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Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

8 June 2023 (\*)

(Reference for a preliminary ruling – Consumer protection – Directive 93/13/CEE – Unfair terms in consumer contracts – Article 2(b) – Definition of ‘consumer’ – Contract for membership of a loyalty scheme enabling certain financial benefits to be obtained when purchasing goods and services from third-party traders)

In Case C-455/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Olt (Olt Regional Court, Romania), made by decision of 27 May 2021, received at the Court on 23 July 2021, in the proceedings

**OZ**

v

**Lyoness Europe AG,**

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, D. Gratsias, M. Ilešič, I. Jarukaitis and Z. Csehi (Rapporteur), Judges,

Advocate General: T. Čapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– OZ, by himself,

- Lyoness Europe AG, by R. Boanță, M. Doibani, I. Palenciuc, I. Postolachi and I. Stănciulescu, avocați,
- the Romanian Government, by E. Gane and L. Lițu, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by G. Greco, avvocato dello Stato,
- the European Commission, by A. Boitos and N. Ruiz García, 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 Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

2 The request has been made in proceedings between OZ and Lyoness Europe AG, concerning certain terms in the general terms and conditions of a contract for membership of a loyalty scheme enabling certain financial benefits to be obtained when goods and services are purchased from third-party traders.

### **Legal context**

#### *European Union law*

##### *Directive 93/13*

3 The fifth, sixth and tenth recitals of Directive 93/13 state:

‘Whereas, generally speaking, consumers do not know the rules of law which, in Member States other than their own, govern contracts for the sale of goods or services; whereas this lack of awareness may deter them from direct transactions for the purchase of goods or services in another Member State;

Whereas, in order to facilitate the establishment of the internal market and to safeguard the citizen in his role as consumer when acquiring goods and services under contracts which are governed by the laws of Member States other than his own, it is essential to remove unfair terms from those 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 organization of companies or partnership agreements must be excluded from this Directive’.

4 Under Article 1(1) of that directive:

‘The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in contracts concluded between a seller or supplier and a consumer.’

5 Article 2 of that directive is worded as follows:

‘For the purposes of this Directive:

...

(b) “consumer” means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession;

(c) “seller or supplier” means any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned.’

6 Article 3(1) of Directive 93/13 provides that ‘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’.

7 Article 6 of Directive 93/13 provides:

‘(1) 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.

(2) Member States shall take the necessary measures to ensure that the consumer does not lose the protection granted by this Directive by virtue of the choice of the law of a non-Member country as the law applicable to the contract if the latter has a close connection with the territory of the Member States.’

### *The Rome I Regulation*

8 Recitals 7 and 25 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6; ‘the Rome I Regulation’):

‘(7) The substantive scope and the provisions of this Regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [(OJ 2001 L 12, p. 1)] ...

...

(25) Consumers should be protected by such rules of the country of their habitual residence that cannot be derogated from by agreement, provided that the consumer contract has been concluded as

a result of the professional pursuing his commercial or professional activities in that particular country. ...’

9 Article 3 of that regulation, entitled ‘Freedom of choice’, provides in paragraph 1 thereof:

‘A contract shall be governed by the law chosen by the parties. ...’

10 Under Article 6 of that regulation, entitled ‘Consumer contracts’:

‘(1) Without prejudice to Articles 5 and 7, a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another person acting in the exercise of his trade or profession (the professional) shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:

(a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or

(b) by any means, directs such activities to that country or to several countries including that country,

and the contract falls within the scope of such activities.

(2) Notwithstanding paragraph 1, the parties may choose the law applicable to a contract which fulfils the requirements of paragraph 1, in accordance with Article 3. Such a choice may not, however, have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1.

...’

### ***Romanian law***

11 Directive 93/13 was transposed into Romanian law by Legea nr. 193/2000 privind clauzele abuzive din contractele încheiate între profesioniști și consumatori (Law No 193/2000 on unfair terms in contracts concluded between traders and consumers) of 6 November 2000 (*Monitorul Oficial al României*, Part I, No 560 of 10 November 2000), in the version applicable to the dispute in the main proceedings (‘Law No 193/2000’).

12 Under Article 1 of Law No 193/2000:

‘(1) Any contract concluded between traders and consumers for the sale of goods or the supply of services must contain clear, unambiguous terms, intelligible without need of specialist knowledge.

(2) In cases of doubt as to the interpretation of any terms of a contract, they must be interpreted in favour of the consumer.

(3) Traders are prohibited from inserting unfair terms into contracts concluded with consumers.’

13 Article 2 of Law No 193/2000 provides:

(1) “Consumer” means any natural person or group of natural persons forming an association who, on the basis of a contract falling within the scope of the present law, acts for purposes which are outside their commercial, industrial or manufacturing, trade or professional activities.

(2) “Trader” means any natural person or duly authorised legal person who, on the basis of a contract covered by this law, is acting for purposes that relate to his or her trade, business, industry or profession, as well as any other person acting for those purposes for and on behalf of that person.’

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

14 The appellant in the main proceedings, OZ, is a natural person who is a mechanical engineer. He does not engage in any commercial activity in a professional capacity.

15 OZ entered into a contract with the respondent in the main proceedings, Lyoness Europe, for membership of the Lyoness scheme (‘the membership contract’). The Lyoness scheme makes it possible to benefit, in particular, from favourable purchasing terms and conditions in the form of refunds on purchases, commission and other promotional benefits. Under that scheme, ‘loyal customers’ have the right to purchase goods and services from traders who have a contractual relationship with the respondent in the main proceedings. Members of that scheme may also act as intermediaries with a view to other persons becoming members of that scheme. Under the membership contract, the law applicable to the contractual relationship between the parties to the main proceedings is Swiss law.

16 Taking the view that several terms in the membership contract, entitled ‘General Terms and Conditions for Lyoness customers’ (in the November 2009 version) and in the annex thereto, entitled ‘Lyoness refunds and methods of payment’, were ‘unfair’ within the meaning of Article 1(3) of Law No 193/2000, the appellant in the main proceedings brought an action before the Judecătoria Slatina (Court of First Instance, Slatina, Romania) seeking a declaration by that court that those terms are prohibited pursuant to that provision.

17 By judgment of 9 December 2020, the Judecătoria Slatina (Court of First Instance, Slatina) dismissed the action brought by the appellant in the main proceedings, on the ground that the membership contract did not fall within the scope of Law No 193/2000 and that, in particular, that appellant did not satisfy the conditions to be regarded as a ‘consumer’ within the meaning of that law.

18 That court held that, pursuant to the membership contract, the respondent in the main proceedings and its partners constituted an ‘international shopping community’, within which participants could benefit from favourable conditions of purchase, in the form of repayments, commissions and other advantages, with the supply of goods and the provision of services being carried out directly by business partners who had a contractual relationship with the respondent in the main proceedings. That court also took the view that the respondent in the main proceedings confined itself, by its services, to acting as an intermediary for the services of each business partner, quantifying in part those services and ordering the ‘Lyoness vouchers’ which allow goods and services to be purchased from those business partners. Finally, according to the Judecătoria Slatina (Court of First Instance, Slatina), the parties to the main proceedings, in the context of the membership agreement, offer financial benefits to each other.

19 The appellant in the main proceedings brought an appeal against the judgment of 9 December 2020 before the referring court. He maintains that the membership contract falls within the scope of

Law No 193/2000 and of Directive 93/13. He states that, in the context of that contract, he has not acted for a purpose associated with ‘commercial, industrial or manufacturing, trade or professional activities’, within the meaning of that law, and that at no time has he engaged in such activities professionally. He adds that there is only an ‘international shopping community’, within the meaning of that contract, since that community is associated only with commercial companies, namely the respondent in the main proceedings, the partner companies and the business partners thereof. ‘Loyal customers’ are entitled to participate in that community only as regards the purchase of goods and services from those business partners. The appellant in the main proceedings also maintains that it is not apparent from the membership contract that the latter provides for commissions, discounts and other financial benefits for the respondent in the main proceedings and that, as a natural person who did not act for purposes associated with his professional activity, he has no possibility of offering financial benefits to the respondent. Moreover, the exercise of such an activity requires without prior authorisation and obtention of the notices and licences provided for in that connection.

20 In the proceedings before the referring court, the respondent in the main proceedings contends that the appellant in the main proceedings is not a ‘consumer’ within the meaning of Law No 193/2000. It takes the view that, in accordance with the operating principle of the Lyoness scheme, the appellant in the main proceedings engages in his own economic activity, independently and systematically, with his own corporate and financial resources. Thus, in its view, the appellant in the main proceedings is involved in commercial activities with the aim of obtaining benefits in the form of ‘passive income’ and does not seek exclusively to obtain discounts. Furthermore, the respondent in the main proceedings claims that affiliation to the Lyoness scheme is free of charge and that the subsequent activity of a member under that scheme is not subject to any payment whatsoever. It states that the sums of money deposited by the members of that scheme constitute advance payments on their own future purchases and that their only obligation is to use those sums through the loyalty programme and to make their purchases from its business partners. The Lyoness scheme and its members are a community of purchasers constituted for the purpose of obtaining mutual benefits. According to the respondent in the main proceedings, the appellant in the main proceedings benefited from the advantages associated with his membership of the Lyoness scheme, namely refunds on his own purchases, extensive benefits on purchases by referred members (‘friendship bonus’) and benefits linked with membership status.

21 The referring court does not concur with the approach taken in the judgment of 9 December 2020 as regards the status of the appellant in the main proceedings as a ‘consumer’ within the meaning of Law No 193/2000.

22 In those circumstances, the Tribunalul Olt (Olt Regional Court, Romania) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 2(b) of [Directive 93/13] be interpreted as meaning that a natural person, who is a mechanical engineer specialising in hydraulic and pneumatic machinery (who does not engage in trade as an occupation and in particular in the purchase of goods and services for resale and/or in intermediation activities) and who concludes with a commercial company (a seller or supplier) a pre-formulated standard contract under which that natural person is entitled to participate in a shopping community set up by that company in the form of the Lyoness system (a system which promises economic returns in the form of refunds on purchases, commission and other promotional benefits), to purchase goods and services from traders who have a contractual relationship with that company (called “Lyoness business partners”), and to act as an intermediary with other persons within the Lyoness system (known as “potential loyalty customers”), be regarded as a ‘consumer’ within the meaning of that provision, notwithstanding the contractual term which provides that

Swiss law alone is to apply to the contractual relationship between Lyoness and the customer, irrespective of the customer's place of domicile, in order to ensure effective consumer protection?

(2) Must Article 2(b) of [Directive 93/13] be interpreted as meaning that a person who has concluded with a seller or supplier a contract having a dual purpose, namely [where] the contract is concluded for purposes which partly fall within the scope of the trade, business or profession of that person and partly outside, and the trade, business or professional purpose of that natural person is not predominant in the overall context of the contract, can be regarded as a 'consumer' within the meaning of that provision?

(3) If the answer to the previous question is in the affirmative, what are the main criteria to be applied in determining whether or not the trade, business or professional purpose of that natural person is predominant in the overall context of the contract?'

### **Consideration of the questions referred**

#### ***Admissibility***

23 The Romanian Government expresses doubts as to whether the reference for a preliminary ruling is admissible. The facts of the dispute in the main proceedings are set out in a very summary manner by the referring court in its request, in breach of Article 94 of the Rules of Procedure of the Court of Justice. Furthermore, that request does not contain the information necessary for a proper understanding of those facts so as to enable the Court to provide useful answers to the questions referred or to allow the parties and interested parties to make relevant observations.

24 According to the settled case-law of the Court, the procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 44 and the case-law cited).

25 In the context of that procedure, which is based on a clear separation of functions between the national courts and the Court of Justice, only the national courts may establish and assess the facts of the dispute in the main proceedings and determine the exact scope of national laws, regulations or administrative provisions. The Court is only empowered to rule on the interpretation or validity of EU law in the light of the factual and legal situation as described by the referring court, in order to provide that court with such guidance as will assist it in resolving the dispute before it (judgment of 13 January 2022, *Benedetti Pietro e Angelo and Others*, C-377/19, EU:C:2022:4, paragraph 37 and the case-law cited).

26 Since the order for reference serves as the basis for that procedure, it is essential that the national court should, in that decision, expand on its definition of the factual and legislative context of the dispute in the main proceedings and give the necessary explanation of the reasons for the choice of the provisions of EU law which it seeks to have interpreted and of the link it establishes between those provisions and the national law applicable to the proceedings pending before it (see, to that effect, in particular, judgment of 4 June 2020, *C.F. (Tax inspection)*, C-430/19, EU:C:2020:429, paragraph 23 and the case-law cited).

27 Those cumulative requirements concerning the content of a request for a preliminary ruling are expressly set out in Article 94 of the Rules of Procedure, which the referring court is bound to

observe scrupulously (order of 3 July 2014, *Talasca*, C-19/14, EU:C:2014:2049, paragraph 21, and judgment of 9 September 2021, *Toplofikatsia Sofia and Others*, C-208/20 and C-256/20, EU:C:2021:719, paragraph 20 and the case-law cited). They are also recalled in paragraphs 13, 15 and 16 of the Recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2019 C 380, p. 1).

28 In the present case, by its first question, the referring court is asking about the interpretation of Article 2(b) of Directive 93/13 and, more specifically, whether a natural person who has entered into a membership contract for a scheme implemented by a commercial company and which, *inter alia*, makes it possible to enjoy certain financial benefits as part of the purchase of goods and services from that company's business partners may be regarded as a 'consumer' for the purposes of that provision in the context of a dispute in which the appellant in the main proceedings claims that several terms in that membership contract are unfair within the meaning of that directive, in particular the term designating Swiss law as the applicable law.

29 Thus the first question concerns, in essence, the scope of Directive 93/13. That question is therefore relevant to the resolution of the dispute in the main proceedings.

30 In the request for a preliminary ruling, the referring court refers, albeit briefly, to facts which may be regarded as sufficient to provide a useful answer to the first question in the specific context of a contract for membership of a scheme such as that at issue in the main proceedings.

31 Accordingly, the reference for a preliminary ruling is admissible in so far as it concerns the first question.

32 By contrast, the request for a preliminary ruling does not contain sufficient information and reasons to enable the Court to give a useful answer to the second and third questions.

33 Those two questions relate in fact to a 'dual-purpose contract' concluded between a natural person and a professional, which is intended, in part, for the purpose related to that natural person's trade or profession and, solely in part, for a purpose outside that trade or profession, and the request for a preliminary ruling does not contain any evidence to suggest that the referring court is faced with such a contract. It should also be noted that the referring court itself appears to consider that the appellant in the main proceedings is a party to a contract under which he is acting for purposes other than his professional activities. Furthermore, the request for a preliminary ruling does not contain a statement of the reasons which prompted the referring court to inquire as to the interpretation of Article 2(b) of Directive 93/13 in the context of a 'dual-purpose contract'.

34 In those circumstances, the request for a preliminary ruling does not satisfy the requirements of Article 94(a) and (c) of the Rules of Procedure, in so far as it relates to the second and third questions.

35 It follows that the request for a preliminary ruling must be regarded as inadmissible in so far as it concerns the second and third questions.

### ***Substance***

36 By its first question, the referring court is asking, in essence, whether Article 2(b) of Directive 93/13 must be interpreted as meaning that a natural person who has entered into a membership contract for a scheme implemented by a commercial company and which, *inter alia*, makes available certain financial benefits in connection with the purchase of goods and services



from that company's business partners, falls within the scope of the concept of 'consumer' for the purposes of that provision.

37 As a preliminary point, it should be noted that, in the present case, the membership contract contains a term designating Swiss law as the applicable law.

38 On that point, it should be recalled that Article 6(1) of the Rome I Regulation provides that, in principle, a consumer contract 'shall be governed by the law of the country where the consumer has his habitual residence'. However, Article 6(2) of that regulation authorises, in principle, the use of a term relating to the choice of applicable law, provided that that choice does not deprive the consumer of the protection afforded to him or her by provisions that cannot be derogated from by agreement by virtue of the law which would have been applicable, in the absence of such choice.

39 Consequently, a term designating the law of a third country as the law applicable to the contract cannot deprive a consumer of the protection which Directive 93/13 affords him or her. Thus, where there is such a term, it is for the national court to ensure that the protection provided for in Article 6(2) of the Rome I Regulation and in Article 6(2) of Directive 93/13 is ensured.

40 In that connection, the Court has repeatedly held that the system of protection implemented by Directive 93/13 is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his or her bargaining power and his or her level of knowledge. This leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of those terms (order of 3 September 2015, *Costea*, C-110/14, EU:C:2015:538, paragraph 18 and the case-law cited).

41 Having regard to that weaker position, Article 6(1) of that directive provides that unfair terms are not binding on consumers. It is a mandatory provision which aims to replace the formal balance which the contract establishes between the rights and obligations of the parties with an effective balance which re-establishes equality between them (judgment of 17 May 2022, *Ibercaja Banco*, C-600/19, EU:C:2022:394, paragraph 36 and the case-law cited).

42 Furthermore, pursuant to Article 6(2) of that directive, the Member States are to take the necessary measures to ensure that the consumer does not lose the protection granted by that directive 'by virtue of the choice of the law of a non-Member country as the law applicable to the contract if the latter has a close connection with the territory of the Member States'.

43 Furthermore, as the tenth recital of Directive 93/13 states, the uniform rules of law in the matter of unfair terms should apply, subject to the exceptions listed in that recital, to 'all contracts' concluded between sellers or suppliers and consumers, as defined in Article 2(b) and (c) of that directive (judgment of 27 October 2022, *S.V. (Building in co-ownership)*, C-485/21, EU:C:2022:839, paragraph 22 and the case-law cited).

44 It is therefore by reference to the capacity of the contracting parties, according to whether or not the latter are acting for purposes relating to their trade, business or profession, that Directive 93/13 defines the contracts to which it applies (judgment of 21 March 2019, *Pouvin and Dijoux*, C-590/17, EU:C:2019:232, paragraph 23 and the case-law cited).

45 It follows that, where a term designating the law of a third country as the applicable law appears in a contract, concluded between a seller or supplier and a consumer, falling within the material scope of Directive 93/13 and the consumer has his or her habitual residence in a Member

State, the national court must apply the provisions transposing that directive into the legal order of that Member State.

46 It is therefore for that court, notwithstanding the existence of such a term, to ascertain whether the contracting party that is the seller or supplier concerned may be regarded as a ‘consumer’ for the purposes of Article 2(b) of Directive 93/13. The first question must be answered from that perspective.

47 In that connection, it should be noted that, under Article 2(b) of Directive 93/13, a ‘consumer’ is any natural person who, in contracts covered by that directive, is acting for purposes which are outside his or her trade, business or profession.

48 Thus, the status of ‘consumer’ of the person concerned must be assessed by reference to a functional criterion, consisting in an assessment of whether the contractual relation at issue has arisen in the course of activities outside a trade, business or profession (judgment of 27 October 2022, *S.V. (Building in co-ownership)*, C-485/21, EU:C:2022:839, paragraph 25 and the case-law cited). The Court has also had occasion to state that the concept of ‘consumer’, within the meaning of Article 2(b) of Directive 93/13, is objective in nature and is distinct from the concrete knowledge the person in question may have, or from the information that person actually has (judgment of 21 March 2019, *Pouvin and Dijoux*, C-590/17, EU:C:2019:232, paragraph 24 and the case-law cited).

49 It is clear from the case-law that a national court before which an action relating to a contract which may be covered by that directive has been brought is required to determine, taking into account all the evidence and in particular the terms of that contract, whether the purchaser may be categorised as a ‘consumer’ within the meaning of that directive. In order to do that, the national court must take into account all the circumstances of the case, particularly the nature of the goods or service covered by the contract at issue, capable of showing the purpose for which those goods or that service is being acquired (see, to that effect, judgments of 3 September 2015, *Costea*, C-110/14, EU:C:2015:538, paragraphs 22 and 23, and of 21 March 2019, *Pouvin and Dijoux*, C-590/17, EU:C:2019:232, paragraph 26).

50 It follows from the foregoing considerations that, in the case of a natural person who joins a scheme such as that at issue in the main proceedings, it is for the national court to establish, by also taking into consideration the nature of the services offered by the seller or supplier concerned, whether that natural person acted in the course of his or her trade, business or profession or whether he or she acted for purposes outside that trade, business or profession.

51 In the present case, it is apparent from the request for a preliminary ruling that, pursuant to the membership contract, the appellant in the main proceedings, who does not engage in any trade, business or profession in a professional capacity, has the right to participate in the ‘international shopping community’ implemented by the respondent in the main proceedings, to purchase goods and services from traders who have a contractual relationship with the latter, and to act as intermediary for other persons within the scheme at issue in the main proceedings. According to the referring court, that scheme ‘promises’ financial revenue in the form of refunds on purchases, commissions and other promotional benefits.

52 In that regard, it should be stated that a natural person not carrying on a trade, business or profession in a professional capacity and seeking essentially to benefit, through his or her participation in a scheme such as that at issue in the main proceedings, from advantageous conditions in the context of the purchase of goods and services for non-commercial purposes from

the business partners of the operator of that scheme, cannot lose the status of ‘consumer’ in the contractual relationship with that operator by the mere fact that he or she may benefit from certain advantages, such as refunds on purchases, commissions or other promotional advantages, resulting from his or her own purchases or from those of other persons participating in that scheme further to his or her referral.

53 An interpretation of the concept of ‘consumer’, within the meaning of Article 2(b) of Directive 93/13, which excludes from that concept a natural person acting for purposes which are outside the scope of a trade, business or profession on the ground that he or she derives certain financial benefits from his or her participation in the scheme concerned would be tantamount to preventing the protection granted by that directive to all natural persons in a weak position vis-à-vis a seller or supplier and making non-professional use of the services offered by the latter, from being ensured.

54 In the light of all the foregoing considerations, the answer to the first question is that Article 2(b) of Directive 93/13 must be interpreted as meaning that a natural person who becomes a member of a scheme implemented by a commercial company and allowing, inter alia, certain financial benefits in connection with the purchase, by that natural person or by other persons participating in that scheme further to his or her referral, of goods and services from that company’s business partners, where that natural person is acting for purposes which are outside his or her trade, business or profession, falls within the scope of the concept of ‘consumer’, within the meaning of that provision.

#### **Costs**

55 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 (Fifth Chamber) hereby rules:

#### **Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts**

**must be interpreted as meaning that a natural person who becomes a member of a scheme implemented by a commercial company and allowing, inter alia, certain financial benefits in connection with the purchase, by that natural person or by other persons participating in that scheme further to his or her referral, of goods and services from that company’s business partners, where that natural person is acting for purposes which are outside his or her trade, business or profession, falls within the scope of the concept of ‘consumer’, within the meaning of that provision.**

[Signatures]

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\* Language of the case: Romanian.