Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

13 March 2025*

(Reference for a preliminary ruling – Consumer protection – Directive 93/13/EEC – Unfair terms in consumer contracts – Article 4(2), Article 6(1) and Article 7(1) – Point 1(i), (j) and (m) of the Annex to Directive 93/13 – Consumer credit agreements – Term requiring a consumer to conclude a contract of guarantee – Guarantor chosen by the creditor – Exclusion of terms relating to the main subject matter of the contract – Agreement which is ancillary to a credit agreement – Powers of the national court – Order for payment procedure – Directive 2005/29/EC – Unfair commercial practices – Articles 5 and 8 – Annex I – Directive 2008/48/EC – Article 3(g), (i) and (n), Article 10(2), Article 15(2) and Article 23 – Linked credit agreement – Concept – Total cost of the credit to the consumer – Annual percentage rate of charge – No indication of the relevant costs – Penalty)

In Case C-337/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski rayonen sad (Sofia District Court, Bulgaria), made by decision of 29 May 2023, received at the Court on 29 May 2023, in the proceedings

APS Beta Bulgaria EOOD,

Agentsia za kontrol na prosrocheni zadalzhenia AD

THE COURT (Tenth Chamber),

composed of D. Gratsias, President of the Chamber, I. Jarukaitis, President of the Fourth Chamber, and Z. Csehi (Rapporteur), Judge,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Agentsia za kontrol na prosrocheni zadalzhenia AD, by E.A. Damyanova, advokat, and Y.B. Yanakiev,

– the Czech Government, by L. Březinová, M. Smolek and J. Vláčil, acting as Agents,

* Language of the case: Bulgarian.

– the European Commission, by P. Ondrůšek, E. Rousseva, N. Ruiz García, H. Tserepa-Lacombe and P. Vanden Heede, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 September 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(1) and (2), Article 5, Article 6(1) and Article 7 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), and of point 1(b), (c), (i), (j) and (m), of the Annex to Directive 93/13, of Article 8 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22), Article 3(g), Article 10(2)(g), Article 15(2) and the second sentence of Article 23 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66), Article 2(2) and Article 14(1) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ 2009 L 335, p. 1).

2 The request has been made in proceedings seeking an order for payment of pecuniary debts to APS Beta Bulgaria EOOD and the Agentsia za kontrol na prosrocheni zadalzhenia AD in accordance with consumer credit agreements and contracts of guarantee.

Legal context

European Union law

Directive 93/13

3 Article 1(1) of Directive 93/13 states that its purpose 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.'

4 In accordance with Article 2(b) of Directive 93/13, for the purposes of that directive, '"consumer" means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession.'

5 Article 3 of Directive 93/13 provides:

'1. 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.

…

3. The Annex shall contain an indicative and non-exhaustive list of the terms which may be regarded as unfair.'

6 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.'

7 Article 5 of that directive states:

'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).'

8 Under Article 6(1) of Directive 93/13:

'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.'

9 Article 7 of that directive is worded 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 organizations, 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.'

10 The annex to that directive, headed 'Terms referred to in Article 3(3)', provides, in point 1:

'Terms which have the object or effect of:

…

(b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him;

(c) making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realization depends on his own will alone;

…

(i) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;

(j) enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract;

…

(m) giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract;

…'

Directive 2005/29

11 Article 5 of Directive 2005/29, entitled 'Prohibition of unfair commercial practices', provides, in paragraph 5 thereof:

'Annex I contains the list of those commercial practices which shall in all circumstances be regarded as unfair. The same single list shall apply in all Member States and may only be modified by revision of this Directive.'

12 Article 8 of that directive, entitled 'Aggressive commercial practices', provides:

'A commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise.'

Directive 2008/48

13 Recital 22 of Directive 2008/48 is worded as follows:

‘Member States should remain free to maintain or introduce national provisions prohibiting the creditor from requiring the consumer, in connection with the credit agreement, to open a bank account or conclude an agreement in respect of another ancillary service, or to pay the expenses or fees for such bank accounts or other ancillary services. In those Member States where such combined offers are allowed, consumers should be informed before the conclusion of the credit agreement about any ancillary services which are compulsory in order for the credit to be obtained in the first place or on the terms and conditions marketed. The costs payable in respect of those ancillary services should be included in the total cost of the credit; alternatively, if the amount of such costs cannot be determined in advance, consumers should receive adequate information about the existence of costs at a pre-contractual stage. The creditor must be presumed to have knowledge of the costs of the ancillary services which he offers to the consumer himself, or on behalf of a third party, unless the price thereof depends on the specific characteristics or situation of the consumer.’

14 Article 3 of Directive 2008/48, entitled ‘Definitions’, provides:

‘For the purposes of this Directive, the following definitions shall apply:

…

(g) “total cost of the credit to the consumer” means all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for notarial costs; costs in respect of ancillary services relating to the credit agreement, in particular insurance premiums, are also included if, in addition, the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed;

…

(i) “annual percentage rate of charge [(APRC)]” means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable including the costs referred to in Article 19(2);

…

(n) “linked credit agreement” means a credit agreement where
   (i) the credit in question serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service, and
   (ii) those two agreements form, from an objective point of view, a commercial unit; a commercial unit shall be deemed to exist where the supplier or service provider himself finances the credit for the consumer or, if it is financed by a third party, where the creditor uses the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement, or where the specific goods or the provision of a specific service are explicitly specified in the credit agreement.’

15 Article 10(2) of that directive provides:

‘The credit agreement shall specify in a clear and concise manner:

…

(g) the [APRC] and the total amount payable by the consumer, calculated at the time the credit agreement is concluded; all the assumptions used in order to calculate that rate shall be mentioned;

…’

16 Under Article 15(2) of that directive:

‘Where the goods or services covered by a linked credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for the supply thereof, the consumer shall have the right to pursue remedies against the creditor if the consumer has pursued his remedies against the supplier but has failed to obtain the satisfaction to which he is entitled according to the law or the contract for the supply of goods or services. Member States shall determine to what extent and under what conditions those remedies shall be exercisable.’

17 Article 22(1) to (3) of that directive provides:

‘1. In so far as this Directive contains harmonised provisions, Member States may not maintain or introduce in their national law provisions diverging from those laid down in this Directive.

2. Member States shall ensure that consumers may not waive the rights conferred on them by the provisions of national law implementing or corresponding to this Directive.

3. Member States shall further ensure that the provisions they adopt in implementation of this Directive cannot be circumvented as a result of the way in which agreements are formulated, in particular by integrating drawdowns or credit agreements falling within the scope of this Directive into credit agreements the character or purpose of which would make it possible to avoid its application.’

18 Article 23 of Directive 2008/48 states:

‘Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.’

Bulgarian law

The ZZD

19 Article 138 of the Zakon za zadalzheniyata i dogovorite (Law on obligations and contracts, DV No 275 of 22 November 1950), in the version applicable to the dispute in the main proceedings ('the ZZD'), provides:

'In a contract of guarantee, the guarantor undertakes to be liable to the creditor of another person for the performance of the other person's obligations. That contract must be in writing.

The guarantee can only exist in respect of a genuine obligation. It may also be a future or contingent obligation.'

20 Article 147 of the ZZD provides:

'The guarantor shall remain liable after the principal obligation has become due if the creditor has brought an action challenging the debtor within six months. This provision shall also apply if the guarantor has expressly limited his or her guarantee to the duration of the principal obligation.

The extension of time granted by the creditor to the debtor shall have no effect on the guarantor unless the guarantor has consented to such extension.'

The Law on consumer credit

21 Article 19(3) and (4) of the Zakon za potrebitelskia kredit (Law on consumer credit, DV No 18 of 5 March 2010), in the version applicable to the main proceedings, states:

'(3) The calculation of the [APRC] of a loan shall not include costs:

(1) that the consumer has to bear in the event of non-compliance with his or her obligations laid down in the consumer credit agreement;

(2) other than the purchase price of the goods or services that the consumer has to pay to purchase the goods or services, whether the transaction is made in cash or on credit;

(3) for the maintenance of an account in connection with a consumer credit agreement, costs for the use of a payment instrument allowing payments in connection with the use or repayment of credit and other costs in connection with the execution of payments, provided that the opening of an account is not compulsory and that the costs in connection with the account are clearly and separately set out in the credit agreement or in any other agreement concluded with the consumer.

(4) The [APRC] shall not exceed five times the statutory rate of default interest in [leva (BGN)] or in a foreign currency determined by decision of the Council of Ministers of the Republic of Bulgaria.'

The main proceedings and the questions referred for a preliminary ruling

22 The referring court, the Sofiyski rayonen sad (Sofia District Court, Bulgaria), has before it a number of applications seeking an order for payment of pecuniary debts to the applicants in the main proceedings in accordance with consumer credit agreements and contracts of guarantee.

23 Those consumer credit agreements were concluded between two financial companies incorporated under Bulgarian law and natural persons for amounts of between BGN 300 and 1 700 (approximately EUR 150 and EUR 870), repayable in instalments over periods of between 3 and 18 months; those agreements provide for the application of an APRC varying between 39.99% and 50%.

24 Under the credit agreements thus concluded, the borrowers were required, in order to obtain the loan or an earlier advance of the funds, to provide security, which could take several forms, one of which was the conclusion of a contract of guarantee with an undertaking specialising in that activity, chosen or approved by the lender. According to the referring court, on the same day that the credit agreements were concluded, all of the borrowers in question concluded contracts of guarantee which provided for remuneration to commercial guarantors, that is to say, guarantor companies, for a sum in addition to the loan instalments. The cost of such a guarantee, which represented more than 75% of the total sum to be repaid under the credit agreements, was not included in the APRC.

25 When the borrowers failed to honour their commitments, the amounts owed to the lenders under the credit agreements were paid by those professional guarantors, who were subrogated to the rights of the borrowers. Those guarantor companies then assigned their claims, including the remuneration payable by the debtors under the contracts of guarantee, to the applicants in the main proceedings, who are, in essence, debt collection agencies.

26 The referring court states that, with the exception of one of the cases before it, the payments made by the professional guarantors were made after the expiry of the six-month period laid down in Article 147 of the ZZD, and the main creditors did not object to the fact that no action was taken in respect of the debtors during that period. It notes, in that regard, that certain national courts interpret that provision as meaning that the extinction of the guarantor's obligation attaching to that failure to act may be relied on only by the guarantor and that, if that is not the case, it has the right to bring an action for indemnity against the defaulting debtor.

27 In that context, the referring court asks, in the first place, for the purposes of assessing the unfair nature of contractual terms in accordance with Directive 93/13, whether it is necessary to interpret credit agreements and contracts of guarantee as forming part of a single contractual relationship the purpose of which was to circumvent Article 19 of the Law on consumer credit, in the version applicable to the main proceedings, which sets a maximum APRC for consumer credit agreements. In that regard, it notes that, in seven of the eight actions brought before it, the guarantee was provided by a subsidiary of the lender. It also states that the guarantor's remuneration, which must be paid on the same dates as the loan instalments, was fixed, in all cases, at an amount exceeding 75% of the total amount to be repaid under the loan. It adds that that remuneration was not taken into account in calculating the APRC of the credit agreement.

28 In the second place, it is uncertain as to whether the creditor's choice of guarantor, which is binding on the borrower, may be regarded as an unfair commercial practice, within the meaning of Directive 2005/29, and, if not, whether it can find, in proceedings other than *inter partes* proceedings, that a contractual term is unfair solely on the basis of a serious doubt in that regard.

29 The referring court raises, in the third place, the question of the compatibility of the national case-law concerning Article 147 of the ZZD with Article 15(2) of Directive 2008/48, assuming that it is applicable in the present case, and with Articles 5 and 7 of Directive 93/13.

30 It asks, in the fourth place, whether the remuneration for the guarantee, made mandatory by a term of the credit agreement, must be taken into account in determining the APRC and whether the incorrect indication of that rate must be equated with the fact that it is not mentioned in the credit agreement.

31 In the fifth place, the referring court is uncertain as to whether the contracts of guarantee in question may be classified as insurance contracts within the meaning of Directive 2009/138 and, if so, whether it is necessary for the guarantor to be authorised in accordance with Article 14 of that directive.

32 In those circumstances, the Sofiyski rayonen sad (Sofia District Court) decided to stay the proceedings before it and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are Article 4(2) and Article 6(1) of [Directive 93/13] to be interpreted as meaning that, where a credit agreement imposes an obligation on the consumer to conclude a contract of guarantee with a guarantor nominated by the creditor, the content of the contract of guarantee is not the "main subject matter" of the contract with that third party but forms part of the content of the credit agreement? Is it relevant in that regard whether the creditor and the guarantor are connected persons?

(2) Is point 1(i) of the Annex to [Directive 93/13] to be interpreted as meaning that, where the consumer is required to provide a guarantor in connection with a credit agreement which has already been concluded, and one of the options is for him or her to appoint a person nominated by the creditor, the content of the consumer's obligation under the contract of guarantee concluded later on the day on which the credit agreement was concluded must be regarded as unclear, since it was not possible for the consumer himself or herself to select or propose the person to be nominated by the creditor as the future guarantor?

(3) If the answer to the preceding question is that the subject matter of the contract of guarantee is clear, is point 1(i), (j) and (m) of the Annex to [Directive 93/13] to be interpreted as meaning that, where the consumer has undertaken to provide a guarantor in connection with a credit agreement which has already been concluded, and one of the options is for him or her to appoint a person nominated by the creditor, the content of the consumer's obligation under the credit agreement must be regarded as unclear and may lead to the nullity of the credit agreement or particular terms thereof?

(4) Is Article 4(1) of [Directive 93/13], read in conjunction with Article 8 of [Directive 2005/29], to be interpreted as meaning that, where a person granting credit requires the consumer to conclude an agreement with a person nominated by the creditor to secure the creditor's claim against the consumer, that always constitutes exploitation of the consumer's disadvantageous position and is therefore an aggressive commercial practice?

(5) If Question 4 is answered in the negative: is Article 4(1) and Article 7 of [Directive 93/13], read in conjunction with Article 8 of [Directive 2005/29], to be interpreted as meaning that, in unilateral legal proceedings, such as the order for payment procedure, in which the consumer is not a party, the court may raise doubts that a contractual term is unfair solely on the ground that it suspects that the term was accepted by the consumer on the basis of an unfair commercial practice, or must the latter be established with certainty?

(6) Is Article 15(2) of [Directive 2008/48] to be interpreted as meaning that it applies in cases where the credit agreement is linked to an ancillary service, namely the provision of a guarantee by a third party in return for a fee, and allows the consumer not only to pursue his or her claims on grounds of wrongful conduct on the part of the guarantor, such as payment after the expiry of a statutory time limit, but also to rely on procedural objections which rule out the obligation to the guarantor?

(7) Does Article 15(2) of [Directive 2008/48], read in conjunction with the principle of effectiveness, or – on the assumption that the credit agreement and the contract of guarantee constitute related transactions – do Articles 5 and 7 of [Directive 93/13], read in conjunction with point 1(b) and (c) of the Annex thereto, permit national case-law according to which the guarantor of a contract linked to a consumer credit agreement [which] has received a fee from the consumer for the collateralisation of the credit agreement and has paid the principal creditor in accordance with a contractual term, despite the expiry of the period laid down in Article 147 of the [ZZD], which, according to the relevant case-law, extinguishes the guarantee in its entirety, may nevertheless plead that [it] has succeeded to the rights of the original creditor and, citing contradictory case-law on the application of the law, claim payment from the principal debtor?

(8) Is Article 3(g) of [Directive 2008/48], read in conjunction with Article 5 of [Directive 93/13], to be interpreted as meaning that in the case of an obligation under a credit agreement to conclude a linked contract of guarantee, which has the effect of increasing the total amount of the credit liability, the [APRC] for the credit must also be calculated on the basis of the increased instalments resulting from the fee paid to the guarantor? Is it relevant in that regard who selected the guarantor and whether [it] is a person connected with the principal creditor?

(9) Is Article 10(2)(g) of [Directive 2008/48] to be interpreted as meaning that the incorrect indication of the [APRC] in a credit agreement concluded between a seller or supplier and a consumer-borrower must be regarded as a failure to indicate the [APRC] in the credit agreement and that the national court must apply the consequences provided for in national law for failure to indicate the [APRC] in a consumer credit agreement? Is it to be assumed that those consequences must also apply to the guarantor who has paid in his or her relationship with the consumer?

(10) Is the second sentence of Article 23 of [Directive 2008/48] to be interpreted as meaning that a penalty provided for in national law, namely the nullity of the consumer credit agreement, whereby only the principal amount granted is repayable, must be regarded as proportionate in cases where the consumer credit agreement does not contain a precise indication of the [APRC] in that it does not indicate the cost of a commercial guarantor selected by the creditor, even though the [APRC] is indicated in numerical form in the text of the credit agreement?

(11) Is Article 2(2) of [Directive 2009/138], read in conjunction with point 14 of Part A of [Annex I] to that directive, to be interpreted as meaning that, in the case of a guarantor, the professional pursuit of a remunerated activity in respect of which the guarantor company pays, in all cases of default, the total amount of the credit [received] by a consumer who is the principal debtor, and the fee is paid with each instalment of the credit, irrespective of the consumer's default, constitutes an "insurance activity" within the meaning of that directive?

(12) If Question 11 is answered in the affirmative: is Article 14(1) of [Directive 2009/138] to be interpreted as meaning that a person pursuing the activity referred to in Question 11 is subject to an obligation to obtain authorisation from the national regulatory authorities responsible for granting authorisations to insurers?'

Consideration of the questions referred

Admissibility

33 In accordance with settled case-law, 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 for a preliminary ruling from a national court only where it is quite obvious that the interpretation of EU law 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 18 June 2024, *Bundesrepublik Deutschland (Effect of a decision granting refugee status)*, C-753/22, EU:C:2024:524, paragraph 44 and the case-law cited).

34 However, it is also settled case-law that the justification for a request for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute concerning EU law (judgment of 31 May 2018, *Confetra and Others*, C-259/16 and C-260/16, EU:C:2018:370, paragraph 63).

35 It is in the light of the foregoing considerations that the questions referred should now be examined.

The first to tenth questions

36 The Agentsia za kontrol na prosrocheni zadalzhenia challenges the admissibility of the first to fourth and the sixth to tenth questions, arguing, in essence, that they are hypothetical, since they relate to facts other than those described by the referring court in the main proceedings. In addition, the sixth to eighth questions misconstrue the concept of 'linked credit agreement' within the meaning of Article 3(n) of Directive 2008/48, while the tenth question contradicts the provisions of Bulgarian law relating to the consequences of an irregularity in the reference to the APRC.

37 In the light of the circumstances giving rise to the cases in the main proceedings, as set out in the request for a preliminary ruling, it is not apparent that the interpretation of EU law sought in the context of the first to fourth and sixth to tenth questions has no bearing on the main proceedings or that the issues raised by the referring court are hypothetical. Furthermore, the question whether the referring court, in formulating the sixth to eighth questions, relied on an incorrect interpretation of the concept of 'linked credit agreement', within the meaning of Article 3(n) of Directive 2008/48, does indeed fall within the scope of the examination of the substance of those questions and cannot therefore call into question their admissibility. Lastly, as is apparent from the case-law cited in paragraph 33 above, it is not for the Court to examine the merits of the referring court's interpretation of its own national law.

38 Furthermore, in so far as the first to fourth questions, like the fifth, relate to the interpretation of Directive 93/13, it should be recalled that contracts concluded between a seller or supplier and a consumer, within the meaning of Article 2(b) of that directive, fall within the scope of that directive, as is apparent from Article 1(1) thereof. Although it appears from the order for reference that natural persons who have concluded the credit agreements and contracts of guarantee at issue in the main proceedings have the status of consumer within the meaning of Article 2(b) of that directive, it is nevertheless for the referring court to ascertain whether that is in fact the case.

39 In those circumstances, the first to tenth questions must be declared admissible.

The eleventh and twelfth questions

40 By its eleventh question, the referring court asks, in essence, whether Article 2(2) of Directive 2009/138, read in the light of point 14 of Part A of Annex I to that directive, must be interpreted as meaning that the pursuit, in a professional capacity, of a remunerated activity as a guarantor, in the context of which, first, the guarantor company repays to the lender, in all cases where the borrower defaults, all the sums due in respect of a loan taken out by the borrower and, secondly, the remuneration is payable with each instalment of the loan irrespective of any default, constitutes an 'insurance activity' within the meaning of that directive. If so, by its twelfth question, the referring court asks whether Article 14(1) of Directive 2009/138 must be interpreted as meaning that a person carrying on that activity is required to obtain a licence from the national authorities responsible for granting licences to insurers.

41 It should be borne in mind that the cases in the main proceedings concern applications seeking an order for payment of pecuniary debts taken out by borrowers and assumed by guarantor companies, which assigned their claims to the applicants in the main proceedings, and that, in those cases, the question arises as to whether certain contractual terms are unfair or misleading and what consequences, if any, should be drawn from such a characterisation.

42 Suffice it to state, without it even being necessary to consider the potential applicability of Directive 2009/138 in the cases in the main proceedings, that that directive does not provide for civil penalties in respect of insurance contracts concluded in contravention of its provisions governing the prior authorisation of insurance undertakings.

43 Therefore, taking into account the subject matter of the cases at issue in the main proceedings, the eleventh and twelfth questions are, in any event, hypothetical.

44 In those circumstances, in the light of the case-law cited in paragraph 34 above, the eleventh and twelfth questions must be declared inadmissible.

Substance

The first question

45 According to settled case-law of the Court, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court may have to reformulate the questions referred to it (judgment of 20 June 2024, *Greislzel*, C-35/23, EU:C:2024:532, paragraph 39 and the case-law cited).

46 In the present case, it is necessary to take into consideration the context of the first question, as is apparent from the explanations of the referring court summarised in paragraph 27 above. Furthermore, in so far as that question concerns the possibility of assessing whether the terms of a contract of guarantee are unfair, Article 6(1) of Directive 93/13, which concerns the consequences of a finding that a contractual term is unfair, is not relevant to the answer to that question.

47 Accordingly, by its first question, the referring court asks, in essence, whether Article 4(2) of Directive 93/13 must be interpreted as precluding the assessment of the unfair nature of the terms of a contract of guarantee which determine the obligations of the guarantor and the debtor in the main proceedings, in a situation where the debtor has concluded the contract of guarantee at the same time as the credit agreement and in order to comply with an obligation imposed by the credit agreement, where the guarantor is a subsidiary of the creditor or a person chosen by that creditor and where the costs of the guarantee are payable at the same time as the loan instalments.

48 According to Article 4(2) of Directive 93/13, the assessment of the unfair nature of the terms is to relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as those terms are in plain intelligible language.

49 According to settled case-law, the need for the uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, which must take into account the context of that provision and the purpose of the legislation in question (judgment of 30 April 2014, *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraph 37).

50 The same is true for the terms in Article 4(2) of Directive 93/13, since that provision does not contain any express reference to the law of the Member States for the purpose of determining its meaning and scope.

51 As far as concerns the category of contractual terms falling within the concept of 'main subject matter of the contract', within the meaning of Article 4(2) of Directive 93/13, the Court has held that those terms must be understood as being those that lay down the essential obligations of the contract and, as such, characterise it. By contrast, terms ancillary to those that define the very essence of the contractual relationship cannot fall within the concept of 'main subject matter of the contract', within the meaning of that provision (judgment of 20 September 2017, *Andriciuc and Others*, C-186/16, EU:C:2017:703, paragraphs 35 and 36 and the case-law cited).

52 It follows from that case-law that, in principle, in order to determine whether a term falls within the 'main subject matter' of the contract of which it forms part, it is necessary to refer to the essential obligations of that contract. The fact that that contract was concluded by the consumer in order to comply with an obligation imposed by another contract which he or she concluded at the same time is irrelevant in that regard.

53 Nevertheless, it is necessary to point out that the system of protection introduced by Directive 93/13 is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his or her bargaining power and his or her 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 June 2010, *Caja de Ahorros y Monte de Piedad de Madrid*, C-484/08, EU:C:2010:309, paragraph 27).

54 As regards such a position of weakness, Directive 93/13 requires Member States to provide for a mechanism ensuring that every contractual term not individually negotiated may be reviewed in order to determine whether it is unfair. In that context, it is for the national court to determine, taking account of the criteria laid down in Article 3(1) and Article 5 of Directive 93/13, whether, having regard to the particular circumstances of the case, such a term meets the requirements of good faith, balance and transparency laid down by that directive (judgment of 30 April 2014, *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraph 40).

55 The effectiveness of that mechanism would be undermined if a seller or supplier could exclude terms unrelated to the main subject matter of the contract from the assessment of unfairness by including those terms in a separate ancillary contract of which they are the main subject matter, and which the consumer concludes, at the request of that seller or supplier, with a subsidiary of that seller or supplier or with a person chosen by that seller or supplier.

56 In such a situation, the two contracts should be examined as a whole and, consequently, the unfairness of the terms in the separate contract should be assessed, in so far as they do not fall within the main subject matter of the contractual relationship established between the seller or supplier and the consumer.

57 That finding is supported, first, by Article 4(1) of Directive 93/13, under which the unfairness of a contractual term is to be assessed by referring, in particular, to all the circumstances attending the conclusion of that contract and to all the terms of another contract on which that contract is dependent. It is also supported, secondly, by the fact that Article 4(2) of that directive lays down an exception to the mechanism for reviewing the substance of unfair terms, such as that

provided for in the system of consumer protection put in place by that directive (judgment of 20 September 2017, *Andriciuc and Others*, C-186/16, EU:C:2017:703, paragraph 34 and the case-law cited).

58 Accordingly, where, as in cases such as those at issue in the main proceedings, the consumer has concluded a credit agreement at the same time as a contract of guarantee with a subsidiary of the creditor or a person chosen by the creditor, whereby the conclusion of the latter contract is necessary to obtain the credit or an earlier advance of the funds lent and the costs of the guarantee are payable at the same time as the loan instalments, the fact that the obligations of the guarantor and the principal debtor are set out in a contract of guarantee separate from the credit agreement does not mean that the contract of guarantee falls within the scope of Article 4(2) of Directive 93/13. Otherwise, the protection that must be afforded to the consumer, who is in a weaker position than the seller or supplier, would become meaningless.

59 In the light of the foregoing, the answer to the first question is that Article 4(2) of Directive 93/13 must be interpreted as not precluding the assessment of the potentially unfair nature of the terms of a contract which determine the obligations of the guarantor and the debtor in the main proceedings, in a situation where the debtor has concluded that contract at the same time as the credit agreement and in order to comply with an obligation laid down in the credit agreement, where the guarantor is a subsidiary of the creditor or a person chosen by the creditor and where the costs of the guarantee are payable at the same time as the loan instalments.

The second and third questions

60 By its second and third questions, which it is appropriate to consider together, the referring court asks, in essence, whether point 1(i), (j) and (m) of the Annex to Directive 93/13 must be interpreted as meaning that a term by which a consumer undertakes, in the context of a credit agreement, to conclude a contract of guarantee with a guarantor chosen by the lender, without being aware, when the credit agreement is concluded, of the identity of the guarantor or of the content of the terms of that contract of guarantee, falls within one of those provisions.

61 As stated in Article 3(3) of Directive 93/13, the annex thereto contains an indicative and non-exhaustive list of the terms which may be regarded as unfair. Those terms include, in particular, as is apparent from point 1(i), (j) and (m) of that annex, terms which have the effect, first, of irrevocably binding the consumer to terms with which he or she had no real opportunity of becoming acquainted before the conclusion of the contract, secondly, of enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract and, thirdly, of giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him or her the exclusive right to interpret any term of the contract.

62 It must be held that a term by which a consumer undertakes, in the context of a credit agreement, to conclude a contract of guarantee with a guarantor chosen by the lender, without being aware, when the credit agreement is concluded, of the identity of the guarantor or of the content of the terms of that contract of guarantee, does not correspond to any of the situations envisaged in point 1(i), (j) and (m) of the Annex to Directive 93/13. As regards, in particular, point 1(i) of that annex, it should be noted that the mere fact that a consumer undertakes, when concluding a credit agreement, to conclude a contract of guarantee with a guarantor chosen by the lender does not

equate to the consumer's adherence to the terms of a contract of guarantee with which he or she has been unable to become acquainted, since the consumer must, in order to satisfy that undertaking, subsequently conclude the contract of guarantee.

63 That said, it should be borne in mind that the list of the terms which may be regarded as unfair, as set out in the Annex to Directive 93/13, is merely indicative. It is therefore for the referring court to determine whether a term in a credit agreement, by which the consumer undertakes to conclude a contract of guarantee with a guarantor chosen by the lender, without being aware, when he or she gives that undertaking, of the identity of the guarantor or the content of the terms of the contract of guarantee, causes, contrary to the requirement of good faith, a significant imbalance in the parties' rights and obligations arising under the credit agreement, to the detriment of the consumer, within the meaning of Article 3(1) of that directive. If so, it will be necessary to classify that term as 'unfair' and to draw the consequences which follow from that classification for the validity of that term and, where appropriate, of the contract of which it forms part.

64 In the light of the foregoing considerations, the answer to the second and third questions is that point 1(i), (j) and (m) of the Annex to Directive 93/13 must be interpreted as meaning that a term by which a consumer undertakes, in the context of a credit agreement, to conclude a contract of guarantee with a guarantor chosen by the lender, without being aware, when the credit agreement is concluded, of the identity of the guarantor or of the content of the terms of that contract of guarantee, does not fall within one of those provisions.

The fourth question

65 As is apparent from the order for reference, the fourth question is, on the one hand, raised in the light of the case-law according to which, although a finding that a commercial practice is unfair is not such as to establish, automatically and on its own, that a contractual term is unfair, it is one element among others on which the court having jurisdiction may base its assessment of the unfairness of contractual terms, an assessment which, under Article 4(1) of Directive 93/13, must take all the circumstances of the particular case into account (judgment of 19 September 2018, *Bankia*, C-109/17, EU:C:2018:735, paragraph 49 and the case-law cited). On the other, it follows from the wording of that provision that the referring court is seeking to ascertain whether the situation which it is addressing is still capable of being regarded as an aggressive commercial practice. In those circumstances, Article 5(5) of Directive 2005/29 and Annex I thereto are relevant in responding to that question.

66 The view must therefore be taken that, by that question, the referring court asks, in essence, whether Article 8 of Directive 2005/29, read in conjunction with Article 5(5) of that directive and Annex I thereto, must be interpreted as meaning that the inclusion in credit agreements of a term by which the consumer must conclude a contract of guarantee with a person chosen by the lender constitutes an aggressive commercial practice in all circumstances.

67 In that regard, it should be recalled that Chapter 2 of Directive 2005/29, entitled 'Unfair commercial practices', contains two sections, namely, Section 1 relating to misleading commercial practices and Section 2 relating to aggressive commercial practices.

68 Article 5 of that directive, which appears in Chapter 2 thereof, prohibits unfair commercial practices in paragraph 1 and establishes the criteria for determining whether a commercial practice is unfair in paragraph 2. That article specifies, in paragraph 4, that, in particular,

commercial practices that are 'misleading' within the meaning of Articles 6 and 7 of Directive 2005/29 are unfair, as are those that are 'aggressive' within the meaning of Articles 8 and 9 of that directive. Article 5(5) of Directive 2005/29 provides, in addition, that Annex I thereto contains the list of those commercial practices which are in all circumstances to be regarded as unfair and that that list, which is to apply in all the Member States, may be modified only by revision of that directive. Points 1 to 23 of that list set out commercial practices which are in all circumstances unfair and points 24 to 31 set out commercial practices which are in all circumstances aggressive.

69 In that regard, recital 17 of Directive 2005/29 specifies that, in order to provide greater legal certainty, only the practices listed in Annex I are in all circumstances to be regarded as unfair without the need to carry out a case-by-case assessment against the provisions of Articles 5 to 9 of that directive (judgment of 14 November 2024, *Compass Banca*, C-646/22, EU:C:2024:957, paragraph 66).

70 Since Annex I to Directive 2005/29 constitutes a complete and exhaustive list of the commercial practices regarded in all circumstances as unfair, a commercial practice such as the one at issue in the main proceedings can be classified as an aggressive commercial practice in all circumstances, within the meaning of that directive, only if it corresponds to one of the situations listed in points 24 to 31 of that annex (see, to that effect, judgment of 14 November 2024, *Compass Banca*, C-646/22, EU:C:2024:957, paragraph 67).

71 It is clear from a straightforward reading of points 24 to 31 that there is no such correspondence.

72 In the light of the foregoing considerations, the answer to the fourth question is that Article 8 of Directive 2005/29, read in conjunction with Article 5(5) of that directive and Annex I thereto, must be interpreted as meaning that the inclusion in credit agreements of a term by which the consumer must conclude a contract of guarantee with a person chosen by the lender does not constitute an aggressive commercial practice in all circumstances.

The fifth question

73 As a preliminary point, it should be noted that, while the wording of the fifth question refers to Article 4(1) and Article 7 of Directive 93/13, the obligation of the Member States to lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier are not to be binding on the consumer is specified in Article 6(1) of that directive. In addition, although the referring court referred to Article 8 of Directive 2005/29, relating to aggressive commercial practices, the fifth question concerns, more generally, unfair commercial practices, within the meaning of Article 5 of that directive, of which aggressive commercial practices are merely a sub-category.

74 In the light of those clarifications, the view must be taken that, by its fifth question, asked in the event of a negative answer to the fourth question, the referring court asks, in essence, whether Article 6(1) of Directive 93/13 must be interpreted as meaning that a national court, hearing an application for an order for payment in the context of proceedings in which the debtor-consumer does not participate, may disapply *ex officio* a term of the consumer credit agreement concluded between that consumer and the seller or supplier concerned, solely on the basis of a doubt as to whether that term may have been accepted by the consumer as a result of an unfair commercial practice, within the meaning of Article 5 of Directive 2005/29, or if the existence of that practice must be established with certainty.

75 In that regard, it is apparent from the case-law cited in paragraph 65 above that a finding that a commercial practice is unfair is only one factor among others on which the court having jurisdiction may base its assessment of the unfairness of contractual terms. That court must decide on the application of the general criteria set out in Articles 3 and 4 of Directive 93/13 to a specific term, which must be considered in relation to all the circumstances of the particular case (see, to that effect, judgment of 15 March 2012, *Pereničová and Perenič*, C-453/10, EU:C:2012:144, paragraph 44).

76 It follows that, in order to classify a term in a contract concluded between a consumer and a seller or supplier as unfair, it is in no way necessary to establish the existence of an unfair commercial practice, since the existence of a doubt in that regard is, nevertheless, one factor which may be taken into consideration in the examination referred to in the preceding paragraph. The fact remains, however, that the court having jurisdiction may exclude the application of a term of such a contract only if it is satisfied that that term is unfair; a mere doubt is not sufficient.

77 In that regard, it should be recalled that although the national court compensates for the imbalance existing between the consumer and the seller or supplier by excluding the application of an unfair term so that it does not produce binding effects with regard to the consumer concerned, it should only do so if it has the necessary legal and factual elements for that task. It follows that, where applicable, the national court will be required to take, where the consumer concerned does not raise an objection and, if necessary, of its own motion, investigative measures in order to complete the case file, by asking the parties, in observance of the principle *audi alteram partem*, to provide it with additional information for that purpose. Those grounds also apply in respect of an order for payment procedure (see, to that effect, judgment of 30 June 2022, *Profi Credit Bulgaria (Offsetting* ex officio *in the event of an unfair term)*, C-170/21, EU:C:2022:518, paragraphs 31 to 33 and the case-law cited).

78 In the light of the foregoing considerations, the answer to the fifth question is that Article 6(1) of Directive 93/13 must be interpreted as meaning that a national court, hearing an application for an order for payment in the context of proceedings in which the debtor-consumer does not participate, may not disapply *ex officio* a term of the consumer credit agreement concluded between that consumer and the seller or supplier concerned, if it is not convinced that that term must be classified as 'unfair' within the meaning of Article 3(1) of that directive. The existence of a doubt that that term may have been accepted by the consumer as a result of an unfair commercial practice, within the meaning of Article 5 of Directive 2005/29, may, however, constitute one factor, among others, which may be taken into consideration for the purposes of assessing the potentially unfair nature of the term at issue.

The sixth and seventh questions

79 As a preliminary point, it should be noted that, in the seventh question, the referring court is uncertain as to the compatibility of national case-law with, inter alia, Articles 5 and 7 of Directive 93/13 and point 1(b) and (c) in the Annex thereto. As the Advocate General observed in point 23 of his Opinion, those provisions concern the interpretation of the terms in contracts concluded between a consumer and a seller or supplier and the unfairness of such terms rather than the effects which flow directly from the application of national legislation and the related case-law, and which do not stem from a contractual term.

80 The sixth and seventh questions must therefore be answered solely on the basis of Directive 2008/48, it being noted that (i) they seek to determine the applicability of Article 15(2) of that directive to credit agreements such as those at issue in the main proceedings, (ii) that provision applies only to 'linked credit agreements', within the meaning of that directive, and (iii) the concept of 'linked credit agreement' is defined in Article 3(n) of that directive.

81 In the light of those factors, it must be held that, by its sixth and seventh questions, the referring court asks, in essence, whether the concept of 'linked credit agreement', within the meaning of Article 3(n) of Directive 2008/48, must be interpreted as meaning that a credit agreement, the conclusion of which is linked solely to the conclusion of a contract of guarantee with a third party in return for a fee, falls within the scope of that concept, and, if so, whether Article 15(2) of that directive must be interpreted as precluding national case-law according to which, where the guarantor in a contract of guarantee, in return for a fee from the principal debtor, has repaid the sums due in respect of the loan to the principal creditor after the expiry of a legal time limit which has the effect of extinguishing the full amount of the guarantee, that guarantor may nevertheless invoke its subrogation to the rights of that creditor and claim from the principal debtor payment of the sums thus paid.

82 It is apparent from Article 3(n) of Directive 2008/48 that the concept of 'linked credit agreement' refers to a credit agreement under which (i) the credit in question serves exclusively to finance an agreement for the supply of specific goods or the provision of specific services and (ii) both those agreements form, from an objective point of view, a commercial unit. Both those conditions are cumulative.

83 A credit agreement, the conclusion of which is linked solely to the conclusion of a contract of guarantee, clearly cannot be regarded as being intended to finance that contract of guarantee.

84 It must therefore be held that such credit agreements do not satisfy the first of the cumulative conditions which collectively define the concept of a 'linked credit agreement' within the meaning of Article 3(n) of Directive 2008/48. Therefore, the fact that such agreements constitute a commercial unit with a contract of guarantee concluded with a third party in return for a fee, even if that were established, is not sufficient to bring them within that concept and, consequently, within the scope of Article 15(2) of that directive.

85 In the light of the foregoing considerations, the answer to the sixth and seventh questions is that the concept of 'linked credit agreement', within the meaning of Article 3(n) of Directive 2008/48, must be interpreted as meaning that a credit agreement, the conclusion of which is linked solely to the conclusion of a contract of guarantee with a third party in return for a fee, does not fall within that scope.

The eighth question

86 As a preliminary point, it should be noted that Article 5 of Directive 93/13, referred to in the wording of the eighth question, is irrelevant to the issue to which it relates.

87 It must therefore be held that, by its eighth question, the referring court asks, in essence, whether Article 3(g) and (i) of Directive 2008/48 must be interpreted as meaning that the costs relating to a contract of guarantee the conclusion of which is imposed on the consumer by a term in a credit

agreement which he or she has taken out, which result in an increase in the total amount of the debt, fall within the concept of 'total cost of the credit to the consumer' and, consequently, within the concept of the 'APRC'.

88 According to Article 3(g) of Directive 2008/48, the concept of 'total cost of the credit to the consumer' covers all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for notarial costs. In accordance with that provision, those costs also include costs in respect of ancillary services relating to the credit agreement if, in addition, the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed.

89 Under Article 3(i) of Directive 2008/48, the APRC means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable including the costs referred to in Article 19(2) of that directive.

90 In order to guarantee extensive consumer protection, the EU legislature has broadly defined the 'total cost of the credit to the consumer' as covering all the costs which the consumer is required to pay in connection with the credit agreement and which are known to the creditor (judgment of 21 March 2024, *Profi Credit Bulgaria (Services ancillary to a credit agreement)*, C-714/22, EU:C:2024:263, paragraph 40 and the case-law cited).

91 It must be borne in mind that recital 22 of Directive 2008/48 states, first, that creditors must be presumed to have knowledge of the costs of the ancillary services which they offer to consumers themselves, or on behalf of a third party, unless the price thereof depends on the specific characteristics or situation of the consumer and, secondly, that even if the amount of the costs of those ancillary services cannot be determined in advance, consumers should receive adequate information about the existence of costs at a pre-contractual stage.

92 The eighth question concerns the situation of a credit agreement which requires the borrower to conclude a contract of guarantee in order to obtain the credit. The provision of a guarantee under that agreement thus constitutes a service linked to the credit agreement within the meaning of Article 3(g) of Directive 2008/48 and, in so far as the conclusion of a contract of guarantee is compulsory in order to obtain the credit itself, the costs relating to that agreement form part of the 'total cost of the credit to the consumer', in accordance with that provision. Accordingly, under point (i) of that article, they must be taken into account when calculating the APRC.

93 In the light of those considerations, the answer to the eighth question is that Article 3(g) and (i) of Directive 2008/48 must be interpreted as meaning that the costs relating to a contract of guarantee the conclusion of which is imposed on the consumer by a term in a credit agreement which he or she has taken out, which result in an increase in the total amount of the debt, fall within the concept of 'total cost of the credit to the consumer' and, consequently, within the concept of the 'APRC'.

The ninth and tenth questions

94 By its ninth and tenth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 10(2)(g) and Article 23 of Directive 2008/48 must be interpreted as precluding a consumer credit agreement from being deemed to be free of interest and charges

where that agreement does not specify an APRC that includes all of the costs provided for in Article 3(g) of that directive, with the result that its annulment entails only the repayment, by the consumer concerned, of the principal amount loaned.

95 It must be borne in mind, first, that Article 10(2) of Directive 2008/48 provides for full harmonisation as regards the information which must imperatively be included in a credit agreement. To that end, Article 10(2)(g) of that directive provides that the credit agreement is to specify, in a clear and concise manner, the APRC and the total amount payable by the consumer, calculated at the time the credit agreement is concluded (judgment of 21 March 2024, *Profi Credit Bulgaria (Services ancillary to a credit agreement)*, C-714/22, EU:C:2024:263, paragraph 50).

96 It is apparent from the case-law that the inclusion of the APRC in a credit agreement is vitally important, in particular in so far as it enables the consumer to assess the extent of his or her liability (judgment of 21 March 2024, *Profi Credit Bulgaria (Services ancillary to a credit agreement)*, C-714/22, EU:C:2024:263, paragraph 51).

97 Secondly, it is apparent from Article 23 of Directive 2008/48, read in the light of recital 47 thereof, that, while the choice of rules on penalties applicable to infringements of the national provisions adopted pursuant to that directive remains within the discretion of the Member States, the penalties thus provided must be effective, proportionate and dissuasive. This means that the severity of those penalties must be commensurate with the seriousness of the infringements for which they are imposed, in particular by ensuring a genuinely deterrent effect, while respecting the general principle of proportionality (judgment of 21 March 2024, *Profi Credit Bulgaria (Services ancillary to a credit agreement)*, C-714/22, EU:C:2024:263, paragraph 52).

98 Having regard to the vital importance for the consumer that the APRC be included in such a contract, the Court has held that a national court may apply of its own motion national legislation which provides that the failure to include the APRC means that the credit granted is deemed to be free of interest and charges (judgment of 21 March 2024, *Profi Credit Bulgaria (Services ancillary to a credit agreement)*, C-714/22, EU:C:2024:263, paragraph 53).

99 The Court has also held that, in a situation in which a consumer credit agreement referred to an estimated APRC, with its exact amount to be specified after the loan was granted, such a penalty of forfeiture by the creditor of entitlement to interest and charges must be considered to be proportionate, within the meaning of Article 23 of Directive 2008/48 (judgment of 21 March 2024, *Profi Credit Bulgaria (Services ancillary to a credit agreement)*, C-714/22, EU:C:2024:263, paragraph 54).

100 Therefore, having regard to the fact that including the APRC in a consumer credit agreement is vital in order to enable consumers to be aware of their rights and obligations and having regard to the requirement to include in the calculation of that rate all of the costs referred to in Article 3(g) of Directive 2008/48, the Court finds that an indication of an APRC that does not accurately reflect all of those costs deprives consumers of the possibility of assessing the extent of their liability in the same way as a failure to include that rate. Consequently, where an APRC is specified that does not include all those costs, a penalty of forfeiture by the creditor of entitlement to interest and charges reflects the seriousness of such an infringement and is dissuasive and proportionate (judgment of 21 March 2024, *Profi Credit Bulgaria (Services ancillary to a credit agreement)*, C-714/22, EU:C:2024:263, paragraph 55).

101 In the light of the foregoing considerations, the answer to the ninth and tenth questions is that Article 10(2)(g) and Article 23 of Directive 2008/48 must be interpreted as not precluding a consumer credit agreement from being deemed to be free of interest and charges where that agreement does not specify an APRC that includes all of the costs provided for in Article 3(g) of that directive, with the result that its annulment entails only the repayment, by the consumer concerned, of the principal amount loaned.

Costs

102 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 (Tenth Chamber) hereby rules:

1. **Article 4(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts**

   must be interpreted as not precluding the assessment of the potentially unfair nature of the terms of a contract which determine the obligations of the guarantor and the debtor in the main proceedings, in a situation where the debtor has concluded that contract at the same time as the credit agreement and in order to comply with an obligation laid down in the credit agreement, where the guarantor is a subsidiary of the creditor or a person chosen by the creditor and where the costs of the guarantee are payable at the same time as the loan instalments.

2. **Point 1(i), (j) and (m) of the Annex to Directive 93/13**

   must be interpreted as meaning that a term by which a consumer undertakes, in the context of a credit agreement, to conclude a contract of guarantee with a guarantor chosen by the lender, without being aware, when the credit agreement is concluded, of the identity of the guarantor or of the content of the terms of that contract of guarantee, does not fall within one of those provisions.

3. **Article 8 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), read in conjunction with Article 5(5) of that directive and Annex I thereto,**

   must be interpreted as meaning that the inclusion in credit agreements of a term by which the consumer must conclude a contract of guarantee with a person chosen by the lender does not constitute an aggressive commercial practice in all circumstances.

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

must be interpreted as meaning that a national court, hearing an application for an order for payment in the context of proceedings in which the debtor-consumer does not participate, may not disapply *ex officio* a term of the consumer credit agreement concluded between that consumer and the seller or supplier concerned, if it is not convinced that that term must be classified as 'unfair' within the meaning of Article 3(1) of that directive. The existence of a doubt that that term may have been accepted by the consumer as a result of an unfair commercial practice, within the meaning of Article 5 of Directive 2005/29, may, however, constitute one factor, among others, which may be taken into consideration for the purposes of assessing the potentially unfair nature of the term at issue.

5. **The concept of 'linked credit agreement', within the meaning of Article 3(n) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC**

   must be interpreted as meaning that a credit agreement, the conclusion of which is linked solely to the conclusion of a contract of guarantee with a third party in return for a fee, does not fall within that scope.

6. **Article 3(g) and (i) of Directive 2008/48**

   must be interpreted as meaning that the costs relating to a contract of guarantee the conclusion of which is imposed on the consumer by a term in a credit agreement which he or she has taken out, which result in an increase in the total amount of the debt, fall within the concept of 'total cost of the credit to the consumer' and, consequently, within the concept of the 'annual percentage rate of charge'.

7. **Article 10(2)(g) and Article 23 of Directive 2008/48**

   must be interpreted as not precluding a consumer credit agreement from being deemed to be free of interest and charges where that agreement does not specify an annual percentage rate of charge that includes all of the costs provided for in Article 3(g) of that directive, with the result that its annulment entails only the repayment, by the consumer concerned, of the principal amount loaned.

[Signatures]