

Judgment of the Court (Fourth Chamber) of 30 April 2014 (request for a preliminary ruling from the Kúria — Hungary) — Árpád Kásler, Hajnalka Káslerné Rábai v OTP Jelzálogbank Zrt

(Case C-26/13) ⁽¹⁾

(Directive 93/13/EEC — Unfair terms in a contract concluded between a seller or supplier and a consumer — Articles 4(2) and 6(1) — Assessment of the unfairness of the contractual terms — Exclusion of terms relating to the main subjectmatter of the contract or the adequacy of the price and the remuneration provided they are drafted in plain intelligible language — Consumer credit contracts denominated in foreign currency — Terms relating to the exchange rate — Difference between the buying rate of exchange applicable to the advance of the loan and the selling rate of exchange applicable to its repayment — Powers of the national court when dealing with a term considered to be unfair — Substitution of the unfair term by a supplementary provision of national law — Whether lawful)

(2014/C 194/05)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicants: Árpád Kásler, Hajnalka Káslerné Rábai

Defendant: OTP Jelzálogbank Zrt

Re:

Request for a preliminary ruling — Kúria — Interpretation of Art. 4(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — Assessment of unfairness of contractual terms — Loan contract denominated in a foreign currency and a mortgage concluded between an individual and a bank, under which the payment and repayment of the loan are to be made in the national currency — Debt calculated, at the time the contract was concluded, on the basis of the buying rate of the foreign currency — Term providing that the monthly instalments to be paid are determined by suing the current selling rate of the currency and not the buying rate

Operative part of the judgment

1) Article 4(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that:

— the expression the ‘main subjectmatter of a contract’ covers a term, incorporated in a loan agreement denominated in foreign currency concluded between a seller or supplier and a consumer and not individually negotiated, such as that at issue in the main proceedings, pursuant to which the selling rate of exchange of that currency is applied for the purpose of calculating the repayment instalments for the loan, only in so far as it is found, which it is for the national court to ascertain having regard to the nature, general scheme and stipulations of the contract and its legal and factual context, that that term lays down an essential obligation of that agreement which, as such characterises it;

— such a term, in so far as it contains a pecuniary obligation for the consumer to pay, in repayment of instalments of the loan, the difference between the selling rate of exchange and the buying rate of exchange of the foreign currency, cannot be considered as ‘remuneration’ the adequacy of which as consideration for a service supplied by the lender cannot be the subject of an examination as regards unfairness under Article 4(2) of Directive 93/13.

2) Article 4(2) of Directive 93/13 must be interpreted as meaning that, as regards a contractual term such as that at issue in the main proceedings, the requirement that a contractual term must be drafted in plain intelligible language is to be understood as requiring not only that the relevant term should be grammatically intelligible to the consumer, but also that the contract should set out transparently the specific functioning of the mechanism of conversion for the foreign currency to which the relevant term refers and the relationship between that mechanism and that provided for by other contractual terms relating to the advance of the loan, so that that consumer is in a position to evaluate, on the basis of clear, intelligible criteria, the economic consequences for him which derive from it.

- 3) Article 6(1) of Directive 93/13 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a contract concluded between a seller or supplier and a consumer cannot continue in existence after an unfair term has been deleted, that provision does not preclude a rule of national law enabling the national court to cure the invalidity of that term by substituting for it a supplementary provision of national law.

⁽¹⁾ OJ C 156, 1. 6. 2013.

Judgment of the Court (Second Chamber) of 30 April 2014 — United Kingdom of Great Britain and Northern Ireland v Council of the European Union

(Case C-209/13) ⁽¹⁾

(Common system of financial transaction tax — Authorisation of enhanced cooperation under Article 329 (1) TFEU — Decision 2013/52/EU — Action for annulment in respect of infringement of Articles 327 TFEU and 332 TFEU and of customary international law)

(2014/C 194/06)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: E. Jenkinson and S. Behzadi Spencer, acting as Agents, and by M. Hoskins QC, P. Baker QC and V. Wakefield, Barrister)

Defendant: Council of the European Union (represented by: A.-M. Colaert, F. Florindo Gijón and A. de Gregorio Merino, acting as Agents)

Interveners in support of the defendant: Kingdom of Belgium (represented by: J.-C. Halleux and M. Jacobs, acting as Agents), Federal Republic of Germany (represented by: T. Henze, J. Möller and K. Petersen, acting as Agents), French Republic (represented by: D. Colas and J.-S. Pilczer, acting as Agents), Republic of Austria (represented by: C. Pesendorfer, acting as Agent), Portuguese Republic (represented by L. Inez Fernandes, J. Menezes Leitão and A. Cunha, acting as Agents), European Parliament (represented by: A. Neergaard and R. van de Westelaken, acting as Agents), European Commission (represented by: R. Lyal, B. Smulders and W. Mölls, acting as Agents)

Re:

Action for annulment — Annulment of Council Decision 2013/52/EU of 22 January 2013 authorising enhanced cooperation in the area of financial transaction tax (OJ 2013 L 22, p. 11) — Infringement of Articles 327 TFEU and 332 TFEU

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.
3. Orders the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Republic of Austria, the Portuguese Republic, the European Parliament and the European Commission to bear their own costs.

⁽¹⁾ OJ C 171, 15.6.2013.