Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

20 September 2018*

(Reference for a preliminary ruling — Consumer credit agreement — Directive 93/13/EEC — Unfair terms — Article 4(2) and Article 5 — Obligation to draft terms in plain intelligible language — Article 7 — Actions brought before the courts by persons or organisations having a legitimate interest in protecting consumers against the use of unfair terms — National law making the possibility for a consumer protection association to intervene in the proceedings subject to the consumer's consent — Consumer credit — Directive 87/102/EEC — Article 4(2) — Obligation to indicate the annual percentage rate in the written agreement — Agreement containing only a mathematical formula for calculating the annual percentage rate without the information necessary to make that calculation)

In Case C-448/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Krajský súd v Prešove (Regional Court, Prešov, Slovakia), made by decision of 16 May 2017, received at the Court on 25 July 2017, in the proceedings

EOS KSI Slovensko s. r. o.

v

Ján Danko,

Margita Danková,

intervening party:

Združenie na ochranu občana spotrebiteľa HOOS,

THE COURT (Eighth Chamber),

composed of J. Malenovský, President of the Chamber, M. Safjan (Rapporteur) and M. Vilaras, Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Slovak Government, by B. Ricziová, acting as Agent,

* Language of the case: Slovak.

– the European Commission, by A. Tokár and N. Ruiz García, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(2) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

2 The request has been made in proceedings between EOS KSI Slovensko s. r. o. ('EOS') and Mr Ján Danko and Ms Margita Danková concerning a claim for payment of the outstanding amounts due under a consumer credit.

Legal context

European Union law

Directive 87/102

3 Article 1 of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48), as amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 (OJ 1998 L 101, p. 17, 'Directive 87/102') reads as follows:

'1. This Directive applies to credit agreements.

2. For the purpose of this Directive:

…

(d) "total cost of the credit to the consumer" means all the costs, including interest and other charges, which the consumer has to pay for the credit;

(e) "annual percentage rate of charge" means the total cost of the credit to the consumer, expressed as an annual percentage of the amount of the credit granted and calculated in accordance with Article 1a.'

4 Article 1a of Directive 87/102 states:

'1. (a) The annual percentage rate of charge which shall be that rate, on an annual basis which equalises the present value of all commitments (loans, repayments and charges), future or existing, agreed by the creditor and the borrower, shall be calculated in accordance with the mathematical formula set out in Annex II.;

(b) Four examples of the method of calculation are given in Annex III, by way of illustration.

2. For the purpose of calculating the annual percentage rate of charge, the "total cost of the credit to the consumer" as defined in Article 1(2) (d) shall be determined, with the exception of the following charges:

…

4. (a) The annual percentage rate of charge shall be calculated at the time the credit contract is concluded, without prejudice to the provisions of Article 3 concerning advertisements and special offers.;

(b) The calculation shall be made on the assumption that the credit contract is valid for the period agreed and that the creditor and the consumer fulfil their obligations under the terms and by the dates agreed.

…

6. In the case of credit contracts containing clauses allowing variations in the rate of interest and the amount or level of other charges contained in the annual percentage rate of charge but unquantifiable at the time when it is calculated, the annual percentage rate of charge shall be calculated on the assumption that interest and other charges remain fixed and will apply until the end of the credit contract.

…'

5 Article 4(2) of that directive provides:

'The written agreement shall include:

(a) a statement of the annual percentage rate of charge;

(b) a statement of the conditions under which the annual percentage rate of charge may be amended.

…'

6 Directive 87/102 was repealed with effect from 11 June 2010 in accordance with Article 29 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Directive 87/102 (OJ 2008 L 33, p. 66, and corrigendum OJ 2009 L 207, p. 14). Given the date of the facts at issue in the main proceedings, it is Directive 87/102 which is applicable in the present case.

Directive 93/13

7 According to Article 1(2) of Directive 93/13:

'The contractual terms which reflect mandatory statutory or regulatory provisions and the provisions or principles of international conventions to which the Member States or the [European Union] are party, particularly in the transport area, shall not be subject to the provisions of this Directive.'

8 Article 3(1) of that directive provides:

'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.'

9 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 supplies in exchange, on the other, in so far as these terms are in plain intelligible language.’

10 Article 5 of the 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).’

11 According to Article 6(1) of that directive:

‘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.’

12 Article 7 of that directive reads as follows:

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

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

3. With due regard for national laws, the legal remedies referred to in paragraph 2 may be directed separately or jointly against a number of sellers or suppliers from the same economic sector or their associations which use or recommend the use of the same general contractual terms or similar terms.’

13 Article 8 of the same directive provides:

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

Slovak law

14 Article 53a of the Občiansky zákonní (Civil Code), which transposes Article 7(1) of Directive 93/13, prohibits any seller or supplier from continuing to use a contractual term which has been held to be unfair by a court in a judgment given in a dispute in the field of consumer law. However, that provision requires the consumer to initiate the proceedings or, if he is the defendant, that he lodges a procedural document.

15 Article 93 of the zakon č. 99/1963 Zb., Občiansky súdny poriadok (Law No 99/1963 on the Civil Procedure, Code in the version applicable at the material time ('the Code of Civil Procedure'), provides:

'(1) A person who has a legal interest in the outcome of the proceedings may participate in proceedings as an intervener in support of the forms of order sought by the applicant or the defendant …

(2) A legal person, the purpose of whose activity is the protection of rights under specific legislation, may also participate in proceedings as an intervener in support of the forms of order sought by the applicant or the defendant.

(3) That legal person may participate in proceedings of its own initiative, or at the request of a party transmitted to it by the court. The court will adjudicate on the admissibility of the intervention only if requested to do so.

(4) In the proceedings, the intervener has the same rights and obligations as a party to those proceedings. However it acts only on its own behalf. If its pleadings oppose those of the party on whose behalf it is intervening, the court must assess them after examining all the circumstances.'

16 Under Article 172 of the Code of Civil Procedure:

'(1) Even failing a specific request by the applicant, and without hearing the defendant, the court may issue an order for payment, if, in the application, the right to payment of a sum of money based on the facts alleged by the applicant is claimed. In an order for payment, it shall order the defendant to pay the applicant within 15 days of its notification the debt payable plus legal costs, or to lodge an objection at the court which issued the order for payment. The objection against the order for payment must contain a statement of reasons on the substance. …

…

(3) If the court does not issue an order for payment, it shall order a hearing to be held.

…

(7) If the application relies on a right which in part is in clear contradiction with the legislation, the court shall issue an order for payment, with the applicant's consent, only for the part which is not affected by that contradiction; once consent is given, the subject matter of the procedure is limited to that part of the application and the court will not adjudicate on the remainder. Even after the issue of the order for payment, the subject matter of the proceedings shall continue to be the part of the application on which the court adjudicated by issuing that order for payment; that provision shall apply also if an objection is lodged.

…

(9) Where a claim for a right to payment of a sum of money is made on the basis of a consumer contract and where the defendant is a consumer, the court shall not issue an order for payment if the agreement contains unfair terms.'

17 According to Article 4(2)(g) of Law No 258/2001 on consumer credit, applicable to the facts in the main proceedings, a consumer credit agreement which does not state the annual percentage rate of charge ('APR') is to be deemed to be interest-free and free of charge.

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

18 On 24 October 2005, Mr Ján Danko concluded a revolving consumer credit agreement with the Všeobecná úverova banka a.s, amounting to 30 000 Slovenian crowns (SKK) (approximately EUR 995). The lender transferred its debt to debt recovery company EOS.

19 It is clear from the order for reference that the agreement at issue in the main proceedings did not mention the APR and that only a mathematical formula for calculating the APR was indicated, without the information necessary to make that calculation.

20 Relying on a breach of that agreement by the borrower, EOS brought an action for payment of the sum of EUR 1 123.12 plus default interest at the rate of 9.5% before the Okresný súd Humenné (District Court, Humenné, Slovakia). In that connection, it requested an order for payment under Article 172(1) of the Code of Civil Procedure, an expedited procedure characterised by the fact that the decision on the substance is adopted without a hearing, without taking evidence and solely on the basis of the applicant's statement.

21 On 24 August 2012, the Okresný súd Humenné (District Court, Humenné) granted the order for payment sought. That order was not granted by a magistrate, but by a civil servant. That court did not take account of the fact that the credit agreement at issue did not mention the APR and failed to examine the possible unfair nature of the contractual terms.

22 The Združenie na ochranu občana spotrebitel'a HOOS (Slovak consumer protection association, 'HOOS'), intervening in support of Mr Danko and Ms Danková's rights, lodged an objection against the order for payment.

23 By order of 17 January 2013, the Okresný súd Humenné (District Court, Humenné) dismissed the objection on the ground that, as the consumer had not lodged the objection himself, the conditions necessary for HOOS to be able to intervene in the proceedings were not satisfied.

24 Hearing an appeal brought by HOOS, by order of 30 September 2013, the Krajský súd v Prešove (Regional Court, Prešov, Slovakia) set aside the order referred to in the preceding paragraph and instructed the Okresný súd Humenné (District Court, Humenné) to arrange for a hearing, to take evidence, and to give a fresh ruling on the substance of the dispute after carrying out a judicial review of the contract terms of the credit agreement in the main proceedings. The Krajský súd v Prešove (Regional Court, Prešov) upheld the objection of the HOOS on the ground that that association had the same rights as a consumer borrower, and held that the case in the main proceedings could not be subject to the expedited procedure which makes no provision for a hearing or the taking of evidence.

25 The Principal Public Prosecutor (Slovakia) lodged an extraordinary appeal in cassation against the decision of the Krajský súd v Prešove (Regional Court, Prešov), before the Najvyšší súd (Supreme Court, Slovakia).

26 By order of 10 March 2015, the Najvyšší súd (Supreme Court) set aside the order of the Krajský súd v Prešove (Regional Court, Prešov) and referred the case back to that court. The Najvyšší súd (Supreme Court) held that the intervention of a consumer protection association can take place only after contentious proceedings have been initiated, that is only when the consumer lodges a statement of opposition against an order for payment.

27 Krajský súd v Prešove (Regional Court, Prešov) asks whether national legislation satisfies the principle of equality laid down by EU law, as regards the conditions under which a consumer protection association may intervene in proceedings in the interests of the consumer, in relation to the general rules of Slovak law on intervention in the interests of the defendant.

28 In that connection, the referring court states that, where a consumer who is a defendant in a case, in proceedings intended to prevent the use of unfair terms in contracts with a seller or supplier referred to in Article 53a of the Civil Code, is inattentive or inactive or uncontactable, his rights would not be adequately protected if the court dealing with a request for the grant of an order for payment were to waive its review of the unfairness of the terms concerned.

29 The provisions of Slovak law do not permit a consumer protection association from intervening in the interests of the consumer in the proceedings as those provisions require that:

– the consumer must give written consent to such an intervention;

– the pleas in defence raised by that association must also be approved by the consumer as the defendant;

– the consumer must give his consent for such an association to bring an action against a judgment concerning him.

30 According to the referring court, in the case in the main proceedings, Slovak law was applied less favourably than in a situation without any elements of EU law, contrary to the case-law laid down in the judgment of 27 February 2014, *Pohotovosť* (C-470/12, EU:C:2014:101, paragraph 46). In a situation which is not covered by EU law, the dispute arises on the day on which the originating application is lodged before the national court, so that the intervener is authorised to intervene in the proceedings from its inception.

31 Finally, as regards the contract term at issue in the main proceedings concerning the APR, the referring court considers that it is not clear and is contrary to public policy, so that, in accordance with Slovak law, the loan at issue should be deemed not to give rise to interest or costs. In the opinion of that court, such a penalty is proportional and dissuasive with regard to the requirements laid down by the Court in the judgment of 9 November 2016, *Home Credit Slovakia* (C-42/15, EU:C:2016:842, paragraphs 65 and 69).

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

‘(1) In the light of the judgment [of 27 February 2014, *Pohotovosť*, C-470/12, EU:C:2014:101], and the considerations set out by the [Court] at paragraph 46 [thereof], is a legal provision incompatible with the principle of equivalence under EU law when — in the context of the equivalence of the interests protected by law and the protection of consumer rights against unfair contractual terms — it does not permit, without the defendant consumer’s consent, a legal person whose activity involves the collective protection of consumers against unfair contractual terms and is designed to achieve the objective set out in Article 7(1) of [Directive 93/13], as transposed by Article 53a(1) and (3) of the Civil Code, to participate as an intervener in legal proceedings from the outset and to make effective use, for the consumer’s benefit, of the means of action and

defence in court proceedings, in order to secure, in the context of such proceedings, protection from the systematic use of unfair contractual terms; whereas, in other circumstances, another party (intervener), intervening in court proceedings in support of the defendant and having an interest in the resolution of the subject matter on the merits (from a patrimonial view point) that is the object of the proceedings, does not in fact, unlike a consumer protection association, require the consent of the consumer, on whose behalf it is intervening, in order to take part in the proceedings from the outset and effectively exercise the means of defence and action for the defendant's benefit?

(2) In the light also of the findings in [the judgments of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282), and of 23 April 2015, *Van Hove* (C-96/14, EU:C:2015:262)], must the expression "in plain intelligible language" appearing in Article 4(2) of Directive 93/13 be interpreted as meaning that a contractual term may be regarded as not being in plain and intelligible language — with the legal consequence that it is automatically subject to judicial review of unfairness — even when the body of legal rules (instrument) which it governs is in itself complicated so that it is hard for the average consumer to foresee its legal consequences and in order to understand it professional legal advice is generally necessary, the costs of which are disproportionate to the value of the service which the consumer receives under the agreement?

(3) When a court adjudicates on the rights deriving from an agreement concluded with a consumer, relied on against him as defendant, solely on the basis of the applicant's claims, by way of an order for payment [issued] in summary proceedings, without applying in the proceedings the provision in Article 172(9) of the Code of Civil Procedure which precludes the issue of an order for payment if a contract concluded with a consumer contains unfair contractual terms, is it not incompatible with EU law for legislation of a Member State, given the brief period allowed for the lodging of an appeal and the possibility that the consumer may be impossible to find or be inactive, to make it impossible for a consumer protection association, which has standing and is authorised to pursue the objective under Article 7(1) of Directive 93/13, as transposed by Article 53a(1) and (2) of the Civil Code, to effectively make use, without the consumer's consent (unless the consumer specifically dissents), of the only opportunity of protecting the consumer, in the form of opposition to the order for payment, in circumstances in which the court fails to fulfil its obligation under Article 172(9) of the Code of Civil Procedure?

(4) Is it relevant, for the purpose of the answers to the second and third questions, that the [national] legal order does not accord the consumer the right to mandatory legal assistance and that, without legal representation, his lack of knowledge in that area leads to a significant risk that he will not rely on the unfairness of the contractual terms and will not even lodge a document authorising the intervention on his behalf, in court proceedings, by a consumer protection association, which has standing and is authorised to act under Article 7(1) of Directive 93/13, as transposed by Article 53a(1) and (2) of the Civil Code?

(5) Is it not incompatible with EU law, and the requirement that all the circumstances of the case be assessed, in accordance with Article 4(1) of Directive 93/13, for legislation, such as the summary proceedings for the issue of an order for payment (Article 172(1) et seq. of the Slovak Code of Civil Procedure), to permit: (1) the seller or supplier to be given the right to a pecuniary benefit with the effects of a judgment, (2) in the context of summary proceedings, (3) before an administrative officer of the court, (4) solely on the basis of the trader's claims, and (5) without evidence being taken and in circumstances in which (6) the consumer is not represented by a legal professional, (7) and his defence may not be effectively mounted, without his consent, by a consumer protection association, which has standing and is authorised to act under Article 7(1) of Directive 93/13 as transposed by Article 53a(1) and (2) of the Civil Code?'

Consideration of the questions referred

The first question

33 By its first question, the referring court asks, in substance, whether Directive 93/13 must be interpreted as meaning that it precludes national legislation, such as that at issue in the main proceedings, which does not permit a consumer protection organisation to intervene in the interests of the consumer in proceedings seeking an order for payment concerning an individual consumer or to lodge an objection against such an order in the absence of a challenge to it by the consumer.

34 In that regard, it should be observed that Article 7(1) of Directive 93/13 requires the Member States to ensure that adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers. In that regard, it is apparent from Article 7(2) thereof that the aforementioned means are to include the possibility for persons or organisations having a legitimate interest under national law in protecting consumers to take action in order to obtain a judicial decision as to whether contract terms drawn up for general use are unfair and, where appropriate, to have them prohibited (judgment of 27 February 2014, *Pohtovosť*, C-470/12, EU:C:2014:101, paragraph 43 and the case-law cited).

35 However, it must be noted that neither Directive 93/13 nor the directives which followed it, adding to the legislative framework of the protection of consumers, contain any provision governing the role which may or must be accorded to consumer protection associations in individual disputes involving a consumer. Thus, Directive 93/13 does not govern whether such associations must be entitled to intervene in support of consumers in such individual disputes (judgment of 27 February 2014, *Pohtovosť*, C-470/12, EU:C:2014:101, paragraph 45).

36 It follows that, in the absence of European Union legislation concerning the possibility for consumer protection associations to intervene in individual disputes involving consumers, it is for the national legal order of each Member State to establish such rules, in accordance with the principles of procedural autonomy, provided, however, that those rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by European Union law (principle of effectiveness) (see, to that effect, judgment of 27 February 2014, *Pohtovosť*, C-470/12, EU:C:2014:101, paragraph 46).

37 First, as regards the principle of equivalence, the referring court notes that the conditions under which the national legislation at issue in the main proceedings allows a consumer protection organisation to intervene are more favourable if the action is brought exclusively on the basis of national law than if it is brought under EU law. Whereas, in accordance with national law, in a case without any elements of EU law proceedings are initiated on the day on which the originating application is lodged with a court, so that the intervener is authorised to intervene in the proceedings from the outset, it appears, by contrast, that in the case in the main proceedings, which falls within the scope of EU law, the proceedings are initiated only when the consumer challenges an order for payment so that the consumer protection association concerned may intervene only from the time the objection is lodged.

38 In that connection, it must be recalled that the principle of equivalence requires that a national rule be applied without distinction to procedures based on EU law and those based on national law (see, to that effect, judgment of 20 October 2016, *Danqua*, C-429/15, EU:C:2016:789, paragraph 30).

39 Consequently, that principle must be interpreted as meaning that it precludes national legislation which subjects the intervention by consumer protection organisations in disputes falling with the scope of EU law to less favourable conditions than those applicable in disputes which fall exclusively within the scope of national law.

40 Although the Slovak Government states, in its written observations, that the differentiated application of the national rules identified by the referring court is not based on whether or not the dispute is connected to EU law, but on the different nature of the proceedings at issue, it is, however, for the referring court, which has direct knowledge of the detailed procedural rules in the national legal system, to determine whether the principle of equivalence is observed in the case before it, examining the actions concerned in the light of the subject matter, cause of action and their essential elements.

41 Second, as regards the principle of effectiveness, the Court has already held that the refusal to grant the association leave to intervene in proceedings involving a consumer does not affect its right to an effective judicial remedy to protect its rights as an association of that kind, including its rights to collective action as recognised by Article 7(2) of Directive 93/13. Incidentally, it must be added that, under the national legislation at issue in the main proceedings, an association may directly represent such a consumer in any proceedings, including enforcement proceedings, if mandated to do so by the latter (see, to that effect, judgment of 27 February 2014, *Pohtovosť*, C-470/12, EU:C:2014:101, paragraphs 54 and 55).

42 In those circumstances, it does not appear that the national law at issue in the main proceedings breaches the principle of effectiveness as regards the right of consumer protection associations to intervene in disputes involving consumers in a situation such as that at issue in the main proceedings.

43 Having regard to all of the foregoing considerations, the answer to the first question is that Directive 93/13, read together with the principle of equivalence, must be interpreted as meaning that it precludes national legislation, such as that at issue in the main proceedings, which prevents a consumer protection organisation from intervening, in the interests of the consumer, in proceedings seeking an order for payment concerning an individual consumer and to lodge an objection in the absence of a challenge to that order by the consumer if that legislation in fact subjects intervention by consumer associations in disputes falling within the scope of Union law to less favourable conditions than those applicable to disputes exclusively within the scope of national law, which is for the referring court to ascertain.

The third, fourth and fifth questions

44 By Questions 3 to 5, which it is appropriate to examine together, the referring court asks in substance whether Directive 93/13 must be interpreted as meaning that it precludes national legislation, such as that at issue in the main proceedings, which, although, at the stage of granting an order for payment against a consumer, it provides for the assessment of the unfair nature of terms in a contract concluded between a seller or supplier and a consumer, on one hand, confers on an administrative officer of a court, who does not have the status of a magistrate, powers to issue that order for payment and, on the other hand, limits the period within which to lodge an objection to 15 days, and requires that the latter include a statement of reasons.

45 In that connection, it must be recalled that the effective protection of the rights under Directive 93/13 can be guaranteed only provided that the national procedural system allows the court, during the order for payment proceedings or the enforcement proceedings concerning an order for payment, to check of its own motion whether terms of the contract concerned are unfair (see, to that effect, judgment of 18 February 2016, *Finanmadrid EFC*, C-49/14, EU:C:2016:98, paragraphs 45 and 46).

46 Thus, in a case in which examination of its own motion by the court of the potentially unfair nature of terms in the contract concerned is provided for only at the enforcement stage of the order for payment, a national law must be regarded as undermining the effectiveness of the protection intended by Directive 93/13 if it does not provide for such an assessment when the order is granted or, in the case where such an assessment is provided for only when an objection is lodged against the order granted, if there is a significant risk that the consumer concerned will not lodge the objection

required, either because of the particularly short period provided for that purpose, or because they might be dissuaded from defending themselves in view of the costs which legal proceedings would entail in relation to the amount of the disputed debt, or because the national legislation does not lay down the obligation that all the information must be communicated to them which is necessary to enable them to determine the extent of their rights (see, by analogy, judgments of 14 June 2012, *Banco Español de Crédito*, C-618/10, EU:C:2012:349, paragraph 54, and of 18 February 2016, *Finanmadrid EFC*, C-49/14, EU:C:2016:98, paragraph 52).

47 In the present case, Article 172(9) of the Code of Civil Procedure provides that, where a claim for a right to payment of a sum of money is made on the basis of a consumer contract and where the defendant is a consumer, the court is not to issue an order for payment if the agreement contains unfair terms.

48 However, the order for reference states that the national legislation confers jurisdiction, with regard to orders for payment, to court officials who do not have the status of magistrate.

49 In that connection, it must be noted that preserving the effectiveness of Directive 93/13 precludes a national law which allows an order for payment to be issued without allowing the consumer to benefit, at any time during the proceedings, from the guarantee of a check that there are no unfair terms in the contract concerned undertaken by a court (see, to that effect, judgment of 18 February 2016, *Finanmadrid EFC*, C-49/14, EU:C:2016:98, paragraph 45).

50 Consequently, the fact that the national legislation confers jurisdiction regarding the grant of orders for payment to officials who do not have the status of magistrate does not compromise the effectiveness of Directive 93/13, so long as an assessment by a court ensuring that there are no unfair terms in the contract concerned is provided for at the stage of enforcement of the order for payment or when an objection is lodged.

51 That being the case, as stated in paragraph 46 of the present judgment, the existence of such a check only if an objection is lodged preserves the effectiveness of Directive 93/13 only if consumers are not dissuaded from lodging such an objection.

52 The national legislation at issue in the main proceedings provides only for a period of 15 days within which a consumer may lodge an objection against the order for payment and also requires him to give reasons in the statement opposition.

53 Therefore, there is a significant risk with such legislation that the consumer concerned does not lodge an objection and that, therefore, the court does not undertake of its own motion an assessment as to the inclusion of unfair terms in the contract concerned.

54 In the light of those findings, the answer to Questions 3 to 5 is that Directive 93/13 must be interpreted as meaning that it precludes national legislation, such as that in the main proceedings, which, although providing, at the stage at which the order for payment is made against the consumer, for an assessment of the unfair nature of the terms in a contract concluded between a seller or supplier and a consumer, first, entrusts the power to grant that order to an administrative officer of a court who is not a magistrate and, second, provides for a period of 15 days within which to lodge a statement of opposition and requires that the latter contain reasons on the substance, where there is no provision for such an assessment by the court of its own motion at the stage of enforcement of that order, which is for the referring court to ascertain.

Question 2

Admissibility

55 In its written observations, the Slovak Government submits, essentially, that that question is hypothetical, since the grant by the referring court of locus standi to HOOS would have the result that the judgment of the Okresný súd Humenné (District Court, Humenné) of 17 January 2013 would be set aside and referred back to that court. Thus, the referring court would not adjudicate on the unfair nature of the contractual term concerned.

56 In that regard, it should be recalled that, according to the settled case-law of the Court, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation 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 21 September 2017, *Malta Dental Technologists Association and Reynaud*, C-125/16, EU:C:2017:707, paragraph 28 and the case-law cited).

57 Furthermore, it is for the national court to decide at what stage in the proceedings it is appropriate for that court to refer a question to the Court of Justice for a preliminary ruling (judgment of 21 September 2017, *Malta Dental Technologists Association and Reynaud*, C-125/16, EU:C:2017:707, paragraph 29 and the case-law cited).

58 In the light of that case-law, and taking account of the answers to Questions 1, 3, 4 and 5, it must be held that Question 2 is admissible.

Substance

59 By Question 2, the referring court asks, essentially, whether Article 4(2) of Directive 93/13 must be interpreted as meaning that the term in a consumer credit agreement relating to the cost of the credit must be regarded as being 'in plain intelligible language', within the meaning of that provision, where, first, that contract omits to mention the APR and contains only a mathematical formula for calculating the APR without the information necessary to make that calculation and, second, fails to indicate the interest rate.

60 As a preliminary point, it must be recalled that Article 4(2) of Directive 93/13 provides that assessment of the unfair nature of the terms relates 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 these terms are in plain intelligible language.

61 In that connection, the Court has had the opportunity to state that the requirement of transparency of contractual terms, also repeated in Article 5 thereof, cannot be reduced merely to their being formally and grammatically intelligible, but that, to the contrary, since the system of protection introduced by Directive 93/13 is based on the idea that the consumer is in a position of weakness vis-à-vis the seller or supplier, in particular as regards his level of knowledge, that requirement of plain and intelligible drafting of contractual terms and, therefore, the requirement of transparency laid down by the directive must be understood in a broad sense (judgment of 20 September 2017, *Andriciuc and Others*, C-186/16, EU:C:2017:703, paragraph 44 and the case-law cited).

62 It follows that, in order to assess whether a term in a credit agreement relating to the cost of that agreement and which, on that basis, concerns the main subject matter of that agreement is drafted in plain intelligible language, it is appropriate to take into consideration all the provisions of EU law laying down obligations relating to information for consumers which may be applicable to the agreement concerned.

63 The Court has already held, as regards Directive 87/102, that, having regard to the objective of consumer protection pursued by that directive against unfair credit terms and of enabling him to have full knowledge of the terms of the future performance of the agreement entered into at the time of concluding such an agreement, Article 4 of that directive required that the borrower must have to hand all information which could have a bearing on the extent of his liability (judgment of 9 July 2015, *Burcura*, C-348/14, not published, EU:C:2015:447, paragraph 57 and the case-law cited).

64 Article 4(1) and (2) of Directive 87/102 provides that the credit agreement must be made in writing and that the written agreement must include a statement of the APR and the conditions under which it may be amended. Article 1a of that directive lays down the methods of calculation of the APR and stipulates, in paragraph 4(a), that it is to be calculated 'at the time the credit contract is concluded'. That information for the consumer, of the total cost of credit, in the form of an interest rate calculated according to a single mathematical formula, is of critical importance (see, to that effect, judgment of 16 November 2010, *Pohotovosť*, C-76/10, EU:C:2010:685, paragraphs 69 and 70).

65 Consequently, the failure to mention the APR in a credit agreement may be a decisive factor in the assessment by a national court of whether a term of a credit agreement concerning the cost of that credit is drafted in plain, intelligible language within the meaning of Article 4 of Directive 93/13. If that is not the case, a national court is empowered to assess the unfair nature of such a term within the meaning of Article 3 of Directive 93/13 (see, to that effect, judgment of 16 November 2010, *Pohotovosť*, C-76/10, EU:C:2010:685, paragraphs 71 and 72).

66 It must be added that a credit agreement, such as that at issue in the main proceedings, which contains only a mathematical formula for the calculation of the APR without the information necessary to make that calculation must be treated in the same way as a case in which the credit agreement fails to mention the APR.

67 In such a situation, the consumer cannot be regarded as having full knowledge of the terms of the future performance of the agreement entered into at the time of concluding such an agreement, and, therefore, as having all the information which could have a bearing on the extent of his liability.

68 Taking account of the foregoing considerations, the answer to Question 2 is that Article 4(2) of Directive 93/13 must be interpreted as meaning that, first, where a consumer credit agreement does not mention the APR and contains only a mathematical formula for the calculation of the APR without the information necessary to make that calculation and, second, does not mention the rate of interest, such a fact is decisive evidence in the assessment undertaken by the national court concerned as to whether the terms of that agreement relating to the total cost of the credit is drafted in plain intelligible language, within the meaning of that provision.

Costs

69 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

1. **Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read together with the principle of equivalence, must be interpreted as meaning that it precludes national legislation, such as that at issue in the main proceedings, which prevents a consumer protection organisation from intervening, in the interests of the consumer, in proceedings seeking an order for payment concerning an individual consumer and to lodge an objection in the absence of a challenge to that order by the consumer if that legislation in fact subjects intervention by consumer associations in disputes falling within the scope of Union law to less favourable conditions than those applicable to disputes exclusively within the scope of national law, which is for the referring court to ascertain.**

2. **Directive 93/13 must be interpreted as meaning that it precludes national legislation, such as that in the main proceedings, which, although providing, at the stage at which the order for payment is made against the consumer, for an assessment of the unfair nature of the terms in a contract concluded between a seller or supplier and a consumer, first, entrusts the power to grant that order to an administrative officer of a court who is not a magistrate and, second, provides for a period of 15 days within which to lodge a statement of opposition and requires that the latter contain reasons on the substance, where there is no provision for such an assessment by the court of its own motion at the stage of enforcement of that order, which is for the referring court to ascertain.**

3. **Article 4(2) of Directive 93/13 must be interpreted as meaning that, first, where a consumer credit agreement does not mention the annual percentage rate of charge and contains only a mathematical formula for the calculation of the annual percentage rate of charge without the information necessary to make that calculation and, second, does not mention the rate of interest, such a fact is decisive evidence in the assessment undertaken by the national court concerned as to whether the term of that agreement relating to the total cost of the credit is drafted in plain intelligible language, within the meaning of that provision.**

[Signatures]