Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

8 June 2023 *

(Reference for a preliminary ruling – Consumer protection – Directive 93/13/EEC – Unfair terms in consumer contracts – Dual-purpose contract – Article 2(b) – Concept of 'consumer' – Criteria)

In Case C-570/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy dla Warszawy-Woli w Warszawie (District Court of Warsaw-Wola, sitting in Warsaw, Poland), made by decision of 22 June 2021, received at the Court on 13 September 2021, in the proceedings

I.S.,

K.S.

v

YYY. S.A.,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, D. Gratsias, M. Ilešič, I. Jarukaitis and Z. Csehi (Rapporteur), Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– I.S. and K.S., by P. Artymionek, A. Citko and M. Siejko, radcowie prawni,

– YYY. S.A., by Ł. Hejmej, M. Przygodzka and A. Szczęśniak, adwokaci,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by S.L. Kalėda, U. Małecka and N. Ruiz García, acting as Agents,

* Language of the case: Polish.

after hearing the Opinion of the Advocate General at the sitting on 15 December 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(b) 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 I.S. and K.S., on the one hand, and, on the other hand, YYY. S.A., a bank, concerning payment of a sum, plus interest, received by that bank under clauses in a mortgage loan contract indexed to the exchange rate of a foreign currency.

Legal context

European Union law

Directive 93/13

3 According to the tenth recital of Directive 93/13:

'…more effective protection of the consumer can be achieved by adopting uniform rules of law in the matter of unfair terms; … those rules should apply to all contracts concluded between sellers or suppliers and consumers; …'

4 Article 1(1) of that directive provides:

'The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in contracts concluded between a seller or supplier and a consumer.'

5 Article 2 of that directive is drafted in the following terms:

'For the purposes of this Directive:

…

(b) "consumer" means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession;

(c) "seller or supplier" means any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned.'

6 Article 3(1) of that directive provides that '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.'

7 Article 6(1) of Directive 93/13 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.'

Directive 2011/83/EU

8 Recital 17 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64), states:

'The definition of consumer should cover natural persons who are acting outside their trade, business, craft or profession. However, in the case of dual purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered as a consumer.'

9 Article 2 of that directive provides:

'For the purpose of this Directive, the following definitions shall apply:

(1) "consumer" means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;

(2) "trader" means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive;

…'

Directive 2013/11/EU

10 Recital 18 of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ 2013 L 165, p. 63) states:

'The definition of "consumer" should cover natural persons who are acting outside their trade, business, craft or profession. However, if the contract is concluded for purposes partly within and partly outside the person's trade (dual purpose contracts) and the trade purpose is so limited as not to be predominant in the overall context of the supply, that person should also be considered as a consumer.'

11 Article 4 of that directive provides:

'1. For the purposes of this Directive:

(a) "consumer" means any natural person who is acting for purposes which are outside his trade, business, craft or profession;

(b) "trader" means any natural persons, or any legal person irrespective of whether privately or publicly owned, who is acting, including through any person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession;

…'

Regulation (EU) No 524/2013

12 Recital 13 of Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ 2013 L 165, p. 1), states:

'The definition of "consumer" should cover natural persons who are acting outside their trade, business, craft or profession. However, if the contract is concluded for purposes partly within and partly outside the person's trade (dual purpose contracts) and the trade purpose is so limited as not to be predominant in the overall context of the supply, that person should also be considered as a consumer.'

13 Article 4 of that regulation provides:

'1. For the purposes of this Regulation:

(a) "consumer" means a consumer as defined in point (a) of Article 4(1) of Directive [2013/11];

(b) "trader' means a trader as defined in point (b) of Article 4(1) of Directive [2013/11];

…'

Polish law

14 Article 22^1 of the ustawa – Kodeks cywilny (Law establishing the Civil Code) of 23 April 1964 (Dz. U. of 1964, No 16), in the version applicable to the dispute in the main proceedings ('the Civil Code'), defines a 'consumer' as 'any natural person who concludes, with a seller or supplier, a legal transaction which has no direct link to that person's business or professional activity'.

15 Under Article 385[1](1) of the Civil Code:

Terms in a contract entered into with a consumer that have not been individually negotiated shall not bind the consumer if they define the consumer's rights and obligations in a manner that is contrary to good morals and grossly prejudices the consumer's interests (unlawful terms). This provision shall not apply to terms setting forth the principal matters to be performed by the parties, including price or remuneration, provided they are worded clearly.'

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

16 The applicants in the main proceedings, I.S. and K.S., married without having entered into a marriage contract.

17 On 28 February 2006, they applied to the predecessor of the defendant in the main proceedings for a mortgage loan of 206 120 Polish zlotys (PLN) (approximately EUR 45 800), indexed to the Swiss franc (CHF). That loan was intended, first, to refinance consumer debts linked to consumer credit, a current bank account and a credit card and, secondly, to finance renovation work on a dwelling.

18 On 21 March 2006, the applicants in the main proceedings concluded a mortgage loan contract in the amount of PLN 198 996.73 (approximately EUR 44 200), indexed to the Swiss franc and for a term of 300 months, with the predecessor of the defendant in the main proceedings. The first instalment of that loan was intended, first, to repay the overdraft of PLN 70 0000 (approximately EUR 15 600) on a current account held in the name of a company run by I.S. and, secondly, to pay various insurance premiums in the amount of PLN 1 216.80 (approximately EUR 270), PLN 3 979.93 (approximately EUR 880) and PLN 3 800 (approximately EUR 840). Its second instalment was intended, first, to reimburse various financial commitments of the applicants in the main proceedings, corresponding to sums of PLN 9 720 (approximately EUR 2 200), PLN 7 400 (approximately EUR 1 600) and PLN 9 000 (approximately EUR 2 000), and, secondly, to finance renovation work on a dwelling in the amount of PLN 93 880 (approximately EUR 20 900).

19 Both on the date of the loan application and on the date on which that loan contract was concluded, I.S. was engaged in business activity in the form of a civil-law partnership and K.S. worked as a locksmith under an employment contract.

20 The applicants in the main proceedings brought an action before the referring court seeking repayment of the sum of PLN 13 142.03 (approximately EUR 2 900), plus interest, received by YYY under the terms of that loan contract relating to the valuation of the monthly instalments for repayment of the loan and to the amount of the debt, on the ground that those terms were unfair.

21 It is apparent from the request for a preliminary ruling that, before the referring court, YYY claimed, inter alia, that the loan at issue had been granted in order to repay a loan linked to a professional activity, so that the applicants in the main proceedings could not rely on the legal protection provided for in Article 385[1] of the Civil Code.

22 In addition, it is apparent from that request that, at the hearing which took place on 11 January 2021 before the referring court, I.S. confirmed that a sum of PLN 70 000 (approximately EUR 15 600), granted under the loan contract at issue, had been used to repay an

overdraft on her professional account and that, after that repayment, that account had been closed. I.S. also declared that that repayment was a pre-condition for the conclusion of that contract.

23 In those circumstances, the referring court has doubts as to the interpretation of the concept of 'consumer', within the meaning of Article 2(b) of Directive 93/13, in a situation in which, in the context of a 'mixed' loan contract, part of the amount loaned, namely 35% of that amount, which is neither predominant nor marginal, was used to repay a loan within the trade, business or profession of one of the applicants in the main proceedings and the other part of that amount, namely 65% thereof, was intended for consumption outside a trade, business or profession. That court asks, in essence, whether the interpretation of the concept of 'consumer', based on the rules of jurisdiction over consumer contracts, adopted in the judgment of 20 January 2005, *Gruber* (C-464/01, EU:C:2005:32; 'the judgment in *Gruber*') by which the Court of Justice held that, in order for a person who has concluded a contract relating to goods intended for use which is in part within and in part outside his or her trade or profession to be able to rely on those rules of jurisdiction, the trade or professional purpose must be so limited as to be negligible in the overall context of the supply, may be applied by analogy to the interpretation of the concept of 'consumer' within the meaning of Article 2(b) of Directive 93/13.

24 In that regard, the referring court observes that it is apparent from recital 17 of Directive 2011/83 and recital 13 of Regulation No 524/2013 that, for the purposes of defining the concept of 'consumer' in the case of dual-purpose contracts, that is to say, contracts concluded for purposes which are only partly within the trade of the person concerned, the trade purpose must be so limited as not to be predominant in the overall context of the contract at issue.

25 In addition, the referring court raises the question of the criteria to be taken into consideration in such a definition. In particular, it wishes to ascertain whether the fact that only one of the applicants in the main proceedings was pursuing a professional purpose and the fact that, without repayment of the debt of the undertaking concerned, the loan in question would not have been granted for a non-professional purpose are relevant criteria in that regard.

26 Under those circumstances, the Sąd Rejonowy dla Warszawy-Woli w Warszawie (District Court of Warsaw-Wola, sitting in Warsaw, Poland) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 2(b) of [Directive 93/13] and its recitals be interpreted as not precluding the inclusion in the definition of "consumer" of a person engaged in business activity who entered into an agreement concerning a loan indexed to a foreign currency together with a joint-borrower who is not engaged in business activity, which loan is intended to be used partly for the business purposes of one of the borrowers and partly for purposes unconnected with his or her business activity, and not only where business use is so marginal as to be negligible in the overall context of the agreement in question, and where it is irrelevant that the non-business element is predominant?

(2) If the answer to the first question is in the affirmative, must Article 2(b) of [Directive 93/13] and its recitals be interpreted as meaning that the concept of "consumer" defined in that provision extends to a person who, at the time the agreement was signed, was engaged in business activity, whereas the other borrower was not engaged in any business activity, and subsequently those two persons entered into an agreement with a bank concerning a loan indexed to a foreign currency where the loan principal was used in part for the business

purposes of one of the borrowers and in part for non-business purposes, where business use is not marginal and is not negligible in the overall context of the loan agreement, and where the non-business element is predominant, and given that if the loan principal had not been used for business purposes it would not have been possible to grant the loan for non-business purposes?'

Consideration of the questions referred

The first question

27 By its first question, the referring court asks, in essence, whether Article 2(b) of Directive 93/13 must be interpreted as precluding a person who has concluded a loan contract intended for a purpose in part within and in part outside his or her trade, business or profession, together with a joint-borrower who did not act within his or her trade, business or profession, from being classified as a 'consumer', where the link between that contract and that person's trade, business or profession is not so limited as to be negligible in the overall context of that contract, but is so limited as not to be predominant in that context.

28 According to settled case-law, when interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it forms part (judgment of 7 November 2019, *Kanyeba and Others*, C-349/18 to C-351/18, EU:C:2019:936, paragraph 35 and the case-law cited).

29 As regards the wording of Article 2(b) of Directive 93/13, it should be noted that, in accordance with that provision, a 'consumer' is any natural person who, in contracts covered by that directive, is acting for purposes which are outside his trade, business or profession.

30 Thus, the status of the person concerned as a 'consumer' must be assessed by reference to a functional criterion, consisting in an assessment of whether the contractual relation at issue has arisen in the course of activities outside a trade, business or profession (judgment of 27 October 2022, *S.V. (Building in co-ownership)*, C-485/21, EU:C:2022:839, paragraph 25 and the case-law cited). The Court of Justice has also had occasion to state that the concept of 'consumer', within the meaning of Article 2(b) of Directive 93/13, is objective in nature and is distinct from the concrete knowledge the person in question may have, or from the information that person actually has (judgment of 21 March 2019, *Pouvin and Dijoux*, C-590/17, EU:C:2019:232, paragraph 24 and the case-law cited).

31 The wording of Article 2(b) of Directive 93/13 does not, however, make it possible to determine whether and, if so, in what cases, a person who has concluded a dual-purpose contract, which falls only partly within his or her trade, business or profession, may be regarded as a consumer within the meaning of that directive.

32 As regards the context of which Article 2(b) of Directive 93/13 forms part and the objectives pursued by that directive, it must be recalled that that directive applies, as is clear from Article 1(1) and Article 3(1), to unfair terms of 'contracts concluded between a seller or supplier and a consumer' which have 'not been individually negotiated' (judgment of 15 January 2015, *Šiba*, C-537/13, EU:C:2015:14, paragraph 19 and the case-law cited).

33 As the tenth recital of that directive states, the uniform rules of law in the matter of unfair terms should apply, subject to the exceptions listed in that recital, to 'all contracts' concluded between sellers or suppliers and consumers, as defined in Article 2(b) and (c) of that directive (judgment of 27 October 2022, *S.V. (Building in co-ownership)*, C-485/21, EU:C:2022:839, paragraph 22 and the case-law cited).

34 It is therefore by reference to the capacity of the contracting parties, according to whether or not they are acting for purposes relating to their trade, business or profession, that Directive 93/13 defines the contracts to which it applies (judgment of 21 March 2019, *Pouvin and Dijoux*, C-590/17, EU:C:2019:232, paragraph 23 and the case-law cited).

35 Such a criterion corresponds to the idea on which the system of protection implemented by that directive is based, namely that the consumer is in a weaker position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge. This leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of those terms (judgment of 3 September 2015, *Costea*, C-110/14, EU:C:2015:538, paragraph 18 and the case-law cited).

36 As regards that weaker position, Article 6(1) of the directive provides that unfair terms are not binding on consumers. It is a mandatory provision which aims to replace the formal balance which the contract establishes between the rights and obligations of the parties with an effective balance which re-establishes equality between them (judgment of 17 May 2022, *Ibercaja Banco*, C-600/19, EU:C:2022:394, paragraph 36 and the case-law cited).

37 Moreover, the Court of Justice has already recognised that a broad definition of the concept of 'consumer' for the purposes of Article 2(b) of Directive 93/13 allows the protection granted by that directive to all natural persons finding themselves in the weaker position vis-à-vis the seller or supplier (see, to that effect, judgment of 21 March 2019, *Pouvin and Dijoux*, C-590/17, EU:C:2019:232, paragraph 28).

38 In those circumstances, as the Advocate General stated, in essence, in points 61 and 66 of his Opinion, the mandatory nature of the provisions contained in Directive 93/13 and the specific consumer-protection requirements linked to them require that a broad interpretation of the concept of 'consumer' within the meaning of Article 2(b) of that directive be given preference, in order to ensure the effectiveness of that directive.

39 Thus, although, in principle, the provisions of Directive 93/13 apply only where the contract at issue has as its subject matter goods or services intended for a purpose outside a trade, business or profession, a natural person who concludes a contract for goods or services intended for a purpose relating in part to his trade, business or profession, and therefore falling only partly outside that activity, could, in certain circumstances, be classified as a 'consumer' within the meaning of Article 2(b) of that directive and, therefore, enjoy the protection granted by that directive.

40 In order to ensure compliance with the objectives pursued by the EU legislature in the sphere of consumer contracts, and the consistency of EU law, account must be taken, in particular, of the definition of 'consumer' in other rules of EU law (see, to that effect, judgment of 5 December 2013, *Vapenik*, C-508/12, EU:C:2013:790, paragraph 25).

41 As the applicants in the main proceedings, the Polish Government and the European Commission point out in their written observations, Directive 2011/83 is particularly relevant in that regard.

42 Besides the fact that the definitions of the term 'consumer' in Article 2 of Directive 93/13 and Article 2 of Directive 2011/83 are broadly equivalent, the latter directive has the same purpose as Directive 93/13. Directive 2011/83 concerns consumer rights with regard to contracts concluded with traders and seeks to provide a high level of consumer protection by ensuring that consumers are informed and secure in transactions with traders (see, to that effect, order of 15 April 2021, *MiGame*, C-594/20, EU:C:2021:309, paragraph 28).

43 Furthermore, as the Advocate General observed in point 72 of his Opinion, Directive 2011/83 has a close connection with Directive 93/13, given that the former amended the latter and that those two directives may apply to the same contract, provided that the contract falls simultaneously within their respective substantive scope. Furthermore, the EU legislature recently strengthened that link by adopting Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (OJ 2019 L 328, p. 7).

44 In those circumstances, for the purposes of interpreting Article 2(b) of Directive 93/13, account must be taken of recital 17 of Directive 2011/83, which makes explicit the intention of the EU legislature as regards the definition of the concept of 'consumer' in the case of dual-purpose contracts and from which it is apparent that, where the contract is concluded for purposes which relate only partly to the trade of the person concerned and where the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be regarded as a consumer.

45 The relevance of the interpretation of Article 2(b) of Directive 93/13 in the light of recital 17 of Directive 2011/83 is borne out by recital 18 of Directive 2013/11 and by recital 13 of Regulation No 524/2013, which contain the same clarification as regards the definition of the concept of 'consumer' in the case of dual-purpose contracts. Although Directive 2013/11 and Regulation No 524/2013 concern the resolution of consumer disputes and, therefore, questions other than those governed by Directives 93/13 and 2011/83 as regards consumer protection, those recitals attest to the determination of the EU legislature to give horizontal scope to that definition.

46 In so far as those recitals are set out in legislative acts postdating the facts of the dispute in the main proceedings, it is sufficient to note that, as has been pointed out in paragraph 38 above, the mandatory nature of the provisions contained in Directive 93/13 and the specific consumer protection requirements associated with them require that a broad interpretation of the concept of 'consumer', within the meaning of Article 2(b) of that directive, be given preference, in order to ensure the effectiveness of that directive. Accordingly, the teleological interpretation of Directive 93/13 supports the approach set out by the EU legislature in those recitals, according to which a person who has concluded a contract for purposes partly within his or her trade must be regarded as a consumer where the trade purpose is so limited as not to be predominant in the overall context of that contract.

47 Furthermore, the interpretation of the concept of 'consumer' adopted by the Court of Justice in paragraphs 31 and 45 of the judgment in *Gruber*, and confirmed in paragraphs 29 to 32 of the judgment of 25 January 2018, *Schrems* (C-498/16, EU:C:2018:37), as regards the interpretation of Articles 15 to 17 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1), and in paragraphs 87 to 91 of the judgment of 14 February 2019, *Milivojević* (C-630/17, EU:C:2019:123), as regards the interpretation of Articles 17 to 19 of Regulation (EU)

No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1), likewise does not preclude Article 2(b) of Directive 93/13 from being interpreted in the light of recital 17 of Directive 2011/83.

48 In the judgment in *Gruber*, the Court interpreted Articles 13 to 15 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32), as amended by the successive conventions on the accession of new Member States to that convention ('the Brussels Convention').

49 That judgment, as is apparent in particular from paragraphs 32, 33 and 43 thereof, concerned the interpretation of the rules of jurisdiction over consumer contracts laid down in the Brussels Convention, which derogate from the general rule of jurisdiction laid down by that convention, namely that of the courts of the Contracting State in which the defendant is domiciled, and which, as rules of jurisdiction derogating from that general rule of jurisdiction, are to be interpreted strictly in the sense that they cannot give rise to an interpretation going beyond the situations expressly envisaged by that convention.

50 It is therefore in that specific context, having regard also to other relevant factors in the interpretation of the rules of jurisdiction provided for by that convention, such as the requirements of legal certainty and of predictability of the court having jurisdiction and the objective of adequate protection of the consumer pursued by the provisions of Section 4 of Title II of that convention (see, to that effect, judgment in *Gruber*, paragraphs 34 and 45), that the Court held that a person who has concluded a contract for a purpose relating in part to his or her trade or profession, and therefore falling only in part outside that trade or profession, may not rely on the special rules on jurisdiction concerning consumer contracts provided for by the Brussels Convention, unless the trade or professional purpose is so limited as to be negligible in the overall context of the supply (see, to that effect, judgment in *Gruber*, paragraphs 39 and 54).

51 Thus, since Article 2(b) of Directive 93/13 is not a provision which must be interpreted strictly and in view of the *ratio legis* of that directive to protect consumers in the event of unfair contract terms, the strict interpretation of the concept of 'consumer' adopted in *Gruber* for the purposes of determining the scope of the derogating jurisdictional rules laid down in Articles 13 to 15 of the Brussels Convention in the case of a dual purpose contract cannot be extended, by analogy, to the concept of 'consumer' within the meaning of Article 2(b) of Directive 93/13.

52 In order to provide a useful answer to the referring court, it should also be noted that, in the context of a loan contract concluded with a seller or supplier, a natural person in the situation of a co-debtor falls within the concept of 'consumer' within the meaning of Article 2(b) of Directive 93/13, since he or she is acting for purposes which are outside his or her trade, business or profession and must, if he or she is, vis-à-vis that seller or supplier, in a situation analogous to that of the debtor, enjoy, together with the latter, the protection provided for by that directive (see, to that effect, judgment of 9 July 2015, *Bucura*, C-348/14, not published, EU:C:2015:447, paragraphs 35 to 39).

53 In the light of the foregoing, the answer to the first question is that Article 2(b) of Directive 93/13 must be interpreted as meaning that the concept of 'consumer', within the meaning of that provision, covers a person who has concluded a loan contract intended for a purpose in part

within and in part outside his or her trade, business or profession, together with a joint-borrower who did not act within his or her trade, business or profession, where the trade, business or professional purpose is so limited as not to be predominant in the overall context of that contract.

The second question

54 By its second question, the national court asks, in essence, for clarification of the criteria for determining whether a person falls within the concept of 'consumer' within the meaning of Article 2(b) of Directive 93/13 and, specifically, for determining whether the trade, business or professional purpose of a loan contract concluded by that person is so limited as not to be predominant in the overall context of that contract.

55 It is apparent from the case-law that a national court before which an action relating to a contract which may be covered by that directive has been brought is required to determine, taking into account all the evidence and in particular the terms of that contract, whether the person concerned may be categorised as a 'consumer' within the meaning of Directive. In order to do that, the national court must take into account all the circumstances of the case, particularly the nature of the goods or service covered by the contract at issue, capable of showing the purpose for which those goods or that service is being acquired (see, to that effect, judgments of 3 September 2015, *Costea*, C-110/14, EU:C:2015:538, paragraphs 22 and 23, and of 21 March 2019, *Pouvin and Dijoux*, C-590/17, EU:C:2019:232, paragraph 26).

56 The same applies with a view, first, to the assessment, in respect of a loan contract which relates in part to the borrower's trade, business or profession and in part to purposes outside that trade, business or profession, of the extent of each of those two parts in the overall context of that contract and, secondly, to the predominant purpose of that contract.

57 In that regard, the distribution of the capital borrowed between a trade, business or profession and a non-professional activity is capable of constituting a relevant quantitative criterion. However, non-quantitative criteria could also be relevant, such as the fact that, where there are several borrowers, only one of them is pursuing, under the loan contract at issue, a trade, business or profession or, as the case may be, the fact that the lender made the grant of the loan, initially intended solely for consumer purposes, subject to a partial allocation of the amount borrowed to the repayment of debts connected with a trade, business or profession.

58 Those criteria are neither exhaustive nor exclusive, with the result that it is for the referring court to examine all the circumstances surrounding the contract at issue in the main proceedings and to assess, on the basis of the objective evidence available to it, to what extent the trade, business or professional purpose of that contract or its non-professional purpose is predominant in its overall context.

59 In the light of the foregoing, the answer to the second question is that Article 2(b) of Directive 93/13 must be interpreted as meaning that, in order to determine whether a person falls within the concept of 'consumer', within the meaning of that provision, and, specifically, whether the trade, business or professional purpose of a loan contract concluded by that person is so limited as not to be predominant in the overall context of that contract, the referring court is required to take into consideration all the relevant circumstances surrounding that contract, both quantitative and qualitative, such as, in particular, the distribution of the borrowed capital between, on the one hand, a trade, business or profession and, on the other hand, a non-professional activity and, where there are several borrowers, the fact that only one of them is

pursuing a professional purpose or that the lender made the grant of credit intended for consumer purposes conditional on a partial allocation of the amount borrowed to the repayment of debts connected with a trade, business or profession.

The limitation of the temporal effects of the present judgment

60 In its written observations, the defendant in the main proceedings requested, in essence, that the Court of Justice limit the temporal effects of its judgment in the event that it does not interpret the concept of 'consumer', within the meaning of Article 2(b) of Directive 93/13, in the light of the judgment in *Gruber*. In support of its application, it relied on the principles of legal certainty and non-retroactivity.

61 In that regard, it should be noted that, according to settled case-law, it is only quite exceptionally that the Court may, in application of the general principle of legal certainty inherent in the EU legal order, be moved to restrict, for any person concerned, the opportunity of relying on a provision which it has interpreted with a view to calling into question legal relationships established in good faith. Two essential criteria must be fulfilled before such a limitation can be imposed, namely that those concerned should have acted in good faith and that there should be a risk of serious difficulties (judgment of 11 November 2020, *DenizBank*, C-287/19, EU:C:2020:897, paragraph 108 and the case-law cited).

62 In the present case, however, the defendant in the main proceedings merely puts forward general arguments without providing any specific and precise evidence capable of establishing that its application is well founded in the light of those two criteria.

63 Accordingly, it is not appropriate to limit the temporal effects of the present judgment.

Costs

64 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 (Fifth Chamber) hereby rules:

1. **Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts**

   must be interpreted as meaning that the concept of 'consumer', within the meaning of that provision, covers a person who has concluded a loan contract intended for a purpose in part within and in part outside his or her trade, business or profession, together with a joint-borrower who did not act within his or her trade, business or profession, where the trade, business or professional purpose is so limited as not to be predominant in the overall context of that contract.

2. **Article 2(b) of Directive 93/13**

   must be interpreted as meaning that in order to determine whether a person falls within the concept of 'consumer', within the meaning of that provision, and, specifically,

whether the trade, business or professional purpose of a loan contract concluded by that person is so limited as not to be predominant in the overall context of that contract, the referring court is required to take into consideration all the relevant circumstances surrounding that contract, both quantitative and qualitative, such as, in particular, the distribution of the borrowed capital between, on the one hand, a trade, business or profession and, on the other hand, a non-professional activity and, where there are several borrowers, the fact that only one of them is pursuing a professional purpose or that the lender made the grant of credit intended for consumer purposes conditional on a partial allocation of the amount borrowed to the repayment of debts connected with a trade, business or profession.

[Signatures]