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Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

9 July 2020 (\*)

(Reference for a preliminary ruling — Directive 93/13/EEC — Personal loan agreement — Contract performed in full — Finding that contractual terms are unfair — Action for reimbursement of sums unduly paid on the basis of an unfair clause — Judicial arrangements — Ordinary legal action not subject to any limitation period — Ordinary legal action of a personal and pecuniary nature subject to a limitation period— Point from which the limitation period starts to run — Objective point in time at which the consumer knows of the existence of the unfair term)

In Joined Cases C-698/18 and C-699/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Specializat Mureş (Specialised Court, Mureş, Romania), made by decision of 12 June 2018, received at the Court on 7 November 2018, in the proceedings

**SC Raiffeisen Bank SA**

v

**JB** (C-698/18),

and

**BRD Groupe Société Générale SA**

v

**KC** (C-699/18),

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, S. Rodin (Rapporteur), D. Šváby, K. Jürimäe and N. Piçarra, Judges,

Advocate General: M. Szpunar,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 12 December 2019,

after considering the observations submitted on behalf of:

- SC Raiffeisen Bank SA, by V. Stoica, M.-B. Popescu and D.S. Bogdan, avocati,
- BRD Groupe Société Générale SA, by M. Siliște, consilier juridic, and by S. Olaru, M. Ceașescu and O. Partenie, avocate,
- KC, by L.B. Luntraru, avocată
- the Romanian Government, initially by C.-R. Canțar, E. Gane, A. Wellman and L. Lițu, and subsequently by the last three, acting as Agents,
- the Czech Government, by M. Smolek, J. Vláčil, and L. Dvořáková, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the Portuguese Government, by L. Inez Fernandes, T. Paixão, P. Barros da Costa and C. Farto, acting as Agents,
- the European Commission, by N. Ruiz García and by C. Gheorghiu, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 March 2020,

gives the following

## **Judgment**

1 These requests for a preliminary ruling concern the interpretation of Article 2(b), Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) and the principles of equivalence, effectiveness and legal certainty.

2 The requests have been made in proceedings between, on the one hand, SC Raiffeisen Bank SA ('Raiffeisen Bank') and JB and, on the other hand, BRD Groupe Société Générale SA ('Société Générale') and KC, concerning the unfairness of certain terms of credit agreements.

## **Legal context**

### ***European Union law***

3 Recitals 10, 12, 21, 23 and 24 of Directive 93/13 state as follows:

'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;

...

Whereas, however, as they now stand, national laws allow only partial harmonization to be envisaged; whereas, in particular, only contract terms which have not been individually negotiated are covered by this Directive; whereas Member States should have the option, with due regard for the Treaty, to afford consumers a higher level of protection through national provisions that are more stringent than those of this Directive;

...

Whereas Member States should ensure that unfair terms are not used in contracts concluded with consumers by a seller or supplier and that if, nevertheless, such terms are so used, they will not bind the consumer, and the contract will continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair provisions;

...

Whereas persons or organisations, if regarded under the law of a Member State as having a legitimate interest in the matter, must have facilities for initiating proceedings concerning terms of contract drawn up for general use in contracts concluded with consumers, and in particular unfair terms, either before a court or before an administrative authority competent to decide upon complaints or to initiate appropriate legal proceedings; whereas this possibility does not, however, entail prior verification of the general conditions obtaining in individual economic sectors;

Whereas the courts or administrative authorities of the Member States must have at their disposal adequate and effective means of preventing the continued application of unfair terms in consumer contracts’.

4 Article 2(a) of that directive provides:

‘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;

...’

5 Article 6(1) of that directive 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.’

6 Under Article 7(1) and (2) of that directive:

‘1. 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.

2. The means referred to in paragraph 1 shall include provisions whereby persons or organizations, having a legitimate interest under national law in protecting consumers, may take action according to the national law concerned before the courts or before competent administrative bodies for a decision as to whether contractual terms drawn up for general use are unfair, so that they can apply appropriate and effective means to prevent the continued use of such terms.’

7 Article 8 of Directive 93/13 reads as follows:

‘Member States may adopt or retain the most stringent provisions compatible with the Treaty in the area covered by this Directive, to ensure a maximum degree of protection for the consumer.’

8 The second subparagraph of Article 10(1) of the directive provides:

‘These provisions shall be applicable to all contracts concluded after 31 December 1994.’

### ***Romanian law***

9 Article 1(3) of 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 sellers or suppliers and consumers) of 6 November 2000, in the version applicable to the dispute in the main proceedings, (‘Law No 193/2000’) provides:

‘Sellers or suppliers are prohibited from inserting unfair terms in contracts concluded with consumers.’

10 Article 2(1) of that law provides as follows:

‘A “consumer” means any natural person or group of natural persons forming an association who, on the basis of a contract falling within the ambit of the present law, acts for purposes outside trade, industrial or manufacturing, artisanal or professional activity.’

11 In accordance with Article 6 of that law:

‘Unfair terms included in the contract that have been verified personally or by legally authorised bodies shall not have effect in respect of the consumer and the contract shall continue to produce effects, with the consumer’s consent, only if that remains possible after the unfair terms have been removed.’

12 Article 12(4) of that law is drafted as follows:

‘The provisions of paragraphs 1 to 3 shall not affect the right of a consumer against whom a standard form contract containing an unfair term is relied on to plead that the term is void, either by bringing an action or by raising an objection, in the circumstances laid down by the legislation.’

13 Under Article 14 of Law No 193/2000:

‘Consumers adversely affected by a contract concluded in breach of the provisions of this law shall have the right to apply to the courts in accordance with the provisions of the Civil Code and the Code of Civil Procedure.’

14 Article 993 of the Codul civil de 1864 (Civil Code), in the version applicable to the facts in the main proceedings, provides:

‘A person who pays a debt in error, believing him or herself to owe that amount, is entitled to recover that amount from the creditor.

That right ceases to exist where the creditor has, in good faith, extinguished the debt obligation; the party making payment can then make a claim against the actual debtor.’

15 Article 994 of that code provides:

‘Where the party receiving payment has acted in bad faith, he or she shall be required to make restitution, of the capital as well as of interest thereon or fruits thereof, from the day of payment.’

16 Article 1092 of the Civil Code reads as follows:

‘Any payment shall suppose the existence of a debt; any debt which has been unduly paid shall be subject to recovery.’

17 Article 1 of Decretul nr. 167 privind la prescripția extincțivă (Decree No 167 on the limitation of actions) of 10 April 1958, in the version applicable to the dispute in the main proceedings, states:

‘The right of action in pecuniary matters shall become time-barred if it is not exercised within the time limit laid down by law.

The time-barring of a right of action concerning a primary right shall cause the right of action concerning ancillary rights to become time-barred.’

18 According to Article 2 of that decree:

‘A plea that a legal act is void can be made at any time, by bringing an action or by raising an objection.’

19 Article 7 of that decree provides:

‘The limitation period shall begin to run on the date on which the right of action or the right to apply for enforcement arises.

In respect of obligations to be satisfied at the request of the creditor and those with no fixed period for performance, the limitation period shall begin to run on the date on which the legal relationship comes into being.’

20 Article 8 of that decree states:

‘The limitation period for a right of action for compensation for damage suffered as the result of an unlawful act shall begin to run on the date on which the injured party became aware or should have become aware both of the damage and of the person liable for it.

The preceding paragraph shall apply likewise in the case of unjust enrichment.’

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

### ***Case C-698/18***

21 On 26 June 2008, JB entered into a credit agreement with Raiffeisen Bank for the grant of a personal loan of EUR 4 168.41 for a period of 84 months to expire in 2015, the date on which the loan was repaid in full by the party concerned.

22 Taking the view that a number of terms in that contract were unfair, JB brought an action in December 2016 before the Judecătoria Târgu Mureş (Court of First Instance, Târgu Mureş, Romania) seeking a declaration that those terms were unfair, reimbursement of the sums paid pursuant to those terms, and payment of statutory interest.

23 In its defence, Raiffeisen Bank put forward an objection alleging that JB lacked standing to bring proceedings since, under the national legislation, on the date on which that action was brought, JB no longer had the status of consumer since, on that date, the relationship between the parties to the credit agreement in question had ended and that agreement had come to an end the previous year, having been performed in full.

24 The Judecătoria Târgu Mureş (Court of First Instance, Târgu Mureş) upheld JB's action. It considered that JB had the status of a consumer when the credit agreement in question was concluded and that the fact that the effects of that agreement had taken place in full did not prevent assessment of the allegedly unfair nature of the terms of that agreement. That court held that the requirements of the national legislation were satisfied, namely that the terms at issue had not been negotiated directly with the consumer and that they created, to the detriment of the consumer and contrary to the requirements of good faith, a significant imbalance in the parties' rights and obligations. After finding that a term declared unfair could not create obligations for the consumer, that court equated that unenforceability with absolute nullity and, on the basis of the principle of *restitutio in integrum*, ordered Raiffeisen Bank to reimburse the sums paid by JB under the terms declared unfair, along with statutory interest from the date of receipt of those amounts by Raiffeisen Bank until the date of their full reimbursement.

25 Raiffeisen Bank brought an appeal before the referring court, reiterating the argument that JB had lost the status of consumer prior to the date on which the action was brought, following the expiry of the credit agreement at issue on account of its full performance.

26 The referring court states that, in accordance with the settled case-law of the Romanian courts, the unenforceability of unfair terms is equated with the rules on absolute nullity. It also notes that it is apparent from the provisions of Article 12(4) of Law No 193/2000 that a consumer who seeks to rely on the unfairness of a contractual term has recourse to the ordinary remedy of nullity. However, the Romanian courts take varying approaches to the retention of the status of consumer for a contract performed in full and, consequently, of his or her right to bring an action for reimbursement of consideration provided under terms declared unfair.

27 First, according to the approach taken by the lower courts, in view of the fact that in Romanian law an action seeking a declaration of absolute nullity is not subject to a time limit, a consumer, within the meaning of Directive 93/13, does not cease to be regarded as such after the full performance of the contract and may, at any time, plead the absolute nullity of unfair terms by bringing an action or raising an objection. Under the same approach, the consumer is entitled to bring an action for reimbursement within a period of three years which starts to run from the time when the unfair terms are declared void, as laid down in the provisions of ordinary law on nullity.

28 On the other hand, the referring court observes that the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania) took a different view, namely that the penalty imposed in the event of a finding that the contractual terms are unfair is *sui generis*, resulting in the removal of the effects of those terms in the future, without calling into question consideration already provided.

29 The referring court considers that it is possible to adopt an interpretation which makes it possible to balance the principle of a high level of consumer protection and the principle of legal certainty. In its view, the date on which the contract at issue comes to an end, that is to say, when the consumer is released from any obligation vis-à-vis the seller or supplier and should therefore no longer be regarded as being in a weak position vis-à-vis that seller or supplier, is a date, determined objectively, on which the consumer must or should have been aware of the unfairness of the term or terms of that contract and from which the three-year limitation period to bring an action of a pecuniary nature, including an action for reimbursement, starts to run.

30 Such an approach would prevent the initiation of the three-year limitation period from depending solely on the will of the consumer, but would not affect the consumer's ability at any time to seek a declaration that a contract concluded with a seller or supplier is unfair, thereby drawing the attention of sellers and suppliers to the unlawful nature of those terms.

31 In the present case, JB brought an action seeking a declaration that the contractual terms of the credit agreement concluded with Raiffeisen Bank were unfair, absolute nullity of those terms and reimbursement of the sums unduly paid, almost one year after that agreement had expired, that is to say, within three years of the date laid down by the ordinary law for bringing an action of a pecuniary nature.

### ***Case C-699/18***

32 On 28 May 2003, KC and another party, as co-borrower, concluded a credit agreement with Société Générale for the grant of a personal loan of EUR 17 000 for a period of 120 months. That agreement came to an end through early repayment.

33 Taking the view that, in the light of the relevant national provisions, certain terms of that agreement were unfair, in July 2016 KC brought an action before the Judecătoria Târgu Mureș (Court of First Instance, Târgu Mureș) seeking a declaration that those terms were unfair. KC sought the annulment of those terms, reimbursement of the amounts paid thereunder and payment of statutory interest calculated from the date of receipt of those amounts by Société Générale until their actual reimbursement.

34 Société Générale invoked an objection alleging that KC did not have standing to bring proceedings under the national legislation on unfair terms in consumer contracts. It claimed that, on the date on which the action was brought, KC no longer had the status of a consumer since, on that date, the relationship between the parties had come to an end and the contract in question had expired 11 years earlier, through early repayment.

35 The Judecătoria Târgu Mureș (Court of First Instance, Târgu Mureș) upheld KC's action in part. It held that he had the status of consumer at the time when the credit agreement was concluded with Société Générale and that the fact that the effects of that agreement had occurred in full did not preclude the assessment, required by Directive 93/13, of the allegedly unfair nature of the terms of that agreement, with the result that there could be no objection to KC's having accepted the terms of the credit agreement at issue in their entirety and performed them. That court held that the

requirements of the national legislation were satisfied, namely that the terms of that agreement had not been negotiated directly with the consumer and that they created, to the detriment of the consumer and contrary to the requirements of good faith, a significant imbalance in the parties' rights and obligations. It decided that those terms were not binding on the consumer and that they were ineffective in relation to the consumer and took the view that the applicable penalty was the absolute nullity of those terms. By reason of the retroactive effect of absolute nullity, that court allowed the claim for reimbursement of the amounts paid under the terms declared unfair, together with statutory interest, calculated from the date on which the document instituting the proceedings was lodged.

36 Société Générale brought an appeal before the referring court, reiterating the argument that KC lost the status of consumer prior to the date on which the action was brought, following the expiry of the credit agreement at issue, 11 years earlier, through early repayment. Société Générale also puts forward arguments relating to the requirements laid down by the national legislation for the purpose of establishing whether a contractual term is unfair.

37 The referring court decided to make a reference to the Court in Case C-699/18 for the same reasons as those set out in Case C-698/18.

38 It nevertheless points out that KC brought the action seeking a declaration that the terms of the credit agreement at issue were unfair 11 years after it had expired, that is to say, after the expiry of the general three-year limitation period laid down by the national legislature concerning the exercise of a pecuniary right.

39 In those circumstances, the Tribunalul Specializat Mureş (Specialised Court, Mureş, Romania) decided to stay the proceedings and to refer the following questions, which are worded identically in Cases C-698/18 and C-699/18, to the Court of Justice for a preliminary ruling:

'(1) Do the provisions of [Directive 93/13], in particular the 12th, 21st and 23rd recitals and Articles 2(b), 6(1), 7(2) and 8 of that directive, permit, in accordance with the principle of procedural autonomy and the principles of equivalence and effectiveness, a set of means of legal recourse that consists in an ordinary legal action, not subject to any limitation period, to establish the unfairness of certain terms in a consumer contract and an ordinary legal action of a personal and pecuniary nature that is subject to a limitation period, which is used in pursuit of the directive's aim of eliminating the effects of all obligations arising and performed under clauses which are found to be unfair to consumers?

(2) In the event that the first question is answered in the affirmative, do those same provisions preclude an interpretation, derived from application of the principle of the certainty of civil law legal relationships, according to which the objective point in time by which the consumer must have known or should have known of the existence of the unfair terms is the time at which the loan agreement with that consumer came to an end?'

40 By decision of the President of the Court of 12 December 2018, Cases C-698/18 and C-699/18 were joined for the purposes of the written and oral procedure and the judgment.

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

#### ***The Court's jurisdiction and the admissibility of the questions referred for a preliminary ruling***



41 In the first place, it should be recalled that, according to the settled case-law of the Court, first, it has jurisdiction to interpret EU law only as regards its application in a Member State with effect from the date of that State's accession to the European Union (order of 3 July 2014, *Tudoran*, C-92/14, EU:C:2014:2051, paragraph 27).

42 Secondly, in so far as it is clear from the second paragraph of Article 10(1) of Directive 93/13 that the directive is applicable only to contracts concluded after 31 December 1994, the date by which it must have been transposed into national law, it is necessary to take into consideration the date of the conclusion of the contract at issue in the main proceedings to determine the applicability of the directive to the contract and the period during which the contract produced effects is not relevant (order of 3 July 2014, *Tudoran*, C-92/14, EU:C:2014:2051, paragraph 28).

43 In the present case, Romania acceded to the European Union on 1 January 2007, while the credit agreement at issue in the main proceedings in Case C-698/18 was concluded on 26 June 2008 and the credit agreement at issue in the main proceedings in Case C-699/18 was concluded on 28 May 2003.

44 Accordingly, Directive 93/13 is applicable, *ratione temporis*, to the dispute in the main proceedings in Case C-698/18. By contrast, it is not applicable, *ratione temporis*, to the dispute in the main proceedings in Case C-699/18.

45 In the second place, as regards Case C-698/18, it is necessary to examine the Romanian Government's argument that the answer to the second question depends exclusively on the interpretation and application of provisions of national legislation.

46 In that regard, it should be recalled that in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court, the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law. It is solely for the national court, before which the dispute has been brought and which must assume responsibility for the judicial decision to be made, to determine, in the light of the particular circumstances of the case, both the need for and the relevance of the questions that it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (judgment of 26 May 2011, *Stichting Natuur en Milieu and Others*, C-165/09 to C-167/09, EU:C:2011:348, paragraph 47).

47 In the present case, the questions in Case C-698/18 relate, in essence, to the conformity of Romanian law concerning the limitation periods applicable to legal actions in the field of unfair terms in consumer contracts with several provisions of Directive 93/13 and general principles of EU law, and not to the substance of the dispute in the main proceedings or to the interpretation and application of the provisions of national law.

48 In those circumstances, first, the Court has jurisdiction to answer the questions referred in Case C-698/18 and those questions are admissible, and, secondly, the Court does not have jurisdiction to answer the questions referred in Case C-699/18.

#### ***First question in Case C-698/18***

49 By its first question, the referring court asks, in essence, whether Article 2(b), Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as not precluding a national rule which, while providing that an action seeking a finding of nullity of an unfair term in a contract concluded

between a seller or supplier and a consumer is not subject to a time limit, subjects the action seeking to enforce the restitutory effects of that finding to a limitation period.

50 In that regard, it must be noted that Article 6(1) of Directive 93/13 requires Member States to provide that unfair terms in an agreement concluded with a consumer, as laid down in their national law, are not to be binding on the consumer.

51 In view of the nature and importance of the public interest underlying the protection which Directive 93/13 confers on consumers, Article 6 of the directive must be regarded as a provision of equal standing to national rules which rank, within the domestic legal system, as rules of public policy (judgment of 20 September 2018, *OTP Bank and OTP Faktoring*, C-51/17, EU:C:2018:750, paragraph 89).

52 Also, given the nature and significance of the public interest constituted by the protection of consumers, Directive 93/13, as is apparent from Article 7(1) thereof, read in conjunction with its 24th recital, obliges the Member States to provide for adequate and effective means to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers (judgments of 30 April 2014, *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraph 78, and of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 56).

53 To do this, it is for the national courts to exclude the application of the unfair terms so that they do not produce binding effects with regard to the consumer, unless the consumer objects (see, to that effect, judgment of 7 November 2019, *Profi Credit Polska*, C-419/18 and C-483/18, EU:C:2019:930, paragraph 47).

54 It follows, according to the Court's case-law, that Article 6(1) of Directive 93/13 must be interpreted as meaning that a contractual term held to be unfair must be regarded, in principle, as never having existed, so that it cannot have any effect on the consumer. Therefore, the determination by a court that such a term is unfair must, in principle, have the consequence of restoring the consumer to the legal and factual situation that he would have been in if that term had not existed. It follows that the obligation for the national court to exclude an unfair contract term imposing the payment of amounts that prove not to be due entails, in principle, a corresponding restitutory effect in respect of those same amounts (judgment of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraphs 61 and 62).

55 It is true that, according to the Court's case-law, the protection conferred on consumers by Directive 93/13 precludes a national provision which prohibits a national court, on expiry of a limitation period, from finding that a term of the contract is unfair (judgment of 21 November 2002, *Cofidis*, C-473/00, EU:C:2002:705, paragraph 38).

56 However, the Court has previously held that consumer protection is not absolute (judgments of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 68) and that, in the interests of legal certainty it is compatible with EU law to lay down reasonable time limits for bringing proceedings (judgments of 6 October 2009, *Asturcom Telecomunicaciones*, C-40/08, EU:C:2009:615, paragraph 41, and of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 69).

57 In that regard, it follows from the settled case-law of the Court that, in the absence of rules under EU law, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law,

provided, first, that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and, second, that they do not render practically impossible or excessively difficult the exercise of rights conferred by the EU legal order (principle of effectiveness) (see, inter alia, judgment of 26 October 2006, *Mostaza Claro*, C-168/05, EU:C:2006:675, paragraph 24 and the case-law cited).

58 Therefore, the answer to the first question in Case C-698/18 is that Article 2(b), Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as not precluding a national rule which, while providing that an action seeking a finding of nullity of an unfair term in a contract concluded between a seller or supplier and a consumer is not subject to a time limit, subjects the action seeking to enforce the restitutory effects of that finding to a limitation period, provided that that period is not less favourable than those governing similar domestic actions (principle of equivalence) and that it does not render practically impossible or excessively difficult the exercise of rights conferred by the EU legal order, in particular Directive 93/13 (principle of effectiveness).

### ***Second question in Case C-698/18***

59 By its second question, the referring court asks, in essence, whether Article 2(b), Article 6(1) and Article 7(1) of Directive 93/13 and the principles of equivalence, effectiveness and legal certainty must be interpreted as precluding a judicial interpretation of national legislation to the effect that the legal action for repayment of amounts unduly paid on the basis of an unfair term in a contract concluded between a consumer and a seller or supplier is subject to a three-year limitation period which runs from the date of full performance of that contract, since the consumer is deemed from that date to be aware of the unfair nature of that term.

60 As regards, in the first place, the principle of effectiveness, it is settled case-law that the question whether a national provision makes the application of EU law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national bodies. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (judgment of 26 June 2019, *Addiko Bank*, C-407/18, EU:C:2019:537, paragraph 48 and the case-law cited).

61 Those aspects must be taken into account in the analysis of the characteristics of the period at issue in the main proceedings. As the Advocate General noted in point 70 of his Opinion, that analysis must cover, inter alia, the duration of that time limit and the mechanism adopted to start that period running (see also, by analogy, judgment of 29 October 2015, *BBVA*, C-8/14, EU:C:2015:731, paragraph 27).

62 In that regard, it is apparent from the Court's case-law that reasonable time limits for bringing proceedings, laid down in the interests of legal certainty, are not liable to make it in practice impossible or excessively difficult to exercise the rights conferred by the EU legal order, if such time limits are sufficient in practical terms to enable a consumer to prepare and bring an effective action (judgment of 29 October 2015, *BBVA*, C-8/14, EU:C:2015:731, paragraphs 28 and 29).

63 In the present case, the referring court states that the issue concerns the application to an action seeking to enforce the restitutory effects of a finding that an unfair term is void of a three-year limitation period laid down by the ordinary law, which starts to run, according to the interpretation favoured by the referring court, from the time when the contract concluded with a seller or supplier has been performed in full. According to the referring court, such a starting point

corresponds to the date on which the consumer must or should have known of the unfair nature of one or more terms of that agreement.

64 In so far as it is established and known in advance, a limitation period of three years is, in principle, sufficient in practical terms to allow the consumer to prepare and bring an effective action.

65 However, since, according to the interpretation of national law favoured by the referring court, the limitation period starts to run on the date on which the agreement was performed in full, it is necessary to take into account the fact that it is possible that the consumers are not aware of the unfair nature of a term in the agreement concluded with a seller or supplier or do not appreciate the extent of their rights deriving from Directive 93/13 (see, to that effect, judgment of 13 September 2018, *Profi Credit Polska*, C-176/17, EU:C:2018:711, paragraph 69) either at the time or after the contract has been performed in full.

66 In addition, it must be borne in mind that the system of protection implemented by the directive 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, which 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 (judgment of 19 December 2019, *Bondora*, C-453/18 and C-494/18, EU:C:2019:1118, paragraph 40 and the case-law cited).

67 In view of that fact and of the weak position of the consumer, it must be held that a limitation period of three years which starts to run from the date of full performance of the contract is not capable of affording the consumer effective protection, since that period is likely to have expired even before the consumer has been able to become aware of the unfair nature of a term contained in that contract. Such a period therefore makes it excessively difficult to exercise the rights of that consumer conferred by Directive 93/13.

68 No other conclusion can be drawn on the ground, envisaged by the referring court, that the consumer loses that status at the time of the full performance of the contract.

69 In this regard, it should be noted that, as the 10th recital of Directive 93/13 states, the uniform rules of law in the matter of unfair terms laid down by that directive should apply to ‘all contracts’ concluded between ‘sellers or suppliers’ and ‘consumers’, as defined in Article 2(b) and (c) of that directive (judgment of 21 March 2019, *Pouvin and Dijoux*, C-590/17, EU:C:2019:232, paragraph 19).

70 According to Article 2(b) of Directive 93/13, a ‘consumer’ is any natural person who, in contracts covered by the directive, is acting for purposes which are outside his trade, business or profession (judgment of 21 March 2019, *Pouvin and Dijoux*, C-590/17, EU:C:2019:232, paragraph 22).

71 In that regard, it should be noted that the definition of the term ‘consumer’ in Article 2(b) of that directive does not contain any information that can be used to determine when a contracting party ceases to be a consumer within the meaning of that directive and therefore, ceases to be entitled to rely on the protection conferred on him or her by that directive.

72 However, that provision must be interpreted in the context of the system of protection implemented by Directive 93/13, in the light of the idea, recalled in paragraph 67 of the present judgment, that the consumer is in a weak position vis-à-vis the seller or supplier.

73 As the Advocate General observed in point 57 of his Opinion, performance of the contract in question does not retroactively alter the fact that the consumer was in that weak position at the time when it was concluded. In those circumstances, limiting the protection which Directive 93/13 confers on the consumer solely to the duration of the performance of the contract in question, in the sense that the performance of that contract in its entirety precludes any possibility for the consumer to rely on that protection, is not compatible with the system of protection established by that directive. Such a limitation would be particularly unacceptable, as the Polish Government maintains, in the context of contracts which, like a contract of sale, are performed immediately after or at the time of their conclusion, since it does not allow consumers a reasonable period to challenge any unfair terms contained in such contracts.

74 It follows that the concept of ‘consumer’ contained in Article 2(b) of Directive 93/13 must be interpreted as meaning that the fact that a contract has been performed in its entirety does not preclude a party to that contract from being capable of being classified as a ‘consumer’ within the meaning of that provision.

75 It follows from the foregoing that the principle of effectiveness precludes an action for reimbursement from being subject to a limitation period of three years, which starts to run from the date on which the contract in question ends, irrespective of the question whether the consumer was, or could reasonably have been, aware on that date of the unfairness of a term of that contract relied on in support of his or her action for reimbursement, since such limitation rules are likely to render excessively difficult the exercise of that consumer’s rights conferred by Directive 93/13.

76 As regards the principle of equivalence, it is apparent from the Court’s case-law that compliance with that principle requires the national rule in question to apply without distinction to action based on an infringement of EU law and those based on an infringement of national law having a similar purpose and cause of action (judgment of 27 February 2014, *Pohotovost’*, C-470/12, EU:C:2014:101, paragraph 47).

77 In that regard, it is solely for the national court, which has direct knowledge of the detailed procedural rules applicable, to ascertain whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics (judgment of 12 February 2015, *Baczó and Vizsnyiczai*, C-567/13, EU:C:2015:88, paragraph 44 and the case-law cited).

78 In the present case, it is apparent from the grounds of the request for a preliminary ruling that, in accordance with the settled case-law of the Romanian courts, the unenforceability of unfair terms is equated with the rules on absolute nullity. In that regard, the referring court states that, under Romanian law, the effect of absolute nullity is the restoration of the previous situation by means, in relation to reciprocal contracts, of an action for reimbursement of the undue payment. Under Romanian law, where such an action is brought, the limitation period begins to run on the date on which the court establishes the cause of action.

79 On the other hand, the referring court points out that, for reasons of legal certainty, it is conceivable that the period for the reimbursement of amounts paid on the basis of an unfair term in a contract concluded with a consumer could start to run from the date of the full performance of that contract, and not from the date on which the term at issue is found to be unfair, and therefore declared invalid.

80 It follows that, subject to the similarity of the actions in question, which only the referring court is in a position to ascertain, the interpretation envisaged by that court summarised in the preceding paragraph would amount to establishing different procedural rules, dealing in a less

favourable manner with actions based on the system of protection provided for in Directive 93/13. Such a difference in treatment cannot, as noted by the Advocate General in paragraph 84 of his Opinion, be justified on ground of legal certainty.

81 While it is true that limitation periods seek to ensure legal certainty (see, to that effect, judgment of 30 April 2020, *Nelson Antunes da Cunha*, C-627/18, EU:C:2020:321, paragraph 60), it is nevertheless true that, in so far as the Romanian legislature considered that the principle of legal certainty does not preclude the limitation period for the actions referred to in paragraph 79 of the present judgment from being applied, it cannot be held that that principle precludes the application, in accordance with the principle of equivalence, of the same period to actions based on the system of protection provided for by Directive 93/13.

82 It follows from the foregoing considerations that, subject to verification, by the referring court, of the similarity of the actions referred to above, the principle of equivalence must be interpreted as precluding an interpretation of national legislation whereby the limitation period applicable to a legal action for reimbursement of amounts unduly paid on the basis of an unfair term starts to run as from the date of the full performance of the contract, where that same period starts to run, in the case of a similar domestic action, as from the date of the judicial finding of the cause of the action.

83 In the light of all the foregoing considerations, the answer to the second question in Case C-698/18 is that Article 2(b), Article 6(1) and Article 7(1) of Directive 93/13 and the principles of equivalence, effectiveness and legal certainty must be interpreted as precluding a judicial interpretation of the national rule according to which the legal action for reimbursement of amounts unduly paid on the basis of an unfair term in a contract concluded between a consumer and a seller or supplier is subject to a three-year limitation period which runs from the date of full performance of the contract, where it is assumed, without need for verification, that, on that date the consumer should have known about the unfair nature of the term in question or where for similar actions, based on certain provisions of national law, that same period starts to run only from the time when a court finds there to be a cause of those actions.

## Costs

84 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

- 1. Article 2(b), Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as not precluding a national rule which, while providing that an action seeking a finding of nullity of an unfair term in a contract concluded between a seller or supplier and a consumer is not subject to a time limit, subjects the action seeking to enforce the restitutory effects of that finding to a limitation period, provided that that period is not less favourable than those governing similar domestic actions (principle of equivalence) and that it does not render practically impossible or excessively difficult the exercise of rights conferred by the EU legal order, in particular Directive 93/13 (principle of effectiveness).**
- 2. Article 2(b), Article 6(1) and Article 7(1) of Council Directive 93/13 must be interpreted as precluding a judicial interpretation of the national rule according to which the legal action**

**for reimbursement of amounts unduly paid on the basis of an unfair term in a contract concluded between a consumer and a seller or supplier is subject to a three-year limitation period which runs from the date of full performance of the contract, where it is assumed, without need for verification, that, on that date the consumer should have known about the unfair nature of the term in question or where for similar actions, based on certain provisions of national law, that same period starts to run only from the time when a court finds there to be a cause of those actions.**

**3. The Court of Justice does not have jurisdiction to answer the questions referred by the Tribunalul Specializat Mureş (Specialised Court, Mureş, Romania) in its order for reference of 12 June 2018 concerning Case C-699/18.**

[Signatures]

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\* Language of the case: Romanian.

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