 were joined for the purposes of the written and oral parts of the procedure and of the judgment.

24. The parties to the main proceedings (with the exception of the applicant in Case C-698/18), the Romanian, Czech, Polish and Portuguese Governments and the European Commission submitted written observations.

25. Those persons were also represented at the hearing held on 12 December 2019.

IV. Analysis

26. By its questions, the referring court is seeking to ascertain, in essence, whether Directive 93/13 precludes, first, the existence of a limitation period for an action for the restitution of consideration provided under a term found to be unfair that is contained in a contract which has been executed in full. Secondly, it is uncertain whether that directive precludes the application to such an action of a

three-year limitation period that begins to run at the time when the contract comes to an end. The referring court raises those questions from the perspective of the limits on the procedural autonomy of the Member States. Since, whenever it falls to be determined whether a national provision complies with those limits, account must be taken of the role played by that provision in the procedure as a whole, as well as the operation and any special features of that procedure,[3] I believe it is necessary to analyse those questions together.

27. Furthermore, the referring court finds that it has to address the issue of how — in temporal terms — it should determine the status of 'consumer' within the meaning of Article 2(b) of Directive 93/13. Although it has not raised that question expressly, the referring court notes that it is necessary to determine whether that directive continues to apply after performance in full of a contract concluded by a person who undoubtedly had the status of consumer at the time when the contract containing unfair terms was concluded.

28. In the light of the foregoing, after examining at the outset whether the questions referred are admissible (section A), and in order to provide a reply of use to those questions, I will, first, set out the solutions adopted in Romanian law to penalise the inclusion of unfair terms in contracts concluded by sellers and suppliers with consumers (section B). I will then address whether or not Directive 93/13 applies to contracts that have been performed in full (section C). Lastly, as regards limits on the procedural autonomy of the Member States, I will determine whether that directive precludes the existence of a limitation period for an action for the restitution of consideration that has been provided on the basis of a term found to be unfair contained in a contract which has been performed in full, and precludes the three-year limitation period from beginning at the time at which the contract comes to an end (section D).

A. Admissibility

29. The applicant in Case C-699/18 contends, as his principal submission, that the questions referred for a preliminary ruling are inadmissible.

30. First, he argues that, by its questions, the referring court is seeking to ascertain whether or not the time limit laid down by the national legislation for bringing proceedings before that court has been complied with. A question referred for a preliminary ruling must concern the interpretation of EU law rather than aspects relating to national law. Secondly, the applicant states that to limit the effects of restitution following a finding that a contractual term is unfair would be contrary to the rationale on which consumer protection is based.

31. I do not share the applicant's reservations

32. By its questions, the referring court is seeking interpretative guidance in respect of EU law enabling it to determine, in essence, whether the national rules and the interpretation it recommends giving to them are compatible with the consumer protection system established by Directive 93/13. Since the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling.[4] Furthermore, to find the questions referred to be inadmissible on the ground that to limit the effects of restitution that results from a finding that a contractual term is unfair would be contrary to the rationale on which consumer protection is based would be to prejudge the answer to be given to those questions.

3 See, to that effect, judgment of 5 December 2013, *Asociación de Consumidores Independientes de Castilla y León* (C-413/12, EU:C:2013:800, paragraph 34).

4 See judgment of 1 July 2010, *Sbarigia* (C-393/08, EU:C:2010:388, paragraph 19 and the case-law cited).

33. That said, I propose that the Court should find that it does not have jurisdiction to answer the questions submitted in Case C-699/18. The contract at issue in that case was concluded in 2003 and came to an end in 2005, that is to say, before 1 January 2007, the date on which Romania acceded to the European Union. The Court has jurisdiction to interpret EU law only as regards its application in a Member State with effect from the date of that State's accession to the European Union.[5] By the same token however, the Court does have jurisdiction to answer the questions submitted in Case C-698/18, which relate to a contract concluded in 2008.

B. The sanction applicable under Romanian law in relation to the transposition of Directive 93/13

1. Unenforceability, relative nullity and absolute nullity under Romanian law

34. The referring court makes it clear in its requests for a preliminary ruling that, in Romanian law, there are three different civil law sanctions for failure to comply with a rule of law, that is to say, unenforceability, relative nullity and absolute nullity. It states that, since there is no express provision as to the substantive law that applied on the dates on which the contracts giving rise to the disputes in the main proceedings were concluded, domestic legal literature and case-law interpret Romanian legislation in order to determine the legal regime for the nullity of civil law legal acts that the legislature intended to introduce nationally.[6]

35. The sanction of nullity is intended to deprive an act of any legal effect where it is concluded in breach of the provisions of the law. The sanction is relative nullity or absolute nullity, depending on the nature of the interest (an individual interest or a general interest) protected by the legal provision that is infringed on conclusion of the civil law legal act.

36. According to the referring court, relative nullity sanctions failure to comply with a mandatory legal rule safeguarding a private interest, and actions for relative nullity are subject to a limitation period. Absolute nullity sanctions the infringement, as a result of conclusion of the civil law act, of a legal rule safeguarding the general interest protected by a mandatory legal rule of public policy. Given the interest protected, affirmation of the contract is not available in the case of absolute nullity, meaning that a consumer who is entitled to rely on that nullity cannot waive it. Absolute nullity can be relied upon by any person with an interest, bodies so empowered by law and by a court, acting of its own motion.[7] There is no limitation period for an action seeking a declaration of absolute nullity, which can therefore be claimed at any time, by bringing an action or by raising an objection.

37. According to the referring court's account, as a general rule absolute nullity in Romanian law has retroactive effect, that is to say, from the time when the legal act was concluded (*ex tunc* effects). Nevertheless, there are a number of exceptions to that rule, where absolute nullity has *ex nunc* effects. This is so where a possessor in good faith of a productive asset keeps the produce taken during the

5 See judgment of 10 January 2006, *Ynos* (C-302/04, EU:C:2006:9, paragraph 36), and, in respect of Romania, order of 3 July 2014, *Tudoran* (C-92/14, EU:C:2014:2051, paragraphs 26 to 29).

6 I note that the new civil code, which came into force on 1 October 2011, distinguishes between relative nullity and absolute nullity. See Firică, M.C., 'Considerations upon the Nullity of the Civil Legal Act in the Regulation of the New Romanian Civil Code', *Journal of Law and Public Administration*, 2015, vol. 1(1), p. 54, and Hinescu, A., 'The Nullity of a Merger under Romanian Law', *European Company Law*, vol. 10(2), 2013, p. 53. However, the referring court refers only to the 1864 Civil Code as regards the legal framework applicable to the contracts giving rise to the disputes in the main proceedings.

7 Admittedly, it emerges from legal literature that, already under the 1864 Civil Code, a court's power to raise absolute nullity of its own motion was questionable. To some writers, where none of the parties brought an action for absolute nullity, the national court was unable to rule on the nullity of the contract giving rise to the dispute. Accordingly, if a court hearing an action for the payment of contractual debts found the contract to be void, it was obliged to dismiss the action as unfounded, without ruling on the validity of that contract. See Firică, M.C., 'Considerations upon the Nullity of the Civil Legal Act in the Regulation of the New Romanian Civil Code', *Journal of Law and Public Administration*, vol. 1(1), 2015, p. 56 and the legal literature cited.

period when he was acting in good faith. Furthermore, absolute nullity gives rise to restoration of the situation as it was previously (*restitutio in integrum*), which means that the consideration provided on the basis of the void legal act is returned. In reciprocal contracts, the consideration is returned under the mechanism for payments not due and by actions for restitution.

38. According to the referring court, in the light of Romanian law, a distinction must be drawn between actions for a declaration of absolute nullity, which are not subject to limitation, and actions for the restitution of consideration, which are pecuniary actions and are always subject to limitation. However, an action for the restitution of consideration is conditional upon a prior decision on nullity, inasmuch as the right to claim restitution arises only after the declaration of nullity. There are exceptions to the foregoing that qualify how the rules concerning the time-barring of actions for restitution are applied. One of those exceptions applies in the procedural situation where two heads of claim have not been pleaded (a principal claim of nullity and an ancillary claim for the restitution of consideration). Another of those exceptions applies to continuing contracts where, in order to avoid the unjust enrichment of one of the parties, it is objectively impossible to order restitution of one of the heads of consideration (in the case of an asset used for rental) and, therefore, the other head of consideration likewise cannot be restored.

2. Application of the sanction of absolute nullity

39. According to the referring court, it has become firmly established in Romanian domestic case-law that the removal of unfair terms is equated with the system of absolute nullity.

40. The referring court also states that, although Directive 93/13 provides that an unfair term *will not be binding on the consumer*, with the effect that a consumer cannot be liable under such a term and can ignore it, which corresponds to the concept of 'unenforceability', given the characteristics of nullity and of unenforceability as provided for in Romanian law, the sanction of nullity seems to be faithful to the regime laid down by that directive.

41. Furthermore, that court refers to Article 7(2) of Directive 93/13 and notes that, under the principle of procedural autonomy, the Member States are to define adequate and effective means so that persons may take action before the courts for a decision as to whether contractual terms are unfair. It states that Law No 193/2000 does not expressly mention application of the sanction of nullity, but that Article 12(4) of that law alludes to the application of that sanction.

42. In addition, the referring court notes that, according to the Court's case-law, Article 6(1) of Directive 93/13 must be regarded as a provision of equal standing to national rules which rank, within the domestic legal system, as rules of public policy. [8] Against that background, it explains that, because the national court is obliged to review potentially unfair terms of its own motion, the domestic case-law has followed the legal regime of absolute nullity. Likewise, according to domestic legal literature, sellers and suppliers have a duty not to include unfair terms in consumer contracts, this being an obligation imposed by a mandatory legal rule of public policy, breach of which is penalised by the absolute nullity of those terms. [9]

8 Judgments of 30 May 2013, *Asbeek Brusse and de Man Garabito* (C-488/11, EU:C:2013:341, paragraph 44), and of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 54).

9 See Voiculescu, I.C., 'Unfair terms in contracts concluded between traders and consumers', in *Romanian and European Law, Journal of Advanced Research in Law and Economics*, vol. 3(2), 2012, p. 57. See, also, to that effect, Marcusohn, V., 'The effects of unfair terms on the binding force principle of contracts', *Union of Jurists of Romania. Law Review*, vol. 9(1), 2019, p. 34. I note that, on page 33 of his work, that writer mentions the fact that domestic legal literature has also envisaged use of the sanction of considering the unfair terms to be not written.

43. This means that a person who claims to have the status of consumer under a credit agreement can at any time bring an action before a court to have a contractual term declared unfair. Once terms have been found to be unfair, the domestic principles attaching to the absolute nullity of those contractual provisions apply, including the principle of *restitutio in integrum*.

3. Implications of applying the sanction of nullity to contracts that have been executed in full

44. The referring court underlines that the disputes in the main proceedings have the feature that the contracts giving rise to those disputes had been performed before proceedings were brought before the national courts. It states that the domestic case-law has developed divergent approaches in terms of the implications of a finding that a term in a fully performed contract is unfair.

45. According to one line of case-law, a finding of unfairness gives rise to the sanction of absolute nullity. Therefore, because actions seeking the absolute nullity of unfair terms are not subject to limitation, an action for restitution, according to that case-law, is not subject to a limitation period.

46. Another line of case-law is based on the interpretation that the sanction imposed where contractual terms are found to be unfair is a *sui generis* sanction that produces effects in the future, and does not cast doubt on the consideration already provided as occurs with the sanction of nullity.

47. According to the referring court, it is possible to adopt an interpretation under which the time at which a contract comes to an end, because it has been fully performed on maturity or by early repayment, is the time at which the borrower should no longer be considered to be in a weaker position compared to the seller or supplier and is relieved of any liability to that seller or supplier. In the referring court's interpretation, that is therefore the objective point in time at which the consumer must have known or should have known that the term was unfair.

48. According to that interpretation, a consumer can bring an action for absolute nullity seeking a declaration that terms are unfair without any time limit, whereas his action for restitution of the consideration provided under those terms would have to be brought within three years from the time at which the contract came to an end.

49. I would also note that, according to the referring court, the fact that the limitation period begins to run at a different time for pecuniary claims that relate to the unfairness of contractual terms, disapplying conflicting national law, is an example of the direct application of EU law. Nevertheless, that court also states that its interpretation is informed by a concern to uphold the principle of legal certainty. It refers in that respect not to the principle of legal certainty under EU law but to the principle of the certainty of civil law legal relationships or the principle of trade certainty. Moreover, it refers to several judgments in which the Court of Justice has held that in the interests of legal certainty it is compatible with EU law to lay down reasonable time limits for bringing proceedings.[10] In those judgments, the Court referred to the principle of legal certainty as a principle at the basis of the national legal system.[11] It should therefore be borne in mind that the referring court bases its interpretation of the national provisions on the principle of legal certainty, which is applied in Romanian law and lies at the basis of the civil law system of that Member State.

10 See judgments of 6 October 2009, *Asturcom Telecommunicaciones* (C-40/08, EU:C:2009:615, paragraph 41), and of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 69).

11 See judgment of 6 October 2009, *Asturcom Telecommunicaciones* (C-40/08, EU:C:2009:615, paragraph 39). See also, to that effect, by implication, judgment of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 67).

C. Applicability of Directive 93/13 to contracts that have been performed

1. The status of consumer and the applicability of Directive 93/13

50. As I have stated in point 27 of this Opinion, the referring court considers that the questions which it has referred should be examined in terms of whether the parties to the terminated contracts were still 'consumers' within the meaning of Article 2(b) of Directive 93/13. That view corresponds to the defendants' argument that, once a credit agreement has been performed in full, the borrower loses the status of a consumer and, therefore the protection that Directive 93/13 provides.

51. Admittedly, Article 2(b) of Directive 93/13 defines 'consumer' as 'any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession'. The defendants seem to infer, in essence, that, because the legislature used the present indicative tense in that definition, once a contract has been performed a person who concluded that contract is no longer acting under it and, therefore, no longer has the status of 'consumer' within the meaning of that directive.

52. It is also true that under Article 6(1) of Directive 93/13, Member States must 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'. According to that provision, the Member States also have a duty to ensure that the contract containing the unfair terms 'shall continue to bind the parties'. The defendants seem to interpret the wording used by the legislature as meaning that the article relates only to contracts that have not yet been performed and that, if the contract comes to an end, it is a priori no longer necessary to ensure that the unfair terms no longer bind the consumer or that the contract continues to be binding on the parties.

53. Nevertheless, I believe it is more appropriate to ask not whether a person who has concluded a contract as a consumer within the meaning of Article 2(b) of Directive 93/13 keeps the status of consumer within the meaning of that article once the contract has been fully performed, but whether that directive ceases to be concerned with protecting that person once the contract he has concluded has been performed in full.

54. Indeed, first, in most systems of private law, a contract comes to an end as soon as all the obligations under that contract have been performed,[12] although it must be borne in mind that the contract was the basis of the transfers that took place as part of its performance. The fully performed contract in fact remains binding in the sense that it is still the basis of the transfers that took place previously. Furthermore, full performance of the contract does not alter the fact that, when performing his contractual obligations, the person who concluded that contract was undoubtedly a 'party to the contract'.

55. Accordingly, if the term declared to be unfair was the basis of a transfer that took place while the contract was being performed, the fact that the contract has already been performed does not make that term any less unfair. There is still an interest in terms contained in that contract being declared to be unfair and, as the case may be, in that contract remaining binding in all other respects. That is the logic according to which the provisions of Directive 93/13 should be read.

12 See Article 2:114 of the Model Rules of European Private Law (draft common frame of reference for European contract law) which have been drawn up on the basis in particular of a comparative law approach, an article according to which full performance extinguishes an obligation if it is in accordance with the terms regulating the obligation or of such a type as by law to afford the debtor a good discharge. See Von Bar, Ch., Clive, E., and Schulte-Nölke, H., and others (eds), *Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR)*, Outline Edition, Munich, Sellier European Law Publishers, 2009, p. 282. Those rules have given rise to the model rules of European private law (draft common frame of reference for European contract law) which have been drawn up on the basis in particular of a comparative law approach.

56. Secondly, the defendants also argue, in essence, that the imbalance in the positions of the consumer and the seller or supplier exists only at the time when a contract is concluded and when it is being performed. Accordingly, in their submission, Directive 93/13 no longer applies once the contract has been performed because its mediation is not needed to offset that imbalance. On that point, the defendants set out their understanding of the Court's case-law, stating that the system of protection introduced by Directive 93/13 is based on the idea that the relationship between the consumer and the seller or supplier is unequal [13] and that the directive concerns contracts where there is a significant imbalance. [14]

57. It is nevertheless apparent from the same case-law of the Court that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge. This leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of the terms. [15] Performance of the contract does not retroactively alter the fact that the consumer was in that weak position at the time when it was concluded. Moreover, it is in such a context that unfair terms, which create a significant imbalance and which the consumer accepts, are included in contracts. [16] As can be seen from what have I said in point 54 of this Opinion, those terms continue to be the basis of the transfers carried out by the parties to the contract in the course of its performance.

58. Accordingly, to hold that performance of a contract precludes any possibility of declaring such terms to be unfair would lead to a situation in which any transfer that occurred on the basis of those terms would remain definitive and not subject to challenge. In that context, as the Polish Government observes, some contracts are performed immediately after or even at the time that they are concluded. That occurs in particular with contracts for sale. To follow the defendants' thesis according to which Directive 93/13 ceases to apply once such a contract has been performed in full would mean that it would not be even theoretically possible for a party to that contract to bring effective court proceedings before the contract comes to an end. However, nothing in that directive implies that it excludes such contracts from its scope.

59. Thirdly, as can be seen from Article 7(1), read in conjunction with the 24th recital, Directive 93/13 requires Member States to ensure that adequate and effective means exist 'to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.' Those means must have a deterrent effect on sellers and suppliers. [17] An interpretation according to which that directive ceases to apply once a contract has been performed could undermine achievement of its long-term objective. Indeed, it is not inconceivable that a consumer, not fully aware that the terms are unfair and fearing that the seller or supplier might bring an action against him, would be inclined to perform his contractual obligations.

2. Waiver of the protection and of the applicability of Directive 93/13

60. I would also note that the referring court is uncertain whether the manner in which the contract comes to an end can affect whether or not Directive 93/13 applies. That court refers here to early repayment and to performance in full on maturity.

13 See judgments of 27 June 2000, *Océano Grupo Editorial and Salvat Editores* (C-240/98 to C-244/98, EU:C:2000:346, paragraph 25), and of 26 October 2006, *Mostaza Claro* (C-168/05, EU:C:2006:675, paragraph 25).

14 See judgment of 16 January 2014, *Constructora Principado* (C-226/12, EU:C:2014:10, paragraph 23).

15 See judgments of 27 June 2000, *Océano Grupo Editorial and Salvat Editores* (C-240/98 to C-244/98, EU:C:2000:346, paragraph 25), and of 26 October 2006, *Mostaza Claro* (C-168/05, EU:C:2006:675, paragraph 25).

16 That is also why the unfairness of contractual terms is assessed by referring, as at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract. See, to that effect, judgment of 20 September 2017, *Andriciuc and Others* (C-186/16, EU:C:2017:703, paragraphs 53 and 54).

17 See, to that effect, judgment of 27 June 2000, *Océano Grupo Editorial and Salvat Editores* (C-240/98 to C-244/98, EU:C:2000:346, paragraph 28).

61. The view that Directive 93/13 ceases to apply once a contract has been performed voluntarily must, to my mind, be based on the idea that a consumer who performs a contract containing unfair terms implicitly waives the protection which he is afforded by that directive.

62. The Court has already clearly established in its case-law that, for a consumer to be able to effectively waive the protection conferred by Directive 93/13, he must give free and informed consent to non-application of the sanction under that directive.[18] It cannot be assumed that a consumer is aware that the terms in a contract are unfair at the time when he performs his contractual obligations. Nor can the view be taken that, by performance of the contract, a consumer gives any consent going beyond merely wishing to perform the obligation in question. Indeed, a consumer may perform his obligations in good faith or may do so in order to guard against a seller or supplier bringing an action against him.

63. Accordingly, the fact that a contract has voluntarily been performed does not in itself mean that Directive 93/13 does not apply and does not remove the protection that the directive confers on a person who has concluded that contract as a consumer within the meaning of Article 2(b) of Directive 93/13.

3. Interim conclusions on the applicability of Directive 93/13

64. It follows from the foregoing that Directive 93/13 also applies to fully performed contracts. It is the conclusion of a contract by a consumer that triggers the applicability of that directive. Moreover, full performance of the contract does not prevent the directive from applying. Nevertheless, it is necessary to distinguish between the applicability of the directive to fully performed contracts and the power of the Member States to introduce limitation periods at national level in order to place time limits on actions for restitution.

D. Limits on the procedural autonomy of the Member States

65. EU law has not harmonised the rules applicable to reviewing whether a contractual term is unfair. It is for the national legal order of each Member State to establish such rules, in accordance with the principle of procedural autonomy, on condition, however, that they are no less favourable than those governing similar domestic actions (principle of equivalence) and do not make it in practice impossible or excessively difficult to exercise the rights conferred on consumers by EU law (principle of effectiveness).[19]

18 See judgments of 4 June 2009, *Pannon GSM* (C-243/08, EU:C:2009:350, paragraph 33); of 21 February 2013, *Banif Plus Bank* (C-472/11, EU:C:2013:88, paragraph 35); and of 3 October 2019, *Dziubak* (C-260/18, EU:C:2019:819, paragraph 53). See, also, my Opinion in *Sales Sinués and Drame Ba* (C-381/14 and C-385/14, EU:C:2016:15, point 69). It is apparent from that case-law that a consumer can always waive the protection that Directive 93/13 confers on him. However, as can be seen from point 36 of this Opinion, it appears that in relation to the regime governing absolute nullity in Romanian law the right to invoke the sanction under that regime cannot be waived.

19 See, to that effect, the judgment of 5 December 2013, *Asociación de Consumidores Independientes de Castilla y León* (C-413/12, EU:C:2013:800, paragraph 30 and the case-law cited). Admittedly, in relation to Directive 93/13, the Court of Justice has tended to refer in its recent case-law more to the right to an effective remedy (see judgments of 13 September 2018, *Profi Credit Polska*, C-176/17, EU:C:2018:711, paragraph 57, and of 3 April 2019, *Aqua Med*, C-266/18, EU:C:2019:282, paragraph 47) or to effective judicial protection (see judgment of 31 May 2018, *Sziber*, C-483/16, EU:C:2018:367, paragraph 35), as laid down in Article 47 of the Charter of Fundamental Rights of the European Union. Those references were made in the context of questions referred for a preliminary ruling concerning the procedural arrangements for finding a contractual term to be unfair. In that context, the Court has focused on whether or not procedural arrangements give rise to a non-negligible risk of a consumer being deterred from properly defending his rights before the court before which proceedings have been brought by the seller or supplier. See judgments of 13 September 2018, *Profi Credit Polska* (C-176/17, EU:C:2018:711, paragraph 61), and of 3 April 2019, *Aqua Med* (C-266/18, EU:C:2019:282, paragraph 54). Nevertheless, it is difficult to determine the relationship between the requirements flowing from Article 47 of the Charter of Fundamental Rights and those flowing from the principle of effectiveness in the context of Directive 93/13. See, in particular, my Opinion in *Finanmadrid EFC* (C-49/14, EU:C:2015:746, point 85). Moreover, as regards the limitation period for actions brought by consumers, it is in my view sufficient to refer to the principle of effectiveness, as the referring court suggests in its questions. The requirements imposed as the result of an approach based on the right to an effective remedy or to effective judicial protection would be identical or indistinguishable.

66. I therefore believe it is necessary, whilst bearing in mind the principle of legal certainty invoked by the referring court, to determine whether it is consistent with those two principles for an action for restitution of the consideration provided on the basis of a term that has been declared unfair to be subject to limitation, and then to analyse, from that perspective, whether a Member State can lay down a three-year limitation period calculated from the time at which the contract comes to an end.

1. The principle of effectiveness

(a) Limitation periods in the context of the principle of effectiveness

67. The Court has already recognised in its case-law that, in respect of Directive 93/13, consumer protection is not absolute.[20] In that context, the Court has held that 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 those requirements do not comply with the principle of effectiveness[21] or that the consumer in question does not enjoy effective judicial protection.[22] A consumer can therefore be required to exercise a degree of vigilance to safeguard his interests without the principle of effectiveness or the right to an effective remedy thereby being infringed. That is so, for example, where a consumer is required to make an additional effort in the general interests of the sound administration of justice and foreseeability.[23] Indeed, when examining whether the provisions of national law by which the legislature transposed Directive 93/13 are compatible with the principle of effectiveness, account must be taken, where appropriate, of the basic principles of the domestic judicial system, such as protection of the rights of the defence, the principle of legal certainty and the proper conduct of procedure.[24]

68. In addition, as regards specifically the time limits for actions based on Directive 93/13, it is to be noted that, according to consistent case-law, reasonable time limits for bringing proceedings, laid down in the interests of legal certainty, are not liable to make it in practice impossible or excessively difficult to exercise the rights conferred by EU law.[25]

69. I conclude from the foregoing that, from the perspective of the principle of effectiveness and inasmuch as the principle of legal certainty, being a principle at the basis of the national legal system, so requires, it is in principle permissible to impose time limits on actions based on EU law. The time limits imposed in that respect must be ‘reasonable’, to use the wording used by the Court in its case-law, which means that they must not make it in practice impossible or excessively difficult to exercise the rights conferred by the EU legal order. It is therefore necessary to determine whether a three-year limitation period that begins to run, in relation to fully performed contracts, from the time at which the contract comes to an end, can be found to be a ‘reasonable’ time limit within the meaning of that case-law.

20 See, to that effect, judgment of 31 May 2018, *Sziber* (C-483/16, EU:C:2018:367, paragraph 50).

21 See, to that effect, judgment of 1 October 2015, *ERSTE Bank Hungary* (C-32/14, EU:C:2015:637, paragraph 62). See, also, to that effect, judgment of 6 October 2009, *Asturcom Telecomunicaciones* (C-40/08, EU:C:2009:615, paragraph 47).

22 See, to that effect, judgment of 31 May 2018, *Sziber* (C-483/16, EU:C:2018:367, paragraphs 50 and 51).

23 See, to that effect, judgment of 12 February 2015, *Baczó and Vizsnyiczai* (C-567/13, EU:C:2015:88, paragraph 51).

24 See, to that effect, judgments of 6 October 2009, *Asturcom Telecomunicaciones* (C-40/08, EU:C:2009:615, paragraph 39); of 5 December 2013, *Asociación de Consumidores Independientes de Castilla y León* (C-413/12, EU:C:2013:800, paragraph 34); and of 18 February 2016, *Finanmadrid EFC* (C-49/14, EU:C:2016:98, paragraph 44).

25 See, to that effect, judgments of 6 October 2009, *Asturcom Telecommunicaciones* (C-40/08, EU:C:2009:615, paragraph 41), and of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 69).

(b) Reasonableness of the limitation period

70. The Court has already held, in a variety of contexts, that a national limitation period of three years appears to be reasonable.[26] However, whether or not a time limit is reasonable — and, therefore, whether it complies with the principle of effectiveness — cannot be determined solely on the basis of its length. All the arrangements relating to that time limit must be taken into account, that is to say, the events that trigger, interrupt or suspend it and, where applicable, the consequences of failing to comply with the time limit and whether it can begin to run again.[27] All those factors are capable of making it in practice impossible or excessively difficult to exercise the rights that Directive 93/13 confers on consumers.

71. In that context, the referring court expresses doubt only about the triggering event and the length of the limitation period. Accordingly, the starting point for my analysis is that no event occurred that could have interrupted or suspended that period. For the sake of completeness, I note that the referring court has not indicated that the bringing of an action seeking a declaration that contractual terms are unfair suspends the limitation period applicable to an action for restitution.

72. In order to determine whether a limitation period, considered together with all the relevant rules, complies with the principle of effectiveness, it must be borne in mind that limitation periods and the arrangements for their application must be adapted to the specific characteristics of the field concerned, so as not to undermine completely the full effectiveness of the relevant provisions of EU law.[28]

73. The fact that a consumer is required to exercise a degree of vigilance in order to safeguard his interests is not contrary to Directive 93/13.[29] In the same vein, a three-year limitation period which begins to run from the time the contract comes to an end seems in principle to leave a consumer, who is unaware of his rights and/or of the fact that contractual terms are unfair, sufficient time to enquire about the legality of those terms and to gauge whether it is appropriate to bring a legal action. To enable the consumer to do so, the limitation period and all the arrangements for its application must, however, be established and known in advance.[30] They can therefore only be established by legislation or in accordance with an interpretation of legislation apparent from consistent case-law.

74. In that context, before expiry of three years from the time at which the contract came to an end, a consumer can envisage bringing an action before a national court for a declaration that contractual terms are unfair, in order to determine, with binding effect on the seller or supplier, whether the latter included in the contract terms that are contrary to Directive 93/13. However, subject to checks that it is for the referring court to carry out, it appears that the limitation period addressed in the questions referred, which applies to actions for restitution, is not suspended when the consumer

26 See judgment of 15 April 2010, *Barth* (C-542/08, EU:C:2010:193, paragraphs 28 and 29 and the case-law cited). Furthermore, in the context of the repayment of import or export duties, the Court has found that a three-year limitation period for the submission of applications for the reimbursement of customs duties wrongfully charged is not contrary to the principle of effectiveness even if there is no possibility of extending that period on grounds of *force majeure*. See judgment of 9 November 1989, *Bessin et Salson* (386/87, EU:C:1989:408, paragraph 17).

27 See, to that effect, in relation to limitation periods that constitute detailed rules governing the exercise of the right to claim compensation for harm resulting from an infringement of competition law, judgment of 28 March 2019, *Cogeco Communications* (C-637/17, EU:C:2019:263, paragraph 45). See also, to that effect, Opinion of Advocate General Sharpston in *Cargill Deutschland* (C-360/18, EU:C:2019:648), in which she stated that there are cogent reasons which indicate that provisions governing limitation periods should comprise a set of rules specifying the length of the limitation period, the date on which time starts to run and the events which have the effect of interrupting or suspending the limitation period.

28 See, to that effect, judgment of 28 March 2019, *Cogeco Communications* (C-637/17, EU:C:2019:263, paragraphs 47 and 53). In that judgment, the Court held, in relation to competition law, that a limitation period of three years which, first, starts to run from the date on which the injured party was aware of its right to compensation, even if the infringer was not known, and, secondly, cannot be suspended or interrupted in the course of proceedings before the national competition authority renders the exercise of the right to full compensation practically impossible or excessively difficult.

29 See point 67 of this Opinion.

30 See, to that effect, my Opinion in *Nencini v Parliament* (C-447/13 P, EU:C:2014:2022, point 81).

brings an action for a declaration that contractual terms are unfair. Whilst awaiting such a binding determination that contractual clauses are unfair, the consumer may therefore be in danger of his action for restitution becoming time-barred as a result of the length of the proceedings for a declaration that the terms are unfair. There is therefore a non-negligible risk that, for reasons beyond his control, the consumer could fail to bring the action required to assert his rights under Directive 93/13 in good time.

75. Leaving that reservation aside, the fact that, as is apparent from what I have stated in point 64 of this Opinion, Directive 93/13 continues to apply to fully performed contracts does not preclude a Member State from laying down a limitation period for an action for restitution which implements that directive at national level. The present cases do not raise the issue of any time limit on the action by which consumers can seek a declaration that contractual terms are unfair. Indeed, the referring court states that such an action can be brought without any time limit and that, once the limitation period has expired, the reparation for the consumer is non-pecuniary, being associated with the deterrence for sellers and suppliers. Furthermore, it follows from Law No 193/2000 that a consumer can also plead nullity of a term by raising an objection. I infer from this that expiry of the three-year limitation period for actions for restitution does not prevent a consumer from disputing a claim brought by a seller or supplier in which the latter is seeking to require the consumer to perform an obligation arising from an unfair term. Nor is there anything to suggest that expiry of that period prevents a national court from finding of its own motion that contractual terms are unfair, a circumstance that distinguishes the present cases from *Cofidis*. [31]

76. It is true that, in its judgment in *Gutiérrez Naranjo and Others*, [32] on domestic case-law that placed a time limit on restitutory effects, the Court stated that the determination by a court that a contractual term is unfair must, in principle, have the consequence of restoring the consumer to the legal and factual situation that he would have been in if that term had not existed. Furthermore, the obligation for the national court to exclude an unfair contract term imposing the payment of amounts that prove not to be due entails, in principle, a corresponding restitutory effect in respect of those same amounts.

77. Nevertheless, first, it must be borne in mind that in *Gutiérrez Naranjo and Others* [33] the Court emphasised that an action for a declaration that contractual terms are unfair must, *in principle*, be given a restitutory effect. Secondly, the temporal limitation of restitutory effects, which that judgment addressed, occurred in a specific context. That limitation seems to have been the outcome of an interpretation of EU law given by a national supreme court in accordance with the criteria that the Court of Justice requires when it is asked to limit the temporal effects of its own judgments. [34] However, in the present cases it is an interpretation of national law that the referring court would wish to apply in the disputes in the main proceedings. Thirdly, in that judgment, the Court clearly distinguished between, on the one hand, such a temporal limitation of the effects of an interpretation of a rule of EU law and, on the other, the application of a procedural rule, such as a reasonable limitation period. [35]

78. In the light of the foregoing, it should be found that Directive 93/13 must be interpreted as not precluding a Member State from laying down a limitation period for an action for restitution relating to a finding that contractual terms are unfair. Furthermore, none of the information provided in the orders for reference suggests that, in the present instance, the principle of effectiveness would be infringed by an interpretation of the national rules according to which an action for restitution

31 See judgment of 21 November 2002, *Cofidis* (C-473/00, EU:C:2002:705).

32 See judgment of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 54).

33 See judgment of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 54).

34 See judgment of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 70). See, also, Opinion of Advocate General Mengozzi in *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:552, points 19 and 20).

35 See judgment of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraphs 69 and 70).

relating to unfair terms is subject to a three-year limitation period that begins to run from the time when the contract concluded by a consumer with a seller or supplier comes to an end. That finding is subject to two conditions: first, that the time limit is suspended during the proceedings by which the consumer seeks to establish that those terms are unfair; and, secondly, that the time limit and all the arrangements for its application are established and known in advance.

2. The principle of equivalence

(a) Similarity of the actions

79. The principle of equivalence requires that all the rules applicable to actions apply without distinction to actions alleging infringement of EU law and to similar actions alleging infringement of national law. It is for the national courts to identify which actions in national law are similar to those based on EU law. For the purposes of the assessment to be carried out by the national court, the Court of Justice can provide it with a degree of guidance for the interpretation of EU law.

80. In order to establish whether the principle of equivalence has been complied with in the cases in the main proceedings, it is necessary to determine, in the light of their purpose, cause of action and essential characteristics, whether the actions brought by the applicants under Directive 93/13 and those that they could have brought on the basis of national law can be regarded as similar. [36]

81. The referring court does not expressly indicate which actions can be regarded as similar to those based on Directive 93/13. It merely states that the Romanian courts equate the sanction for including unfair terms in a consumer contract with the sanction applied in relation to absolute nullity. From that perspective, it is not immediately obvious that actions concerning the infringement of a rule ranking as a rule of public policy and actions relating to Directive 93/13 are similar. [37] However, the referring court compares the arrangements for those actions with the arrangements relating to actions concerning absolute nullity. It would seem therefore that, in the view of the referring court, the cause (infringement of a rule ranking as a rule of public policy), purpose (to remedy such an infringement and deprive a contractual term of legal effect) and essential characteristics of those actions (in particular, the fact that there is a set of two actions to penalise that infringement, which must be raised by a national court of its own motion) can be considered to be similar or comparable. To my mind, the references for a preliminary ruling contain no further information such as to call that view into question. Nor does it seem that the parties that have submitted observations in the present cases cast doubt on that interpretation. Nevertheless, it is for the referring court to carry out the final appraisal in that respect.

36 See, to that effect, judgment of 20 September 2018, *EOS KSI Slovensko* (C-448/17, EU:C:2018:745, paragraph 40).

37 In support of that finding, the Romanian courts rely on the fact that — in the words used by the Court of Justice — Article 6(1) of Directive 93/13 must be regarded as a provision of equal standing to national rules which rank, within the domestic legal system, as rules of public policy. See judgments of 30 May 2013, *Asbeek Brusse and de Man Garabito* (C-488/11, EU:C:2013:341, paragraphs 44 and 45); of 4 June 2015, *Faber* (C-497/13, EU:C:2015:357, paragraph 56); of 26 January 2017, *Banco Primus* (C-421/14, EU:C:2017:60, paragraphs 42 and 43); of 17 May 2018, *Karel de Grote — Hogeschool Katholieke Hogeschool Antwerpen* (C-147/16, EU:C:2018:320, paragraphs 35 and 36); and of 20 September 2018, *OTP Bank and OTP Faktoring* (C-51/17, EU:C:2018:750, paragraphs 87 and 89). Also, in Romanian law absolute nullity is the sanction that applies for infringing a mandatory legal rule of public policy. Nevertheless, I confess that I have doubts as to whether that case-law means that a Member State is obliged to equate the sanction applied to unfair terms with that which applies in the case of infringement of rules of public policy. My view is that, in its case-law, the Court of Justice referred to such rules solely in order to explain why the national courts have a duty to consider of their own motion whether contractual terms are unfair.

(b) Compliance with the principle of equivalence

82. It is, in principle, for the national courts to ascertain whether the procedural arrangements intended to ensure that the rights derived by individuals from EU law are safeguarded under national law comply with the principle of equivalence. The same applies to identifying which actions under national law are similar. Nevertheless, where material in the case file so permits, the Court of Justice can comment on whether the procedural arrangements comply with that principle. [38]

83. In that context, the mere fact that the same limitation period applies to actions based on EU law and to those based on national law is not sufficient to find that the principle of equivalence is complied with. Under that principle, all those actions must be subject without distinction to all the rules applicable to actions for restitution. [39] However, the referring court explains that its interpretation according to which the three-year limitation period, which corresponds to a general limitation period, begins to run from the time at which the contract comes to an end applies only to actions for restitution relating to terms found to be unfair within the meaning of Directive 93/13. Furthermore, there is nothing to indicate that this interpretation corresponds to one of the exceptions referred to in point 38 of this Opinion, allowing qualification when determining the time from which the limitation period begins to run in respect of actions relating to the domestic regime of absolute nullity.

84. Moreover, in contrast to the requirements derived from the principle of effectiveness, those flowing from the principle of equivalence cannot be relaxed by invoking the principles at the basis of the national system, such as the principle of legal certainty. Indeed, the principle of equivalence requires that a national rule be applied without distinction to procedures based on EU law and those based on national law. To find that an action based on EU law is treated in a non-discriminatory way despite the fact that an action based on national law is treated differently would run counter to the very meaning of the principle of equivalence. If the principle of legal certainty requires that a limitation period must begin to run from a specific moment, that rule relating to the limitation period must apply without distinction to situations relating to rights derived from the EU legal order and to similar national situations.

85. That being so, it is apparent in the present instance that the principle of equivalence is not observed, since it is not in dispute that the event that triggers the limitation period depends on the basis of the action for restitution.

86. Having regard to the foregoing, the principle of equivalence should be found to preclude national rules or an interpretation of those rules according to which the three-year limitation period that applies to actions for restitution relating to contractual terms found to be unfair within the meaning of Directive 93/13 begins to run from the time when the contract containing those terms comes to an end despite the fact that the three-year limitation period that applies to similar actions, based on certain provisions of national law, begins to run only from the time when a court finds there to be a cause of action.

38 See, to that effect, judgment of 10 July 1997, *Palmisani* (C-261/95, EU:C:1997:351, paragraph 33).

39 See, to that effect, judgment of 15 April 2010, *Barth* (C-542/08, EU:C:2010:193, paragraph 19).

V. Conclusion

87. In the light of the foregoing, I propose that the Court of Justice should answer the questions referred for a preliminary ruling by the Tribunalul Specializat Mureș (Specialised Court, Mureș, Romania) as follows:

In Case C-698/18:

(1) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as not precluding a Member State from laying down a limitation period for an action for restitution relating to a finding that contractual terms are unfair.

(2) The principle of effectiveness does not preclude a Member State from laying down that such an action for restitution is subject to a three-year limitation period that begins to run from the time when the contract comes to an end, provided, first, that the time limit is suspended during proceedings by which the consumer seeks a declaration from a national court that those terms are unfair, and secondly, that the time limit and all arrangements for its application are established and known in advance.

(3) The principle of equivalence precludes national rules or an interpretation of those rules according to which the three-year limitation period that applies to actions for restitution relating to contractual terms found to be unfair within the meaning of Directive 93/13 begins to run from the time when the contract containing those terms comes to an end despite the fact that the three-year limitation period that applies to similar actions, based on certain provisions of national law, begins to run only from the time when a court finds there to be a cause of action.

In circumstances such as those of the dispute in the main proceedings in Case C-699/18, the material facts of which predate the accession of a State to the European Union, the Court does not have jurisdiction to give a preliminary ruling on the referring court's questions.