Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

22 April 2021 *

(Reference for a preliminary ruling – Consumer protection – Directive 2008/48/EC – Credit agreements for consumers – Directive 93/13/EEC – Unfair contract terms – Payment made under an unlawful term – Unjust enrichment of the lender – Right to restitution time-barred – Principles of Union law – Principle of effectiveness – Article 10(2) of Directive 2008/48 – Information to be included in a credit agreement – Elimination of certain national requirements on the basis of the case-law of the Court – Interpretation of the old version of the national legislation in accordance with that case-law – Temporal effects)

In Case C-485/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Krajský súd v Prešove (Regional Court, Prešov, Slovakia), made by decision of 12 June 2019, received at the Court on 25 June 2019, in the proceedings

LH

v

Profi Credit Slovakia s. r. o.,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen, C. Toader, M. Safjan and N. Jääskinen (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Profi Credit Slovakia s. r. o., by A. Cviková, advokátka,

– the Slovak Government, by B. Ricziová, acting as Agent,

– the European Commission, by G. Goddin and by N. Ruiz García and A. Tokár, acting as Agents,

* Language of the case: Slovak.

after hearing the Opinion of the Advocate General at the sitting on 3 September 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), the principle of effectiveness of European Union law and provisions 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; corrigenda OJ 2009 L 207, p. 14; OJ 2010 L 199, p. 40; and OJ 2011 L 234, p. 46), in particular, Article 10(2)(h) and (i) thereof.

2 The application has been made in proceedings between LH and Profi Credit Slovakia s. r. o. concerning unjust enrichment of that company, allegedly as a result of a payment made by the borrower on the basis of allegedly unfair or unlawful terms in a consumer credit agreement.

Legal context

European Union law

Directive 93/13/EEC

3 Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) 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.'

4 Article 7(1) of that directive states:

'Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.'

Directive 2008/48

5 According to Article 1 thereof, the purpose of Directive 2008/48 is to harmonise certain aspects of the Member States' rules concerning agreements covering credit for consumers.

6 Article 3(i) defines the concept of 'annual percentage rate of charge' ('APR') as being 'the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable including the costs referred to in Article 19(2)'.

7 Article 10 of that directive, entitled 'Information to be included in credit agreements', states in paragraph 2:

'The credit agreement shall specify in a clear and concise manner:

…

(g) the [APR] and the total amount payable by the consumer, calculated at the time the credit agreement is concluded; all the assumptions used in order to calculate that rate shall be mentioned;

(h) the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement;

(i) where capital amortisation of a credit agreement with a fixed duration is involved, the right of the consumer to receive, on request and free of charge, at any time throughout the duration of the credit agreement, a statement of account in the form of an amortisation table.

The amortisation table shall indicate the payments owing and the periods and conditions relating to the payment of such amounts; the table shall contain a breakdown of each repayment showing capital amortisation, the interest calculated on the basis of the borrowing rate and, where applicable, any additional costs; where the interest rate is not fixed or the additional costs may be changed under the credit agreement, the amortisation table shall indicate, clearly and concisely, that the data contained in the table will remain valid only until such time as the borrowing rate or the additional costs are changed in accordance with the credit agreement;

…'

8 Article 22 of Directive 2008/48, entitled 'Harmonisation and imperative nature of this Directive', provides in paragraph 1:

'Insofar 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.'

Slovak law

The Civil Code

9 Article 53 of the Občiansky zákonník (Civil Code) provides as follows:

'1. A contract concluded with a consumer must not contain provisions causing a significant imbalance in the rights and obligations of the parties to the detriment of the consumer (unfair term). …

…

(5) Unfair terms used in a contract concluded with a consumer shall be invalid.'

10 Under Article 107 of the Civil Code:

‘(1) The right to claim restitution on the grounds of unjust enrichment shall be time-barred within two years from the time when the person concerned becomes aware of unjust enrichment and discovers who has enriched himself or herself to his or her detriment.

(2) The right to restitution on the grounds of unjust enrichment shall lapse at the latest within 3 years, and within 10 years in the case of intentional unjust enrichment, from the day on which the unjust enrichment occurred.

…’

11 Article 451(2) of the code defines ‘unjust enrichment’ as ‘a pecuniary advantage obtained by means of a benefit without a legal basis, a benefit based on a void legal act or a benefit based on a legal ground that has ceased to exist, as well as a pecuniary advantage derived from dishonest sources’.

Law No 129/2010

12 The zákon č. 129/2010 Z. z. o spotrebiteľských úveroch a o iných úveroch a pôžičkách pre spotrebiteľov a o zmene a doplnení niektorých zákonov (Law No 129/2010 on consumer credit and other forms of credit and loans for consumers, amending certain other laws) is intended to transpose Directive 2008/48 into Slovak law.

13 In the version applicable to the dispute in the main proceedings, Article 9(2)(k) of Law No 129/2010 provided that the consumer credit agreement was to contain the amount, number and timing of the repayments of capital, interest and other charges borne by the borrower and, where appropriate, the order in which the payments were to be allocated to the various balances due which had been fixed at different lending rates for the purposes of repayment.

14 In order to comply with the interpretation of Article 10(2) of Directive 2008/48 adopted in the judgment of 9 November 2016, *Home Credit Slovakia* (C-42/15, EU:C:2016:842, paragraphs 51 to 59), the Slovak legislature amended Law No 129/2010 in such a way that, in the version applicable from 1 May 2018, Article 9(2)(i) thereof provides that the consumer credit agreement must state ‘the amount, number and frequency of payments and, where appropriate, the order in which payments are to be allocated to the various balances due set at different lending rates for the purpose of repayment’.

15 Under Article 11(1) of Law No 129/2010, in the version applicable to the dispute in the main proceedings, consumer credit is ‘deemed to be free of interest and charges’ if the agreement relating thereto does not contain the elements required, inter alia, under Article 9(2)(a) to (k) of that law or does not correctly indicate the APR, to the detriment of the consumer.

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

16 On 30 May 2011, the applicant in the main proceedings and Profi Credit Slovakia entered into a consumer credit agreement for the sum of EUR 1 500, with an interest rate of 70% and an APR of 66.31%, amounting to a total of EUR 3 698.40, to be repaid in 48 monthly instalments of EUR 77.05, without any specification as to the breakdown of the repayments between capital, interest and other costs borne by the borrower.

17 It is apparent from the order for reference that, under the terms of that agreement, Profi Credit Slovakia was entitled, from the first day of the contractual relationship, to charge fees amounting to EUR 367.49 in return for the possibility given to the consumer of obtaining a deferment of the repayment of the credit in the future. As a result of the application of those charges, the applicant in the main proceedings received not the agreed amount of EUR 1 500, but a residual amount of EUR 1 132.51, a reduction of 24%, even though it was not certain that that consumer would make use of the option to defer reimbursement.

18 On the other hand, the referral decision states that the APR mentioned in this contract (66.31%) is lower than the interest rate (70%), which could be related to the fact that the APR was not calculated on the basis of the amount actually paid by Profi Credit Slovakia. The referral decision states that, under Slovak law, the incorrect indication of the APR is sanctioned by the loss of the creditor's right to the payment of interest and charges relating to the credit.

19 On 2 February 2017, after having repaid the credit in full, the applicant in the main proceedings was informed by a lawyer that the term in the contract relating to the deferment fee was unfair and that the information given to him concerning the APR was incorrect.

20 On 2 May 2017, the applicant in the main proceedings brought an action for restitution of the fees which, in his view, were wrongly charged. In its defence, Profi Credit Slovakia pleaded that his right to bring proceedings was time-barred. By decision of 15 November 2018, the Okresný súd Prešov (District Court, Prešov, Slovakia) dismissed that application.

21 On appeal by the applicant in the main proceedings, the referring court, the Krajský súd v Prešove (Regional Court, Prešov, Slovakia), takes the view that the agreement at issue may, in a number of respects, be regarded as contrary to the rules of Union law on consumer protection.

22 In the first place, the Court states that, under the provisions of the first and second paragraphs of Article 107 of the Civil Code, the right to restitution on the ground of unjust enrichment is extinguished:

– either at the end of a limitation period of two years, known as the 'subjective' period, which begins when the person concerned becomes aware of unjust enrichment and identifies the person who has enriched himself or herself to the consumer's detriment; that period appears to have been complied with in the present case, since less than two years separate the information received by the applicant in the main proceedings (on 2 February 2017) and the bringing of his action (on 2 May 2017);

– at the end of a limitation period of three years, known as the 'objective' period, which begins on the day on which the unjust enrichment occurred; that period appears to have already expired in the present case, since more than three years elapsed between the payment of the costs at issue in the main proceedings and the bringing of the action;

– or, in the case of 'intentional' unjust enrichment, at the end of an 'objective' limitation period extended to 10 years, which also starts from the date of the occurrence of the unjust enrichment; that period seems not to have expired in the present case.

23 The referring court notes, first of all, that the objective limitation period of three years begins to run and expires even though the injured consumer was not aware of the unfair or unlawful nature of the contractual term giving rise to the unjust enrichment. In its view, such a national rule is likely to infringe the right to effective judicial protection guaranteed by Article 47 of the Charter and to be incompatible with the case-law of the Court relating to consumer protection, laid down, in particular, by Directive 93/13 and Directive 2008/48.

24 Next, if such a limitation period, applicable notwithstanding the possible ignorance of the consumer, were to be held to be compatible with Union law, the referring court wonders whether the same would be true with regard to the burden of proof on consumers. In that connection, it states that, in the past, the Slovak courts applied the abovementioned national provisions in a way that was favourable to consumers, by adopting a flexible approach to the determination of the intentional nature of unjust enrichment, and thus allowing the persons concerned to benefit from the long limitation period of 10 years, but that that approach has been called into question by a judgment of the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) of 18 October 2018.

25 It follows from that decision that it is incumbent on a consumer relying on the special objective limitation period of 10 years to show that the creditor did indeed intend to enrich himself or herself unduly to the consumer's detriment and that, in the absence of such proof, the general objective limitation period of three years applies. The lower Slovak courts are obliged to follow that decision. However, the referring court considers that that may run counter to Article 47 of the Charter and the principle of effectiveness of Union law, since, in its view, it is practically impossible for a consumer without full information to provide the required proof.

26 Finally, if the Court were to hold that such a burden of proof is compatible with the requirements of Union law, the question arises, first, as to which natural person must be proved by the consumer to have knowledge that the latter's rights have been infringed when the creditor is a legal person and, second, what is the degree of seriousness of the infringement of his or her rights to be established by the consumer.

27 In the second place, the referring court notes that, in implementing the judgment of 9 November 2016, *Home Credit Slovakia* (C-42/15, EU:C:2016:842), the Slovak legislature amended Law No 129/2010 abolishing, with effect from 1 May 2018, the obligation in consumer credit agreements to indicate the due dates of payments of principal, interest and other costs incurred by the borrower, in Article 9(2)(k) thereof in the version applicable to the dispute in the main proceedings, in respect of which the relevant date is 30 May 2011. That obligation has been replaced by the obligation to indicate in such contracts 'the frequency of payments', which is provided for in Article 9(2)(i) thereof in the version applicable as from 1 May 2018.

28 However, in a decision of 22 February 2018, the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) held that, with regard to contracts concluded before 1 May 2018, such as that at issue in the main proceedings, the Slovak courts were required to achieve the result produced by that legislative amendment, by interpreting the original provision in a manner

consistent with European Union law, with the result that creditors must indicate the information required by that provision in such contracts only in a general manner, without a breakdown between the capital, interest and other costs associated with the credit.

29 Against that background, the referring court asks whether the effects of directives, as recognised in the case-law of the Court, preclude a court of a Member State from interpreting a national provision declared incompatible with Union law in a manner consistent with that law without giving reasons for its decision or basing it on the usual methods of interpretation. Moreover, that court wonders whether, if it were to hold that an interpretation compatible with Union law would lead to an interpretation *contra legem*, it could give direct effect to Article 10(2)(h) and (i) of Directive 2008/48 and not apply the national provision concerned to the contractual relationship between the parties in the main proceedings, by analogy with what has been recognised by the Court, in particular, in relation to discrimination.

30 The referring court emphasises the links between the latter questions and those which it had submitted to the Court in the case which gave rise to the judgment of 5 September 2019, *Pohotovosť* (C-331/18, EU:C:2019:665), which was delivered after the present reference for a preliminary ruling was made.

31 In those circumstances, the Krajský súd v Prešove (Regional Court, Prešov) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘A.

(1) Must Article 47 of the [Charter] and, by implication, the consumer’s right to an effective legal remedy be interpreted as precluding national legislation, such as Article 107(2) of the Občianský zákonník (Civil Code of Slovakia) on the limitation of the consumer’s right by a statutory three-year limitation period, in accordance with which the consumer’s right to reimbursement which arises from an unfair contractual term may become time-barred even where the consumer is not in a position to evaluate the unfair contractual term and the limitation period starts even without the consumer being aware that the contractual term is unfair?

(2) In the event that, despite a lack of awareness on the part of the consumer, the legislation which imposes a statutory limitation period of three years on the consumer’s right is consistent with Article 47 of the Charter and the principle of effectiveness, the national court then asks the following:

Is a national practice contrary to Article 47 of the Charter and the principle of effectiveness if, in accordance with that practice, the burden of proof falls on the consumer, who must prove in legal proceedings that the persons acting on behalf of the creditor were aware of the fact that the creditor was infringing the consumer’s rights, in the present case that awareness consisting in the knowledge that, by failing to indicate the precise [APR], the creditor was infringing a legal provision, and must also prove awareness of the fact that, in such circumstances, the loan was non-interest bearing and, by receiving payments of interest, the creditor obtained unjust enrichment?

(3) In the event that [the second question] is answered in the negative, on the part of which persons, among the directors, the shareholders and the commercial representatives of the creditor, must the consumer prove awareness of the matters referred to in [the second question]?

(4) In the event that [the second question] is answered in the negative, what degree of awareness must be shown in order to prove the [lender's] intention to infringe the relevant financial sector rules?

B.

(5) Do the effects of the directives and the relevant case-law of the Court of Justice, including *Rasmussen*, C-441/14, EU:C:2016:278, *Pfeiffer*, C-397/01 to C-403/01, EU:C:2004:584, paragraphs 113 and 114, *Kücükdeveci*, C-555/07, EU:C:2010:21, paragraph 48, *Impact*, C-268/06, EU:C:2008:223, paragraph 100, *Dominguez*, C-282/10, EU:C:2012:33, paragraphs 25 and 27, and *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 38, preclude a national practice in accordance with which the national court reaches a conclusion concerning interpretation in conformity with EU law without employing interpretative methods and without giving due reasons?

(6) If, after applying methods of interpretation, such as purposive interpretation, authentic interpretation, historical interpretation, contextual interpretation, logical interpretation (the *a contrario* method, the *reductio ad absurdum* method) and after applying the whole body of domestic law, in order to secure the objectives referred to in Article 10(2)(h) and (i) of Directive 2008/48 … the national court concludes that interpretation in conformity with EU law results in a situation *contra legem*, is it then possible – for example, by making a comparison with relationships involving discrimination or the protection of employees – to accord the abovementioned provision of the Directive direct effect, in order to protect traders against consumers in credit relationships, and disapply the provision of law which is not in conformity with EU law?'

Consideration of the questions referred

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

32 First, Profi Credit Slovakia expresses doubts as to the lawfulness of the procedure followed by the referring court in referring the request for a preliminary ruling, arguing that it was not given the opportunity to express its views beforehand on the reasons for the stay of proceedings.

33 However, it must be recalled in that regard that, in the context of the procedure referred to in Article 267 TFEU, which is based on a clear separation of functions between the national courts and the Court, the fact that a question on Union law may have been referred for a preliminary ruling without prior adversarial debate does not preclude the Court from being seised of such a question and, in any event, it is not for the Court to determine whether the decision to refer was taken in accordance with the national rules of organisation and procedure of the courts (see, to that effect, judgment of 30 April 2020, *Blue Air – Airline Management Solutions*, C-584/18, EU:C:2020:324, paragraphs 39 to 41 and the case-law cited).

34 Second, Profi Credit Slovakia submits that the questions referred by the national court are inadmissible on the grounds (i) that they do not concern the interpretation of provisions of Union law harmonising national rules on limitation periods or the effects of directives, (ii) that Article 51 of the Charter limits its scope to situations in which the Member States implement Union law and (iii) that those questions are of no use for the resolution of the dispute in the main proceedings.

35 The Slovak Government argues that that question is inadmissible as it fails to comply with the requirements of Article 94(c) of the Rules of Procedure of the Court. According to that government, it follows that there is no need to examine the following three questions, posed in continuation of the first. In any event, the third and fourth questions do not fall within the jurisdiction of the Court in so far as they concern the interpretation of rules of national law. Furthermore, the fifth and sixth questions are unnecessary for the purposes of deciding the main proceedings, since it would not be for the Court to decide whether an interpretation in conformity with Union law is possible with regard to the Slovak rules referred to and, furthermore, there is another legal basis for dealing with the application directly.

36 In that regard, it must be observed that the first and second questions referred for a preliminary ruling concern, in substance, the interpretation of Article 47 of the Charter, read in conjunction with the principle of the effectiveness of Union law.

37 Under Article 51(1) of the Charter, its provisions are addressed to the Member States only when they are implementing Union law and, according to settled case-law, the concept of 'implementation of Union law' within the meaning of that provision presupposes a degree of connection between an act of Union law and the national measure at issue which goes beyond the matters referred to or the indirect effects of one of the matters on the other, having regard to the assessment criteria laid down by the Court (see, to that effect, judgments of 22 January 2020, *Baldonedo Martín*, C-177/18, EU:C:2020:26, paragraphs 57 to 59, and of 16 July 2020, *Adusbef and Others*, C-686/18, EU:C:2020:567, paragraphs 51 and 52).

38 Furthermore, it follows from settled case-law of the Court that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Therefore, since the questions referred concerned the interpretation or validity of a rule of Union law, the Court is, in principle, required to give a ruling, unless it is quite obvious that the interpretation sought bears no relation to the actual facts of the main action, it is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, judgments of 16 July 2020, *Facebook Ireland and Schrems*, C-311/18, EU:C:2020:559, paragraph 73, and of 8 October 2020, *Union des industries de la protection des plantes*, C-514/19, EU:C:2020:803, paragraphs 28 and 29).

39 In the present case, the first two questions put by the national court do not, of course, refer to any act of Union law other than the Charter. However, it is clear from the grounds set out in the order for reference that there is a clear and sufficient link between the limitation rules laid down in Article 107(2) of the Civil Code, which are applicable to an action brought by a consumer, such as the applicant in the main proceedings, and the provisions of secondary Union law, which are intended to ensure consumer protection.

40 More specifically, the national court is asking whether those national rules are likely not only to affect the right to an effective remedy enshrined in Article 47 of the Charter, but also to undermine the full effect of the provisions on unfair terms contained in Directive 93/13 and the provisions on consumer credit contained in Directive 2008/48.

41 In other words, as the Advocate General has indicated in points 31 to 33 and 52 of his Opinion, by its first two questions, that court seeks clarification in order to be able to rule on the conformity with Directives 93/13 and 2008/48 of provisions of Slovak law concerning limitation periods which are applicable to legal proceedings brought in the field of consumer contracts.

42 Therefore, the first two questions are admissible.

43 As regards the third and fourth questions referred for a preliminary ruling, it must be observed that they concern, in substance, the proof of the intentional nature of unjust enrichment which is required for the 10-year limitation period laid down in the final part of Article 107(2) of the Civil Code to apply and, more particularly, the determination of the persons in respect of whom such intention must be demonstrated and the level of knowledge which those persons must have had in that regard.

44 In that regard, it must be observed that neither the wording of those two questions nor the grounds in the order for reference contain anything capable of establishing a link between them and any provision of Union law. However, the need to give an interpretation of Union law which is useful to the national court requires that the latter scrupulously comply with the requirements concerning the content of a reference for a preliminary ruling, which are explicitly set out in Article 94 of the Rules of Procedure and of which the referring court is supposed to be aware. Thus, it is essential, as is stated in Article 94, that the reference for a preliminary ruling itself contain a summary of the relevant findings of fact, or at least, an account of the facts on which the questions are based, and a statement of the reasons which prompted the national court to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings, failing which the questions referred will be deemed inadmissible (see, to that effect, judgment of 19 April 2018, *Consorzio Italian Management and Catania Multiservizi*, C-152/17, EU:C:2018:264, paragraphs 21, 22 and 24 and the case-law cited).

45 It follows that the third and fourth questions submitted to the Court by the referring court must be regarded as inadmissible, since the order for reference does not contain sufficient reasoning to enable the Court to give a useful answer to those two questions.

46 Finally, with regard to the fifth and sixth questions referred for a preliminary ruling, the arguments put forward by Profi Credit Slovakia and the Slovak Government cannot suffice to rebut the presumption of relevance which those questions enjoy, in accordance with the case-law referred to in paragraph 38 of the present judgment, since they relate, in substance, to the manner in which the national rules of law applicable to the dispute in the main proceedings are to be interpreted in conformity with Union law, in particular in the light of Article 10(2)(h) and (i) of Directive 2008/48, as interpreted by the Court.

47 In those circumstances, the ground of inadmissibility put forward by the Slovak Government regarding the existence of another legal basis, namely the incorrect statement of the APR in the agreement at issue, which would allow the dispute in the main proceedings to be upheld without examining the failure to comply with the obligation to indicate the breakdown of repayments

between capital, interest and other costs borne by the borrower, cannot, in any event, succeed. In that regard, it must be observed, first, that the Court has already dismissed a similar argument in the judgment of 5 September 2019, *Pohotovosť* (C-331/18, EU:C:2019:665, paragraphs 35 and 38), and, second, that the differences between the dispute in the main proceedings and the case which gave rise to that judgment, relied on by that government, do not justify opting for any other course of action than the dismissal of that argument.

48 It follows from the foregoing that the fifth and sixth questions are admissible.

The first question

49 It must be observed as a preliminary point that, according to settled case-law of the Court, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it (judgments of 17 December 2015, *Neptune Distribution*, C-157/14, EU:C:2015:823, paragraph 33, and of 25 November 2020, *Banca B.*, C-269/19, EU:C:2020:954, paragraph 24).

50 In the present case, even if the referring court formally confined its first question to the interpretation of Article 47 of the Charter, that circumstance does not prevent the Court from providing it with all the elements of interpretation which may be useful for the judgment in the main proceedings, by extracting from the body of material provided by that court, and in particular from the statement of reasons for the order for reference, the elements of Union law which require interpretation in the light of the subject matter of the dispute (see, to that effect, judgments of 17 December 2015, *Neptune Distributions*, C-157/14, EU:C:2015:823, paragraph 34, and of 8 May 2019, *PI*, C-230/18, EU:C:2019:383, paragraph 43).

51 In the present case, the first question referred must be understood as seeking, in substance, to determine whether the principle of effectiveness is to be interpreted as precluding national legislation which provides that an action brought by a consumer for repayment of sums unduly paid, on the basis of unfair terms within the meaning of Directive 93/13 or terms contrary to the requirements of Directive 2008/48, is subject to a limitation period of three years, which begins to run from the day on which the unjustified enrichment occurred.

52 In that regard, the Court has consistently held that, in the absence of EU rules on the matter, it is for the national legal order of each Member State to establish, in accordance with the principle of procedural autonomy, procedural rules for actions intended to safeguard the rights that individuals derive from EU law, provided, however, that those rules are no less favourable than the rules governing similar domestic actions (the principle of equivalence) and do not render impossible in practice or excessively difficult the exercise of rights conferred by EU law (the principle of effectiveness) (see, to that effect, judgments of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria*, C-224/19 and C-259/19, EU:C:2020:578, paragraph 83, and of 6 October 2020, *La Quadrature du Net and Others*, C-511/18, C-512/18 and C-520/18, EU:C:2020:791, paragraph 223 and the case-law cited).

53 Specifically as regards the principle of effectiveness, which alone is covered in the present case, the Court has previously held that every case in which the question arises whether a national procedural provision makes the application of EU law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special

features, viewed as a whole, before the various national bodies. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (see, in particular, judgments of 15 March 2017, *Aquino*, C-3/16, EU:C:2017:209, paragraph 53, and of 9 July 2020, *Raiffeisen Bank and BRD Groupe Société Générale*, C-698/18 and C-699/18, EU:C:2020:537, paragraph 60).

54 Furthermore, the Court has made it clear that the obligation of Member States to lay down detailed procedural rules to ensure respect for the rights which individuals derive from Directive 93/13 against the use of unfair terms implies a requirement for effective judicial protection, also guaranteed by Article 47 of the Charter, which applies, in particular, to the detailed procedural rules relating to such actions (see, to that effect, judgments of 17 July 2014, *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraph 35, and of 31 May 2018, *Sziber*, C-483/16, EU:C:2018:367, paragraph 49).

55 It is in the light of those factors that it is necessary to examine whether a national rule on limitation, such as that referred to in paragraph 51 of the present judgment, can be regarded as complying with the principle of effectiveness, bearing in mind that that examination must relate not only to the duration of the time limit at issue in the main proceedings, but also to the detailed rules for its application, including the factor used to trigger the commencement of the time limit (see, to that effect, judgment of 9 July 2020, *Raiffeisen Bank and BRD Groupe Société Générale*, C-698/18 and C-699/18, EU:C:2020:537, paragraph 61).

56 First, as regards reliance on a limitation period with regard to actions brought by consumers to enforce rights which they derive from Union law, it is important to note that such a rule is not, in itself, contrary to the principle of effectiveness, provided that its application does not in practice render impossible or excessively difficult the exercise of the rights conferred, in particular, by Directive 93/13 and by Directive 2008/48.

57 The Court has recognised that consumer protection is not absolute and that the setting of reasonable time limits for bringing actions on pain of foreclosure, in the interests of legal certainty, is compatible with Union law (judgments of 9 July 2020, *Raiffeisen Bank and BRD Groupe Société Générale*, C-698/18 and C-699/18, EU:C:2020:537, paragraph 56, and of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria*, C-224/19 and C-259/19, EU:C:2020:578, paragraph 82 and the case-law cited).

58 More specifically, the Court has already held that Article 6(1) and Article 7(1) of Directive 93/13 do not preclude a national rule which, while providing that an action seeking a finding of nullity of an unfair term in a contract concluded between a seller or supplier and a consumer is not subject to a time limit, subjects the action seeking to enforce the restitutory effects of that finding to a limitation period, provided that the principles of equivalence and effectiveness are observed (see, to that effect, judgments of 9 July 2020, *Raiffeisen Bank and BRD Groupe Société Générale*, C-698/18 and C-699/18, EU:C:2020:537, paragraph 58, and of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria*, C-224/19 and C-259/19, EU:C:2020:578, paragraph 84).

59 Second, as regards the duration of the limitation period examined, which is three years in the present case, the Court has held that, in so far as it is established and known in advance, a limitation period of that length appears, in principle, sufficient to enable a consumer to prepare and bring an effective action, so that the length of that period, per se, is not incompatible with the principle of effectiveness (see, to that effect, judgments of 9 July 2020, *Raiffeisen Bank and*

BRD Groupe Société Générale, C-698/18 and C-699/18, EU:C:2020:537, paragraphs 62 and 64, and of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria*, C-224/19 and C-259/19, EU:C:2020:578, paragraph 87 and the case-law cited).

60 Third, however, as regards the starting point laid down with regard to the limitation period examined, there is, in circumstances such as those in the main proceedings, a real risk that the consumer will not rely on the rights conferred on him or her by Union law (see, to that effect, judgment of 5 March 2020, *OPR-Finance*, C-679/18, EU:C:2020:167, paragraph 22 and the case-law cited) which make it impossible for him or her to rely on those rights.

61 It is clear from the information given by the national court, in particular in the context of its first question, that the three-year period provided for in Article 107(2) of the Civil Code begins to run from the date on which the unjust enrichment occurred and that the limitation period applies even if the consumer is not in a position to assess for himself or herself that a contractual term is unfair or has not been made aware of the unfairness of the contractual term in question.

62 In that connection, it is necessary to take account of the weaker position of consumers vis-à-vis sellers or suppliers, as regards both their bargaining power and their level of knowledge, and the fact that it is possible that the consumers are not aware of the unfair nature of a term in the agreement concluded with a seller or supplier or do not appreciate the extent of their rights deriving from Directive 93/13 or Directive 2008/48 (see, to that effect, judgments of 9 July 2020, *Raiffeisen Bank and BRD Groupe Société Générale*, C-698/18 and C-699/18, EU:C:2020:537, paragraphs 65 to 67, and of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria*, C-224/19 and C-259/19, EU:C:2020:578, paragraph 90 and the case-law cited).

63 As the Advocate General has pointed out in points 71 to 73 of his Opinion, credit agreements such as that at issue in the main proceedings are generally executed over long periods of time and, therefore, if the event which triggers the three-year limitation period is any payment made by the borrower, which it is for the national court to ascertain, it cannot be ruled out that, at least in respect of some of the payments made, the limitation period will run even before the contract in question comes to an end, so that such a limitation period regime is liable systematically to deprive consumers of the possibility of claiming the return of payments made under terms contrary to those directives.

64 Therefore, procedural rules such as those at issue in the main proceedings, in so far as they require the consumer to take legal action within a period of three years from the date of the unjust enrichment and in so far as that enrichment may occur during the performance of a long-term contract, are such as to make it excessively difficult for the consumer to exercise the rights conferred on him or her by Directive 93/13 or Directive 2008/48, and therefore such rules infringe the principle of effectiveness (see, by analogy, judgments of 9 July 2020, *Raiffeisen Bank and BRD Groupe Société Générale*, C-698/18 and C-699/18, EU:C:2020:537, paragraphs 67 and 75, and of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria*, C-224/19 and C-259/19, EU:C:2020:578, paragraph 91).

65 Moreover, as the Advocate General points out in points 87 and 89 of his Opinion, the intention of the seller or supplier using a term found to be unfair is irrelevant to the rights which consumers derive from the provisions of Directive 93/13, and the same applies to Article 10(2) of Directive 2008/48. Therefore, in order to assert rights under these provisions, a consumer cannot be required to prove the intentional nature of the trader's conduct. It follows that the possibility of

extending the three-year limitation period on condition that the consumer proves an intention on the part of the trader, as provided for in Article 107(2) of the Civil Code, cannot invalidate the finding made in the preceding paragraph of the present judgment.

66 In the light of all the foregoing considerations, the answer to the first question is that the principle of effectiveness must be interpreted as precluding national legislation which provides that an action brought by a consumer for repayment of sums wrongly paid in connection with the performance of a credit agreement may not be brought on the basis of unfair terms within the meaning of Directive 93/13 or terms contrary to the requirements of Directive 2008/48, is subject to a limitation period of three years which begins to run from the day on which the unjust enrichment occurred.

The second question

67 Since the second question is asked only in the event of a negative answer to the first question, there is no need to answer it in view of the affirmative answer given to that first question.

The fifth and sixth questions

68 By its fifth and sixth questions, which must be examined together, the referring court asks the Court, in substance, how to interpret, in accordance with Union law, national legislation which has been declared incompatible with the requirements under Article 10(2)(h) and (i) of Directive 2008/48, as interpreted by the judgment of 9 November 2016, *Home Credit Slovakia* (C-42/15, EU:C:2016:842), where the credit agreement at issue was concluded before that judgment was delivered and before an amendment to those national rules made with a view to complying with the interpretation adopted in that judgment.

69 In that connection, it must be stated that in paragraph 59 of that judgment, relating to Article 9(2) of Law No 129/2010, in the version applicable in 2011 which is also referred to in the present case, the Court interpreted Article 10(2)(h) and (i) of Directive 2008/48 as meaning that a fixed-term credit agreement, providing for amortisation of the capital in consecutive instalments, need not state, in the form of an amortisation table, the part of each instalment that will be allocated to repayment of capital. Those provisions, read in conjunction with Article 22(1) of that directive, preclude a Member State from imposing such an obligation under national law.

70 In the judgment of 5 September 2019, *Pohotovosť* (C-331/18, EU:C:2019:665, paragraph 51), the Court confirmed that Article 10(2)(h) to (j) of Directive 2008/48, in conjunction with Article 22(1) of that directive, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which a credit agreement must specify the breakdown of each repayment showing, where applicable, capital amortisation, interest and other charges.

71 Furthermore, it must be recalled that, in accordance with the settled case-law of the Court, the interpretation which the Court gives to a rule of EU law clarifies and defines the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its entry into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships which arose and were established after the entry into force of that rule and before the judgment ruling on the request for interpretation, if, moreover, the conditions for

bringing a dispute relating to the application of that rule before the courts having jurisdiction are satisfied (see, to that effect, judgment of 5 September 2019, *Pohotovosť*, C-331/18, EU:C:2019:665, paragraph 53).

72 In the case in the main proceedings, it is for the referring court to interpret, using methods recognised by national law, the Slovak provisions at the date the agreement concerned was entered into, namely 30 May 2011, in so far as possible in accordance with Directive 2008/48 as interpreted by the judgment of 9 November 2016, *Home Credit Slovakia* (C-42/15, EU:C:2016:842). That court cannot validly consider that it is impossible for it to interpret a provision of national law in conformity with EU law merely because those provisions have been interpreted by the Slovak courts in a manner that is incompatible with that law (see, to that effect, judgments of 5 September 2019, *Pohotovosť*, C-331/18, EU:C:2019:665, paragraphs 54 and 55, and of 5 March 2020, *OPR-Finance*, C-679/18, EU:C:2020:167, paragraphs 42 and 44).

73 While this obligation of interpretation in conformity is limited by the general principles of law, in particular the principle of legal certainty, in that it may not serve as a basis for an interpretation of national law contrary to law, the national courts, including those ruling at last instance, must nevertheless amend, where appropriate, established national case-law where that case-law is based on an interpretation of national law which is incompatible with the objectives of a directive (see, to that effect, judgments of 5 September 2019, *Pohotovosť*, C-331/18, EU:C:2019:665, paragraph 56, and of 5 March 2020, *OPR-Finance*, C-679/18, EU:C:2020:167, paragraphs 43 and 45).

74 In the present case, the Court has already held, in the judgment of 5 September 2019, *Pohotovosť* (C-331/18, EU:C:2019:665, paragraph 57), that Article 10(2) and Article 22(1) of Directive 2008/48, as interpreted by the judgment of 9 November 2016, *Home Credit Slovakia* (C-42/15, EU:C:2016:842), are applicable to a credit agreement, such as that at issue in the main proceedings, which was concluded before that second judgment was delivered and before an amendment to the national legislation made in order to comply with the interpretation adopted in that judgment. In so doing, the Court considered that the subsidiary questions put by the national court in the case which gave rise to the judgment of 5 September 2019, *Pohotovosť* (C-331/18, EU:C:2019:665), which related, as in the present case, to the possible effects of those provisions of Directive 2008/48 with regard to the relationship between the individuals concerned in the main proceedings, had it not been possible to interpret those rules in conformity with Union law.

75 In the light of all the foregoing considerations, the answer to the fifth and sixth questions is that Article 10(2) and Article 22(1) of Directive 2008/48, as interpreted by the judgment of 9 November 2016, *Home Credit Slovakia* (C-42/15, EU:C:2016:842), are applicable to a credit agreement which was entered into before that judgment was handed down and before the national legislation was amended in order to comply with the interpretation adopted in that judgment.

Costs

76 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 (First Chamber) hereby rules:

1. **The principle of effectiveness must be interpreted as precluding national legislation which provides that an action brought by a consumer for repayment of sums wrongly paid in connection with the performance of a credit agreement may not be brought on the basis of unfair terms, within the meaning of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, or terms contrary to the requirements 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, is subject to a limitation period of three years which begins to run from the day on which the unjust enrichment occurred.**

2. **Article 10(2) and Article 22(1) of Directive 2008/48, as interpreted by the judgment of 9 November 2016, *Home Credit Slovakia* (C-42/15, EU:C:2016:842), are applicable to a credit agreement which was entered into before that judgment was handed down and before the national legislation was amended in order to comply with the interpretation adopted in that judgment.**

[Signatures]