



## Reports of Cases

### Order of the Court (Seventh Chamber) of 22 February 2018 — ERSTE Bank Hungary

(Case C-126/17)<sup>1</sup>

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Consumer protection — Directive 93/13/EEC — Unfair terms in consumer contracts — Articles 4(2), 5 and 6(1) — Terms defining the main subject matter of the contract — Loan agreement denominated in a foreign currency — Scope of the term ‘drafted in plain, intelligible language’ — Partial or total invalidity of the contract)

1. *Consumer protection — Unfair terms in consumer contracts — Directive 93/13 — Scope — Terms defining the main subject matter of the contract or concerning the price or the remuneration and the services or goods supplied as consideration — Term inserted in a loan agreement denominated in a foreign currency requiring the consumer to repay the loan in that currency — Included — Conditions — Obligation to satisfy the requirements of intelligibility and transparency — Scope*

*(Council Directive 93/13, Arts 4(2) and 5)*

*(see para. 35, operative part 1)*

2. *Consumer protection — Unfair terms in consumer contracts — Directive 93/13 — Finding that a term is unfair — Scope — National law enabling the national court declaring an unfair term to be invalid to substitute for it a supplementary provision of national law — Lawfulness*

*(Council Directive 93/13, Art. 6(1))*

*(see paras 40, 41, operative part 2)*

### Operative part

1. Article 4(2) and Article 5 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that the terms of a loan agreement concluded between a consumer and a bank in a Member State, in which the amount of money that will be made available to that consumer denominated in a foreign currency as an accounting currency, defined in relation to the payment currency, is clearly indicated, satisfy the requirement of those provisions that contractual terms must be drafted in plain, intelligible

<sup>1</sup> OJ C 221, 10.7.2017.

language. In so far as the determination of that amount depends on the exchange rate applicable at the time of the release of the funds, that requirement means that the methods of calculation of the amount actually loaned and the rate of exchange applicable should be transparent, so that an average consumer who is reasonably well informed and reasonably observant and circumspect may assess, on the basis of clear, intelligible criteria, the economic consequences for him which derive from that contract, including, inter alia, the total cost of the sum borrowed.

2. Article 6(1) of Directive 93/13 must be interpreted as meaning that in a situation in which a national court finds that the terms of a loan contract concluded between a consumer and a bank are unfair, such as the terms at issue in the main proceedings, that provision does not preclude that court from declaring that that contract is invalid in its entirety if it cannot continue in existence after the deletion of those terms.