ECLI:EU:C:2023:845

Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

9 November 2023 (*)

(Reference for a preliminary ruling – Unfair terms in consumer contracts – Consumer credit contract – Directive 93/13/EEC – Article 1(2) – Term reflecting a mandatory statutory provision – Article 3(1), Article 4(1), Article 6(1) and Article 7(1) – Acceleration clause – Judicial review – Proportionality with regard to the consumer breaches of contract – Articles 7 and 38 of the Charter of Fundamental Rights of the European Union – Contract secured by a charge on immovable property – Extrajudicial sale of the consumer's home)

In Case C-598/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Krajský súd v Prešove (Regional Court, Prešov, Slovakia), made by decision of 13 September 2021, received at the Court on 28 September 2021, in the proceedings

SP,

CI,

v

Všeobecná úverová banka a.s.,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei (Rapporteur), J.-C. Bonichot, S. Rodin and L.S. Rossi, Judges,

Advocate General: L. Medina,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 October 2022,

after considering the observations submitted on behalf of:

– SP and CI, by L. Riedl, advokát,

– Všeobecná úverová banka a.s., by M. Hrbek, advokát,

– the Slovak Government, by B. Ricziová, and subsequently by E.V. Drugda, acting as Agents,

– the European Commission, by G. Goddin, R. Lindenthal and N. Ruiz García, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 January 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), read in conjunction with Articles 7 and 38 thereof, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), Article 3(1) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22), Article 2(2)(a) 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 corrigendum OJ 2011 L 234, p. 46), as amended by Commission Directive 2011/90/EU of 14 November 2011 (OJ 2011 L 296, p. 35) ('Directive 2008/48'), and the principle of effectiveness.

2 The request has been made in proceedings between SP and CI, on the one hand, and Všeobecná úverová banka a.s. ('VÚB'), a banking institution, on the other, concerning the suspension of the extrajudicial enforcement of the charge on immovable property, constituted by their home, which secures the credit agreement concluded between those parties.

Legal context

European Union law

Directive 93/13

3 The thirteenth and the sixteenth recitals of Directive 93/13 state:

'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;

…

Whereas the assessment, according to the general criteria chosen, of the unfair character of terms, in particular in sale or supply activities of a public nature providing collective services which take account of solidarity among users, must be supplemented by a means of making an overall evaluation of the different interests involved; whereas this constitutes the requirement of good faith; whereas, in making an assessment of good faith, particular regard shall be had to the strength of the bargaining positions of the parties, whether the consumer had an inducement to agree to the term and whether the goods or services were sold or supplied to the special order of the consumer; whereas the requirement of good faith may be satisfied by the seller or supplier where he deals fairly and equitably with the other party whose legitimate interests he has to take into account'.

4 According to Article 1 of that directive:

'1. 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.

2. '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 that directive 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(1) of that directive provides:

'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.'

7 Article 6(1) of Directive 93/13 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.'

8 Article 7(1) of that directive provides:

'Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.'

Directive 2005/29

9 Article 3(1) of Directive 2005/29, headed ‘Scope’, provides:

‘This Directive shall apply to unfair business-to-consumer commercial practices, as laid down in Article 5, before, during and after a commercial transaction in relation to a product.’

Directive 2008/48

10 Recital 10 of Directive 2008/48 states:

‘The definitions contained in this Directive determine the scope of harmonisation. The obligation on Member States to implement the provisions of this Directive should therefore be limited to its scope as determined by those definitions. However, this Directive should be without prejudice to the application by Member States, in accordance with Community law, of the provisions of this Directive to areas not covered by its scope. …’

11 Under Article 2(2)(a) of that directive:

‘This Directive shall not apply to the following:

(a) credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on immovable property or secured by a right related to immovable property’.

Slovak law

The Civil Code

12 Paragraph 53 of zákon č. 40/1964 Zb. Občiansky zákonník (Law No 40/1964 on the Civil Code), in the version applicable to the dispute in the main proceedings (‘the Civil Code’), governs unfair terms in consumer contracts. That paragraph provides, in subparagraph 9:

‘In the event of enforcement by means of payment of instalments of a contract concluded with a consumer, the seller or supplier may exercise the right which is conferred by Paragraph 565 of the Civil Code at the earliest three months after the delay of payment of one instalment and when, moreover, he or she has notified the consumer at least 15 days before the exercise of that right.’

13 Paragraph 54(1) of the Civil Code provides:

‘The contractual terms provided for in a contract concluded with a consumer may not depart from this law to the detriment of the consumer. In particular, the consumer may not waive in advance his rights granted by that law or by separate provisions which confer protection on consumers, and may not otherwise worsen his contractual position.’

14 Under Paragraph 151j(1) of that code:

‘Where a claim secured by charge is not fully settled in due time, the secured creditor can commence enforcement of the charge. In the enforcement of the charge, the secured creditor can obtain settlement of the claim by the means specified in the contract or by sale of the security at auction pursuant to a specific law … or he or she can apply for settlement of the claim by the sale of

the security pursuant to specific statutory provisions …, unless provided otherwise by this law or a specific law.'

15 It is apparent from the request for a preliminary ruling that that provision contains an initial footnote, inserted after the words 'pursuant to a specific law', which refers to the zákon č. 527/2002 Z. z. o dobrovož ných dražbách a o doplnení zákona Slovenskej národnej rady č. 323/1992 Zb. o notároch a notárskej činnosti (Notársky poriadok) v znení neskorších predpisov (Law No 527/2002 on voluntary auctions and supplementing Law No 323/1992 of the Slovak National Council on notaries and notarial activity (the Notarial Code), as amended; 'the Law on voluntary auctions'), and a further footnote, after the words 'specific statutory provisions', which refers to the zákon 160/2015 Z. z. Civilný sporový poriadok (Law No 160/2015 on the Code of Civil Procedure) and to the zákon č. 233/1995 Z. z. Exekučný poriadok (Law No 233/1995 on bailiffs and the enforcement of the Code of Civil Procedure; 'the Code of Enforcement Procedure').

16 Paragraph 151m of the Civil Code provides:

'(1) The secured creditor may sell the security by the means specified in the charge agreement or by auction at the earliest 30 days from the date of the notice to the guarantor and debtor of the commencement of enforcement of the charge, where the debtor and the guarantor are not one and the same person, unless otherwise provided for by a specific law. If the charge is entered in the register of charges and the date of entry of the commencement of enforcement of the charge in the register of charges is later than the date of notification of the enforcement of the charge to the guarantor and the debtor and, if the debtor is not the same person as the guarantor, the 30-day period starts to run from the date of entry of the commencement of enforcement of the charge in the register of charges.

(2) The guarantor and the secured creditor may, after notice of the commencement of enforcement of the charge, agree that the secured creditor is authorised to sell the security by the means agreed upon in the charge agreement or by auction even before the expiry of the period prescribed in subparagraph (1).

(3) A secured creditor who has commenced the enforcement of a charge with the aim of recovering his claim by the means agreed upon in the contract creating the charge may change the means of enforcing the charge at any time during the enforcement of the charge and sell the security by auction or apply for settlement of the claim by the sale of the security pursuant to specific statutory provisions. The secured creditor is required to inform the guarantor of the change in the means of enforcement of the charge.'

17 Paragraph 565 of that code is worded as follows:

'In the event of enforcement of a claim by means of instalments, the creditor may not ask for the payment of the entire claim for failure to comply with any monthly instalment unless this was agreed between the parties or provided in a decision. The creditor may, however, exercise that right at the latest until the due date of the first following instalment.'

The Code of Enforcement Procedure

18 Paragraph 63(3) of the Code of Enforcement Procedure provides that the compulsory sale of immovable property may be carried out only in exceptional cases, after the court has authorised it, if the person in question is subject to several enforcement proceedings relating to claims totalling

more than EUR 2 000 and the bailiff demonstrates that the pecuniary claim cannot otherwise be recovered.

Law on voluntary auctions

19 Article 16 (1) of the Law on Voluntary Sale by Auction provides that a sale by auction may be proceeded with only on the basis of a signed agreement between the person requesting the sale and the auctioneer.

20 Under Paragraph 17 of that law, the auctioneer is required to announce the sale by auction by publishing a notice of public auction. If the item put up for auction is an apartment, a house or other building, an undertaking or part of an undertaking, or if the lowest bid is greater than EUR 16 550, the auctioneer is to publish the notice of public auction in the auction sales register at least 30 days before the auction begins. It shall also without delay forward the notice of public auction to the competent ministry for publication in the *Official Trade Journal* and to the person requesting the sale, to the debtor of the secured creditor, and to the owner of the property which is the subject of the sale, if different from the debtor.

21 Paragraph 21(2) of that law provides:

‘Where the validity of the charge agreement is challenged or the provisions of the present law are infringed, any person who claims that his rights have been adversely affected as a result of that infringement may request the court to declare the sale void. The right to apply to the court lapses, however, if it is not exercised within three months following the public auction, unless the grounds on which annulment is sought relate to the commission of a criminal offence and the sale concerns a house or an apartment in which the former owner, at the time of the sale, was officially resident in accordance with specific rules; in that case, it shall be possible to apply for annulment of the sale even after the expiry of that period …’

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

22 On 9 February 2012, VÚB granted the applicants in the main proceedings, SP and CI, a consumer credit, repayable over a period of 20 years, secured by a charge on immovable property, namely the family home in which the applicants in the main proceedings and other persons had their home (‘the credit agreement at issue’).

23 Prior to that date, since 2004, the applicants in the main proceedings had taken out several other consumer credits with Consumer Finance Holding a.s. (‘CFH’), with which VÚB was at the time economically linked. It is apparent from the request for a preliminary ruling that VÚB allocated almost all of the sum granted to SP and CI under the credit agreement at issue to repayment of the loans granted by CFH which they were no longer able to repay. In addition, still before the conclusion of the credit agreement at issue, VÚB granted them a number of consumer credits the amount of which it unilaterally fixed and which it also used, to a large extent, to repay the debts and costs arising from loans previously granted to SP and to CI, either by itself or by CFH.

24 In January 2013, less than a year after the conclusion of the credit agreement at issue, since the applicants in the main proceedings were in default of payment, VÚB demanded repayment in full of the sums due under that agreement, on the basis of an acceleration clause contained in that agreement (‘the acceleration clause’). In April 2013, VÚB notified SP and CI of its decision to

proceed with the enforcement of its charge by the ‘voluntary’ auction of the pledged property, that is to say, a sale by extrajudicial auction.

25 That type of extrajudicial auction is, as is apparent from the request for a preliminary ruling, carried out by private persons. After the creditor has unilaterally determined the amount of the claim, an auctioneer sells the immovable property concerned without any judicial process and without a court having first been able to examine whether the amount of the claim is well founded or whether the sale is proportionate to the amount of the claim. Despite the consumers’ opposition, the law describes this type of auction as ‘voluntary’. The creditor could initiate the voluntary auction process 30 days after the notice of enforcement of the charge.

26 The applicants in the main proceedings brought an action before the Okresný súd Prešov (District Court, Prešov, Slovakia) seeking suspension of that auction of the family home. That court of first instance dismissed their application by a first judgment, which it subsequently confirmed, on remittal, notwithstanding the annulment of that judgment by the Krajský súd v Prešove (Regional Court, Prešov, Slovakia). According to that court of first instance, it follows from the case-law of the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) that it cannot be inferred from the judgment of 10 September 2014, *Kušionová* (C-34/13, EU:C:2014:2189) that the provisions of Directive 93/13 preclude Slovak legislation which authorises the extrajudicial enforcement by a voluntary auction of a charge on immovable property given as security by the consumer, even in the case that it is his or her home and that the secured claim is based on a contract containing unfair terms.

27 The applicants in the main proceedings brought an appeal against that second judgment before the Krajský súd v Prešove (Regional Court, Prešov), which is the referring court, reiterating their application for suspension of the extrajudicial sale of their home, alleging, inter alia, an infringement of their rights as consumers.

28 The referring court takes the view that protection against disproportionate interference with consumers’ rights, including their right to a home, is particularly important before the sale of the property. Slovak substantive law does not provide for any other possibility of *ex ante* protection, so that, in the event of the voluntary auction of their home, consumers have no alternative than to bring an action to suspend that sale.

29 That court states that, in the present case, the credit agreement at issue relates to a term of 20 years and VÚB implemented the acceleration clause less than a year after the conclusion of that contract, due to a delay in payment of EUR 1 106.50. The value of the family home that is the subject of the extrajudicial sale is at least 30 times greater than the sum in respect of which VÚB declared the loan immediately due and proceeded to enforce its charge.

30 The referring court notes that, under Slovak law, the implementation of an acceleration clause, such as that at issue in the main proceedings, is subject to only one condition, namely a three month delay in payment, and to observance by the lender of an additional period of 15 days’ notice.

31 That legislation and the case-law of the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic), referred to in paragraph 26 of the present judgment, are thus liable to be contrary to EU law and, in particular, to the principle of proportionality, since they allow the property where the consumer is residing to be sold, even in the event of a minor breach of contract.

32 Furthermore, according to the referring court, notwithstanding the protection offered by Articles 7, 38 and 47 of the Charter, Directives 93/13 and 2005/29 and the principle of

effectiveness, the national legislation relating to the enforcement of a charge on immovable property by means of a voluntary auction of property constituting the home of consumers, as interpreted by the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic), does not attach sufficient importance to the protection of the family home and does not have regard to the possibility of other means of enforcing the charge. Thus, as is shown by practice, the grant of credit to consumers would have highly detrimental consequences for consumers and their families.

33 As regards the application of Directive 2005/29, the referring court takes the view that the practice of granting credit for the purpose of repaying debts arising from one or more earlier loans cannot be excluded from judicial review under that directive. The referring court considers that the circumstances in which the credit agreement at issue was concluded constitute unfair commercial practices that should fall within the scope of that directive. Furthermore, although unfair commercial practices do not directly lead to the invalidity of the legal act at issue, they have an impact on the assessment of the unfairness of contractual terms.

34 As regards the application of Directive 2008/48, that court considers that a loan granted in order to repay debts arising from earlier loans does not correspond either to its objective or to that of the directive which preceded it.

35 Furthermore, although credit agreements secured by a mortgage or a right related to immovable property are excluded from the scope of Directive 2008/48, in the present case, the credit agreement at issue does not define the subject matter of the credit and meets the requirements applicable to consumer credit agreements. That credit agreement is neither secured by a mortgage nor intended to finance the purchase of immovable property, but serves to ensure the repayment of earlier consumer credit loans. In those circumstances, there is a close connection between that credit agreement and those consumer credit agreements previously concluded by SP and CI, so that the referring court asks whether such a situation falls within the scope of Directive 2008/48.

36 Finally, in order to determine the exact amount of the debt owed by the applicants in the main proceedings, the referring court wishes to know whether the approach adopted by the Court in the judgment of 21 April 2016, *Radlinger and Radlingerová* (C-377/14, EU:C:2016:283) is applicable in the present case.

37 In those circumstances, the Krajský súd v Prešove (Regional Court, Prešov) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Does Article 47 of the [Charter], read in conjunction with Articles 7 and 38 [thereof], [Directive 93/13], [Directive 2005/29] and the principle of effectiveness of EU law preclude legislation such as Paragraph 53(9) and Paragraph 565 of the Civil Code, pursuant to which in the event of accelerated repayment, no account is taken of the proportionality of that transaction, in particular the gravity of the infringement by the consumer of his or her obligations in relation to the amount of the credit and its term?

If the answer to Question 1 is in the negative …:

(2) (a) Does Article 47 of the [Charter], read in conjunction with Articles 7 and 38 [thereof], Directive 93/13, Directive 2005/29 and the principle of effectiveness of EU law preclude case-law which does not preclude the enforcement as to its substance of a charge by means of a private auction of immovable property, consisting of the home of consumers or of other persons and which simultaneously does not have regard to the gravity of the infringement by the consumers of their obligation in relation to the amount of the credit and its term, even where there is another way in

which the credit provider's claim may be satisfied through judicial enforcement, in the context of which the sale of the home over which the charge has been granted does not take precedence?

(b) Is Article 3(1) of Directive 2005/29 to be interpreted as meaning that the protection of consumers against unfair commercial practices in the granting of credit to consumers extends to all forms of satisfaction of the credit provider's claim, including the agreement on a new loan granted for repayment of the obligations arising from an earlier loan?

(c) Is Directive 2005/29 to be interpreted as meaning that the conduct of a credit provider who repeatedly grants credit to a consumer who is incapable of repaying the credit such that the result is a chain of credit, which the seller or supplier does not in reality pay to the consumer but itself receives for the repayment of the previous loans and the total costs on the credit, is also regarded as an unfair commercial practice?

(d) Must Article 2(2)(a) of [Directive 2008/48], read in conjunction with recital 10 thereof, be interpreted as not excluding the application of that directive even in the case of a loan having all the characteristics of consumer credit, where the purpose of the loan has not been agreed upon, the entirety of which loan, with the exception of an insignificant part thereof, the credit provider used to ensure payment of previous consumer loans and as security for which a charge over immovable property was agreed upon?

(e) Is the judgment of 21 April 2016, *Radlinger and Radlingerová* (C-377/14, EU:C:2016:283) to be interpreted as meaning that it also covers the case of a credit agreement granted to a consumer the amount of which is used in part for the repayment of the credit provider's costs?'

Procedure before the Court

38 By document lodged at the Court Registry on 22 February 2023, VÚB sought, primarily, a declaration, on the basis of Article 100(2) of the Rules of Procedure of the Court, that the Court no longer has jurisdiction to give a ruling since the dispute in the main proceedings has become devoid of purpose. In the alternative, VÚB requested the reopening of the oral part of the procedure pursuant to Article 83 of the Rules of Procedure.

39 By document lodged at the Court Registry on 9 August 2023, VÚB again requested that the oral part of the procedure be reopened.

40 As regards, in the first place, the main claim contained in the document lodged on 22 February 2023, VÚB declares that it waived the charge on immovable property securing the credit agreement at issue, with effect from 14 February 2023, with the result that the dispute in the main proceedings has become devoid of purpose and there is no longer any need to rule on the present request for a preliminary ruling.

41 In addition, by letter lodged at the Court Registry on 21 April 2023, VÚB informed the Court that it had accepted an assignment of the debt of the applicants in the main proceedings to a third party, who had in the meantime repaid that debt. For that reason also, the dispute in the main proceedings no longer has any purpose.

42 According to the Court's 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. However, it has also been consistently held that 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 that they need in order to decide the disputes before them. The justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute. Therefore, if it appears that the dispute in the main proceedings has become devoid of purpose, with the result that the questions referred are manifestly no longer relevant for the purposes of deciding the case, the Court must declare that there is no need to proceed to judgment (see, to that effect, judgment of 24 November 2022, *Banco Cetelem* (C-620/21, EU:C:2022:919, paragraphs 26, 27, 31 and 32 and the case-law cited).

43 In that context, on 14 March 2023 and 26 May 2023, the Court sent a request for clarification to the referring court in order to ascertain whether the circumstances referred to by VÚB actually put an end to the dispute in the main proceedings and whether the answers to the questions referred to the Court were still necessary for the resolution of the dispute in the main proceedings and, if so, on what grounds.

44 By letters of 5 April 2023 and 12 June 2023, the referring court stated that neither the waiver of the charge on immovable property nor the assignment of the debt had had the effect that the dispute in the main proceedings had become devoid of purpose, on the ground, in essence, that the conditions of validity laid down for that purpose by national law had not been satisfied. First, that court stated that it had not approved VÚB's unilateral waiver of the charge, since an agreement with the debtors is indispensable for the extinguishment of such a charge by waiver. Second, it pointed out that, in accordance with national law, if VÚB's claim had been assigned, all the rights of the applicants in the main proceedings as consumers had been preserved.

45 In the light of the clarifications provided by the referring court, it must be held that the dispute in the main proceedings retains its purpose and, therefore, that the questions referred remain relevant to the outcome of that dispute. Consequently, it is necessary to rule on the request for a preliminary ruling.

46 As regards, in the second place, the request to reopen the oral part of the procedure, VÚB submits, in essence, in its alternative request lodged at the Court Registry on 22 February 2023, that it disagrees, on certain points, with the Opinion of the Advocate General, which it alleges is based on incorrect information, so that it is necessary to clarify the factual and/or legal context of the questions referred for a preliminary ruling. Furthermore, VÚB contests in several respects the interpretation given by the Advocate General in her Opinion regarding the directives referred to in those questions.

47 By document lodged at the Court Registry on 9 August 2023, VÚB informs the Court, in support of its request that the oral part of the procedure be reopened, first, that, on the same day, it brought an action before the Ústavný súd Slovenskej republiky (Constitutional Court of the Slovak Republic) against the decision of the referring court of 12 June 2023 by which it decided to reject the request for withdrawal of the preliminary ruling notwithstanding the waiver by VÚB of the charge on immovable property and the assignment of the debt, referred to in paragraph 44 of the present judgment. Indeed, VÚB did not request that court to withdraw its reference for a preliminary ruling on the basis of those acts, but to bring to the attention of the Court any factor which might affect the continuation of the preliminary ruling procedure in accordance with Article 100(2) of the Rules of Procedure. That waiver and the assignment of the debt constitute such elements.

48 Second, VÚB considers, in essence, that, should the information available to the Court in relation to those assignments and waivers not enable it to rule on the present reference for a preliminary ruling on the basis of Article 100(2) of the Rules of Procedure, the oral procedure should be reopened in order to clarify the matters which it considers relevant in that regard.

49 Under Article 83 of its Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the opening or reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

50 At the outset, it should be recalled that, according to settled case-law, the disagreement of a party to the main proceedings or an interested party with the Opinion of the Advocate General cannot in itself constitute grounds justifying the reopening of the oral part of the procedure. See, to that effect, judgment of 16 February 2023, *Gallaher* (C-707/20, EU:C:2023:101, paragraph 45 and the case-law cited).

51 It follows that VÚB's disagreement with the Advocate General's Opinion cannot, in itself, justify the reopening of the oral part of the procedure.

52 Furthermore, the Court considers, after hearing the Advocate General, that it has, following the written part of the procedure and the hearing which was held before it, all the information necessary in order to rule on the present request for a preliminary ruling.

53 The parties to the main proceedings and the interested persons who participated in the present proceedings, and in particular VÚB, were able to set out, both during the written and oral stages of the procedure, the matters of law and of fact which they considered relevant in order to enable the Court to answer the questions raised by the referring court. In addition, although the Court expressly requested a position, at the hearing, in relation to the answers given by the referring court to an initial request for clarification sent to it on 7 June 2022, which concerned, inter alia, the legal and factual context of the questions referred for a preliminary ruling, VÚB decided not to participate in the hearing. Furthermore, as regards the waiver of the charge on immovable property and the assignment of the debt and the consequences thereof for the purposes of applying Article 100(2) of the Rules of Procedure, it must be held that those factors are not such as to have any influence on the decision which the Court is called upon to give, having regard to the considerations set out in paragraphs 40 to 45 of the present judgment.

54 Finally, the requests to reopen the oral part of the procedure made by VÚB do not reveal any new fact capable of having a bearing on the decision which the Court is called upon to give.

55 In those circumstances, it is not necessary to order that the oral part of the procedure be reopened.

Consideration of the questions referred

Admissibility

56 VÚB submits, in essence, that the questions referred for a preliminary ruling on the interpretation of Directive 93/13 are inadmissible on the ground that they are unnecessary for the

purposes of resolving the dispute and are hypothetical since they have no connection with the subject matter of the dispute in the main proceedings. In that regard, it notes, in essence, that the applicants in the main proceedings systematically and seriously failed to comply with their contractual obligations, with the result that the enforcement of the charge would in any event be consistent with the proportionality test according to the criteria set out in the judgment of 14 March 2013, *Aziz* (C-415/11, EU:C:2013:164, paragraph 73).

57 According to the Court's 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 give a ruling on a question referred by a national court for a preliminary ruling, under Article 267 TFEU, only where, for instance, the requirements concerning the content of a request for a preliminary ruling, set out in Article 94 of the Rules of Procedure, are not satisfied or where it is quite obvious that the interpretation of a provision of EU law, or the assessment of its validity, which is sought by the national court, bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical (judgment of 20 October 2022, *Koalitsia* '*Demokratichna Bulgaria – Obedinenie*', C-306/21, EU:C:2022:813, paragraph 27 and the case-law cited.

58 Such an absence of connection or the hypothetical nature of the questions referred cannot be established solely on the basis of VÚB's claim that the implementation of the enforcement of the charge is, in the present case, proportionate. As the Advocate General observed in point 49 of her Opinion, the questions relating to the interpretation of Directive 93/13 do not seek to determine whether that is the case here, but seek to ascertain whether the court must examine the proportionality of the option offered to the creditor by the acceleration clause, in the absence of an obligation to that effect imposed by national legislation or case-law.

59 Thus, the interpretation sought of the provisions of Directive 93/13 appears necessary for the resolution of the dispute in the main proceedings and the questions referred for a preliminary ruling are not hypothetical. Consequently, those questions are admissible.

60 On the other hand, it must be noted that, as the Slovak Government and the European Commission submit, the referring court does not provide the legal and factual information that would demonstrate the link between the questions referred and Directive 2005/29. Thus, the referring court does not explain the relationship between the implementation of the acceleration clause, on the one hand, and the existence of unfair commercial practices, on the other. Similarly, it does not specify the extent to which the enforcement of the charge on immovable property by a voluntary auction may constitute an unfair commercial practice or why an interpretation of that directive in that context is necessary for the resolution of the dispute in the main proceedings.

61 It must therefore be held that the requirements laid down in Article 94(c) of the Rules of Procedure have not been met and that, in accordance with the case-law referred to in paragraph 57 of the present judgment, the questions referred for a preliminary ruling are inadmissible in so far as they concern the interpretation of Directive 2005/29.

The first question

62 Since the first question essentially concerns the scope of judicial review of the option given to the creditor to declare the entire loan payable by an acceleration clause, it is appropriate, as a preliminary point, to examine whether, in the present case, the acceleration clause falls within the

scope of Directive 93/13. In accordance with Article 1(2) of that directive, contractual terms which reflect mandatory statutory or regulatory provisions are not to be subject to its provisions.

63 That exclusion from the application of the scheme of Directive 93/13, which extends to provisions of national law governing the relationship between the parties to the contract independently of their choice and to those that apply by default, is justified by the fact that it is, in principle, legitimate to presume that the national legislature has struck a balance between all the rights and obligations of the parties to certain contracts, a balance which the EU legislature expressly intended to preserve (see, to that effect, judgments of 10 June 2021, *Prima banka Slovensko*, C-192/20, EU:C:2021:480, paragraph 32, and of 5 May 2022, *Zagrebačka banka*, C-567/20, EU:C:2022:352, paragraph 57 and the case-law cited).

64 That exclusion assumes that two conditions must be satisfied, namely, first, the contractual term must reflect a statutory or regulatory provision and, second, that provision must be mandatory (judgments of 10 September 2014, *Kušionová*, C-34/13, EU:C:2014:2189, paragraph 78, and of 3 March 2020, *Gómez del Moral Guasch*, C-125/18, EU:C:2020:138, paragraph 31).

65 In order to establish whether those conditions are met, the Court has held that it is for the national court to determine whether the contractual term concerned reflects mandatory provisions of national law that apply between the parties to the contract independently of their choice or provisions that are supplementary in nature and therefore apply by default, that is to say, in the absence of other arrangements established by the parties (judgments of 10 September 2014, *Kušionová*, C-34/13, EU:C:2014:2189, paragraph 79; of 3 March 2020, *Gómez del Moral Guasch*, C-125/18, EU:C:2020:138, paragraph 32; and of 5 May 2022, *Zagrebačka banka*, C-567/20, EU:C:2022:352, paragraph 55).

66 In that regard, it is for the national court to determine whether such a term 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 5 May 2022, *Zagrebačka banka*, C-567/20, EU:C:2022:352, paragraph 58 and the case-law cited).

67 In the present case, subject to verification by the referring court, it appears that the provisions of national law which are the subject of the first question, namely Article 53(9) and Article 565 of the Civil Code, are reflected in a term of the credit agreement at issue, namely the acceleration clause. The referring court notes in that regard that that term ‘substantially copies’ those provisions.

68 Under Article 53(9) of the Civil Code, in the case of a consumer credit agreement repayable by instalments, the creditor may request payment of the credit in full, in accordance with Article 565 of that code, if the parties have agreed to it. The creditor may only exercise that right at the earliest three months after the late payment of a due date and only after giving the consumer at least 15 days’ prior notice.

69 In its reply to the Court’s request for clarification in that regard, the referring court stated that those combined provisions do not apply automatically or by default in the absence of a choice to that effect by the parties. Furthermore, even if the parties have agreed in the credit agreement that the creditor may claim early repayment of the sum loaned, the creditor is not required to exercise that right. The referring court also considers that Article 54(1) of the Civil Code, which provides, in

essence, that contractual terms in a contract concluded with a consumer may not depart from the provisions of that code to the detriment of the consumer, does not, however, make Article 53(9) of that code mandatory, since the former provision allows the parties to derogate from the latter, provided that it is in favour of the consumer.

70 Thus, and subject to verification by the referring court, which alone has jurisdiction to interpret the provisions of its national law, an acceleration clause which allows the creditor to claim repayment in advance of the entire outstanding balance in the event of the debtor's failure to fulfil his contractual obligations, does not appear to be a '[term] which reflect[s] mandatory statutory or regulatory provisions' within the meaning of Article 1(2) of Directive 93/13, since, although it reproduces the national provisions cited in paragraph 68 of the present judgment, those provisions are not mandatory and, therefore, do not satisfy the second condition required by Article 1(2) for the application of the exclusion laid down therein.

71 In that situation, such a term is therefore subject to the provisions of Directive 93/13, as interpreted by the Court.

72 As regards the substance of the question, according to the Court's settled case-law, in the procedure laid down in Article 267 TFEU, which provides for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to resolve the dispute before it. To that end, it is incumbent on the Court to reformulate the questions referred to it and to interpret all provisions of EU law which national courts require in order to rule on the disputes before them, even if those provisions are not expressly indicated in the questions referred to it by those courts (see, to that effect, in particular, judgment of 4 October 2018, *Kamenova*, C-105/17, EU:C:2018:808, paragraph 21 and the case-law cited).

73 To that extent, it must be held that, by its first question, the referring court asks, in essence, whether Article 3(1), Article 4(1), Article 6(1) and Article 7(1) of Directive 93/13, read in the light of Articles 7 and 38 of the Charter, must be interpreted as precluding national legislation under which a judicial review of the unfairness of an acceleration clause contained in a consumer credit agreement does not take account of the proportionality of the option available to the seller or supplier to exercise his right under that clause, in the light of criteria relating in particular to the extent of the consumer's failure to fulfil his contractual obligations, such as the amount of the instalments that have not been paid in relation to the total amount of the credit and the duration of the contract, and to the possibility that the implementation of that clause might result in the seller or supplier being able to recover the sums due under that term by selling, without any legal process, the consumer's family home.

74 In the first place, it should be recalled that, in view of the consumer's weak position vis-à-vis the seller or supplier as regards both his or her bargaining power and his or her level of knowledge, Article 6(1) of Directive 93/13 provides that unfair terms are not to be binding on the consumer. In that context, and in order to ensure the high level of consumer protection set out in Article 38 of the Charter, a national court is required to assess, of its own motion, whether a contractual term falling within the scope of Directive 93/13 is unfair, compensating in that way for the imbalance which exists between the consumer and the seller or supplier, where it has available to it the legal and factual elements necessary for that task (see, to that effect, judgments of 19 December 2019, *Bondora*, C-453/18 and C-494/18, EU:C:2019:1118, paragraph 40, and of 17 May 2022, *Ibercaja Banco*, C-600/19, EU:C:2022:394, paragraphs 35 to 37).

75 As regards, in the second place, the criteria in the light of which such judicial review must be carried out, it should be recalled that Article 3(1) and Article 4(1) of Directive 93/13 define, as a

whole, the general criteria for assessing whether contractual terms subject to the provisions of that directive are unfair (*Caja de Ahorros y Monte de Piedad de Madrid*, C-484/08, EU:C:2010:309, paragraph 33).

76 Thus, in referring to concepts of 'good faith' and 'significant imbalance' in the parties' rights and obligations arising under the contract, to the detriment of the consumer, Article 3(1) of Directive 93/13 merely defines in a general way the factors that render unfair a contractual term that has not been individually negotiated (judgment of 26 January 2017, *Banco Primus*, C-421/14, EU:C:2017:60, paragraph 58 and the case-law cited).

77 In order to ascertain whether a term causes a 'significant imbalance' in the parties' rights and obligations under a contract to the detriment of the consumer, particular account must be taken of which rules of national law would apply in the absence of an agreement by the parties in that regard. That comparative analysis will enable the national court to assess whether and, if so, to what extent the contract places the consumer in a legal situation less favourable than that provided for by the national law in force (see, to that effect, judgment of 14 March 2013, *Aziz*, C-415/11, EU:C:2013:164, paragraph 68).

78 As regards the circumstances in which such an imbalance is caused 'contrary to the requirement of good faith', the national court must, having regard to the sixteenth recital of Directive 93/13, assess for those purposes whether the seller or supplier, dealing fairly and equitably with the consumer, could reasonably assume that the consumer would have agreed to such a term in individual contract negotiations (see, to that effect, judgments of 14 March 2013, *Aziz*, C-415/11, EU:C:2013:164, paragraph 69, and of 10 June 2021, *BNP Paribas Personal Finance*, C-609/19, EU:C:2021:469, paragraph 66).

79 Furthermore, in accordance with Article 4(1) of that directive, the unfairness of a contractual term must 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.

80 As regards, specifically, a term in a long-term mortgage loan contract determining the conditions under which the creditor is authorised to require early repayment, such as the acceleration clause, the Court has also already had occasion to set out criteria in the light of which the national court may determine whether that term is unfair, as the Advocate General noted in point 74 of her Opinion.

81 Thus, the Court has consistently held that, in order to determine whether a contractual term accelerating the repayment of a mortgage produces a significant imbalance to the detriment of the consumer, it is essential to examine, inter alia, the question whether the right of the seller or supplier to call in the totality of the loan is conditional upon the non-compliance by the consumer with an obligation of essential importance in the context of the contractual relationship in question, whether that right is provided for in cases in which such non-compliance is sufficiently serious in the light of the term and amount of the loan, whether that right derogates from the ordinary law applicable, in the absence of specific contractual provisions, and whether national law provides for adequate and effective means enabling the consumer subject to such a term to remedy the effects of the loan being called in (see, to that effect, judgment of 26 January 2017, *Banco Primus*, C-421/14, EU:C:2017:60, paragraph 66 and the case-law cited).

82 It follows that the national court must, inter alia, examine the proportionality of the option available to the creditor under that term to demand all the sums due when it assesses whether it is unfair, which means that it must take into account, inter alia, the extent to which the consumer fails to fulfil his or her contractual obligations, such as the amount of the instalments which have not been paid in relation to the total amount of the credit and the duration of the contract.

83 It should be recalled in that regard that the criteria set out in the judgment of 26 January 2017, *Banco Primus* (C-421/14, EU:C:2017:60), for assessing the unfairness of a contractual term relating to accelerated repayment as a result of the debtor's failure to fulfil his obligations during a limited period are neither cumulative or alternative nor exhaustive (see, to that effect, judgment of 8 December 2022, *Caisse régionale de Crédit mutuel de Loire-Atlantique et du Centre Ouest*, C-600/21, EU:C:2022:970, paragraphs 30 and 31).

84 It follows that judicial review of the proportionality of that term must, where appropriate, be carried out on the basis of additional criteria. Thus, having regard to the effects of an acceleration clause included in a consumer credit contract secured by the family home, such as that at issue in the main proceedings, the national court, when assessing the unfairness of the option which that clause offers to the creditor, must take account, in its analysis, of any contractual imbalance created by that clause, of the fact that the application of that clause may, where appropriate, lead to the recovery by the creditor of the sums owed under that clause by the sale of that dwelling without any judicial process.

85 In that regard, in its assessment of the means enabling the consumer to remedy the effects of the amounts due under the loan agreement becoming payable in full, that court must take into account the consequences of the eviction of the consumer and his family from the dwelling constituting their principal residence. The right to accommodation is a fundamental right guaranteed under Article 7 of the Charter that the national court must take into consideration when implementing Directive 93/13. The Court has emphasised in that regard the importance, for that court, of having interim relief which makes it possible to suspend, or prevent, unlawful mortgage enforcement proceedings where the grant of such relief is necessary in order to guarantee the effectiveness of the protection intended by Directive 93/13 (see, to that effect, judgment of 10 September 2014, *Kušionová*, C-34/13, EU:C:2014:2189, paragraphs 63 to 66).

86 If, on the basis of the criteria set out above, the referring court were to find, in its assessment of the unfairness of the acceleration clause, that, in the present case, the right stipulated in favour of VÚB to claim early repayment of the outstanding balance due under the credit agreement at issue, secured by the family home of the applicants in the main proceedings, allows that seller or supplier to exercise that right without having to take account of the extent of the consumer's failure to fulfil obligations in relation to the amount granted and the duration of the loan, that finding could lead that court to find that that clause is unfair, in so far as it would create a significant imbalance to the detriment of consumers, contrary to the requirement of good faith, having regard to all the circumstances in which that contract was concluded and of which the seller or supplier could have been aware at the time it was concluded.

87 If, following that analysis, the term were found to be unfair, it would be for that court to exclude its application so that it would not produce binding effects with regard to the consumer, unless the consumer objects (judgment of 16 July 2020, *Caixabank et Banco Bilbao Vizcaya Argentaria*, C-224/19 and C-259/19, EU:C:2020:578, paragraph 50).

88 In that regard, the conditions laid down in the national laws to which Article 6(1) of Directive 93/13 refers cannot adversely affect the substance of the right that consumers acquire under that

provision not to be bound by a term deemed to be unfair (judgment of 26 January 2017, *Banco Primus*, C-421/14, EU:C:2017:60, paragraph 51 and the case-law cited).

89 In the absence of such a review, consumer protection would be incomplete and insufficient and would not constitute either an adequate or effective means of preventing the continued use of that term, contrary to Article 7(1) of Directive 93/13 (judgment of 26 January 2017, *Banco Primus*, C-421/14, EU:C:2017:60, paragraph 52 and the case-law cited).

90 In the light of all the foregoing reasons, the answer to the first question is that Article 3(1), Article 4(1), Article 6(1) and Article 7(1) of Directive 93/13, read in the light of Articles 7 and 38 of the Charter, must be interpreted as precluding national legislation under which the judicial review of the unfairness of an acceleration clause contained in a consumer credit agreement does not take account of the proportionality of the option given to the seller or supplier to exercise his or her right under that term, in the light of criteria relating, in particular, to the extent of the consumer's failure to fulfil his contractual obligations, such as the amount of the instalments which have not been paid in relation to the total amount of the credit and the duration of the contract, and to the possibility that the implementation of that term may result in the seller or supplier being able to recover the sums due under that term by selling, without any legal process, the consumer's family home.

The second question

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

Costs

92 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 (Fourth Chamber) hereby rules:

Article 3(1), Article 4(1), Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read in the light of Articles 7 and 38 of the Charter of Fundamental Rights of the European Union,

must be interpreted as precluding national legislation under which the judicial review of the unfairness of an acceleration clause contained in a consumer credit agreement does not take account of the proportionality of the option given to the seller or supplier to exercise his or her right under that clause, in the light of criteria relating, in particular, to the extent of the consumer's failure to fulfil his contractual obligations, such as the amount of the instalments which have not been paid in relation to the total amount of the credit and the duration of the contract, and to the possibility that the implementation of that clause may result in the seller or supplier being able to recover the sums due under that clause by selling, without any legal process, the consumer's family home.

[Signatures]

* Language of the case: Slovak.