Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

3 July 2025 * [i]

[Text rectified by order of 18 September 2025]

(Reference for a preliminary ruling – Directive 93/13/EEC – Unfair terms in consumer contracts – Article 6(1) and Article 7(1) – Powers and obligations of the national court – Insolvency proceedings relating to a natural person – Bankruptcy court has no power to examine *ex officio* whether the terms of a contract that gave rise to a claim on the list of claims are unfair – No power for that court to order interim measures – Principle of effectiveness)

In Case C-582/23 [Wiszkier [i]],

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (District Court for the central district of Łódź, Poland), made by decision of 2 August 2023, received at the Court on 20 September 2023, in the proceedings

[As rectified by order of 18 September 2025]

R.S.,

other parties:

C. S.A.,

P.C., acting as trustee in bankruptcy of R.S. and of M.S.,

M.K., acting as liquidator of G. S.A.,

J.J.,

M.G.,

THE COURT (Fourth Chamber),

composed of I. Jarukaitis, President of the Chamber, N. Jääskinen (Rapporteur), A. Arabadjiev, M. Condinanzi and R. Frendo, Judges,

Advocate General: D. Spielmann,

* Language of the case: Polish.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

Registrar: M. Siekierzyńska, Administrator,

having regard to the written procedure and further to the hearing on 14 November 2024,

after considering the observations submitted on behalf of:

– P.C., acting as trustee in bankruptcy of R.S. and of M.S., by M. Kiejna, radca prawny,

– M.K., acting as liquidator of G. S.A., by P. Cieślak, M. Pyzik-Waląg J. Szewczak and Ł. Żak, adwokaci, and M. Pugowski, aplikant radcowski,

– the Polish Government, by B. Majczyna, M. Kozak, K. Rudzińska, and S. Żyrek, acting as Agents,

– the European Commission, by M. Brauhoff, O. Glinicka, P. Kienapfel and P. Ondrůšek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 March 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6(1) and of 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).

2 The request has been made in bankruptcy proceedings relating to R.S., a bankrupt consumer, concerning the establishment of a plan to repay R.S.'s creditors, which include a bank, namely G. S.A. ('Bank G.').

Legal context

European Union law

3 According to the twenty-fourth recital of Directive 93/13:

'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 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.'

5 Article 7(1) of that directive reads 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.’

Polish law

The Law on insolvency

6 Insolvency proceedings are governed by the Ustawa – Prawo upadłościowe (Law on insolvency) of 28 February 2003 (Dz. U. No 60, item 535), in the version applicable to the main proceedings (Dz. U. of 2019, item 498, as amended) (‘the Law on insolvency’).

7 Under Article 2(2) of the Law on insolvency, proceedings governed by that law in respect of natural persons not engaged in business are to be conducted in such a way as to enable the discharge of the insolvent party’s debts of which payment has not been enforced in the insolvency proceedings and, as far as possible, maximum satisfaction of the claims of his or her creditors.

8 Article 61 of that law provides that, from the date of the declaration of insolvency, the assets of the insolvent party are to become the insolvency estate, which is to be used to satisfy the claims of that person’s creditors.

9 Under Article 62 of that law, the insolvency estate is to comprise the assets belonging to the insolvent party on the date of the declaration of insolvency and those acquired by that person in the course of the insolvency proceedings, subject to the exceptions set out in Articles 63 to 67a of the law.

10 It is apparent from Article 63(1)(2) of the Law on insolvency that the portion of the insolvent party’s remuneration that is not subject to attachment does not form part of the insolvency estate.

11 Under Article 151(1) of that law, as from the date of the declaration of insolvency, acts in the insolvency proceedings are to be performed by the supervisory judge, with the exception of acts for which the insolvency court has jurisdiction.

12 Under Article 152(1) of that law, it is the task of the supervisory judge to direct the insolvency proceedings, to supervise the acts of the liquidator or trustee in bankruptcy, to indicate which acts by the liquidator or trustee require the authorisation of the supervisory judge or of the committee of creditors and to draw attention to any failings by the liquidator or trustee. In addition, under Article 152(2), the supervisory judge is to perform the other acts defined in that law.

13 Article 154 of the Law on insolvency provides that, in connection with his or her acts, the supervisory judge is to have the rights and duties of the insolvency court and of the president of that court.

14 Article 236 of that law provides:

‘1. A creditor that has a claim against the personal assets of the insolvent party and wishes to participate in the insolvency proceedings shall, where it is necessary that that person’s claim be established, give notice of the claim to the supervisory judge within the period laid down in the order containing the declaration of insolvency.

2. A creditor shall also be entitled to give notice of a claim where that claim is secured by means of a mortgage, a pledge, with or without possession, a treasury pledge, a maritime mortgage or any other entry in the Land Register or the Ship Register. If a creditor fails to give notice of such claims, they shall be included *ex officio* on the list of claims.

3. Paragraph 2 shall apply *mutatis mutandis* to claims secured by a mortgage, a pledge, with or without possession, a treasury pledge or a maritime mortgage where the security is an asset forming part of the insolvency estate, if the insolvent party is not a debtor on the basis of his or her personal assets and if the creditor is seeking to enforce the claims in question against the encumbered asset in the insolvency proceedings.

4. The provisions of this article relating to claims shall apply to other debts that must be satisfied from the insolvency estate.’

15 Article 243(1) of that law states that the liquidator or trustee in bankruptcy is to verify whether the notified claim is supported by the accounts or other documents of the insolvent party or by entries in the Land Register or in other registers, and is to invite the insolvent party to submit a declaration, within a prescribed period, indicating whether that party acknowledges the claim.

16 Article 244 of that law provides that, after expiry of the period for notifying claims and once the claims notified have been verified, the liquidator or trustee in bankruptcy is immediately to draw up a list of claims, and must do so no later than two months after expiry of the period for notifying claims.

17 Under Article 260(2) of the Law on insolvency, if no objection has been lodged on expiry of the period for lodging objections, the supervisory judge is to approve the list of claims.

18 It is apparent from Article 261 of that law that, if the supervisory judge finds that wholly or partly non-existent debts have been included on the list of claims or that claims that should appear are missing from it, he or she may, *ex officio*, amend the list, that the order amending the list is to be published, and that an appeal may be lodged against that order.

19 Article 491[14] of that law provides:

‘1. Once the final distribution plan has been implemented or where, because the bankrupt’s assets are insufficient, no distribution plan has been drawn up, the bankruptcy court, after approval of the list of claims and having heard representations from the bankrupt, the trustee in bankruptcy and the creditors, shall draw up a creditor repayment plan or, in the situations referred to in Article 491[16], shall rule that the bankrupt’s debts are discharged without drawing up a creditor repayment plan.

2. The order relating to the drawing up of a creditor repayment plan or to the discharge of the bankrupt's debts without the drawing up of a creditor repayment plan shall be served on the creditors. An appeal may be lodged against that order.

3. When the order relating to the drawing up of a creditor repayment plan or to the discharge of the bankrupt's debts without the drawing up of a creditor repayment plan becomes final, the proceedings shall close.'

20 Article 491[15](1) and (4) of that law provides:

'1. In the order relating to the drawing up of the creditor repayment plan, the bankruptcy court shall indicate the extent to which and the period (not exceeding 36 months) within which the bankrupt must repay the debts acknowledged on the list of claims and of which payment has not been enforced in the course of the proceedings on the basis of the distribution plans, and what portion of the bankrupt's debts that had fallen due prior to the date of the declaration of bankruptcy is to be discharged after implementation of the creditor repayment plan.

…

4. The bankruptcy court shall not be bound by the position adopted by the bankrupt on the terms of the creditor repayment plan. For the purposes of defining the creditor repayment plan, that court shall take into consideration the bankrupt's earning capacity, the maintenance needs of that person and his or her dependents, including their housing needs, the amount of the unsatisfied claims and any genuine possibility of those claims being satisfied at a later date.'

Law establishing the Labour Code

21 Article 87 of the Ustawa – Kodeks pracy (Law establishing the Labour Code) of 26 June 1974 (Dz. U. No 24, item 141), in the version applicable to the main proceedings (Dz. U. of 2022, item 1510, as amended) provides, inter alia, that, in the case of the enforcement of payment in relation to other debts or of offsetting in respect of advances made by an employer to cover business expenses, withholdings may be made of up to half a person's salary.

The main proceedings and the questions referred

22 On 30 March 2007, R.S., his wife and two other natural persons entered into a mortgage loan agreement with Bank G., indexed to the Swiss franc (CHF), for 489 821.63 Polish zlotys (PLN) (approximately EUR 116 587.34) and with a term of 360 months.

23 By order of 15 October 2019, R.S. was declared bankrupt and, subsequently, a trustee in bankruptcy was appointed.

24 By order of 26 April 2021, the supervisory judge approved a list of claims drawn up by that trustee. The majority of the claims on that list were claims by Bank G., under the mortgage loan agreement at issue in the main proceedings. No objections were made and R.S. acknowledged all those claims.

25 On 20 July 2023, Bank G. was declared insolvent and the bankruptcy proceedings continued with the presence of its liquidator.

26 It is apparent from the order for reference that, in bankruptcy proceedings, it is for the bankruptcy court, on the basis of the list of claims already drawn up by the trustee in bankruptcy and approved by the supervisory judge, to establish a plan for the repayment of the claims against the bankrupt or to make a finding that the assets already accumulated in the bankruptcy estate are sufficient to satisfy all that person's debts and that no repayment plan is necessary. The decision of that court in that regard brings the bankruptcy proceedings to an end.

27 In the present case, the court in question is the Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (District Court for the central district of Łódź, Poland), which is the referring court. That court considers that the mortgage loan agreement at issue in the main proceedings contains unfair terms capable of rendering the agreement null and void, and notes that that aspect has not been examined previously. According to that court, the amounts owed to Bank G. are lower than the claims notified and may even not exist at all.

28 In that regard, the referring court, in the first place, observes that, although R.S. has already acknowledged all the claims, it is not apparent from the case file in the bankruptcy proceedings that he was informed of the possible unfairness of the terms of the loan agreement at issue in the main proceedings or that he declared in full knowledge of the facts that he did not wish to avail himself of the protection conferred on him by Directive 93/13. However, R.S.'s professional representative, who has represented him since 3 November 2022, asserted before that court that the mortgage loan agreement in question contained unfair terms. Moreover, R.S. has not had an opportunity to bring an action himself invoking the protection of his rights under that directive, since his assets were and continue to be administered by the trustee in bankruptcy.

29 According to the referring court, under the applicable provisions of national law, the bankruptcy court, when it is drawing up a repayment plan, is not itself able to review whether the contractual terms are unfair. The bankruptcy court can only stay the proceedings and refer the matter to the supervisory judge for a potential *ex officio* amendment of the list of claims, which would cause a delay in the hearing of the case.

30 In the second place, the referring court notes that, in bankruptcy proceedings, it is difficult to determine which authority is responsible for examining, where necessary, the possible unfairness of the contractual terms concerned. The supervisory judge examines the notices of claims from a formal perspective only and forwards them to the trustee in bankruptcy, and the latter examines them substantively and draws up the list of claims. The supervisory judge, therefore, has no opportunity provided for in law to amend that list before it is approved, unless an objection is made by a person authorised to do so.

31 Since, in the present case, no objections have been made and since R.S. has not claimed, before the supervisory judge, that the terms of the mortgage loan agreement at issue in the main proceedings are unfair, the supervisory judge was not required, under national law, to ascertain the validity of Bank G.'s claim on the list of claims. The allegedly unfair nature of the terms of that mortgage loan agreement was raised by R.S.'s representative only before the referring court.

32 In the third place, the referring court indicates that, according to the statements made by R.S., once the sums to be paid into the bankruptcy estate have been withheld, he is left with an amount that is insufficient to meet his needs and those of his family. However, the provisions applicable to the bankruptcy proceedings at issue in the main proceedings allow neither the bankruptcy court nor the supervisory judge to alter the amount of that withholding in any way.

33 In the fourth and last place, the referring court recalls that the funds collected during the bankruptcy proceedings serve to satisfy the claims of all the creditors, rather than those of Bank G. alone. In view of the amount of the funds paid into the bankruptcy estate and the amount of the other debts, it may transpire that those funds are sufficient to satisfy the claims, with the exception of the claim of Bank G. Under Article 87 of the Law establishing the Labour Code, in the version applicable to the main proceedings, half the bankrupt's salary continues to be paid into the bankruptcy estate and it is only at the end of the bankruptcy proceedings that any surplus is reimbursed to that person.

34 In those circumstances, the referring court considers that the bankrupt may be deterred from invoking the protection arising from Directive 93/13 because, if he did not claim that protection, the bankruptcy court could more quickly draw up a repayment plan for him, taking into account his needs and those of his close family, which would be likely to involve the repayment of lower amounts than the sums withheld from salary. That course of action would however require him to accept the fact that the list of claims would include the claim of Bank G.

35 In those circumstances, the Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (District Court for the central district of Łódź) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 6(1) and Article 7(1) of [Directive 93/13] be interpreted as precluding rules of national law which provide that the bankruptcy court is bound by the list of claims approved by the [supervisory judge] in bankruptcy proceedings, thereby preventing the bankruptcy court which gives the final ruling in the proceedings from assessing whether contractual terms are unfair?

(2) Must Article 6(1) and Article 7(1) of [Directive 93/13] be interpreted as precluding rules of national law which prohibit the ordering of interim measures in bankruptcy proceedings and which are therefore liable to deter consumers from availing themselves of the protection afforded them by that directive?'

Consideration of the questions referred

The first question

36 By its first question, the referring court asks, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as precluding national legislation which provides that, in insolvency proceedings relating to natural persons, once the list of claims has been approved by a judicial authority and proceedings have been commenced before the bankruptcy court, the latter is bound by that list, with the effect that it can neither assess the unfairness of terms contained in a loan agreement on which a claim included on that list is based nor amend that list, but must stay the proceedings and refer the matter of the possible unfairness of those terms to the judicial authority in question.

37 In that regard, it should be noted, in the first place, that Article 6(1) of Directive 93/13 is a mandatory provision and must be regarded as a provision of equal standing to that of national rules that have, within the domestic legal system, the character of rules of public policy (judgment of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraphs 54 and 55 and the case-law cited).

38 Accordingly, the national court is required to assess of its own motion whether a contractual term falling within the scope of Directive 93/13 is unfair, compensating in that way for the imbalance which exists between the consumer and the seller or supplier, wherever it has available to it the legal and factual elements necessary for that task (judgment of 17 May 2022, *Ibercaja Banco*, C-600/19, EU:C:2022:394, paragraph 37 and the case-law cited).

39 Moreover, 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 twenty-fourth 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' (judgment of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraph 73 and the case-law cited).

40 Given that the question raised in the present case concerns insolvency proceedings relating to a natural person not engaged in business, it is necessary to recall, in the second place, that EU law does not harmonise the procedures applicable to examining the possible unfairness of a contractual term, with the result that those procedures fall within the domestic legal system of the Member States, in accordance with the principle of the procedural autonomy of the Member States, on condition, however, that they are no less favourable than those governing similar domestic actions (principle of equivalence) and do not make it impossible in practice or excessively difficult to exercise the rights conferred by EU law (principle of effectiveness) (judgments of 4 May 2023, *BRD Groupe Societé Générale and Next Capital Solutions*, C-200/21, EU:C:2023:380, paragraph 28, and of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraph 74 and the case-law cited).

41 As regards the principle of equivalence, there is no evidence before the Court that raises any doubts as to whether the legislation at issue in the main proceedings complies with that principle.

42 As regards the principle of effectiveness, the question of whether national legislation makes the application of EU law impossible or excessively difficult must be analysed by reference to the proceedings as a whole, the way in which they are conducted and their particular features, along with, where relevant, the principles underlying 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. Moreover, the specific characteristics of court proceedings cannot constitute a factor which is liable to affect the legal protection from which consumers must benefit under the provisions of Directive 93/13 (judgment of 17 May 2022, *Impuls Leasing România*, C-725/19, EU:C:2022:396, paragraph 45 and the case-law cited).

43 However, the Court has also held that the need to comply with the principle of effectiveness cannot be stretched so far as to make up fully for the complete inaction on the part of the consumer concerned (judgments of 6 October 2009, *Asturcom Telecomunicaciones*, C-40/08, EU:C:2009:615, paragraph 47, and of 24 June 2025, *GR REAL*, C-351/23, EU:C:2025:474, paragraph 58 and the case-law cited).

44 In addition, the obligation on the Member States to ensure the effectiveness of the rights that individuals derive from EU law, particularly the rights deriving from Directive 93/13, implies a requirement for effective judicial protection, reaffirmed in Article 7(1) of that directive and also

guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union (judgment of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraph 76 and the case-law cited).

45 In the present case, it is apparent from the order for reference that a list of claims approved by the supervisory judge is binding on the bankruptcy court, with the effect that the latter cannot itself make findings of fact as regards whether the debts in question exist for the purposes of drawing up the creditor repayment plan. According to the referring court, the only means available to it of obtaining a review of the possible unfairness of terms in a contract that has given rise to a claim on the list of claims drawn up by the trustee in bankruptcy and approved by the supervisory judge is to put the matter before that supervisory judge seeking an examination both of those contractual terms and of the need to amend that list *ex officio*.

46 It is also apparent that the obligation, for the bankruptcy court, to put the matter before the supervisory judge delays the conclusion of the bankruptcy proceedings and, because the bankruptcy estate receives withholdings from the bankrupt's salary continuously throughout the proceedings, prolongs that person's precarious financial situation. Prolonging the proceedings may therefore discourage that bankrupt from asserting his or her right to invoke the protection arising from Directive 93/13.

47 As the referring court explained in its reply to a request for clarification made to it by the Court under Article 101 of the Rules of Procedure of the Court of Justice, as a general rule a bankrupt is dependent on the bankruptcy proceedings being concluded as soon as possible. When drawing up the repayment plan, which brings those proceedings to an end, the bankruptcy court can take account of that bankrupt's personal situation and expenditure and the requirement to meet the needs of the persons closest to him or her, and, in most cases, the monthly amount that the bankrupt must allocate to repayment of his or her debts on conclusion of the proceedings is set below the amount withheld from salary during those proceedings. That bankrupt may therefore be forced, in order to avoid prolonging the bankruptcy proceedings, not to invoke the protection arising from Directive 93/13 and to accept a repayment plan that includes a claim arising from a contract containing potentially unfair terms.

48 It should also be added that, according to the information in the file before the Court, it appears that the risk that the bankrupt may abstain from raising the unfairness of a contractual term at the time of bankruptcy proceedings exists not only at the stage of those proceedings that takes place before the bankruptcy court but at each stage of those proceedings. Raising the unfairness of a term in a contract that has given rise to a claim has the effect, in all circumstances, of delaying conclusion of the proceedings concerned.

49 It must be noted that the protection which Directive 93/13 confers on consumers extends to cases in which a consumer who has concluded with a seller or supplier a contract containing an unfair term fails to raise, first, the fact that that contract falls within the scope of that directive and, second, the unfair nature of the term in question, whether because the consumer is unaware of his or her rights or because he or she is deterred from enforcing them on account of the costs which judicial proceedings would involve or the financial burden that he or she would have to bear (see, to that effect, judgment of 4 June 2020, *Kancelaria Medius*, C-495/19, EU:C:2020:431, paragraph 31 and the case-law cited).

50 Accordingly, in the light of the factors referred to in paragraphs 45 to 47 of the present judgment, it should be found that national legislation such as that at issue in the main proceedings, which may discourage a bankrupt from asserting his or her right to invoke the protection arising from Directive 93/13, makes the application of that directive in those proceedings excessively difficult.

51 For the avoidance of doubt, it is also necessary to state that the right to effective consumer protection includes the option to waive the exercise of one's rights, with the consequence that, where appropriate, the national court must take account of the intention expressed by the consumer where, although aware of the non-binding nature of an unfair term, that consumer states nevertheless that he or she is opposed to that term being disregarded, thus giving his or her free and informed consent to the term in question (judgment of 9 July 2020, *Ibercaja Banco*, C-452/18, EU:C:2020:536, paragraphs 25 to 28 and the case-law cited).

52 There is nothing in the file before the Court to suggest that, in the present case, the bankrupt, in a free and informed manner, waived his right to invoke the protection that he enjoys under Directive 93/13. As the Advocate General noted in point 88 of his Opinion, the fact that the bankrupt, who was not represented by a lawyer at that stage in the proceedings, acknowledged the notices of claims to the trustee in bankruptcy and did not lodge an objection with the supervisory judge cannot be regarded as indicating a free and informed waiver of the right to that protection.

53 Furthermore, in a situation such as that in the main proceedings, the attitude of the bankrupt cannot be described as completely inactive within the meaning of the case-law summarised in paragraph 43 of the present judgment. As set out in paragraph 28 of the present judgment, he claimed before the bankruptcy court, here the referring court, that the mortgage loan agreement at issue in the main proceedings contained unfair terms.

54 In view of the arguments put forward by M.K. at the hearing, according to which the list of claims approved by the supervisory judge has become *res judicata*, it is also necessary to state that that fact does not necessarily preclude the bankruptcy court from examining, *ex officio*, the possible unfairness of terms contained in a contract from which a claim on that list has arisen.

55 As the Court of Justice has held, the obligation to carry out such an *ex officio* examination is justified by the nature and importance of the public interest underlying the protection which Directive 93/13 confers on consumers, with the result that an effective review of the possible unfairness of contractual terms, as required by that directive, could not be guaranteed if the force of *res judicata* were to be extended to judicial decisions which do not indicate that such a review has been conducted (judgment of 17 May 2022, *Ibercaja Banco*, C-600/19, EU:C:2022:394, paragraph 50).

56 Accordingly, since, in the present case, no examination of the unfairness of terms contained in a contract that gave rise to a claim on the list of claims approved by the supervisory judge has taken place, which will ultimately be for the referring court to verify, Directive 93/13 requires the bankruptcy court to determine the possible unfairness of those terms and to draw the necessary conclusions from any unfairness.

57 The position could only be otherwise if the supervisory judge had expressly stated that she had carried out an examination as to whether the contractual terms at issue in the main proceedings were unfair and, giving at least summary reasons, that that examination had not revealed the existence of any unfair terms, and had also stated, where applicable, that the finding made by the

supervisory judge on completion of that examination could not be called into question unless an action was brought within the period laid down for that purpose (see, by analogy, judgment of 17 May 2022, *Ibercaja Banco*, C-600/19, EU:C:2022:394, paragraph 51).

58 Having regard to all the foregoing, the answer to the first question is that Article 6(1) and Article 7(1) of Directive 93/13, read in the light of the principle of effectiveness, must be interpreted as precluding national legislation which provides that, in insolvency proceedings relating to natural persons, once the list of claims has been approved by a judicial authority, which has not examined the possible unfairness of the terms of the contract concerned, and proceedings have been commenced before the bankruptcy court, the latter is bound by that list, with the effect that it can neither assess the unfairness of terms contained in a loan agreement on which a claim included on that list is based nor amend that list, but must stay the proceedings and refer the matter of the possible unfairness of those terms to the judicial authority in question.

The second question

59 By its second question, the referring court asks, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13 should be interpreted as precluding national legislation which, in the context of insolvency proceedings relating to natural persons, does not provide that the bankruptcy court can order interim measures to regulate the situation of the bankrupt pending the outcome of examination of the unfairness of the terms in a loan agreement, where that agreement has given rise to a claim included on the list of claims approved by a different judicial authority, which has not examined the possible unfairness of the terms of the contract concerned.

60 As a preliminary point, it must be recalled, first, that Article 6(1) of Directive 93/13 requires Member States to ensure that unfair contract terms are not binding on the consumer, without the consumer having to bring an action and obtain a judgment confirming the unfairness of those terms. It follows that the national courts are required to exclude the application of those terms so that they do not produce binding effects with regard to a consumer, unless the consumer objects (judgment of 15 June 2023, *Getin Noble Bank (Suspension of the performance of a loan agreement)*, C-287/22, EU:C:2023:491, paragraph 37 and the case-law cited).

61 Furthermore, as stated in paragraph 39 of the present judgment, it is ultimately for the Member States, in accordance with Article 7(1) of Directive 93/13, to 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.

62 Second, as is clear from paragraph 40 of the present judgment, the rules implementing the consumer protection established by Directive 93/13 fall within the domestic legal system of the Member States by virtue of the principle of the procedural autonomy of the Member States, subject to compliance with the principles of equivalence and effectiveness.

63 As regards the principle of equivalence, the Court has no information giving rise to any doubt as to whether the national legislation at issue in the main proceedings complies with that principle in so far as it does not provide that interim measures can be ordered, by the bankruptcy court, in order to protect the bankrupt in the context of the bankruptcy proceedings.

64 As regards the principle of effectiveness, as noted, in essence, in paragraph 42 of the present judgment, the question of whether national legislation makes the application of EU law impossible or excessively difficult must be analysed having regard to the proceedings as a whole, the way in which they are conducted and their particular features.

65 That said, as regards specifically the circumstances in which it may be necessary for the national court to grant interim measures in order to ensure the effectiveness of application of Directive 93/13, it should be emphasised that the need for such measures must be assessed in the light of the purpose of Directive 93/13, which is to provide consumers with a high level of protection (see, to that effect, judgment of 25 November 2020, *Banca B.*, C-269/19, EU:C:2020:954, paragraph 37).

66 Accordingly, the national court must be able to apply interim measures so that the rights that consumers derive from Directive 93/13 can be fully effective.

67 It is to that end that the Court has held, inter alia, that the protection guaranteed to consumers by that directive, in particular by Article 6(1) and Article 7(1) thereof, requires that the national court, which has jurisdiction to assess the unfairness of a contractual term, must be able to grant an appropriate interim measure, if that is necessary to ensure the full effectiveness of the forthcoming decision on the unfairness of contractual terms (judgment of 15 June 2023, *Getin Noble Bank (Suspension of the performance of a loan agreement)*, C-287/22, EU:C:2023:491, paragraph 43 and the case-law cited).

68 In the same way, it may be necessary to grant such measures where there is a risk that that consumer will pay, in the course of legal proceedings the duration of which may be considerable, monthly instalments of a higher amount than that actually due if the term concerned were to be disregarded, if it is necessary to do so in order to ensure the full effectiveness of the forthcoming decision on the unfairness of contractual terms (judgment of 15 June 2023, *Getin Noble Bank (Suspension of the performance of a loan agreement)*, C-287/22, EU:C:2023:491, paragraphs 42 and 43 and the case-law cited).

69 In that regard, first, it follows from the information in the order for reference that under the national legislation at issue in the main proceedings, the bankruptcy court cannot grant interim measures to alleviate the bankrupt's financial situation pending the outcome of examination of the possible unfairness of a contractual term. Although, admittedly, the bankrupt does not, before conclusion of the bankruptcy proceedings, repay the debts on the list of claims approved by the supervisory judge, the fact remains that the bankrupt is obliged, during that examination, to continue paying into the bankruptcy estate on the basis of a list of claims that potentially contains a claim arising from such a term. As noted in paragraph 46 of the present judgment, because raising the unfairness of a contractual term involves prolonging the bankruptcy proceedings, that bankrupt is likely to be discouraged from asserting his or her right to invoke the protection arising from Directive 93/13. Second, it is clear from the explanation provided by the referring court that, in the present case, in view of the amount of the funds paid up to the present time into the bankruptcy estate and the amount of the debts of the bankrupt concerned, those funds may be sufficient to satisfy the claims on that list, with the exception of the claim of Bank G.

70 It must be held that, in those circumstances, as the referring court explained, in essence, in its reply to the request for clarification referred to in paragraph 47 of the present judgment, an interim measure, aimed at reducing the withholdings made from the bankrupt's salary pending a

decision concluding examination of whether a contractual term is unfair, may be necessary in order to guarantee the protection afforded by Directive 93/13 and the effective judicial protection that flows therefrom, which is nevertheless a matter to be determined by the referring court.

71 For the purposes of determining that point, that court must, in particular, assess whether the adoption of interim measures, consisting in a reduction of the withholdings from the bankrupt's salary, is necessary in order to guarantee the protection conferred on that bankrupt by Directive 93/13. To that end, as the Advocate General stated in point 104 of his Opinion, that court will have to take into account all the relevant circumstances of the case, including, in particular, whether there is sufficient evidence that the contractual terms concerned are unfair, whether there is a real possibility that the bankruptcy estate is already sufficiently funded to satisfy the creditors, with the exception, as the case may be, of the claim concerned, as well as the bankrupt's financial situation and the risk of that person having to endure a prolongation of the bankruptcy proceedings which could result in an unwarranted deterioration in his or her financial situation pending the conclusion of those proceedings.

72 In the light of all the foregoing, the answer to the second question is that Article 6(1) and Article 7(1) of Directive 93/13, read in the light of the principle of effectiveness, must be interpreted as precluding national legislation which, in the context of insolvency proceedings relating to natural persons, does not provide that the bankruptcy court can order interim measures to regulate the situation of the bankrupt pending a decision concluding examination of the unfairness of the terms in a loan agreement, where that agreement has given rise to a claim included on the list of claims approved by a different judicial authority, which has not examined the possible unfairness of the terms of the contract concerned.

Costs

73 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 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read in the light of the principle of effectiveness,**

   must be interpreted as precluding national legislation which provides that, in insolvency proceedings relating to natural persons, once the list of claims has been approved by a judicial authority, which has not examined the possible unfairness of the terms of the contract concerned, and proceedings have been commenced before the bankruptcy court, the latter is bound by that list, with the effect that it can neither assess the unfairness of terms contained in a loan agreement on which a claim included on that list is based nor amend that list, but must stay the proceedings and refer the matter of the possible unfairness of those terms to the judicial authority in question.

2. **Article 6(1) and Article 7(1) of Directive 93/13, read in the light of the principle of effectiveness,**

must be interpreted as precluding national legislation which, in the context of insolvency proceedings relating to natural persons, does not provide that the bankruptcy court can order interim measures to regulate the situation of the bankrupt pending a decision concluding examination of the unfairness of the terms in a loan agreement, where that agreement has given rise to a claim included on the list of claims approved by a different judicial authority, which has not examined the possible unfairness of the terms of the contract concerned.

[Signatures]

[i] The wording of paragraph 49 of this document has been amended since it was first put online.