ECLI:EU:C:2019:461

JUDGMENT OF THE COURT (Seventh Chamber)

5 June 2019 (*)

(Reference for a preliminary ruling — Consumer protection — Unfair terms in consumer contracts — Directive 93/13/EEC — Article 3(1) — Article 4(2) — Article 6(1) — Loan agreement denominated in foreign currency — The exchange rate applicable to the sum made available in domestic currency communicated to the consumer after the agreement has been concluded)

In Case C-38/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Budai Központi Kerületi Bíróság (Central District Court, Buda, Hungary), made by decision of 14 December 2016, received at the Court on 24 January 2017, in the proceedings

GT

v

HS,

THE COURT (Seventh Chamber),

composed of A. Prechal (Rapporteur), President of the Third Chamber, acting as President of the Seventh Chamber, C. Toader and A. Rosas, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– GT, by T. Szabó, ügyvéd,

– HS, by T. Várhelyi, ügyvéd,

– the Hungarian Government, by M.Z. Fehér and Zs. Biró-Tóth, acting as Agents,

– the European Commission, by K. Talabér-Ritz and A. Cleenewerck de Crayencour, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the powers granted to the European Union in order to ensure a high level of consumer protection and the fundamental EU principles of equality before the law, the right to an effective judicial remedy and the right to fair legal process, and of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), in particular the eighth to twelfth and twentieth recitals and Articles 4(2) and 5 of the directive.

2 The request has been made in proceedings between GT, a leasing company ('the company') and HS, as borrower, concerning the invalidity of a loan agreement concluded by the parties, on account of the fact that it did to not refer to the exchange rate applied when the funds were advanced.

Legal context

European Union law

3 According to the eighth to twelfth and twentieth recitals of Directive 93/13:

'Whereas the two Community programmes for a consumer protection and information policy … underlined the importance of safeguarding consumers in the matter of unfair terms of contract; whereas this protection ought to be provided by laws and regulations which are either harmonized at Community level or adopted directly at that level;

Whereas in accordance with the principle laid down under the heading "Protection of the economic interests of the consumers", as stated in those programmes: "acquirers of goods and services should be protected against the abuse of power by the seller or supplier, in particular against one-sided standard contracts and the unfair exclusion of essential rights in contracts";

Whereas more effective protection of the consumer can be achieved by adopting uniform rules of law in the matter of unfair terms; whereas those rules should apply to all contracts concluded between sellers or suppliers and consumers; whereas as a result inter alia contracts relating to employment, contracts relating to succession rights, contracts relating to rights under family law and contracts relating to the incorporation and organisation of companies or partnership agreements must be excluded from this Directive;

Whereas the consumer must receive equal protection under contracts concluded by word of mouth and written contracts regardless, in the latter case, of whether the terms of the contract are contained in one or more documents;

Whereas, however, as they now stand, national laws allow only partial harmonization to be envisaged; whereas, in particular, only contract terms which have not been individually negotiated are covered by this Directive; whereas Member States should have the option, with due regard for

the Treaty, to afford consumers a higher level of protection through national provisions that are more stringent than those of this Directive;

…

Whereas contracts should be drafted in plain, intelligible language, the consumer should actually be given an opportunity to examine all the terms and, if in doubt, the interpretation most favourable to the consumer should prevail'.

4 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.'

5 Article 3(1) of Directive 93/13 is worded as follows:

'A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.'

6 Article 4 of that directive states:

'1. Without prejudice to Article 7, the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.

2. Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as these terms are in plain intelligible language.'

7 Article 5 of Directive 93/13 provides as follows:

'In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. …'

8 Article 6(1) of the directive is worded as follows:

'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.'

Hungarian law

The Hpt Lw

9 Paragraph 213(1)(a) of the a hitelintézetekről és a pénzügyi vállalkozásokról szóló 1996. évi CXII. törvény (Law No CXII of 1996 on credit institutions and financial undertakings) ('the Hpt Law') provides:

'Any loan agreement concluded with a consumer or individual shall be void if it does not specify:

(a) the subject matter of the agreement …'

The DH 1 Law

10 Paragraph 1(1) of the Kúriának a pénzügyi intézmények fogyasztói kölcsönszerződéseire vonatkozó jogegységi határozatával kapcsolatos egyes kérdések rendezéséről szóló 2014. évi XXXVIII. törvény (Law No XXXVIII of 2014 on the resolution of certain issues relating to the decision adopted by the Kúria [Supreme Court] with a view to ensuring consistent interpretation of the provisions of civil law concerning loan agreements concluded by financial institutions with consumers) ('the DH 1 Law') provides:

'The present law shall apply to loan agreements concluded with consumers between 1 May 2004 and the date of entry into force of the present law. For the purposes of the present law, loan agreements concluded with consumers shall cover any foreign exchange based (linked to, or denominated in, a foreign currency and repaid in forint) or forint based credit or loan agreement, or any financial leasing agreement, concluded between a financial institution and a consumer …'

11 Paragraph 3(1) and (2) of the DH 1 Law states:

'1. In loan agreements concluded with consumers, terms — with the exception of contractual terms which have been individually negotiated — pursuant to which the financial institution stipulates that, for the purpose of paying out the amount of finance granted for the purchase of the subject of the loan or financial leasing, the buying rate is to apply, and that, for the purpose of repayment of the debt, the selling rate, or a different exchange rate from that set when the loan was paid out, is to apply, shall be void.

2. Instead of the void term referred to in paragraph 1 … the official exchange rate set by the National Bank of Hungary for the foreign currency concerned shall apply in relation to the disbursement and repayment of the loan (including payment of the instalments and all the costs, fees and commission expressed in foreign currency).'

The DH 3 Law

12 Under Paragraph 3(1) of the az egyes fogyasztói kölcsönszerződések devizanemének módosulásával és a kamatszabályokkal kapcsolatos kérdések rendezéséről szóló 2014. évi LXXVII. törvény (Law No LXXVII of 2014 regulating various matters relating to the amendment of the currency of denomination of certain consumer loan contracts and to the rules governing interest) ('the DH 3 Law'):

'Loan agreements concluded with consumers shall be amended by operation of law, in accordance with the provisions of this Law.'

Decision No 1/2016 PJE

13 Decision No 1/2016 PJE of the Kúria (Supreme Court, Hungary), adopted with a view to ensuring consistent interpretation of the provisions of civil law in accordance with Paragraph 25(3) of the Alaptörvény (Basic Law), is worded as follows:

‘1. A currency-denominated loan agreement concluded with a consumer or individual also fulfils the requirement laid down in Paragraph 213(1)(a) of [the Hpt law] when the agreement, contained in a written instrument — including the general terms and conditions forming part of the agreement at the time it is concluded — states the amount of the loan in Hungarian forints (currency of payment), subject to the condition that the equivalent in denominated currency (unit of account) of the loan can be calculated precisely at the later time specified in the agreement for conversion, or, failing that, at the time when the funds are released, taking into account the exchange rate applicable at that time.

…

3. If a currency-denominated loan agreement concluded with a consumer or individual — including the general terms and conditions forming part of the agreement at the time it is concluded — contains the information referred to in subparagraphs 1 and 2, any unilateral statements made after the agreement has been concluded (for instance, a payment note, a repayment schedule, a payment plan) are to be regarded as information provided by the credit institution to the consumer that has no effect on the conclusion of the agreement or its validity.’

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

14 On 20 February 2006, the company concluded with HS, as borrower, a loan agreement to finance the purchase of a motor vehicle. The loan was denominated in foreign currency, namely the Swiss franc (CHF). The amount of the loan was established on the basis of the sum required in Hungarian forints (HUF), namely HUF 3 859 000, applying the exchange rate in force at the time the funds were released. That agreement stated that ‘the parties sign[ed] the agreement, the content of which [was] consistent with the lender’s agreement note’. The agreement note was then sent to the borrower, after the loan agreement had been signed, on 7 April 2006. That note, which, the referring court points out, was not signed by the borrower, set out the exchange rate applicable to the released funds (CHF 1 = HUF 164,87).

15 According to the terms of the agreement, the loan was to be repaid in Hungarian forints, the amount of the payment instalments being dependent on the Swiss franc/Hungarian forint exchange rate applicable at the time the instalments were paid, so that the borrower bore the currency risk.

16 On 4 March 2013, as it considered that the borrower had failed to comply with his repayment obligation, the company terminated the loan agreement. It then brought proceedings against the borrower before the referring court, seeking an order that the borrower pay HUF 1 463 722 in respect of the capital loan and interest.

17 In the defence, relying, inter alia, on Paragraph 213(1)(a) of the Hpt Law, the borrower alleged that the agreement was invalid, on the ground that it did not indicate the subject matter of the loan, as the Swiss franc/Hungarian forint exchange rate applied when the funds were released was not specified in the agreement note, which was signed only by the company.

18 The referring court is of the view that, in the case pending before it, it is necessary to apply the decisions delivered by the Kúria (Supreme Court) with a view to ensuring consistent interpretation of the provisions of law, including Decision No 1/2016, which are binding on the

lower courts. Under that decision, the exchange rate fixed unilaterally by the company in the agreement note should be recognised as having the same legal value as a contractual term, where the agreement itself does not specify the exchange rate applicable when the funds are advanced. It follows from that decision that the fact that the debtor did not sign the agreement note and that the lender is under no obligation to prove that the debtor received that note is of no consequence in that regard.

19 The referring court also observes that if it is accepted that the agreement is valid, the effect of this is that the borrower has to bear the financial consequences of the currency risk. That is why it would be contrary to the borrower's financial interests if the court seised were to find that such a foreign currency-denominated loan agreement was valid under Paragraph 213(1)(a) of the Hpt Law. That court therefore wishes to satisfy itself that Decision No 1/2016 is not at variance with the provisions of EU law on consumer protection.

20 In those circumstances, the Budai Központi Kerületi Bíróság (Central District Court, Buda, Hungary) decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'Do the European Union's powers to ensure a high level of protection for consumers, the fundamental principles of EU law of equality before the law, the right to an effective remedy and to a fair trial, various elements of the recitals of Directive [93/13] [namely, the eighty to twelfth and twentieth recitals], and Article 4(2) and Article 5 of [that directive] preclude binding national case-law that:

– imposes no obligation on the counterparty of the consumer, as a condition of validity of the agreement, to enable the consumer, before entering into an agreement, to read the terms of the agreement, written in clear and intelligible language, which form the main subject matter of the agreement, including the exchange rate applicable to payments made under a currency loan agreement, in order to ensure that the agreement is not rendered invalid; and/or

– enables the counterparty of the consumer to communicate (in a specific document, for example), the terms of the agreement, in clear and intelligible language, which form the main subject matter of that agreement, including the exchange rate applicable to payments made under a currency loan agreement, only at a time when the consumer has already irrevocably committed himself to performing the agreement, without this circumstance alone being a ground for the invalidity of the agreement?'

Consideration of the question referred

Admissibility

21 The European Commission contends that the question referred is inadmissible, on the ground that, in essence, the referring court has failed to provide to the Court all the factual and legal material and background necessary, in particular the fact that the main proceedings have to be seen as part of a wider context of legislative initiatives undertaken by the Hungarian legislature in respect of loan agreements, such as that at issue in the main proceedings, which led to the adoption of Laws DH 1 and DH 3. Pursuant to those laws, the exchange rate originally specified for that type of agreement was replaced, with retroactive effect and as a matter of law, by that set by Hungarian law, removing the currency risk, without prejudice to the possibility of an exchange risk consequent upon the exchange rate set by legislative means. The Commission is of the view that those laws must be regarded as mandatory statutory provisions within the meaning of Article 1(2) of Directive

93/13, which therefore raises the issue as to the relationship between the provisions of EU law in respect of which an interpretation is sought and the facts and subject matter of the dispute in the main proceedings.

22 According to the Commission, the points of EU law in respect of which an interpretation is sought bear no relation to the dispute in the main proceedings because the effect of the adoption of Laws DH 1 and DH 3 was to remove terms relating to exchange rates and currency risk in loan agreements, such as the agreement at issue in the main proceedings, from the scope of Directive 93/13, pursuant to Article 1(2) thereof, so that the directive is no longer applicable in the present case.

23 In that regard, it should be noted that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law sought bears no relation to the actual facts of the main action or its purpose, where the problem 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 (judgment of 20 September 2018, *OTP Bank and OTP Faktoring*, C-51/17, EU:C:2018:750, paragraph 37).

24 It is apparent from the account of the facts in the order for reference that the question referred concerns a situation in which a consumer concluded a currency-denominated loan agreement and the precise amount of the loan in foreign currency was established only after the agreement had been concluded, on the basis of the exchange rate set by the company in a separate document and applied to the sum indicated in the finance application submitted by the consumer, which was expressed in national currency.

25 It is true that, in so far as they replace terms stipulating a differential between the exchange rate applicable when the loan is advanced (the buying rate) and that applicable to its repayment (the selling rate) with a term stipulating that a single rate of exchange will be applied, namely that set by the National Bank of Hungary, the laws referred to by the Commission have the effect of placing the latter term outside the scope of Directive 93/13, as such a term reflects a mandatory statutory provision, within the meaning of Article 1(2) of Directive 93/13. Nevertheless, in view of the fact that that provision must be construed strictly, it does not follow that another contractual term, such as that at issue in the main proceedings, which determines how the amount of the loan denominated in foreign currency is to be fixed, will also be excluded from the scope of the directive in its entirety (see, to that effect, judgment of 20 September 2018, *OTP Bank and OTP Faktoring*, C-51/17, EU:C:2018:750, paragraphs 65 and 66), so that it is not obvious that that directive is not applicable to the term at issue in the main proceedings.

26 It follows that the question referred for a preliminary ruling is admissible.

Substance

27 Although the question referred relates only in part to the interpretation of a particular provision of EU law, it is settled case-law that the Court must extract from all the information provided by the referring court, and in particular from the statement of grounds contained in the order for reference, the provisions of EU law requiring an interpretation, having regard to the subject matter of the dispute (see, to that effect, judgment of 3 April 2019, *Aqua Med*, C-266/18, EU:C:2019:282, paragraph 39).

28 As the issues raised by the Budai Központi Kerületi Bíróság (Central District Court, Buda) seek to determine the conditions for establishing invalidity under Directive 93/13 in respect of a loan agreement such as that at issue in the main proceedings, Articles 3(1) and 6(1) of the directive must be included among the points of EU law in respect of which that court is seeking an interpretation from the Court of Justice.

29 As a consequence, the referring court must be regarded as asking, in essence, whether Articles 3(1), 4(2) and 6(1) of Directive 93/13 are to be interpreted as precluding the legislation of a Member State, as interpreted by the Supreme Court of that Member State, under which a loan agreement is not invalid where it is denominated in foreign country and, although it specifies the sum corresponding to that set out in the consumer's application for finance in domestic currency, does not indicate the exchange rate applicable to that sum for the purpose of determining the definitive amount of the loan in foreign currency, but at the same time stipulates, in one of its terms, that that rate will be set by the lender in a separate document after the agreement has been concluded.

30 In the first place, as is apparent from the wording of the question referred, the referring court takes as its starting point the fact that the contractual term at issue in the main proceedings, which determines how the amount of the loan denominated in foreign currency is to be established, must be regarded as defining the main subject matter of the loan agreement, within the meaning of Article 4(2) of Directive 93/13.

31 Under that provision, such terms escape any assessment as to whether they are unfair only if the national court having jurisdiction should form the view, following a case-by-case examination, that they were drafted by the seller or supplier in plain intelligible language (see, to that effect, judgment of 14 March 2019, *Dunai*, C-118/17, EU:C:2019:207, paragraph 48).

32 The Court has stated that the requirement that contractual terms must be drafted in plain intelligible language, also repeated in Article 5 of Directive 93/13, cannot be reduced merely to their being formally and grammatically intelligible. It has also stated that, to the contrary, since the system of protection introduced by the directive is based on the idea that the consumer is in a position of weakness vis-à-vis the seller or supplier, in particular as regards his level of knowledge, that requirement must be understood in a broad sense (see, to that effect, judgment of 20 September 2018, *EOS KSI Slovensko*, C-448/17, EU:C:2018:745, paragraph 61).

33 Therefore, the requirement that a contractual term must be drafted in plain intelligible language means that the contract should indicate transparently and specifically how the mechanism to which the relevant term relates is to function and, where appropriate, the relationship between that mechanism and that provided for by other contractual terms, so that that consumer is in a position to evaluate, on the basis of clear, intelligible criteria, the economic consequences for him of entering into the contract (judgment of 20 September 2017, *Andriciuc and Others*, C-186/16, EU:C:2017:703, paragraph 45).

34 In a situation such as that in the main proceedings, in which the determination of the amount of the loan depends on the applicable exchange rate at the time the loan was advanced, as fixed by the lender after the agreement had been concluded, that requirement means that the mechanism for calculating the amount lent, expressed in foreign currency, and the exchange rate applicable must be indicated transparently, so that a reasonably well-informed and reasonably observant and circumspect consumer may evaluate, on the basis of clear, intelligible criteria, the economic consequences for him of entering into the agreement, including, in particular, the total cost of the loan (see, to that effect, judgment of 20 September 2017, *Andriciuc and Others*, C-186/16,

EU:C:2017:703, paragraph 47, and order of 22 February 2018, *ERSTE Bank Hungary*, C-126/17, not published, EU:C:2018:107, paragraph 32).

35 That question must be examined by the referring court in the light of all the relevant facts, including the promotional material and information provided by the lender in the negotiation of the loan agreement (judgment of 20 September 2017, *Andriciuc and Others*, C-186/16, EU:C:2017:703, paragraph 46).

36 It is for the referring court to verify, inter alia, whether, in the light of all the relevant facts, the consumer was in a position to understand exactly how the amount of the loan denominated in foreign currency and the exchange rate applicable were to be determined, as well as the possible economic consequences of this for him. However, the seller or supplier cannot be expected to have specified all those details at the time the agreement was concluded.

37 In the second place, if it is apparent, as a result of that assessment, that the term relating to the fixing of the exchange rate was not drafted in plain intelligible language, within the meaning of Article 4(2) of Directive 93/13, the agreement concerned may be dismissed as invalid only if, first, it has been established that the term is unfair, within the meaning of Article 3(1) of the directive, and, second, the agreement is not capable of continuing in existence without the unfair term, as referred to in Article 6(1) of the directive.

38 As regards, first, whether the term concerned is unfair, it is for the court with jurisdiction to ascertain whether, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer concerned.

39 In carrying out that assessment, the national court must take into account, as required under Article 4(1) of Directive 93/13, the nature of the goods or services for which the agreement was concluded, referring, at the time the agreement was concluded, to all the circumstances attending the conclusion of the agreement.

40 The circumstances referred to in Article 4(1)of Directive 93/13 are those which could have been known to the seller or supplier at that time the agreement was concluded and which were of such a nature that they could affect the future performance of the agreement, since a contractual term which manifests itself only during the performance of the agreement term may give rise to an imbalance between the parties (see, to that effect, judgment of 20 September 2017, *Andriciuc and Others*, C-186/16, EU:C:2017:703, paragraph 54).

41 Second, if it is established that such a term is unfair, that term cannot, in accordance with Article 6(1) of Directive 93/13, bind the consumer, as provided for under national law. According to that provision, the agreement will continue to bind the parties upon the same terms if it is capable of continuing in existence without the unfair term.

42 In that regard, the Court has held that Article 6(1) of Directive 93/13 seeks to restore the balance between the parties, and not to cancel all contracts containing unfair terms. However, the contract must continue in existence, in principle, without any amendment other than that resulting from the deletion of the unfair terms, in so far as, in accordance with the rules of domestic law, such continuity of the contract is legally possible, which is to be determined objectively (see, to that effect, judgment of 14 March 2019, *Dunai*, C-118/17, EU:C:2019:207, paragraph 51 and the case-law cited).

43 According to the referring court, the term at issue in the main proceedings defines the main subject matter of the agreement, within the meaning of Article 4(2) of Directive 93/13. Accordingly, it does not appear that the continuity of the agreement is legally possible after that term has been deleted, which is, in any event, a matter for the referring court to ascertain, if appropriate.

44 It follows that national legislation such as that referred to by the referring court will be incompatible with Directive 93/13 only in so far as it does not allow, according to the referring court's interpretation of that legislation, a loan agreement in respect of which the requirements set out in paragraph 37 above are met to be dismissed as invalid.

45 In the light of the foregoing considerations, the answer to the question referred is that Articles 3(1), 4(2) and 6(1) of Directive 93/13 are to be interpreted as not precluding the legislation of a Member State, as interpreted by the Supreme Court of that Member State, under which a loan agreement is not invalid if it is denominated in foreign currency and, although it specifies the sum corresponding to that set out in the consumer's application for finance in domestic currency, does not indicate the exchange rate applicable to that sum for the purpose of determining the definitive amount of the loan in foreign currency, but at the same time stipulates, in one of its terms, that that rate will be set by the lender in a separate document after the agreement has been concluded,

– where that term is in plain intelligible language, within the meaning of Article 4(2) of Directive 93/13, in that the mechanism for calculating the total amount lent and the exchange rate applicable are indicated transparently, so that a reasonably well-informed and reasonably observant and circumspect consumer may evaluate, on the basis of clear, intelligible criteria, the economic consequences for him of entering into the agreement, including, in particular, the total cost of the loan, or, if it is apparent that the term is not in plain intelligible language,

– where that term is not unfair, within the meaning of Article 3(1) of the directive, or, if it is unfair, the agreement concerned is capable of continuing in existence without the unfair term, in accordance with Article 6(1) of Directive 93/13.

Costs

46 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 (Seventh Chamber) hereby rules:

Articles 3(1), 4(2) and 6(1) of Council Directive 91/13/EEC of 5 April 1993 on unfair terms in consumer contracts are to be interpreted as not precluding the legislation of a Member State, as interpreted by the Supreme Court of that Member State, under which a loan agreement is not invalid if it is denominated in foreign currency and, although it specifies the sum corresponding to that set out in the consumer's application for finance in domestic currency, does not indicate the exchange rate applicable to that sum for the purpose of determining the definitive amount of the loan in foreign currency, but at the same time stipulates, in one of its terms, that that rate will be set by the lender in a separate document after the agreement has been concluded,

– **where that term is in plain intelligible language, within the meaning of Article 4(2) of Directive 93/13, in that the mechanism for calculating the total amount lent and the exchange**

rate applicable are indicated transparently, so that a reasonably well-informed and reasonably observant and circumspect consumer may evaluate, on the basis of clear, intelligible criteria, the economic consequences for him of entering into the agreement, including, in particular, the total cost of the loan, or, if it is apparent that the term is not in plain intelligible language,

– **where that term is not unfair, within the meaning of Article 3(1) of the directive, or, if it is unfair, the agreement concerned is capable of continuing in existence without the unfair term, in accordance with Article 6(1) of Directive 93/13.**

[Signatures]

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* Language of the case: Hungarian.