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Provisional text

JUDGMENT OF THE COURT (Eighth Chamber)

30 April 2025 (*)

(Reference for a preliminary ruling – Consumer protection – Directive 93/13/EEC – Articles 3 to 5 – Unfair terms in consumer contracts – Mortgage loan agreements – Term concerning loan arrangement fees – Application seeking a declaration of invalidity of that term – Assessment of the unfairness of contractual terms – Plainness and intelligibility of the terms)

In Case C699/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de Primera Instancia nº 8 de Donostia – San Sebastián (Court of First Instance No 8, Donostia – San Sebastián, Spain), made by decision of 13 November 2023, received at the Court on 16 November 2023, in the proceedings

FG

v

Caja Rural de Navarra SCC,

THE COURT (Eighth Chamber),

composed of S. Rodin (Rapporteur), President of the Chamber, N. Piçarra and N. Fenger, Judges,

Advocate General: D. Spielmann,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– FG, by J.M. Erausquin Vázquez and M. Ortiz Pérez, abogados,

– Caja Rural de Navarra SCC, by A. Enériz Arraiza, abogado,

– the Spanish Government, by M.J. Ruiz Sánchez, acting as Agent,

– the European Commission, by J. Baquero Cruz, P. Kienapfel and N. Ruiz García, acting as Agents,

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

makes the following

Judgment

1 This request for a preliminary ruling concerns the interpretation, first, of Articles 3 to 5 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) and, second, of Article 7 of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ 2014 L 60, p. 34).

2 The request has been made in proceedings between FG and Caja Rural de Navarra SCC concerning the alleged unfairness of a contractual term relating to a loan arrangement fee.

The legal framework

European Union law

Directive 93/13

3 According to Article 3(1) of Directive 93/13:

'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.'

4 Article 4 of that directive provides:

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

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

5 Article 5 of that directive is worded as follows:

'In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. This rule on interpretation shall not apply in the context of the procedures laid down in Article 7(2).'

6 Article 7(1) of that directive is worded as follows:

'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 2014/17

7 Article 7 of Directive 2014/17, entitled ‘Conduct of business obligations when providing credit to consumers’, states, in paragraph 1:

‘Member States shall require that when manufacturing credit products or granting, intermediating or providing advisory services on credit and, where appropriate, ancillary services to consumers or when executing a credit agreement, the creditor, credit intermediary or appointed representative acts honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers. …’

8 Under Article 43(1) of that directive:

‘This Directive shall not apply to credit agreements existing before 21 March 2016.’

Spanish law

Law 5/2019

9 Article 14 of Ley 5/2019, reguladora de los contratos de crédito inmobiliario (Law 5/2019 regulating property credit agreements) of 15 March 2019 (BOE No 65 of 16 March 2019), provides:

‘3. Expenses may be passed on or fees charged only for services connected with loans that have been definitively requested or expressly agreed by a borrower or potential borrower, provided that they correspond to services actually provided or to costs incurred which can be substantiated.

4. If an arrangement fee is agreed, it shall be payable only once and shall include all the costs of examining the application, processing or granting the loan or other similar costs inherent in the creditor’s activity caused by granting the loan. In the case of loans denominated in foreign currency, the arrangement fee shall also include any foreign exchange fee corresponding to the initial pay-out of the loan.’

The Order of the Office of the Prime Minister on the transparency of financial terms in mortgage loans

10 Annex II to the Orden del Ministerio de la Presidencia sobre transparencia de las condiciones financieras de los préstamos hipotecarios (Order of the Office of the Prime Minister on the transparency of financial terms in mortgage loans) of 5 May 1994 (BOE No 112 of 11 May 1994, p. 14444) provides in its Clause 4 entitled, ‘Fees’:

‘1. Arrangement fee – all expenses relating to the examination of the loan application, the granting or processing of the mortgage loan, or other similar expenses inherent in the activity of the lending entity incurred in granting the loan, must be included in a single fee, known as the arrangement fee, and shall be payable only once. The amount, form and date of payment thereof shall be specified in that term.

…’

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

11 On 22 January 2010, FG concluded a loan agreement secured by a mortgage with Caja Rural de Navarra.

12 In accordance with Article 4 of that agreement, the borrower was to pay, on signing the agreement, an arrangement fee corresponding to 0.35% of the total amount of the loan, that is to say, the sum of EUR 588.70.

13 On 6 April 2022, FG brought an action against Caja Rural de Navarra before the Juzgado de Primera Instancia nº 8 de Donostia – San Sebastián (Court of First Instance No 8, Donostia – San Sebastián, Spain), the referring court, seeking, inter alia, a declaration that the term providing for the arrangement fee is unfair.

14 In the order for reference, that court notes that, in the judgment of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria* (C224/19 and C259/19, EU:C:2020:578), the Court interpreted, inter alia, Directive 93/13 in relation to the review of the unfairness and of the requirement for transparency of the term contained in a loan agreement governed by Spanish law requiring the borrower to pay an arrangement fee. It states that, following that judgment, the national courts delivered contradictory decisions in that area, which led the Tribunal Supremo (Supreme Court, Spain) to make a request for a preliminary ruling again concerning that term, which gave rise to the judgment of 16 March 2023, *Caixabank (Loan arrangement fees)* (C565/21, EU:C:2023:212).

15 The referring court is uncertain whether the case-law of the Tribunal Supremo (Supreme Court) is compatible with that judgment.

16 In that regard, the referring court cites a judgment of the Tribunal Supremo (Supreme Court) of 29 May 2023, judgment 816/2023 (ES:TS:2023:2131), in which the latter court held that the term providing for an arrangement fee that remunerates the costs of examining, granting or processing the mortgage loan or credit, is not, in itself, unfair. The Tribunal Supremo (Supreme Court) limits its review of the unfairness of such a term to two aspects, namely, first, the fact that the services remunerated by that fee are not included in other items already charged to the consumer and, second, the fact that the amount of that fee is not disproportionate to the average cost of arrangement fees in Spain, since statistics relating to that cost are available on the internet.

17 In those circumstances, the Juzgado de Primera Instancia nº 8 de Donostia – San Sebastián (Court of First Instance No 8, Donostia – San Sebastián) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is the principle of transparency infringed where an [“arrangement fee”] is charged for the provision of services by a seller or supplier and the latter does not specify what those services consist of or the time spent on them, thereby preventing consumers from ascertaining, first, whether the charging of the fee corresponds to what was agreed, what is established in the schedule of prices or, in any event, what is reasonable in view of the type of service; and, secondly, that there is no overlap between services, that the consumer is not paying for services which are already remunerated as part of the contractual interest and that the seller or supplier is not charging twice for any other service?

(2) Is the principle of transparency infringed where the seller or supplier advertised the interest rate it was offering for mortgage loans aimed at consumers but did not also publicise the compulsory [“arrangement fee”] payable on conclusion of the advertised mortgage, in particular where that fee was a known, predetermined and invariable percentage of the loan granted, regardless of the amount of the loan?

(3) If the services remunerated by means of the arrangement fee when the loan application is approved and the loan is taken out include: the examination of the application and steps taken in relation to it; collation and analysis of information about the applicant’s creditworthiness and ability to pay the loan throughout its term; and assessment of the security submitted, but there is no charge for the same services where the loan application is refused, should the services in question be understood to be services inherent in banking activity and forming part of the banking safety protocol, whose cost should be borne by the institution, as was considered to be the case in Directive [2014/17] …?

(4) Were it to be found that the arrangement fee remunerates services that are paid for in addition to the compensatory interest because they are unconnected with the activity of the lender institution, should the lender institution therefore provide consumers with the relevant invoice corresponding to any supply of services containing a breakdown of those services and [value added tax]?

(5) Is the principle of transparency infringed where a seller or supplier that required payment of an arrangement fee as the price payable for a series of very specific services did not have a schedule with the price per hour of each service and did not provide that schedule to consumers, before the agreement was concluded, so that consumers, first, knew in advance what the final cost of their loan agreement would be and secondly, could compare the price of those services with the prices offered by other sellers or suppliers?

(6) Is the principle of transparency upheld where a seller or supplier charged for a series of very specific services, which were essential to conclusion of the agreement that both parties wished to conclude, by deducting a percentage of the total amount of the loan granted, with the effect that an identical service, provided by the same number of people for the same period of time, was invoiced, as an "arrangement fee", at different amounts depending on the amount of the loan granted in each case?

(7) Is a transparency test incompatible with Article 4(2) of Directive [93/13] where, according to that test, a term relating to an arrangement fee is considered to be unfair or otherwise depending on whether its amount exceeds a specific figure drawn from statistics obtained online on the charging of arrangement fees?

(8) Is national case-law compatible with [Article 6(1) and Article 7(1)] of Directive [93/13] where, according to that case-law, arrangement fees are found to be disproportionate or otherwise on the basis of the amounts, according to the statistics, of the arrangement fees then being charged in Spain, at a time when Spain did not review the fairness of terms containing arrangement fees?

(9) Is the principle of effectiveness infringed by the fact that, under agreements concluded before the Kingdom of Spain transposed Directive [2014/17] into its domestic legal order, sellers or suppliers charge arrangement fees that remunerate the examination of the creditworthiness of the potential lender and the viability of the transaction whereas, after the transposition of that directive that examination can no longer entail any cost to the potential borrower?

(10) Must Article 3(1) of Directive [93/13] be interpreted as meaning that it precludes national case-law such as that laid down by the [Tribunal Supremo (Supreme Court)] in its judgment 816/2023 of 29 May 2023 [(ES:TS:2023:2131)], which establishes that the test of the fairness of a term relating to an ["arrangement fee"] does not require the term to specify what services are remunerated by means of the arrangement fee or the price at which they are invoiced, and that a review of fairness merely ascertains whether the term clearly sets out the amount payable by the consumer and whether that amount exceeds the threshold above which it would be found to be disproportionate[?]'

The questions referred for a preliminary ruling

Admissibility

18 In their written observations submitted to the Court, the defendant in the main proceedings, the Kingdom of Spain and the European Commission express doubts as to the admissibility of the present request for a preliminary ruling or, at the very least, of one or more of the questions referred.

19 First of all, the defendant in the main proceedings raises a plea of inadmissibility in respect of the request for a preliminary ruling, alleging that that request does not satisfy the requirements set out in Article 94 of the Rules of Procedure of the Court of Justice, since the referring court has not sufficiently described the reasons why it has doubts as to the interpretation of EU law. It adds that the issue underlying the questions referred for a preliminary ruling has already been addressed by the Court in its judgment of 16 March 2023, *Caixabank (Loan arrangement fees)* (C565/21, EU:C:2023:212), with the result that an answer to those questions is no longer necessary.

20 In accordance with settled case-law, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of a rule of EU law, the Court is in principle bound to give a ruling (judgment of 19 September 2024, *Booking.com and Booking.com (Deutschland)*, C264/23, EU:C:2024:764, paragraph 34 and the case-law cited).

21 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to give a ruling on a question referred by a national court only where it is quite obvious that the interpretation of a rule of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 19 September 2024, *Booking.com and Booking.com (Deutschland)*, C264/23, EU:C:2024:764, paragraph 35 and the case-law cited).

22 In the present case, the questions referred concern, in essence, the interpretation of Articles 3 to 7 of Directive 93/13 and Article 7 of Directive 2014/17. Moreover, it is clear from a reading of the request for a preliminary ruling as a whole that the referring court has defined with sufficient precision the factual and legal framework of the dispute in the main proceedings, within which it has made that request, so as to enable both the interested parties to submit their observations, in accordance with Article 23 of the Statute of the Court of Justice of the European Union, and the Court to provide a useful reply to that request. In particular, the referring court clearly referred to the national case-law at issue and to its doubts as to the compatibility of judgment 816/2023 of the Tribunal Supremo (Supreme Court) of 29 May 2023 (ES:TS:2023:2131) with Directive 93/13, as interpreted by the Court of Justice in the judgment of 16 March 2023, *Caixabank (Loan arrangement fees)* (C565/21, EU:C:2023:212). Those questions can also be inferred from the wording of the questions referred for a preliminary ruling by the national court and relate, in particular, to the criteria for assessing whether a term providing for an arrangement fee is transparent or unfair. They require further clarification of the judgment of 16 March 2023, *Caixabank (Loan arrangement fees)* (C565/21, EU:C:2023:212).

23 It follows that the plea of inadmissibility raised by the defendant in the main proceedings must be rejected.

24 Next, the defendant in the main proceedings submits that the second question is hypothetical in the absence of a debate in the main proceedings on the publicity to which a clause providing for an arrangement fee must be subject.

25 It is apparent from the documents before the Court that that question raised by the referring court, which, in accordance with the case-law referred to in paragraph 20 above, is required to assess the need for a reference for a preliminary ruling and the relevance of the questions raised, concerns more broadly the information which the banking institution must provide to the consumer in accordance with the requirement for transparency laid down in Article 5 of Directive 93/13. The interpretation of that provision therefore appears useful for the resolution of the dispute in the main proceedings.

26 Consequently, the second question is admissible.

27 Lastly, the defendant in the main proceedings, the Kingdom of Spain and the Commission claim that the third and ninth questions are inadmissible on the ground that Directive 2014/17, to which they relate, is not applicable *rationae temporis* to the dispute in the main proceedings.

28 By those questions, the referring court seeks to ascertain whether Directive 2014/17 precludes the cost of the examination of the borrower's creditworthiness from being charged to the borrower and, if so, whether such a conclusion applies to credit agreements concluded before its transposition into Spanish law.

29 It should be noted that, under Article 43(1) of Directive 2014/17, that directive does not apply to credit agreements existing before 21 March 2016. The credit agreement at issue in the main proceedings was concluded on 22 January 2010.

30 Thus, it must be held that Directive 2014/17, which the Court is asked to interpret, does not apply *ratione temporis* to the circumstances of the case in the main proceedings.

31 In those circumstances, it is quite obvious that the interpretation of EU law sought in the context of the third and ninth questions referred for a preliminary ruling bears no relation to the actual facts of the main action or its purpose. Accordingly, in accordance with the case-law referred to in paragraphs 20 and 21 above, the third and ninth questions must be declared to be inadmissible.

Substance

The first, second, fourth and fifth questions

32 By its first, second, fourth and fifth questions, the referring court asks, in essence, whether Article 5 of Directive 93/13 must be interpreted as precluding national case-law which, in the light of national legislation that provides that the arrangement fee for a mortgage loan is to remunerate services connected with the examination, granting or processing of the mortgage loan or credit or other similar services, considers that the term imposing such a fee on the consumer satisfies the requirement for transparency arising from Article 5 without that term specifying in detail all of the services supplied in exchange for that fee or the time needed to perform those services, and without the seller or supplier informing the consumer of the existence of that fee when communicating the proposed interest rate, or indicating an hourly rate or providing him or her with the detailed invoices showing the breakdown of those services and the related charges.

33 The Court has pointed out that the transparency requirement set out in Article 5 of Directive 93/13 cannot be reduced merely to the contractual terms being formally and grammatically intelligible, but that, to the contrary, since the system of protection introduced by that directive is based on the idea that consumers are in a position of weakness vis-à-vis sellers or suppliers, in particular as regards their level of knowledge, that requirement, laid down by that directive, that the contractual terms are to be drafted in plain, intelligible language and, accordingly, that they be transparent, must be understood in a broad sense (judgment of 16 March 2023, *Caixabank (Loan arrangement fees)*, C565/21, EU:C:2023:212, paragraph 30 and the case-law cited).

34 Thus, that requirement must be understood as requiring not only that the term in question be grammatically intelligible to the consumer, but also that the contract set out transparently the specific functioning of the mechanism to which the term in question relates and, where appropriate, the relationship between that mechanism and the mechanism laid down by other terms, so that the consumer is capable of evaluating, on the basis of clear, intelligible criteria, the economic consequences for him or her which derive from it (judgment of 16 March 2023, *Caixabank (Loan arrangement fees)*, C565/21, EU:C:2023:212, paragraph 31 and the case-law cited).

35 It does not follow from that case-law that the lender is required to specify in the contract concerned the nature of all of the services provided in exchange for the charges laid down by one or more contractual terms. However, in the light of the protection that Directive 93/13 seeks to afford to the consumer by reason of the fact that he or she is in a weaker position vis-à-vis the seller or supplier, as regards both his or

her bargaining power and level of knowledge, it is necessary that the nature of the services actually provided can reasonably be understood or inferred from a consideration of the contract as a whole. Furthermore, the consumer must be able to ascertain that there is no overlap between those various costs or the services for which those costs are paid (judgments of 3 October 2019, *Kiss and CIB Bank*, C621/17, EU:C:2019:820, paragraph 43, and of 16 March 2023, *Caixabank (Loan arrangement fees)*, C565/21, EU:C:2023:212, paragraph 32).

36 In that connection, in paragraph 70 of its judgment of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria* (C224/19 and C259/19, EU:C:2020:578), the Court of Justice stated that it is for the national court to determine whether the financial institution has provided the consumer with sufficient information to enable him or her to apprise himself or herself of the content and functioning of the term requiring him or her to pay an arrangement fee, and of the role of that term within the loan agreement. In this way, the consumer will be acquainted with the reasons justifying the remuneration corresponding to that fee and will thus be able to assess the extent of his or her commitment and, in particular, the total cost of that contract (judgment of 16 March 2023, *Caixabank (Loan arrangement fees)*, C565/21, EU:C:2023:212, paragraph 35 and the case-law cited).

37 The plain and intelligible nature of a term, such as the one at issue in the dispute in the main proceedings, must be assessed by the court having jurisdiction in the light of all of the relevant factual elements, in particular the wording of the term under consideration, the information which the financial institution has provided to the borrower, including that which it is required to provide in accordance with the relevant national legislation, and the advertising by that institution in relation to the type of agreement entered into, by taking into account the level of attention which can be expected of an average consumer who is reasonably well informed and reasonably observant and circumspect (judgment of 16 March 2023, *Caixabank (Loan arrangement fees)*, C565/21, EU:C:2023:212, paragraph 40).

38 As regards the point at which the consumer must be informed, the Court has held that providing information, before concluding such a contract, on the terms of the contract and the consequences of concluding it is of fundamental importance for a consumer. It is on the basis of that information in particular that the consumer decides whether he or she wishes to be bound by the terms drawn up in advance by the seller or supplier (judgments of 9 July 2020, *Ibercaja Banco*, C452/18, EU:C:2020:536, paragraph 47, and of 12 January 2023, *D.V. (Lawyers' fees – Principle of an hourly rate)*, C395/21, EU:C:2023:14, paragraph 39).

39 The fact that the contractual terms do or do not relate to the main subject matter of that contract is irrelevant in that regard. In order for the consumer to be able, in accordance with the objective pursued by that requirement of transparency, to decide in full knowledge of the facts whether he or she wishes to be bound by the terms drawn up in advance by the seller or supplier, he or she must necessarily, before making such a decision, have been able to become acquainted with the contract as a whole, since it is the terms of that contract taken as a whole that will determine, inter alia, the rights and obligations of the consumer under that contract (judgment of 20 April 2023, *Ocidental – Companhia Portuguesa de Seguros de Vida*, C263/22, EU:C:2023:311, paragraph 30).

40 In relation to a contract for legal services chargeable on an hourly basis, the Court stipulated that, although a seller or supplier cannot be required to inform the consumer of the final financial consequences of his or her commitment, which depend on future events that are unpredictable and beyond the control of that seller or supplier, the fact remains that the information which the seller or supplier is required to provide before the conclusion of the contract must enable the consumer to take a prudent decision in full knowledge of the possibility that such events may occur and of the consequences which they are likely to have with regard to the duration of the provision of legal services concerned (judgment of 12 January 2023, *D.V. (Lawyers' fees – Principle of an hourly rate)*, C395/21, EU:C:2023:14, paragraph 43).

41 In the present case, it must be observed that the term imposing on the borrower an arrangement fee of EUR 588.70, corresponding to 0.35% of the amount of the loan granted, that is to say, the sum of EUR 168 200 repayable over a period of 30 years, is defined by the national legislation as remuneration for services connected with the examination, granting or processing of the mortgage loan or credit or other similar services. The requirement for transparency, which is intended primarily to ensure that the consumer is in a position to assess the financial consequences of a term such as the one at issue in the main proceedings, does not entail an obligation for the banking institution to specify precisely the nature of all the services supplied in exchange for the arrangement fee, or the number of hours devoted to the provision of each of those services, since those elements have no effect on the total amount of the remuneration to be paid in connection with that fee and the consumer's ability to understand the reasons justifying that remuneration.

42 Nor does it follow from Directive 93/13 that the banking institution is required to provide the consumer with invoices detailing the content of each service provided and an hourly rate for carrying out those services. Apart from the fact that such an obligation is not required by the case-law referred to in paragraphs 35 and 36 above, it is not, by definition, likely to facilitate the consumer's understanding before the conclusion of the contract. The arrangement fee is paid only once, at the time the loan is granted, and invoicing takes place after the signing of that contract.

43 It must be borne in mind that the assessment of whether a contractual term, such as that at issue in the main proceedings, is 'drafted in plain, intelligible language', within the meaning of Article 5 of Directive 93/13, must be carried out by the national court in the light of all the relevant facts and taking into account all the circumstances attending the conclusion of the contract. In the context of that assessment, account must be taken, in particular, of the information which the institution provided to the borrower during the various stages preceding the signing of the loan agreement, especially when communicating the proposed interest rate, including the information it is required to provide in accordance with national legislation. Such a case-by-case examination is all the more important since the transparent nature of a contractual term, as required under Article 5 of Directive 93/13, is one of the elements to be taken into account in the assessment of whether that term is unfair, which is for the national court to carry out pursuant to Article 3(1) of that directive (judgment of 3 October 2019, *Kiss and CIB Bank*, C621/17, EU:C:2019:820, paragraph 49). Thus, in principle, the unfairness of a particular contractual term cannot be assumed, since such a characterisation depends on the specific circumstances attending the conclusion of each contract, including the specific information provided by each seller or supplier to each consumer and whether those services were in fact provided.

44 In the light of the foregoing, the answer to the first, second, fourth and fifth questions is that Article 5 of Directive 93/13 must be interpreted as not precluding national case-law which, in the light of national legislation that provides that the arrangement fee for a mortgage loan is to remunerate services connected with the examination, granting or processing of the mortgage loan or credit or other similar services, considers that the term imposing such a fee on the consumer satisfies the requirement for transparency arising from Article 5 without that term specifying in detail all of the services supplied in exchange for that fee when communicating the proposed interest rate or indicating an hourly rate, and without the banking institution providing the consumer with the detailed invoices showing the breakdown of those services and the related charges, provided that that consumer has indeed been placed in a position to assess the economic consequences for him or her, to understand the nature of the services supplied in exchange for the costs provided for by that term and to ascertain that there is no overlap between the various costs provided for in the contract or between the services for which those costs are paid.

The sixth question

45 By its sixth question, the referring court asks, in essence, whether Articles 3 to 5 of Directive 93/13 must be interpreted as precluding the expression of the amount of the arrangement fee in the form of a percentage applied to the total amount of the loan granted.

46 Under Article 3(1) of Directive 93/13, a contractual term that has not been individually negotiated is to be regarded as being 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.

47 It is established case-law that the examination as to whether there is such a significant imbalance cannot be limited to a quantitative economic evaluation based on a comparison between the total value of the transaction which is the subject of the contract, on the one hand, and the costs charged to the consumer under the contractual term in question, on the other. A significant imbalance can result solely from a sufficiently serious impairment of the legal situation in which the consumer, as a party to the contract in question, is placed by reason of the relevant national provisions that apply, whether this be in the form of a restriction of the rights which, in accordance with those provisions, he or she enjoys under the contract, or a constraint on the exercise of those rights, or the imposition on him or her of an additional obligation not envisaged by the national rules (judgments of 3 October 2019, *Kiss and CIB Bank*, C621/17, EU:C:2019:820, paragraph 51, and of 16 March 2023, *Caixabank (Loan arrangement fees)*, C565/21, EU:C:2023:212, paragraph 51).

48 It follows from that case-law that the national court, when it finds that a quantitative economic evaluation does not show that there is a significant imbalance, cannot restrict its examination to that assessment. It is incumbent upon that court, in such a case, to examine whether such an imbalance results from another factor, such as a restriction on a right derived from national law or an additional obligation not provided for by that law (judgment of 23 November 2023, *Provident Polska*, C321/22, EU:C:2023:911, paragraph 46).

49 By contrast, where the quantitative economic evaluation does show that there is a significant imbalance, that finding may be made without it being necessary to examine other factors. In the case of a credit agreement, such a finding may notably be made if the services provided in exchange for the non-interest costs were not reasonably covered in the context of the conclusion or management of that agreement, or if the amounts charged to the consumer in respect of the costs of granting and managing the loan are clearly disproportionate in relation to the amount of the loan. It is for the national court to take account, in that regard, of the effect of other contractual terms in order to determine whether those terms create a significant imbalance to the borrower's detriment (see, to that effect, judgment of 3 September 2020, *Profi Credit Polska*, C84/19, C222/19 and C252/19, EU:C:2020:631, paragraph 95).

50 The referring court is required to ascertain, as a first step, whether the examination of the possible unfairness of contractual terms relating to the non-interest credit costs is not precluded under Article 4(2) of Directive 93/13 (see, to that effect, judgment of 23 November 2023, *Provident Polska*, C321/22, EU:C:2023:911, paragraph 49).

51 According to that provision, and subject to Article 8 of Directive 93/13, an assessment of the unfairness of contractual terms is to relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as those terms are drafted in plain, intelligible language (judgment of 23 November 2023, *Provident Polska*, C321/22, EU:C:2023:911, paragraph 50).

52 In that regard, it should be recalled that a commission fee covering remuneration for services connected with the examination, granting or processing of the loan or credit or other similar services, inherent in the lender's activity, arising from the granting of the loan or credit cannot be regarded as

forming part of the main obligations arising from a credit agreement (see, to that effect, judgment of 16 March 2023, *Caixabank (Loan arrangement fees)*, C565/21, EU:C:2023:212, paragraphs 22 and 23).

53 By contrast, terms relating to the consideration due by the consumer to the lender or having an impact on the actual price to be paid to the latter by the consumer thus, in principle, fall within the second category of terms covered by Article 4(2) of Directive 93/13, referred to in paragraph 50 above, as regards the question whether the amount of consideration or the price as stipulated in the contract are adequate as compared with the service provided in exchange by the lender (see, to that effect, judgment of 3 October 2019, *Kiss and CIB Bank*, C621/17, EU:C:2019:820, paragraph 35 and the case-law cited).

54 In the present case, the agreement concluded between the parties in the main proceedings provides for a term imposing on the borrower an arrangement fee of 0.35% of the total amount of the loan granted, that is to say, the sum of EUR 588.70. The mere expression of the cost of such a fee in the form of a percentage of that amount cannot, in itself, establish the existence of a significant imbalance in the parties' rights and obligations arising under the contract in the conditions set out in paragraphs 46 to 49 above. Thus, provided that clause complies with the requirement for transparency, Article 3 of Directive 93/13 must be interpreted as not precluding the expression of the amount of the arrangement fee in the form of a percentage of the total amount of the loan.

55 With regard to the compatibility of such a method of expressing the price of the services covered by the term at issue in the main proceedings with the requirement for transparency set out in Article 5 of Directive 93/13, it must be recalled, in the light of the answer given to the first, second, fourth and fifth questions, that the examination of whether such a term is 'drafted in plain, intelligible language', within the meaning of that provision, must be carried out by the referring court in the light of all the relevant facts and taking into account all the circumstances attending the conclusion of the contract. In that regard, the fact that the sum claimed in respect of the arrangement fee paying for a set of services on a flat-rate basis is determined by the application of a percentage to the amount of the loan granted does not appear, in principle, to be contrary to the requirement for transparency laid down in Article 5 of Directive 93/13. It is, however, for that court to satisfy itself, on the basis of all the factors attending the conclusion of the contract, that a reasonably observant and circumspect consumer can assess the financial consequences of that term.

56 It follows that, if the referring court finds that the relevant term is not drafted in plain, intelligible language, that term must, in any event, be subject to an assessment of its unfairness, even if that term is in fact challenged with regard to the adequacy of the price or the remuneration in relation to the services provided in exchange (see, to that effect, judgments of 26 February 2015, *Matei*, C143/13, EU:C:2015:127, paragraph 72 and the case-law cited, and of 23 November 2023, *Provident Polska*, C321/22, EU:C:2023:911, paragraph 58).

57 In the light of the foregoing, the answer to the sixth question is that Articles 3 to 5 of Directive 93/13 must be interpreted as not precluding the price of the services covered by a contractual term providing for an arrangement fee, defined by national legislation as remunerating the services connected with the examination, granting or processing of the mortgage loan or credit or other similar services, from being expressed in the form of a percentage applied to the amount of the loan granted, provided that the consumer has indeed been placed in a position to assess the economic consequences of that term for him or her, to understand the nature of the services supplied in exchange for the costs provided for by that term and to ascertain that there is no overlap between the various costs provided for in the contract. In that scenario, such a clause cannot create a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.

The seventh, eighth and tenth questions

58 By its seventh, eighth and tenth questions, the referring court asks, in essence, whether Article 3 and Article 4(1) of Directive 93/13 must be interpreted as precluding national case-law which, in the light of national legislation that provides that the arrangement fee is to remunerate services connected with the examination, granting or processing of the mortgage loan or credit or other similar services, merely verifies that the term providing for that fee clearly indicates the amount due in that respect and that that fee does not exceed a ceiling for an average cost of the arrangement fees derived from national statistics, despite the lack of details relating to the services remunerated and the price of each of those services.

59 It should be recalled that the Court's jurisdiction in that regard extends to the interpretation of the concept of 'unfair term' used in Article 3(1) of Directive 93/13, and to the criteria which the national court may or must apply when examining a contractual term in the light of the provisions of that directive, but that it is for the national court to determine, in the light of those criteria, whether a particular contractual term is actually unfair in the circumstances of the case. It is thus clear that the Court must limit itself to providing the referring court with guidance which the latter must take into account in order to assess whether the term at issue is unfair (judgments of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria*, C224/19 and C259/19, EU:C:2020:578, paragraph 73, and of 16 March 2023, *Caixabank (Loan arrangement fees)*, C565/21, EU:C:2023:212, paragraph 49).

60 Under that provision, a contractual term that has not been individually negotiated is to be regarded as being 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.

61 As to whether the requirement of good faith, within the meaning of Article 3(1) of Directive 93/13, is satisfied, it is important to note that, regard being had to the sixteenth recital thereof, the national court must 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 (judgment of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria*, C224/19 and C259/19, EU:C:2020:578, paragraph 74).

62 With regard to the examination as to whether there may be a significant imbalance, this cannot be limited to a quantitative economic evaluation based on a comparison between the total value of the transaction which is the subject of the contract, on the one hand, and the costs charged to the consumer under that term, on the other. A significant imbalance can result solely from a sufficiently serious impairment of the legal situation in which the consumer, as a party to the contract in question, is placed by reason of the relevant national provisions, whether this be in the form of a restriction of the rights which, in accordance with those provisions, he or she enjoys under the contract, or a constraint on the exercise of those rights, or the imposition on him or her of an additional obligation not envisaged by the national rules (judgment of 3 October 2019, *Kiss and CIB Bank*, C621/17, EU:C:2019:820, paragraph 51).

63 Moreover, it is clear from Article 4(1) of Directive 93/13 that the unfairness of a contractual term is to 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.

64 In that regard the Court has held that a contractual term governed by national law which establishes an arrangement fee, the purpose of which is to remunerate services relating to the examination, constitution and personalised processing of an application for a mortgage loan or credit which are necessary to obtain such a loan or credit, does not appear, subject to verification by the court having jurisdiction, capable of adversely affecting the legal position of the consumer as provided for by national law, unless the services provided in return do not reasonably fall within the scope of the services described above or the amount charged to the consumer in respect of that fee is disproportionate to the amount of

the loan (judgment of 16 March 2023, *Caixabank (Loan arrangement fees)*, C565/21, EU:C:2023:212, paragraph 59).

65 Although, among the criteria it uses to assess whether there is any significant imbalance, in accordance with the case-law referred to in paragraph 62 above, it is possible for the court having jurisdiction to take account of national statistics determining the average cost of arrangement fees over a given period, that factor alone cannot suffice. If the national court were to confine itself to making a comparison between the amount of the arrangement fee provided for by a term, the possible unfairness of which it is examining, and that average cost, such a comparison would be significant only if it were based on the most recent data necessarily covering the period of application of Directive 93/13.

66 In so far as it follows from the case-law referred to in paragraph 36 above that the requirement for transparency, referred to in Article 5 of Directive 93/13, does not entail an obligation for the banking institution to set out in detail, in the credit agreement concerned, the nature of the services supplied in exchange for the remuneration provided for in the clause establishing the arrangement fee, it must be held that compliance with Article 3 of that directive likewise does not require that clause to mention the precise content of the services covered by that fee or the price of each of those services. In any event, it is for the court having jurisdiction to satisfy itself that the requirement of good faith has been complied with and that that term does not create a significant imbalance in the parties' rights and obligations arising under the contract, by ascertaining inter alia that, in accordance with national legislation, the costs passed on to the consumer correspond to services actually provided by the banking institution which give rise to costs borne by the consumer.

67 For those reasons, the answer to the seventh, eighth and tenth questions is that Article 3 and Article 4(1) of Directive 93/13 must be interpreted as not precluding national case-law which considers that a contractual term which provides, in accordance with national legislation, for the payment by the consumer of an arrangement fee intended to remunerate services connected with the examination, granting and personalised processing of an application for a mortgage loan or credit, may not create a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer, without the seller or supplier being required to provide details of the nature of the services remunerated by that fee or the cost of each of those services, provided that the possible existence of such an imbalance may be subject to effective review by the court having jurisdiction, in accordance with the criteria set out in the case-law of the Court of Justice, if necessary by comparing the amount of an arrangement fee imposed on a borrower with the average cost of arrangement fees surveyed over a recent period.

Costs

68 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 (Eighth Chamber) hereby rules:

1. **Article 5 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts**

must be interpreted as not precluding national case-law which, in the light of national legislation that provides that the arrangement fee for a mortgage loan is to remunerate services connected with the examination, granting or processing of the mortgage loan or credit or other similar services, considers that the term imposing such a fee on the consumer satisfies the requirement for transparency arising from Article 5 without that term specifying in detail all of the services supplied in exchange for that fee when communicating the proposed interest rate or indicating an hourly rate, and without the banking

institution providing the consumer with the detailed invoices showing the breakdown of those services and the related charges, provided that that consumer has indeed been placed in a position to assess the economic consequences for him or her, to understand the nature of the services supplied in exchange for the costs provided for by that term and to ascertain that there is no overlap between the various costs provided for in the contract or between the services for which those costs are paid.

2. **Articles 3 to 5 of Directive 93/13**

must be interpreted as not precluding the price of the services covered by a contractual term providing for an arrangement fee, defined by national legislation as remunerating the services connected with the examination, granting or processing of the mortgage loan or credit or other similar services, from being expressed in the form of a percentage applied to the amount of the loan granted, provided that the consumer has indeed been placed in a position to assess the economic consequences of that term for him or her, to understand the nature of the services supplied in exchange for the costs provided for by that term and to ascertain that there is no overlap between the various costs provided for in the contract. In that scenario, such a clause cannot create a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.

3. **Article 3 and Article 4(1) of Directive 93/13**

must be interpreted as not precluding national case-law which considers that a contractual term which provides, in accordance with national legislation, for the payment by the consumer of an arrangement fee intended to remunerate services connected with the examination, granting and personalised processing of an application for a mortgage loan or credit, may not create a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer, without the seller or supplier being required to provide details of the nature of the services remunerated by that fee or the cost of each of those services, provided that the possible existence of such an imbalance may be subject to effective review by the court having jurisdiction, in accordance with the criteria set out in the case-law of the Court of Justice, if necessary by comparing the amount of an arrangement fee imposed on a borrower with the average cost of arrangement fees surveyed over a recent period.

[Signatures]

* Language of the case: Spanish.