Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

5 May 2022 *

(Reference for a preliminary ruling – Consumer protection – Unfair terms – Directive 93/13/EEC – Applicability *ratione temporis* – Article 10(1) – Loan agreement concluded prior to Member State's accession to the EU but amended after that date – Article 6 – Reimbursement of benefits improperly obtained by the seller or supplier – National legislation providing for the replacement of unfair terms and reimbursement of the overpayment – Applicability *ratione materiae* – Article 1(2) – Exclusion of contractual terms which reflect mandatory statutory or regulatory provisions)

In Case C-567/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Općinski građanski sud u Zagrebu (Municipal Civil Court, Zagreb, Croatia), made by decision of 15 October 2020, received at the Court on 29 October 2020, in the proceedings

A.H.

v

Zagrebačka banka d.d,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, N. Jääskinen (Rapporteur), M. Safjan, N. Piçarra and M. Gavalec, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– A.H., by P. Đurić and S. Kalebota, odvjetnici,

– Zagrebačka banka d.d., by B. Porobija, M. Kiš Kapetanović and S. Porobija, odvjetnici,

– For the Croatian government by G. Vidović Mesarek, acting as Agent,

* Language of the case: Croatian.

– the European Commission, by M. Mataija and N. Ruiz García, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 February 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) and Articles 38 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request was made in proceedings between A.H. and Zagrebačka banka d.d. concerning the reimbursement of amounts alleged to have been improperly acquired by the latter through the application of unfair terms which originally appeared in the loan agreement concluded by those parties and which they subsequently replaced by means of an amendment making changes provided for by a Croatian law.

Legal framework

European Union law

The 2012 Act of Accession

3 Article 2 of the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community (OJ 2012 L 112, p. 21), provides as follows in the first paragraph thereof:

'From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions before accession shall be binding on Croatia and shall apply in Croatia under the conditions laid down in those Treaties and in this Act.'

Directive 93/13

4 The thirteenth recital of Directive 93/13 reads as follows:

'Whereas the statutory or regulatory provisions of the Member States which directly or indirectly determine the terms of consumer contracts are presumed not to contain unfair terms; whereas, therefore, it does not appear to be necessary to subject the terms which reflect mandatory statutory or regulatory provisions and the principles or provisions of international conventions to which the Member States or the Community are party; whereas in that respect the wording "mandatory statutory or regulatory provisions" in Article 1(2) also covers rules which, according to the law, shall apply between the contracting parties provided that no other arrangements have been established'.

5 Article 1(2) of that directive provides as follows:

'The contractual terms which reflect mandatory statutory or regulatory provisions and the provisions or principles of international conventions to which the Member States or the Community are party, particularly in the transport area, shall not be subject to the provisions of this Directive.'

6 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.'

7 Article 10(1) of the same directive provides:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 December 1994. They shall forthwith inform the Commission thereof.

These provisions shall be applicable to all contracts concluded after 31 December 1994.'

Croatian law

8 Adopted before the accession of the Republic of Croatia to the European Union, the Zakon o potrošačkom kreditiranju (Law on Consumer Credit, *Narodne novine*, br. 75/09), which entered into force on 1 January 2010, was designed to transpose into Croatian law the 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, and corrigenda OJ 2009 L 207, p. 14; OJ 2010 L 199, p. 40; OJ 2011 L 234, p. 46; and OJ 2015 L 36, p. 15).

9 Article 3 of that Law lists the types of credit agreement to which it does not apply, which do not include credit agreements the purpose of which is to finance the acquisition or retention of property rights in land or in an existing or projected building.

10 That law was amended by the Zakon o izmjeni i dopunama Zakona o potrošačkom kreditiranju (Law amending the Law on Consumer Credit, *Narodne novine*, br. 102/15) ('the Law of 2015 on Consumer Credit'), which entered into force on 30 September 2015.

11 Chapter IV.a of the Law of 2015 on Consumer Credit contains Articles 19a to 19i thereof which govern the 'conversion of loans expressed in Swiss francs [(CHF)] and credits denominated in [Croatian] kuna [(HRK)] with an exchange clause in Swiss francs'.

12 Article 19b of that law, entitled 'Principle of loan conversion', provides:

'The conversion of a loan expressed in Swiss francs into a loan expressed in euro and of a loan expressed in [Croatian] kuna with an exchange clause in Swiss francs into a loan expressed in [Croatian] kuna with an exchange clause in euro implies a conversion of the loan in order to change the currency in which it is expressed or to change the currency of its exchange clause and it is done in such a way that the position of a consumer who has a loan expressed in Swiss francs becomes equal to that in which they would have been if they had received credit expressed in euro, and that the position

of a consumer who has a loan expressed in [Croatian] kuna with an exchange clause in Swiss francs becomes equal to that in which they would have been if they had received credit expressed in [Croatian] kuna with an exchange clause in euro.'

13 Article 19c of that law, entitled 'Method of calculating the conversion of the loan', provides for a specific procedure for calculating the new principal amount of the debt of the consumer concerned, which essentially consists in comparing the loan repayments made by that consumer with the terms of a simulated, fictitious loan in euro. The new balance of the loan expressed in euro on 30 September 2015, obtained as a result of this specific calculation procedure, constitutes the amount retained for the repayment of the loan by the said consumer from that date.

14 Article 19e of that Law, entitled 'Loan conversion', states, in paragraphs 1, 5 and 6 thereof:

'1. Within 45 days from the day of the entry into force of this Law, the creditor shall be obliged to send the consumer, by registered post with recorded delivery, the calculation of the loan conversion, together with the position calculated as at 30 September 2015 in accordance with Article 19c of this Law, as well as a proposal for a new or amended credit agreement.

…

5. If the loan conversion is accepted, the consumer must inform the creditor of the acceptance of the calculation of the conversion, either by registered post with recorded delivery or in person, within 30 days from the day of receipt of the calculation of the conversion referred to in paragraph 1 of this article and of the overview of the position of all the creditor's claims, that is to say, a summary of the outstanding amounts referred to in paragraph 2 of this article.

6. If the consumer does not accept the calculation of the loan conversion or does not conclude with the creditor the agreement referred to in Article 19c(1)(6) of this Law, the repayment of the loan shall continue in accordance with the valid contractual terms and conditions and in accordance with the provisions of this Law.'

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

15 On 15 October 2007, the applicant in the main proceedings, a consumer domiciled in Croatia, and Zagrebačka banka, a bank established in that Member State, concluded a mortgage loan agreement for an amount expressed in Swiss francs but disbursed in Croatian kuna at the average exchange rate fixed by the Hrvatska Narodna Banka (Croatian National Bank) on the date of release of the loan. The agreement contained, inter alia, a clause providing that the Swiss franc was the currency on the basis of which the amount due under the loan was to be repaid and a clause providing that the variable interest rate to be applied could be changed by unilateral decision of Zagrebačka banka.

16 On 30 September 2015, the reform introduced by the Law of 2015 on Consumer Credit entered into force. According to Article 19b thereof, any loan expressed in Swiss francs had to be converted into a loan expressed in euro so that the consumer was placed on an equal footing with euro borrowers. By virtue of Article 19e of that law, lenders were obliged to offer all consumers concerned new loan agreements or to amend their existing loan agreements, in

accordance with the conversion terms laid down, in particular, in Article 19c thereof. If the consumer did not accept such a conversion, the repayment of his or her loan had to continue under the valid contractual conditions.

17 On 8 January 2016 the applicant in the main proceedings and Zagrebačka banka agreed to amend their original agreement, in order to effect the conversion provided for in the Law of 2015 on Consumer Credit, so that the repayment of the loan was linked to the euro, resulting in a change both in the principal owed and in the method of calculating interest, with effect from 30 September 2015.

18 On 12 June 2019, the applicant in the main proceedings brought an action against Zagrebačka banka before the Općinski građanski sud u Zagrebu (Municipal Civil Court, Zagreb, Croatia).

19 By her action, the applicant seeks, first, a declaration that the Swiss franc indexation clause and the variable interest rate clause in the agreement entered into on 15 October 2007 are unfair and therefore invalid, under the provisions of both Croatian law and EU law, primarily those in Directive 93/13.

20 In support of her action, she relies on the outcome of class action proceedings brought before the Trgovački sud u Zagrebu (Commercial Court, Zagreb, Croatia) against several banks, including Zagrebačka banka. It is clear from the order for reference that, relying in particular on the provisions of Directive 93/13, the Croatian courts successively hearing those proceedings declared, in decisions which have become final, that the banks in question had infringed the collective interests and rights of consumers, during a period which included the year 2007, by concluding loan agreements which contained clauses deemed unfair and void, in that they provided for linking of repayment to the Swiss franc and for a change in the rate of interest by unilateral decision of the lender.

21 Secondly, relying on an expert's report which she had commissioned, the applicant in the main proceedings seeks an order that Zagrebačka banka reimburse her all the benefits which it improperly obtained by virtue of the unfair terms in the original agreement which were replaced by virtue of an amendment, the remedial effects of which are, in her view, insufficient.

22 In that regard, the applicant submits that the national court must exclude the application of any rule of national law which prevents her from obtaining full reimbursement of those benefits, since she has not waived her rights as a consumer. In her view, the Law of 2015 on Consumer Credit and the amendment reproducing the content of that law did not put her in the position in which she would have been had the original contract not contained unfair terms.

23 Zagrebačka banka refutes those claims, arguing that, as a result of the conversion of the loan provided for by that law and the acceptance of the amendment by the applicant in the main proceedings, she no longer has any legal basis for a finding that the terms of the original contract are unfair and for compensation on that ground, since, according to the bank, the loan has been retroactively calculated as if it had been expressed in euro.

24 As a preliminary point, the referring court points out that the Law of 2015 on consumer credit and the amendment agreed under that law were adopted after the Republic of Croatia's accession to the European Union, with the result that that court considers that the Court has jurisdiction *ratione temporis* to answer the questions referred by it in the present case.

25 First, with regard to the merits, the referring court states that it found, in the light of the amendment in question, that the applicant in the main proceedings had not waived full compensation and judicial protection of her interests and that, moreover, such a waiver is prohibited under Croatian law, namely, by the Law of 2015 on Consumer Credit. Furthermore, that court considers that that law does not determine the unfairness and invalidity of terms such as those at issue in the main proceedings, the damage sustained individually by a consumer as a result of unfair terms, the amounts improperly acquired by a seller, or supplier as a result, since those matters are left to the discretion of the judge hearing the case. According to that court, in the present case, the applicant in the main proceedings has shown that the conversion of the loan carried out did not enable reimbursement to her by Zagrebačka banka of all the benefits wrongly obtained, to her detriment.

26 The national court also points out that, in 'proceedings unifying the interpretation of law', the Vrhovni sud (Supreme Court, Croatia) issued an interpretative decision on 4 March 2020, according to which any conversion agreement concluded under the Law of 2015 on Consumer Credit 'produces legal effects and is valid even if the terms of the loan agreement concerning the variable interest rate and the monetary clause are invalid', on the grounds, inter alia, that such an agreement constitutes a new contractual relationship, since the consumer is not obliged to accept it, unlike the circumstances that gave rise to the judgment of 14 March 2019, *Dunai* (C-118/17, EU:C:2019:207).

27 It appears from the reference for a preliminary ruling that the decision of the Vrhovni sud (Supreme Court) is binding on the lower courts, but has been subject to divergent interpretations as regards its effect on the right to compensation of a consumer who has agreed to such a conversion. According to the first approach, it is irrelevant whether the seller or supplier has acquired benefits improperly or whether the consumer has been fully compensated. According to the second approach, favoured by the national court, that decision cannot be understood in that way, otherwise it would produce effects contrary to the requirements of Directive 93/13 as interpreted by the Court.

28 Furthermore, in the light of the case-law of the Court on the provisions of Directive 93/13, read together with Articles 38 and 47 of the Charter, the national court considers that the legislature of a Member State may adopt measures which are more protective of consumers than those provided for by that directive. According to that court, in order to achieve the objectives laid down by EU law, it should refuse to apply the provisions of the Law of 2015 on Consumer Credit which are incompatible and hold, in the present case, that the unfair terms must be removed as if they had never existed and that all the benefits acquired by Zagrebačka banka by virtue of those terms must be reimbursed to the applicant in the main proceedings.

29 Finally, the national court states that it follows from other provisions of Croatian law that the validity of a contract must be assessed as at the time of its conclusion and that an invalid clause cannot be regularised. It considers that those provisions are compatible with the Court's case-law on Directive 93/13, from which, in its view, it follows that national courts must exclude the application of unfair terms from their origin, and not replace them with content not agreed between the parties.

30 In those circumstances, the Općinski građanski sud u Zagrebu (Municipal Civil Court, Zagreb) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 6(1) of [Directive 93/13], as interpreted by the case-law of the Court of Justice, in particular in [the judgment of 14 March 2019, *Dunai* (C-118/17, EU:C:2019:207)], be interpreted as meaning that the legislature's intervention in the relationships between a consumer who is a borrower and a bank cannot deprive consumers of their right to challenge in court the terms of the original contract, or of an amendment thereto, agreed pursuant to statute, in order to exercise their right to reimbursement of all the benefits which the bank has improperly obtained to the detriment of consumers as a result of applying unfair contract terms, where, following an intervention by the legislature, the consumers consented to an amendment of the original contractual relationship which was based on a statutory obligation imposed on banks to offer consumers that possibility, and not directly as a result of statutory intervention as was the case in *Dunai*?

(2) If the answer to the first question is in the affirmative, is a national court ruling on a case between two parties (the borrower and the bank) – where that court is unable, following the interpretation adopted by the Vrhovni sud ([Supreme Court]), to give an interpretation to the provisions of the national law, namely [the Law of 2015 on Consumer Credit], that would meet the requirements of Directive 93/13 – authorised and/or required, under that directive and under Articles 38 and 47 of the [Charter], to exclude the application of that national law as interpreted by the [Vrhovni sud (Supreme Court)]?'

The questions referred

Jurisdiction of the Court

31 Zagrebačka banka submits that the Court does not have jurisdiction, arguing that the dispute before the national court does not fall within the scope *ratione temporis* of EU law, since, first, that dispute has as its sole object, according to that party in the main proceedings, a loan agreement which was concluded before the date of the Republic of Croatia's accession to the European Union.

32 Secondly, Zagrebačka banka submits that Directive 93/13, which is the subject of the present reference for a preliminary ruling, makes its applicability, by virtue of Article 10(1) thereof, dependent on the date on which the contract concerned was concluded, and not on the period during which that contract produces its legal effects.

33 In that regard, first, it must be recalled that, according to settled case-law, the Court has jurisdiction to interpret EU law only as regards its application in a new Member State with effect from the date of that State's accession to the European Union (judgment of 17 December 2020, *Franck*, C-801/19, EU:C:2020:1049, paragraph 16 and the case-law cited).

34 Article 2 of the Act concerning the conditions of accession of the Republic of Croatia, referred to in paragraph 3 of the present judgment, provides that the provisions of the original treaties and the acts adopted by the institutions before the accession of the Republic of Croatia are binding on that Member State and are to apply in that State only from the date of its accession, namely 1 July 2013 (judgment of 25 March 2021, *Obala i lučice*, C-307/19, EU:C:2021:236, paragraph 55).

35 Therefore, the Court has jurisdiction to rule on a question of interpretation of EU law the answer to which is capable of calling into question the compatibility with EU law of national legislation adopted after the accession in question, which also has legal effects on an agreement concluded before that accession (see, to that effect, judgment of 14 February 2019, *Milivojević*, C-630/17, EU:C:2019:123, paragraphs 40 to 43).

36 Secondly, the Court has ruled that, in so far as it is clear from the second paragraph of Article 10(1) of Directive 93/13 that the directive is applicable only to contracts concluded after 31 December 1994, the date by which it must have been transposed into national law, it is necessary to take into consideration the date of the conclusion of the contract at issue in the main proceedings to determine the applicability of the directive to the contract and the period during which the contract produced effects is not relevant (judgment of 9 July 2020, *Raiffeisen Bank and BRD Groupe Société Générale*, C-698/18 and C-699/18, EU:C:2020:537, paragraph 42 and the case-law cited).

37 That case-law has been clarified with regard to situations arising in Member States which, like the Republic of Croatia, joined the European Union after 31 December 1994, as compliance with the requirements of Directive 93/13 only became mandatory for those States upon accession. In that particular context, the Court has assessed the applicability of that directive on many occasions, and thus its own jurisdiction to interpret it, in light of the date of accession of the Member State whose legislation was at issue in the main proceedings, before examining whether the contract in question was concluded after that accession and therefore fell within the temporal scope of that directive (see, to that effect, orders of 3 April 2014, *Pohotovost'*, C-153/13, EU:C:2014:1854, paragraphs 23 to 25, and of 3 July 2014, *Tudoran*, C-92/14, EU:C:2014:2051, paragraphs 26 to 29, and judgment of 9 July 2020, *Raiffeisen Bank and BRD Groupe Société Générale*, C-698/18 and C-699/18, EU:C:2020:537, paragraphs 41 to 44).

38 In the present case, Directive 93/13 is not applicable to the original contract at issue in the main proceedings, since it was concluded on 15 October 2007, and therefore before the accession of the Republic of Croatia to the European Union, which took effect on 1 July 2013. Therefore, as the Advocate General pointed out, in essence, in points 34 and 40 of her Opinion, the possible reimbursement of benefits improperly acquired by Zagrebačka banka by virtue of the potentially unfair terms of that contract cannot be governed by the provisions of that directive.

39 However, Directive 93/13 is applicable to the amendment to the original contract, since that amendment, which is also at issue in the main proceedings, was agreed on 8 January 2016, that is to say after the date of that accession. Since the facts of the dispute in the main proceedings occurred in part after the date of accession of the Member State, the Court has jurisdiction to interpret EU law (see, to that effect, judgment of 17 December 2020, *Franck*, C-801/19, EU:C:2020:1049, paragraph 17 and the case-law cited).

40 However, it must be observed that that amendment does not extend the scope *ratione temporis* of the directive, as defined in the case-law referred to in paragraphs 36 and 37 of the present judgment, with the result that any obligation to make restitution on the part of Zagrebačka banka, by virtue of terms of the amendment, cannot be governed by or based on the provisions of the directive in respect of the period prior to its agreement.

41 It follows from the foregoing that the Court has jurisdiction to interpret provisions of Directive 93/13 only in so far as the request for a preliminary ruling concerns terms in that amendment and the period following its agreement.

Admissibility of the request for a preliminary ruling

42 Zagrebačka banka argues that the two questions referred for a preliminary ruling should be declared inadmissible as being irrelevant to the determination of the main proceedings, since, in its view, neither the provisions of Croatian law referred to by the referring court, including as interpreted by the Vrhovni sud (Supreme Court), nor the amendment to the contract agreed by the parties deprive the applicant in the main proceedings of the right to claim, in accordance with Article 6(1) of Directive 93/13, restitution of benefits which the bank concerned may have improperly acquired under the original loan agreement.

43 In that connection, first, 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, which enjoy a presumption of relevance. Therefore, since the question referred concerns the interpretation or validity of a rule of EU 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 question submitted to it (judgment of 21 December 2021, *Trapeza Peiraios*, C-243/20, EU:C:2021:1045, paragraph 25 and the case-law cited).

44 In the present case, the questions referred for a preliminary ruling concern the interpretation of provisions of EU law, in particular those of Directive 93/13, and it is not obvious that the interpretation sought is completely unrelated to the main proceedings or that the problem raised is hypothetical. It is apparent from the order for reference, in particular, that the applicant in the main proceedings has relied on the rights guaranteed by that directive in the context of that dispute. Moreover, it was held in paragraph 41 of the present judgment that the circumstances described by the court fall in part within the temporal scope of that directive.

45 Secondly, it is common ground 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 national court alone is competent to interpret and apply provisions of national law, whereas the Court is empowered solely to rule on the interpretation or validity of an EU text on the basis of the facts presented to it by the national court (judgment of 21 December 2021, *Trapeza Peiraios*, C-243/20, EU:C:2021:1045, paragraph 26 and the case-law cited).

46 Accordingly, the arguments relating to the inadmissibility of the questions referred for a preliminary ruling which Zagrebačka banka based, in essence, on the effects which, in its view, the Law of 2015 on Consumer Credit would have in the main proceedings must be dismissed.

47 It follows that the request for a preliminary ruling is admissible.

Substance

The first question

48 By its first question, the national court asks, in essence, whether Article 6(1) of Directive 93/13 must be interpreted as precluding provisions of national law which would prevent the court hearing a case from upholding a consumer's claim for full reimbursement of the benefits which a seller or supplier has derived from unfair terms in a loan agreement, where the seller or supplier was obliged to propose to the consumer an amendment to their original contract by way of an agreement, the content of which is determined by those provisions and the consumer had the choice of agreeing to such amendment.

49 The national court states that, according to the interpretation of the Law of 2015 on Consumer Credit given by some Croatian courts, such could be the effects produced by the provisions of Chapter IV.a thereof. In particular, it is clear from those provisions that lending institutions were obliged to offer any consumer who had entered into a loan agreement expressed in Swiss francs to convert it into a loan expressed in euro, in accordance with the procedures laid down by that law. The consumer concerned had the option of refusing that proposal, but, if he or she accepted it, the conversion had necessarily to be effected by incorporating the content provided for by those provisions either in an amendment to the original agreement, as was done in the main proceedings, or in a new contract, concluded between the contracting parties.

50 In order to give that court a useful answer enabling it to decide the case before it, it is necessary first to examine whether, as the Croatian Government and the Commission have stated in their written observations, Directive 93/13 is applicable *ratione materiae* to the dispute in the main proceedings, having regard to the exclusion provided for in Article 1(2) thereof.

51 In that connection, it follows from the considerations in paragraphs 39 and 40 of the present judgment concerning the scope *ratione temporis* of Directive 93/13, that the latter applies only to the amendment to the original agreement and that any obligation on the part of Zagrebačka banka to make restitution by virtue of clauses of that amendment cannot be governed by or based on the provisions of that directive in respect of the period prior to the agreement of that amendment.

52 In these circumstances, it must be observed that the Court has jurisdiction to answer the first question only in so far as it concerns the contractual terms that were inserted a posteriori into the initial agreement by the amendment, in accordance with the Law of 2015 on Consumer Credit.

53 The case in the main proceedings can therefore be distinguished from the case which gave rise to the judgment of 14 March 2019, *Dunai* (C-118/17, EU:C:2019:207). That is because the latter case concerned, more broadly, the impact of national legislation classifying as unfair and void, terms relating to the exchange rate differential inserted in loan agreements and replacing those terms with terms applying the official exchange rate fixed by the national bank of a Member State for the corresponding currency, with the possibility for the consumer to request the annulment of the original loan agreement (see, to that effect, judgment of 14 March 2019, *Dunai*, C-118/17, EU:C:2019:207, paragraphs 35 to 38).

54 In the present case, as noted in paragraph 22 of the present judgment, the applicant in the main proceedings intends to rely on the provisions of Directive 93/13 in order to challenge independently the terms of the amendment to the original agreement which were inserted by

virtue of the Law of 2015 on Consumer Credit, in so far as those terms are insufficient to obtain full reimbursement of the benefits which the bank allegedly derived from the unfair terms contained in the original loan agreement.

55 Having made these points, it must be recalled that, according to the Court's settled case-law, Article 1(2) of Directive 93/13 precludes from its substantive scope contractual terms which reflect 'mandatory statutory or regulatory provisions', wording which, in the light of the thirteenth recital of that directive, encompasses both provisions of national law which apply between contracting parties independently of their choice and provisions which are supplementary, that is to say, which apply by default, in the absence of other arrangements established between the parties (judgment of 21 December 2021, *Trapeza Peiraios*, C-243/20, EU:C:2021:1045, paragraph 30 and the case-law cited).

56 Furthermore, the Court has already interpreted Article 1(2) as meaning that the scope of Directive 93/13 does not cover terms reflecting mandatory provisions of national law, inserted after the conclusion of a loan agreement concluded with a consumer and intended to remove a term which is null and void from that agreement (judgment of 2 September 2021, *OTP Jelálogbank and Others*, C-932/19, EU:C:2021:673, paragraph 29 and the case-law cited).

57 The exclusion from the application of the rules of that directive which results from Article 1(2) thereof is justified by the fact that it is, in principle, legitimate to presume that the national legislature has established a balance between all the rights and obligations of the parties to certain contracts, a balance which the EU legislature explicitly intended to preserve (judgment of 21 December 2021, *Trapeza Peiraios*, C-243/20, EU:C:2021:1045, paragraph 35 and the case-law cited).

58 It is for the national courts to determine whether the term in question falls within the scope of Article 1(2) of Directive 93/13 in the light of the criteria laid down by the Court, that is to say, by taking into consideration the nature, general scheme and provisions of the loan agreements concerned as well as the legal and factual context within which those agreements sit, while taking account of the fact that, having regard to the objective of consumer protection pursued by that directive, the exception laid down in Article 1(2) of the directive is to be interpreted strictly (judgment of 21 December 2021, *Trapeza Peiraios*, C-243/20, EU:C:2021:1045, paragraph 37 and the case-law cited).

59 In the present case, the referring court states, in essence, that the terms contained in the amendment which Zagrebačka banka and the applicant in the main proceedings agreed, in order to amend their original agreement so as to convert the loan expressed in Swiss francs into a loan expressed in euro, reflect the content of the provisions set out in Chapter IV.a of the Law of 2015 on Consumer Credit.

60 First, that court notes that the Law of 2015 on Consumer Credit requires sellers or suppliers to propose such an amendment to the consumers concerned and prescribes a particular methodology for calculating the new amount of the latter's credit commitments. Similarly, in its written observations, the Croatian Government states that the banks' freedom of choice was limited by that law, in that they were obliged by it to propose to consumers the conclusion of an agreement to convert their existing contract, the content of which was precisely determined by that mandatory rule.

61 Secondly, the national court notes that all the parties falling within the scope of the Law of 2015 on Consumer Credit amended the original contractual relationship on the basis of a voluntary agreement and not directly on the basis of legislative intervention, as was the case, in particular, in the case giving rise to the judgment of 14 March 2019, *Dunai* (C-118/17, EU:C:2019:207). Nevertheless, even though each consumer had the option of refusing the conversion provided for by that law, the fact remains that where the consumer consented to it, as in the main proceedings, the parties amended their original agreement, replacing the unfair terms contained therein, not freely but with the obligation to apply the conversion rules imposed by the national legislature. As the Advocate General noted in point 50 of her Opinion, the mere requirement of the consumer's consent does not mean that the terms of the annex in question are not to be regarded as reflecting a mandatory statutory or regulatory provision, since the content of this annex is entirely determined by that law.

62 Thirdly, as the Advocate General has noted, in essence, in point 51 of her Opinion, it is clear from the order for reference that the aim of the Croatian legislature was to strike a balance between the rights and obligations of the parties in question through the Law of 2015 on Consumer Credit.

63 Therefore, even if that legal classification will ultimately be the responsibility of the national court in accordance with the case-law referred to in paragraph 58 of the present judgment, it appears that the provisions in Chapter IV.a of that law constitute mandatory provisions of national law, within the meaning of Article 1(2) of Directive 93/13, so that the contractual terms reflecting the provisions of that law which are intended to replace invalid terms contained in a loan agreement concluded with a consumer are not subject to the provisions of that directive.

64 In the light of the foregoing, the answer to the first question referred is that Article 1(2) of Directive 93/13 must be interpreted as meaning that contractual terms reflecting provisions of national law under which the seller or supplier was obliged to propose to the consumer an amendment to his or her original contract by means of an agreement, the content of which is determined by those provisions, and the consumer was able to consent to such an amendment do not fall within the material scope of that directive.

The second question

65 Having regard to the answer given to the first question, there is no need to answer the second question.

Costs

66 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 (Third Chamber) hereby rules:

Article 1(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that contract terms reflecting provisions of national law under which the seller or supplier was obliged to propose to the consumer an amendment to his or her original contract by means of an agreement, the content of which

is determined by those provisions, and the consumer was able to consent to such an amendment do not fall within the material scope of that directive.

[Signatures]