Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

27 April 2023*

(Reference for a preliminary ruling – Consumer protection – Directive 93/13/EEC – Unfair terms in consumer contracts – Articles 6 and 7 – Loan agreements denominated in foreign currency – Legal consequences of a declaration that a loan agreement is invalid because of the unfairness of a term in that agreement – Contractual term placing the exchange rate risk on the consumer)

In Case C-705/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Győri Ítélőtábla (Győr Regional Court of Appeal, Hungary), made by decision of 10 November 2021, received at the Court on 23 November 2021, in the proceedings

MJ

v

AxFina Hungary Zrt.,

JUDGMENT OF THE COURT (Eighth Chamber)

composed of M. Safjan, President of the Chamber, N. Piçarra and N. Jääskinen (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– MJ, by L. Marczingós, ügyvéd,

– AxFina Hungary Zrt., by T.L. Horváth, ügyvéd,

– the Hungarian Government, by M.Z. Fehér and K. Szíjjártó, acting as Agents,

– the European Commission, by N. Ruiz García and Zs. Teleki, acting as Agents,

* Language of the case: Hungarian.

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 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

2 The request has been made in proceedings between MJ and AxFina Hungary Zrt. ('AxFina') concerning the legal consequences of a declaration that a loan agreement denominated in a foreign currency, but repayable in the national currency, is invalid because of the unfairness of a term in that agreement which places the exchange rate risk on the consumer.

Legal context

European Union law

3 Article 6(1) of Directive 93/13 states:

'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.'

4 Article 7(1) of that directive provides:

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

Hungarian law

5 Paragraph 231(1) of the Polgári Törvénykönyvről szóló 1959. évi IV. törvény (Law No IV of 1959 establishing the Civil Code), in the version applicable to the dispute in the main proceedings ('the Civil Code'), provided that, unless otherwise stipulated, a monetary debt must be paid in the currency of the legal tender of the place of payment.

6 It is apparent from Paragraph 232(1) and (2) of the Civil Code that, in contractual relationships, subject to exceptions provided for by law, interest is payable and that the applicable interest rate is equal to the central bank's base rate.

7 According to Paragraph 237(1) of that code, if the contract is invalid, the situation prevailing prior to the conclusion of that contract is to be restored.

8 Paragraph 237(2) of that code provides that, if it is impossible to restore the situation existing before the conclusion of a contract, the court may declare that contract applicable until it has given its ruling. Under that provision, a contract which is invalid may be declared to be valid if it is possible to eliminate the cause of the invalidity. In such cases, the restitution of any performance outstanding is to be ordered, if need be without consideration.

9 Under the provisions of the egyes fogyasztói kölcsönszerződések devizanemének módosulásával és a kamatszabályokkal kapcsolatos kérdések rendezéséről szóló 2014. évi LXXVII. törvény (Law No LXXVII of 2014 on the settlement of questions relating to the alteration of the currency in which certain loan agreements are denominated and the rules on interest), loan agreements denominated in foreign currency were amended for the future, with effect from 1 February 2015. By that law, the Hungarian legislature provided, inter alia, for the conversion into national currency of outstanding debts denominated in a foreign currency on the date laid down by the law, and specified the criteria for determining the interest rate applicable in the agreements at issue.

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

10 On 13 February 2008, the applicant in the main proceedings concluded a loan agreement with an option to purchase with AxFina's predecessor in law in order to purchase a vehicle. The actual amount of that loan was 2 830 000 Hungarian forint (HUF) (approximately EUR 7 126), repayable over 120 months, with interest in the sum of HUF 920 862 (approximately EUR 2 319) anticipated for the whole of that period.

11 That agreement provided for a loan denominated in Swiss francs (CHF) and repayable in Hungarian forint. The fluctuation in the exchange rate between the Hungarian forint and the Swiss franc affected the repayment obligation of the applicant in the main proceedings, who continued to pay monthly instalments until August 2015.

12 The Győri Ítélőtábla (Győr Regional Court of Appeal, Hungary), which is the referring court, declared that contract to be invalid on the ground that the term imposing the exchange rate risk on the consumer was unfair.

13 In addition, it is apparent from the order for reference that, under the applicable Hungarian legislation, the loan agreement in question was also invalid because it contained a term stating that the buying rate of exchange would be applied when the loan was paid out, while the selling rate, or any other exchange rate different from that set when the loan was paid out, would apply to the repayment of that loan.

14 Following the declaration by the referring court that that agreement was invalid, the proceedings were continued before the court of first instance, the Szombathelyi Törvényszék (Szombathely High Court, Hungary), concerning the legal consequences of that declaration of invalidity.

15 On appeal, the case was brought again before the referring court.

16 That court considers that the loan agreement at issue cannot be enforced by disregarding the unfair term referred to in paragraph 12 above.

17 As regards the legal effects of the declaration that that agreement was invalid, the referring court notes that the majority of Hungarian case-law follows the position adopted by the advisory body of the Kúria (Supreme Court, Hungary), in its opinion of 19 June 2019, which is not formally binding.

18 According to that opinion, the only legal consequence that may be applied where a loan agreement contains an unfair term imposing the exchange rate risk on the consumer is a 'declaration of validity' under Hungarian law.

19 In that regard, the referring court explains that it is only where the ground for the invalidity of a contract cannot be eliminated that the court hearing the case may declare that contract to be temporarily applicable until the date on which it gives its decision, which is necessarily linked to the termination of that contract for the future. In that context, the removal of the cause of the invalidity entails, for the consumer, the elimination of the entire exchange risk arising from the unfair term concerned (the conversion of the loan into Hungarian forint by a court), or part of the risk (the setting of a ceiling on the exchange rate risk by a court), through the effective amendment of the content of that agreement. None of the parties would therefore enjoy a disproportionate financial advantage.

20 However, the referring court is uncertain whether, having regard in particular to the Court's case-law on the interpretation of Articles 6 and 7 of Directive 93/13, such an approach is compatible with that directive.

21 In addition, that court is uncertain whether it is possible for the national court to declare a loan agreement to be valid where it contains an unfair term imposing the exchange risk on the consumer, and to substitute that unfair term with the provisions of the Civil Code concerning the currency in which a loan is to be repaid, the payment of interest in contractual relations and the determination of the interest rate.

22 In those circumstances, the Győri Ítélőtábla (Győr Regional Court of Appeal) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do Article 6(1) and Article 7(1) of [Directive 93/13] preclude an interpretation of national law to the effect that the legal consequences of invalidity derived from an unfair term in a consumer contract, where the unfair term relates to the principal subject of the transaction and, as a result, the (loan) contract cannot continue to exist without the term considered to be unfair, are that, after it has declared that the contract as a whole is invalid – in other words, that the contract as a whole cannot continue in existence and cannot create binding legal effects for the consumer – the national court

(a) declares that the contract is valid and in so doing converts into Hungarian [forint] the account currency of the loan granted, which constitutes the main subject matter of the contract, and replaces that sum denominated in the account currency with the amount in [forint] that the consumer has effectively received from the lender, and at the same time calculates (replaces) the ordinary interest on the principal amount so determined in a different manner from the method that was used to calculate that interest in the contract declared invalid, such that the "initial" interest rate at the time when the contract was concluded is equal to the value of the Budapest interbank lending rate in [forint] (BUBOR), used as a reference rate, which was in force at the time when the contract was concluded, plus the interest rate differential set in the original contract (denominated in foreign currency)[;]

(b) declares that the contract is valid and in so doing sets a ceiling on the conversion rate between the foreign currency and the Hungarian forint, in other words, reduces the exchange rate risk actually assumed by the consumer as a result of the unfair term in the contract to a level which the court considers reasonable and which the consumer may have taken into consideration when the contract was concluded, leaving the interest rate set in the contract unchanged until the date of the mandatory conversion into [forint] stipulated by a subsequent law?

(2) For the purposes of answering question 1, is it significant that the declaration of validity which is made under Hungarian law

(a) is made in a factual situation in which a contract between the parties still exists, in other words, in which the continuation of the contract is intended to enable the legal relationship between the parties to continue to exist in the future by means of a retroactive correction of the terms considered to be unfair – while also recalculating, by means of the amended terms, the performance carried out up to that point – and thereby also protects the consumer from the particularly harmful effects of an obligation to repay the total amount immediately;

(b) or is made in a factual situation in which the contract between the parties to be examined in the proceedings relating to an unfair contract term no longer exists – because the contract has expired, because the creditor terminated the contract early on the ground of non-payment of instalments or on the ground that the amount paid is insufficient, or, in any event, because the real situation is that neither party considers the contract to be valid or because the issue of the invalidity of the contract can no longer be raised on account of a previous judicial decision – in other words, a situation in which the declaration of validity of the contract with retroactive effect does not serve to keep the contract in existence in the interests of the consumer but rather to enable the discharge of mutual obligations and the termination of the legal relationship by means of correction of the term(s) declared unfair?

(3) In the event of an affirmative reply to question 1(a) or (b), and taking account also of the matters set out in question 2, do the relevant provisions of Directive [93/13] preclude, in the factual situation described in question 2(a), the continued existence of the contract, effected through substitution of the unfair term, until the date of the amendment laid down by the legislature in the Law on conversion into [forint], by means of national statutory provisions pursuant to which:

– unless otherwise provided (which is not the case in the present instance), monetary debts must be paid in the legal tender of the place of performance of the obligation;

– interest is chargeable in contractual relationships, subject to the exception laid down by the provision;

– the interest rate is to be equal to the central bank base rate, subject to the exception laid down in the provision?'

Admissibility of the request for a preliminary ruling

23 AxFina and the Hungarian Government expressed doubts as to the admissibility of the request for a preliminary ruling.

24 According to AxFina, the referring court is asking the Court of Justice to assess the compatibility of Hungarian law with EU law, which falls within the exclusive jurisdiction of the referring court. Furthermore, the questions referred do not meet the requirements of clarity and precision set out in Article 94(c) of the Rules of Procedure of the Court of Justice. That is the case, first, as regards the reasons which led that court to refer those questions and, second, as regards the identification of the relevant rules of EU law in the second question referred.

25 The Hungarian Government submits that that question is hypothetical, since it relates to a situation which is unrelated to the actual facts of the dispute in the main proceedings, that is to say, one in which there is a contract between the seller or supplier and the consumer concerned.

26 It should be noted that, in order to allow the Court to provide an interpretation of EU law that will be of assistance to the national court, Article 94(c) of the Rules of Procedure requires that the request for a preliminary ruling contain a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings (judgment of 31 March 2022, *Lombard Lízing*, C-472/20, EU:C:2022:242, paragraph 27 and the case-law cited).

27 According to the settled case-law of the Court, 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, which enjoy a presumption of relevance. Therefore, since the question referred concerns the interpretation or validity of a rule of EU law, the Court is, in principle, required to give a ruling, unless it is quite obvious that the interpretation sought bears no relation to the actual facts of the main action or its object, 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 question submitted to it (judgment of 31 March 2022, *Lombard Lízing*, C-472/20, EU:C:2022:242, paragraph 28 and the case-law cited).

28 It is also settled case-law that, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to interpret and apply national law, while the Court of Justice is empowered only to give rulings on the interpretation or the validity of an EU provision on the basis of the facts which the national court puts before it (judgment of 31 March 2022, *Lombard Lízing*, C-472/20, EU:C:2022:242, paragraph 29 and the case-law cited).

29 In the present case, it is apparent from the order for reference that the dispute in the main proceedings concerns the legal consequences of the declaration of invalidity of a loan agreement denominated in a foreign currency, but repayable in the national currency, and that that invalidity results from the unfairness of a term in that agreement which places the exchange risk on the consumer. In that context, by its three questions referred for a preliminary ruling, the referring court seeks to determine whether the approach of following the opinion of the advisory body of the Kúria (Supreme Court) of 19 June 2019, according to which the national courts should declare such a contract to be valid by adapting the consumer's obligations by means of an amendment of its content, is consistent with Directive 93/13.

30 More specifically, as regards the second question, it should be noted, first, that the situations referred to in that question also include the situation in which there is no longer a contract between the seller or supplier and the consumer concerned and, second, that those situations supplement those referred to in the first question concerning the interpretation of Article 6(1) and Article 7(1) of Directive 93/13.

31 In the light of those factors, it is not obvious that the questions referred are irrelevant for the purposes of resolving the dispute in the main proceedings or that the problem raised is hypothetical.

32 Accordingly, it must be held that the request for a preliminary ruling is admissible.

Consideration of the questions referred

33 From the outset, it is apparent from the request for a preliminary ruling that the contractual term regarded as unfair by the referring court places the exchange risk on the consumer. According to that court, that term relates to the main subject matter of the loan agreement at issue in the main proceedings, with the result that the finding that that term was unfair led it to declare that agreement to be invalid. It is in that context that the referring court raises the question of the consequences to be drawn from the invalidity of that agreement for the period from the date of its conclusion on 13 February 2008 to 1 February 2015, corresponding to the date laid down in the Hungarian legislation for the conversion into national currency of loan agreements denominated in a foreign currency

34 It is in the light of those factors that the questions referred for a preliminary ruling must be answered.

The first and second questions

35 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as meaning that, where a term which places the exchange risk on the consumer results – because of its unfairness – in the invalidity of a loan agreement denominated in a foreign currency, but repayable in the national currency, in which that term appears, those provisions preclude that agreement from being declared valid and the content of the consumer's obligations arising from that term from being adapted by means of a change in the currency of that agreement and the interest rate set in that agreement, or a ceiling on the exchange rate of that currency.

36 As a preliminary point, it should be noted that, in the absence of sufficient information in the order for reference concerning the relevance, for the purposes of answering the first and second questions, of the fact that the declaration of validity of the loan agreement at issue and the adaptation of the consumer's obligations arising from the term in that agreement found to be unfair are intended to enable the national court to settle the reciprocal obligations of the seller or supplier and the consumer concerned, and to terminate the legal relationship between them, there is no need to examine those two questions in the light of that fact.

37 That said, in the first place, as regards the consequences of a finding that a contractual term is unfair, it should be recalled that the objective pursued by the EU legislature in connection with Directive 93/13 consists in restoring the balance between the parties while, in principle,

preserving the validity of the contract as a whole, not in annulling all contracts containing unfair terms (judgment of 31 March 2022, *Lombard Lízing*, C-472/20, EU:C:2022:242, paragraph 54 and the case-law cited).

38 As regards the interpretation of Article 6(1) of Directive 93/13, the Court has held that when the national court finds that an unfair term in a contract concluded between a seller or supplier and a consumer is void, that court cannot modify that contract by revising the content of that term (judgment of 25 November 2020, *Banca B.*, C-269/19, EU:C:2020:954, paragraph 30 and the case-law cited).

39 Thus, a contractual term held to be unfair must be regarded, in principle, as never having existed, with the result that it cannot have any effect on the consumer. Therefore, the determination by a court that such a term is unfair must, in principle, have the consequence of restoring the consumer to the legal and factual situation that he or she would have been in if that term had not existed, by, inter alia, creating a right to restitution of advantages wrongly obtained, to the consumer's detriment, by the seller or supplier on the basis of that unfair term (see, to that effect, judgment of 31 March 2022, *Lombard Lízing*, C-472/20, EU:C:2022:242, paragraphs 50 and 55 and the case-law cited).

40 As the Court has pointed out, if it were open to the national court to revise the content of unfair terms included in a contract concluded between a consumer and a seller or supplier, such a power would be liable to compromise attainment of the long-term objective of Article 7 of Directive 93/13, which is to prevent the continued use of unfair terms in such contracts. That power would contribute to eliminating the dissuasive effect on sellers or suppliers of the straightforward non-application with regard to the consumer of those unfair terms, in so far as those sellers or suppliers would still be tempted to use those terms in the knowledge that, even if they were declared invalid, the contract could nevertheless be modified, to the extent necessary, by the national court in such a way as to safeguard the interest of those sellers or suppliers (see, to that effect, judgment of 3 March 2020, *Gómez del Moral Guasch*, C-125/18, EU:C:2020:138, paragraph 60 and the case-law cited).

41 Therefore, in order not to undermine that objective, the national court cannot remedy the invalidity of a contract resulting from the unfairness of a term contained therein, by declaring that contract to be valid and, at the same time, changing its currency and the interest rate set in the contract, or by setting a ceiling on the exchange rate of that currency. Such intervention by the court would ultimately amount to revising the content of that term and would therefore run counter to the case-law cited in the preceding paragraph of the present judgment.

42 In the second place, it is nevertheless apparent from the case-law that where, as in the present case, the loan agreement at issue must be annulled in its entirety after an unfair term has been deleted from it, such a term may, exceptionally, be deleted and replaced by a supplementary provision of national law or one which is applicable, where the parties so agree. Such a possibility is limited to cases where the cancellation of the contract as a whole would expose the consumer to particularly detrimental consequences, so that the consumer would be penalised (see, to that effect, judgment of 31 March 2022, *Lombard Lízing*, C-472/20, EU:C:2022:242, paragraph 41 and the case-law cited).

43 It is in that context that the Court has held that the national court must be able to grant, where appropriate, an application for the cancellation of a loan agreement on the basis of the unfair nature of a term relating to exchange rate risk where it is found that that term is unfair and that the agreement cannot continue to exist without that term (see, to that effect, judgment of 14 March 2019, *Dunai*, C-118/17, EU:C:2019:207, paragraph 56).

44 In that context, it should also be noted that, where the national court considers that the annulment of the loan agreement at issue would have the effect of penalising the consumer, within the meaning of the case-law referred to in paragraph 42 above, the replacement of the unfair term concerned by supplementary provisions of national law is not the only consequence consistent with Directive 93/13 (see, to that effect, judgment of 25 November 2020, *Banca B.*, C-269/19, EU:C:2020:954, paragraphs 39 and 40).

45 Thus, in the absence of any supplementary provisions of national law or provisions applicable where the parties to the loan agreement at issue so agree which may replace the unfair terms concerned, the Court has stated that, in so far as the consumer has not expressed his or her wish to maintain those unfair terms and in so far as annulment of that agreement would expose that consumer to particularly unfavourable consequences, the high level of consumer protection, which must be ensured in accordance with Directive 93/13, requires that, in order to restore the effective balance between the reciprocal rights and obligations of the parties, the national court must, while taking into account all its national law, take all the measures necessary to protect the consumer from the particularly unfavourable consequences which could result from the annulment of that loan agreement, notably the fact that the seller or supplier could immediately claim the debt from the consumer (judgment of 31 March 2022, *Lombard Lízing*, C-472/20, EU:C:2022:242, paragraph 56 and the case-law cited).

46 Thus, in specific circumstances, the Court has in particular held that nothing precludes the national court from, inter alia, inviting the parties to negotiate, provided that it sets out the framework for those negotiations and that those negotiations seek to establish an effective balance between the rights and obligations of the parties to the agreement taking into account in particular the objective of consumer protection underlying Directive 93/13 (see, to that effect, judgment of 25 November 2020, *Banca B.*, C-269/19, EU:C:2020:954, paragraph 42).

47 In addition, the Court has held that, if, having regard to the nature of the loan agreement at issue, the national court takes the view that it is not possible to restore the parties to the situation they would have been in if that agreement had not been concluded, the onus is on that court to ensure that the consumer is ultimately in the position he or she would have been in if the term held to be unfair had never existed (judgment of 31 March 2022, *Lombard Lízing*, C-472/20, EU:C:2022:242, paragraph 57).

48 Consequently, it is permissible for the national court, in order to safeguard the interests of the consumer, to order repayment to him or her of the sums wrongly received by the lender on the basis of the term held to be unfair, such repayment being effected on the ground of unjust enrichment (see, to that effect, judgment of 31 March 2022, *Lombard Lízing*, C-472/20, EU:C:2022:242, paragraph 58).

49 However, it is important to point out that the court's powers cannot extend beyond what is strictly necessary to restore the contractual balance between the parties and thus to protect the consumer from the particularly unfavourable consequences which could result from annulment of the loan agreement at issue (judgment of 31 March 2022, *Lombard Lízing*, C-472/20, EU:C:2022:242, paragraph 59).

50 Consequently, the answer to the first and second questions is that Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as meaning that, where a term which places the exchange risk on the consumer results – because of its unfairness – in the invalidity of a loan agreement denominated in a foreign currency, but repayable in the national currency, in which that term appears, those provisions preclude that agreement from being declared valid and the content of the consumer's obligations arising from that term from being adapted by means of a change in the currency of that agreement and the interest rate set in that agreement, or a ceiling on the exchange rate of that currency.

The third question

51 By its third question, the referring court asks, in essence, whether Article 6(1) of Directive 93/13 must be interpreted as meaning that, where a term which places the exchange risk on the consumer results – because of its unfairness – in the invalidity of a loan agreement denominated in a foreign currency, but repayable in the national currency, in which that term appears, that provision precludes that agreement, during the period from the date of its conclusion to the date of the entry into force of national legislation providing for the conversion into national currency of loan agreements denominated in a foreign currency, from being maintained in force by replacing that term with provisions of national law concerning the currency in which a loan is repaid, the payment of interest in contractual relations and the determination of the interest rate.

52 As has been noted in paragraph 42 above, although the Court of Justice has acknowledged that the national court may substitute a supplementary provision of national law for an unfair term in a loan agreement, that possibility is, however, limited to exceptional cases, namely those cases in which the invalidity of that unfair term would require the court to annul that contract in its entirety, thereby exposing the consumer concerned to particularly unfavourable consequences, so that the consumer would thus be penalised.

53 However, such a possibility of substitution, which derogates from the general rule that the contract at issue can remain binding on the parties only if it can continue in existence without the unfair terms that it contains, is limited to supplementary provisions of national law or those which are applicable where the parties so agree and is based, in particular, on the ground that such provisions are presumed not to contain unfair terms (judgment of 3 October 2019, *Dziubak*, C-260/18, EU:C:2019:819, paragraph 59 and the case-law cited).

54 Those provisions are meant to reflect the balance that the legislature intended to establish between all the rights and obligations of the parties to certain contracts in cases where the parties have not departed from a standard rule provided for by the national legislature in relation to the contracts concerned, or indeed have expressly opted for a rule introduced by the national legislature to that end to be applicable (judgment of 3 October 2019, *Dziubak*, C-260/18, EU:C:2019:819, paragraph 60 and the case-law cited).

55 In addition, it follows from that case-law that gaps in a contract caused by the removal of the unfair terms contained in that contract cannot be filled solely on the basis of national provisions of a general nature (see, to that effect, judgment of 3 October 2019, *Dziubak*, C-260/18, EU:C:2019:819, paragraph 62).

56 Consequently, the answer to the third question is that Article 6(1) of Directive 93/13 must be interpreted as meaning that, where a term which places the exchange risk on the consumer results – because of its unfairness – in the invalidity of a loan agreement denominated in a foreign currency, but repayable in the national currency, in which that term appears, that provision precludes that agreement, during the period from the date of its conclusion to the date of the entry into force of national legislation providing for the conversion into national currency of loan agreements denominated in a foreign currency, from being maintained in force by replacing that term with general provisions of national law, in so far as those provisions of national law cannot usefully replace the same term by a mere substitution by the national court which does not require action on the part of that court that would amount to revising the content of an unfair term in that contract.

Costs

57 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 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts**

   must be interpreted as meaning that, where a term which places the exchange risk on the consumer results – because of its unfairness – in the invalidity of a loan agreement denominated in a foreign currency, but repayable in the national currency, in which that term appears, those provisions preclude that agreement from being declared valid and the content of the consumer's obligations arising from that term from being adapted by means of a change in the currency of that agreement and the interest rate set in that agreement, or a ceiling on the exchange rate of that currency.

2. **Article 6(1) of Directive 93/13**

   must be interpreted as meaning that, where a term which places the exchange risk on the consumer results – because of its unfairness – in the invalidity of a loan agreement denominated in a foreign currency, but repayable in the national currency, in which that term appears, that provision precludes that agreement, during the period from the date of its conclusion to the date of the entry into force of national legislation providing for the conversion into national currency of loan agreements denominated in a foreign currency, from being maintained in force by replacing that term with general provisions of national law, in so far as those provisions of national law cannot usefully replace the same term by a mere substitution by the national court which does not require action on the part of that court that would amount to revising the content of an unfair term in that contract.

[Signatures]