Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

8 May 2025 *

(Reference for a preliminary ruling – Consumer protection – Unfair terms in consumer contracts – Directive 93/13/EEC – Article 6(1) and Article 7(1) – Mortgage loan agreement indexed to a foreign currency – Legal action brought by the consumer seeking a declaration that the agreement is null and void – Application for the grant of protective measures suspending performance of the agreement – Directive 2014/59/EU – Recovery and resolution of credit institutions – Bank under resolution – Article 1(2) – Member States' power to adopt rules that are stricter than or additional to those in that directive – National rule requiring applications for protective measures directed against institutions under ongoing resolution to be dismissed)

In Case C-324/23 [Myszak], [i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland), made by decision of 26 October 2022, received at the Court on 25 May 2023, in the proceedings

OF,

EI,

RI

v

M.K., acting as liquidator of Getin Noble Bank S.A. (in liquidation),

THE COURT (Third Chamber),

composed of C. Lycourgos, President of the Chamber, S. Rodin, O. Spineanu-Matei (Rapporteur), S. Gervasoni and N. Fenger, Judges,

Advocate General: L. Medina,

Registrar: M. Siekierzyńska, Administrator,

having regard to the written procedure and further to the hearing on 17 October 2024,

* Language of the case: Polish.

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

after considering the observations submitted on behalf of:

– OF, EI and RI, by W. Bochenek, P. Stalski and T. Zaremba, radcowie prawni,

– M.K., by P. Cieślak and M. Pyziak-Waląg, adwokaci,

– the Polish Government, by B. Majczyna, M. Kozak, R. Stańczyk and B. Trocha, acting as Agents,

– the European Commission, by U. Małecka, P. Ondrůšek and D. Triantafyllou, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), read in the light of the principles of effectiveness and proportionality and in conjunction with Article 34(1)(b) and (g) and Article 70(1) and (4) of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190).

2 The request has been made in proceedings between OF, EI and RI, on the one hand, and M.K., acting as liquidator of Getin Noble Bank S.A., currently in liquidation, on the other, concerning the application for protective measures made by OF, EI and RI in proceedings for a declaration that a mortgage loan agreement indexed to a foreign currency is null and void and for repayment of the sums paid in performance of that agreement which they had concluded with Getin Noble Bank.

Legal context

European Union law

Directive 93/13

3 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.’

4 Under Article 7(1) of that directive:

'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.'

Directive 2014/59

5 Recitals 5, 49 to 51 and 131 of Directive 2014/59 state:

'(5) A regime is … needed to provide authorities with a credible set of tools to intervene sufficiently early and quickly in an unsound or failing institution so as to ensure the continuity of the institution's critical financial and economic functions, while minimising the impact of an institution's failure on the economy and financial system. The regime should ensure that shareholders bear losses first and that creditors bear losses after shareholders, provided that no creditor incurs greater losses than it would have incurred if the institution had been wound up under normal insolvency proceedings in accordance with the no creditor worse off principle as specified in this Directive. …

…

(49) The limitations on the rights of shareholders and creditors should be in accordance with Article 52 of the Charter [of Fundamental Rights of the European Union]. The resolution tools should therefore be applied only to those institutions that are failing or likely to fail, and only when it is necessary to pursue the objective of financial stability in the general interest. In particular, resolution tools should be applied where the institution cannot be wound up under normal insolvency proceedings without destabilising the financial system and the measures are necessary in order to ensure the rapid transfer and continuation of systemically important functions and where there is no reasonable prospect for any alternative private solution, including any increase of capital by the existing shareholders or by any third party sufficient to restore the full viability of the institution. In addition, when applying resolutions tools and exercising resolution powers, the principle of proportionality and the particularities of the legal form of an institution should be taken into account.

(50) Interference with property rights should not be disproportionate. … In the event of a partial transfer of assets of an institution under resolution to a private purchaser or to a bridge bank, the residual part of the institution under resolution should be wound up under normal insolvency proceedings. In order to protect shareholders and creditors who are left in the winding up proceedings of the institution, they should be entitled to receive in payment of, or compensation for, their claims in the winding up proceedings not less than what it is estimated they would have recovered if the whole institution had been wound up under normal insolvency proceedings.

(51) For the purpose of protecting the right of shareholders and creditors, clear obligations should be laid down concerning the valuation of the assets and liabilities of the institution under resolution and, where required under this Directive, valuation of the treatment that shareholders and creditors would have received if the institution had been wound up under normal insolvency proceedings. … If it is determined that shareholders and creditors have

received, in payment of, or compensation for, their claims, the equivalent of less than the amount that they would have received under normal insolvency proceedings, they should be entitled to the payment of the difference where required under this Directive. …

…

(131) Since the objective of this Directive, namely the harmonisation of the rules and processes for the resolution of institutions, cannot be sufficiently achieved by the Member States, but can rather, by reason of the effects of a failure of any institution in the whole [European] Union, be better achieved at [EU] level, the [European] Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 [TEU]. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.'

6 Article 1(2) of Directive 2014/59 provides:

'Member States may adopt or maintain rules that are stricter or additional to those laid down in this Directive and in the delegated and implementing acts adopted on the basis of this Directive, provided that they are of general application and do not conflict with this Directive and with the delegated and implementing acts adopted on its basis.'

7 Article 34 of that directive, entitled 'General principles governing resolution', provides, in paragraph 1:

'Member States shall ensure that, when applying the resolution tools and exercising the resolution powers, resolution authorities take all appropriate measures to ensure that the resolution action is taken in accordance with the following principles:

…

(b) creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims under normal insolvency proceedings, save as expressly provided otherwise in this Directive;

…

(g) no creditor shall incur greater losses than would have been incurred if the institution or entity referred to in point (b), (c) or (d) of Article 1(1) had been wound up under normal insolvency proceedings in accordance with the safeguards in Articles 73 to 75;

…'

8 Under Article 37(6) of the directive:

'Where only [the sale of business resolution tool or the bridge institution resolution tool] are used, and they are used to transfer only part of the assets, rights or liabilities of the institution under resolution, the residual institution or entity referred to in point (b), (c) or (d) of Article 1(1) from which the assets, rights or liabilities have been transferred, shall be wound up under normal insolvency proceedings. Such winding up shall be done within a reasonable timeframe …'

9 Article 70 of Directive 2014/59, entitled ‘Power to restrict the enforcement of security interests’, provides, in paragraphs 1 and 4:

‘1. Member States shall ensure that resolution authorities have the power to restrict secured creditors of an institution under resolution from enforcing security interests in relation to any assets of that institution under resolution from the publication of a notice of the restriction in accordance with Article 83(4) until midnight in the Member State of the resolution authority of the institution under resolution at the end of the business day following that publication.

…

4. When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.’

10 Article 73 of that directive, headed ‘Treatment of shareholders and creditors in the case of partial transfers and application of the bail-in tool’, refers, in point (b), to the situation where a national resolution authority applies the bail-in tool. Under point (a) of that article:

‘Member States shall ensure that, where one or more resolution tools have been applied and, in particular for the purposes of Article 75:

(a) except where point (b) applies, where resolution authorities transfer only parts of the rights, assets and liabilities of the institution under resolution, the shareholders and those creditors whose claims have not been transferred, receive in satisfaction of their claims at least as much as what they would have received if the institution under resolution had been wound up under normal insolvency proceedings at the time when the decision referred to in Article 82 was taken’.

11 Article 74 of Directive 2014/59, entitled ‘Valuation of difference in treatment’, states, in paragraphs 1 and 2:

‘1. For the purposes of assessing whether shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings, including but not limited to for the purpose of Article 73, Member States shall ensure that a valuation is carried out by an independent person as soon as possible after the resolution action or actions have been effected. That valuation shall be distinct from the valuation carried out under Article 36.

2. The valuation in paragraph 1 shall determine:

(a) the treatment that shareholders and creditors, or the relevant deposit guarantee schemes, would have received if the institution under resolution with respect to which the resolution action or actions have been effected had entered normal insolvency proceedings at the time when the decision referred to in Article 82 was taken;

(b) the actual treatment that shareholders and creditors have received, in the resolution of the institution under resolution; and

(c) if there is any difference between the treatment referred to in point (a) and the treatment referred to in point (b).’

12 According to Article 75 of that directive, headed ‘Safeguard for shareholders and creditors’:

‘Member States shall ensure that if the valuation carried out under Article 74 determines that any shareholder or creditor referred to in Article 73 … has incurred greater losses than it would have incurred in a winding up under normal insolvency proceedings, it is entitled to the payment of the difference from the resolution financing arrangements.’

Polish law

The Law on the Civil Code

13 Article 385[1] of the ustawa Kodeks cywilny (Law on the Civil Code) of 23 April 1964, in the version applicable to the dispute in the main proceedings (Dz. U. of 2020, item 1740), states, in paragraphs 1 and 2:

‘1. The terms of a contract concluded with a consumer which have not been individually negotiated shall not be binding on the consumer if his or her rights and obligations are set forth in a way that is contrary to good practice and grossly infringes his or her interests (unlawful terms). This provision shall not apply to terms setting out the principal obligations of the parties, including price or remuneration, provided that they are worded clearly.

2. If a contractual term is not binding on the consumer pursuant to paragraph 1, the contract shall otherwise continue to be binding on the parties.’

14 Article 405 of that code provides:

‘Any person who, without legal grounds, obtains an economic advantage at the expense of another person shall be required to restore that advantage in kind or to return the value thereof.’

15 Under Article 410(2) of that code:

‘A performance shall be undue if the person who rendered it was not under an obligation to render it or was not under an obligation to render it to the person to whom it was rendered, if the basis for the performance has ceased to exist, if the objective of the performance has not been achieved or if the legal act requiring the performance was invalid and has not become valid since the performance was rendered.’

The Law on the Code of Civil Procedure

16 The ustawa Kodeks postępowania cywilnego (Law on the Code of Civil Procedure) of 17 November 1964, in the version applicable to the dispute in the main proceedings (Dz. U. of 2021, item 1805), provides, in Article 189:

‘An applicant may bring an action before a court for a declaration that a legal relationship or a right exists or does not exist, provided that the applicant has a legitimate interest in bringing proceedings.’

17 Under Article 730[1] of that code:

‘1. Any party to the proceedings may request protective measures provided that it demonstrates the prima facie existence of its claim and of an interest in seeking protective measures.

2. The interest in seeking protective measures exists where their absence would prevent or seriously impede the enforcement of the forthcoming judgment in the case or would otherwise prevent or seriously impede the achievement of the purpose of the proceedings in that case.

…

3. When choosing protective measures, the court must take into account the interests of the parties to the proceedings so as to guarantee the beneficiary adequate legal protection and not burden the debtor more than necessary.’

18 Under Article 731 of that code:

‘A protective measure may not be used to settle the claim, unless otherwise provided by law.’

19 Article 755 of that code provides:

‘1. Where protective measures do not relate to pecuniary claims, the court shall order the protective measures it considers appropriate in the circumstances of the case, without excluding protective measures provided for in respect of pecuniary claims. In particular, the court may:

(1) fix the rights and obligations of the parties or participants in the proceedings for the duration thereof;

…

2[1]. Article 731 shall not apply if the protective measure is necessary to avoid imminent harm or other adverse consequences for the beneficiary.

…’

The Law on Insolvency

20 The ustawa Prawo upadłościowe (Law on Insolvency) of 28 February 2003, in the version applicable to the dispute in the main proceedings (Dz. U. of 2022, item 1520), provides, in Article 146:

‘1. All enforcement proceedings in respect of assets forming part of the insolvency estate which were brought before the date of the declaration of insolvency shall be stayed by operation of law from that date. Those proceedings shall be discontinued by operation of law once the judgment declaring the insolvency has become final. …

2. Any sums arising from stayed enforcement proceedings which have not yet been paid out shall be transferred to the insolvency estate once the judgment declaring the insolvency has become final.

…

3. After the date of the declaration of insolvency, it shall no longer be possible to take enforcement action in respect of assets forming part of the insolvency estate or to enforce or grant protective measures in respect of the insolvent party's assets, with the exception of protective measures in respect of maintenance claims or claims arising from a pension payable on account of illness, incapacity for work, disability or death, and pensions in respect of the conversion into a life annuity of a contract by which the purchaser of immovable property has undertaken to provide care, maintenance and accommodation to the transferor.'

The Law on the Bank Guarantee Fund

21 The ustawa o Bankowym Funduszu Gwarancyjnym, systemie gwarantowania depozytów oraz przymusowej restrukturyzacji (Law on the Bank Guarantee Fund, the deposit guarantee scheme and resolution) of 10 June 2016, in the version applicable to the dispute in the main proceedings (Dz. U. of 2022, item 793; 'the Law on the Bank Guarantee Fund'), provides, in Article 135(1) and (4):

'1. Enforcement proceedings or proceedings for the grant of protective measures directed at the assets of an institution under resolution which were brought before the initiation of such resolution shall be discontinued.

…

4. No enforcement proceedings or proceedings for the grant of protective measures may be brought against an institution under ongoing resolution.'

22 Under Article 142(1) of that law, the Bankowy Fundusz Gwarancyjny (Bank Guarantee Fund, Poland), which is the national resolution authority, may suspend the right to enforce security interests in relation to the assets of an institution under resolution from the publication of the notice issued by it concerning the suspension of that right until the end of the business day following that publication.

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

23 In 2007, the applicants in the main proceedings – OF and OF's parents, RI and EI – took out a 360-month mortgage, as consumers, with Getin Noble Bank in the amount of 185 375.71 zlotys (PLN) (approximately EUR 43 000). The mortgage loan agreement contained a clause converting that amount into Swiss francs (CHF), at the purchase rate for that currency set by the bank, and also provided for a variable interest rate. The monthly instalments, calculated in Swiss francs, were repayable in zlotys at the Swiss franc selling rate, also fixed unilaterally by the bank.

24 The applicants in the main proceedings brought an action before the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland), which is the referring court, concerning the loan agreement at issue in the main proceedings. Principally, that action seeks a declaration that that agreement is null and void on the ground that some of its terms are unfair and, consequently, seeks an order requiring Getin Noble Bank to pay PLN 48 352.97 and CHF 27 171.82 (approximately EUR 11 300 and EUR 29 000 respectively), corresponding to the monthly instalments paid in per-

formance of that agreement on the date on which the action was brought, plus statutory default interest and costs. In the alternative, the action seeks a declaration that the terms concerned are unfair and invalid.

25 On 29 September 2022, while the action at issue in the main proceedings was pending, the Bank Guarantee Fund, acting in its capacity as national resolution authority, adopted a decision placing Getin Noble Bank under resolution. Within the framework of that resolution, the Bank Guarantee Fund applied the bridge institution tool, creating a bank, currently called VELO Bank S.A., to which almost all of Getin Noble Bank's assets, rights and obligations were transferred. That decision excluded from the transfer property rights arising from de facto or legal acts or from infringements relating to credit and loan agreements denominated in Swiss francs or indexed to the Swiss franc, as well as claims arising from those property rights, including claims forming the subject matter of civil and administrative proceedings.

26 Following the Bank Guarantee Fund's decision, the applicants in the main proceedings brought proceedings for interim relief against Getin Noble Bank before the referring court, in which they applied for protective measures relating to the rights and obligations of the parties to the procedure dealing with the merits of the case, seeking the suspension of their contractual obligation to pay the monthly instalments due under the loan agreement at issue in the main proceedings until those proceedings had been definitely concluded and an order prohibiting Getin Noble Bank from taking steps to terminate that agreement and to publish a loan default notice.

27 The referring court states that such an application for protective measures is decided on the basis of a prima facie assessment of the merits of the parties' claims, with account being taken of all the evidence gathered in the main action. In the present case, it takes the view that the terms of the loan agreement at issue in the main proceedings which are disputed by the applicants in those proceedings could be classified as unfair and that that agreement might be incapable of continuing to exist after those terms have been declared invalid.

28 The referring court is therefore of the opinion that it should be possible to grant the application for protective measures consisting, inter alia, in the suspension of the obligation of the applicants in the main proceedings to pay the monthly instalments due under the loan at issue in those proceedings. However, it has doubts on that point in circumstances where the seller or supplier concerned is a bank under resolution as provided for in Directive 2014/59.

29 In that connection, the referring court mentions the provisions of Article 135(1) and (4) of the Law on the Bank Guarantee Fund, under which, where a bank is subject to a resolution action, ongoing proceedings seeking protective measures concerning that bank must be discontinued and it is not possible to initiate fresh proceedings to secure such measures. It states that those provisions incorrectly transpose Article 70(1) and (4) of Directive 2014/59 because they are overly broad.

30 In response to a request for information from the Court concerning the possible relevance of Article 142(1) of the Law on the Bank Guarantee Fund as a measure transposing Article 70(1) of Directive 2014/59, the referring court stated, in essence, that there is indeed a correspondence between those two provisions, but that the addition of Article 135(1) and (4) of that law is problematic, since those latter provisions are much broader in scope than Article 70(1) of the directive.

31 The referring court enquires whether Article 135(1) and (4) of the Law on the Bank Guarantee Fund deprives consumers of the protection afforded by Directive 93/13 and is, therefore, contrary to the principles of effectiveness and proportionality. It explains that the consumers concerned would be deprived of the possibility of actually being released from the performance of an agreement that is potentially invalid, on account of the unfair terms it contains, for the duration of the judicial proceedings seeking a declaration that those terms are unfair, while risking not being able subsequently to benefit from the restitutory effect resulting from a finding that the terms are unfair.

32 The referring court points out in that regard that, in a situation such as that at issue in the main proceedings, in which enforcement action against the bank is precluded, the only effective means of implementing that restitutory effect is a set-off of reciprocal claims. If the bank is declared insolvent, the consumer's claim against it for repayment of the sums paid under the loan agreement in excess of the loan principal would befall the same fate as the claims of the other creditors, meaning that, in practice, the consumer would not be able to recover his or her claim.

33 The referring court also mentions the principle laid down in Article 34(1)(g) of Directive 2014/59, according to which resolution proceedings should be conducted in such a way that creditors do not incur greater losses than under normal insolvency proceedings. It is unsure whether observance of that principle is possible if it is prohibited to apply for interim measures consisting in the suspension of the obligation to pay the monthly instalments of a loan granted by a bank under resolution pursuant to an agreement the validity of which is in issue.

34 The referring court states that the dispute in the main proceedings is concerned in part with a claim which that court describes as 'non-pecuniary', in so far as it concerns an application for a declaration that the loan agreement at issue in the main proceedings is null and void, and that, in accordance with Article 146(3) of the Law on Insolvency, in the version applicable to the main proceedings, the grant of protective measures in connection with such a claim is possible despite the opening of insolvency proceedings, since, in essence, such measures do not amount to protective measures in respect of the insolvent party's assets, within the meaning of that provision. In its reply to the Court's request for information, the referring court stated that the application for protective measures at issue in the main proceedings would have been admissible if it had been made after Getin Noble Bank was declared insolvent on 20 July 2023, which had occurred in the intervening period.

35 That 'non-pecuniary claim' should be distinguished from the claim for restitution of improper performance arising from the restitutory effect linked to the application of Directive 93/13, which has financial consequences for the insolvent party, so that a protective measure in connection with that second claim cannot be envisaged.

36 Lastly, the referring court is of the view that account should be taken of the fact that, if the loan agreement at issue in the main proceedings were annulled, the bank would have a claim for repayment of the loan principal. Consequently, suspending performance of the obligations of the applicants in the main proceedings arising under that agreement before the total amount of their repayments has reached a sum corresponding to the loan principal could run counter to the objective of the resolution procedure, since it would impede or delay the debt recovery process of the bank concerned, which is intended to satisfy other creditors' claims.

37 In those circumstances, the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Articles 6(1) and 7(1) of [Directive 93/13], in the light of the principles of effectiveness and proportionality, and also Articles 34(1)(b) and (g) and 70(1) and (4) of [Directive 2014/59], be interpreted as precluding national legislation under which, in relation to a bank against which special resolution has been initiated, it is not permissible to grant a consumer’s application for [a protective] measure (securing of the action) suspending, during the course of the court proceedings, the obligation to pay the capital and interest instalments under the loan agreement, which is likely to be declared invalid by a court as a result of the removal of unfair contractual terms from it, on the sole ground that that bank has been put under special resolution?’

Consideration of the question referred

38 As a preliminary point, it should be noted, in the first place, that the referring court asks the Court to take into consideration Article 70(1) and (4) of Directive 2014/59 in the context of the interpretation of Directive 93/13 it is asked to give, on the ground that Article 135(1) and (4) of the Law on the Bank Guarantee Fund – identified in the order for reference as the ‘national legislation’ referred to in the question submitted for a preliminary ruling – transposes Article 70(1) and (4).

39 However, those provisions of EU law, on the one hand, and of Polish law, on the other, differ in purpose and scope. While Article 70(1) and (4) of Directive 2014/59 is concerned with a power of restriction, very limited in time, which national resolution authorities must have with regard to the enforcement of security interests in relation to any assets of an institution under resolution, Article 135(1) and (4) of the Law on the Bank Guarantee Fund concerns – as is apparent from the order for reference – a prohibition on national courts giving effect to any enforcement proceedings or proceedings for the grant of protective measures directed at the assets of such an institution for as long as such resolution is ongoing.

40 Furthermore, as the Advocate General pointed out, in essence, in points 31 to 35 of her Opinion, the applicants in the main proceedings are not ‘secured creditors’ of an institution under resolution, within the meaning of Article 70(1) of Directive 2014/59. It follows from the order for reference that they are contracting parties of such an institution who have brought legal proceedings against it with a view to having a court declare the existence, first, of a ‘claim’ consisting in the annulment of a loan agreement and, secondly, of a pecuniary claim consisting in repayment of the sums paid to the institution in question in performance of that agreement. Those alleged claims are not coupled with any ‘security interests in relation to any assets of that institution’ within the meaning of Article 70(1). In addition, an application for interim relief seeking the grant of protective measures such as those at issue in the main proceedings, consisting, in essence, in the suspension, for the duration of the procedure dealing with the merits of the case, of the obligation to pay the outstanding sums due on the future dates stipulated in that agreement, is unrelated to any such security interest (see, to that effect, order of 20 February 2024, *Getin Noble Bank*, C-34/23, EU:C:2024:203, paragraph 32).

41 Moreover, following a request for information made by the Court, the referring court appears to have conceded that, as the Polish Government and the European Commission submitted in their observations in the present proceedings, Article 70 of Directive 2014/59 was transposed into Polish law by other provisions of the Law on the Bank Guarantee Fund, namely those of Article 142 thereof.

42 In the second place, in so far as the referring court mentions the principles of effectiveness and proportionality in the question submitted for a preliminary ruling, it should be noted that it does not explain its reasons for invoking the latter principle. In accordance with Article 94 of the Rules of Procedure of the Court of Justice, a request for a preliminary ruling must contain a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings. That requirement also applies where the referring court or tribunal enquires about general principles of EU law in the context of such a request.

43 Consequently, it must be held that, by its question, the referring court asks, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13, read in the light of the principle of effectiveness and in conjunction with Article 34(1)(b) and (g) of Directive 2014/59, must be interpreted as precluding national legislation which requires a national court to dismiss a consumer's application for protective measures, seeking suspension of the payment of the monthly instalments owed by the consumer under a loan agreement in respect of which he or she has brought an action for annulment on the ground that it contains unfair terms, pending a final decision on that action, solely because the bank with which that agreement was concluded is under resolution, within the meaning of Directive 2014/59, and in the context of that resolution the bridge institution tool was applied by creating another bank to which substantially all of the assets, rights and liabilities of the bank under resolution were transferred, but not the agreement concerned, which remains part of the assets of the residual institution, even though such protective measures would be necessary to ensure the full effectiveness of that final decision.

44 It should be recalled at the outset that the objective of Directive 93/13 is to ensure a high level of consumer protection (see, to that effect, judgments of 19 September 2018, *Bankia*, C-109/17, EU:C:2018:735, paragraph 36, and of 15 June 2023, *Getin Noble Bank (Suspension of the performance of a loan agreement)*, C-287/22, EU:C:2023:491, paragraph 36 and the case-law cited). That objective is consistent with the requirement set out in Article 38 of the Charter of Fundamental Rights, which is itself to ensure a high level of consumer protection in EU policies, a requirement applying especially to the implementation of that directive (see, to that effect, judgment of 5 September 2024, *Novo Banco and Others*, C-498/22 to C-500/22, EU:C:2024:686, paragraph 137 and the case-law cited).

45 To that end, first, Article 6(1) of Directive 93/13 requires 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.

46 It follows that the national courts are required to refrain from applying those terms so that they do not produce binding effects with regard to a consumer, unless the consumer objects (judgment of 15 June 2023, *Getin Noble Bank (Suspension of the performance of a loan agreement)*, C-287/22, EU:C:2023:491, paragraph 37 and the case-law cited).

47 In the case of unfair terms which require the payment of a sum of money, that obligation entails, in principle, a restitutory effect in respect of that sum. The requirement to restore the legal and factual situation that the consumer concerned would have been in if those unfair terms had not existed, by, inter alia, creating a right to restitution of advantages wrongly obtained by a seller or supplier on the basis of the unfair terms, which the consumer must therefore be recognised as having, falls specifically within the substance of the protection guaranteed to consumers by Directive 93/13 (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 42 and 43 and the case-law cited).

48 Secondly, under Article 7(1) of Directive 93/13, Member States are required to implement means that are both adequate and effective to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.

49 It should be recalled in that regard that, in view of the nature and importance of the public interest underlying the protection which Directive 93/13 confers on consumers, Article 6(1) thereof must be regarded as a provision of equal standing to national rules which rank, within the domestic legal system, as rules of public policy (judgments of 6 October 2009, *Asturcom Telecomunicaciones*, C-40/08, EU:C:2009:615, paragraph 52, and of 17 May 2022, *Unicaja Banco*, C-869/19, EU:C:2022:397, paragraph 24). Article 7(1) of Directive 93/13 is also directly linked to that public interest (see, to that effect, judgment of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 56).

50 Since EU law does not harmonise the procedures applicable to examining whether a contractual term is unfair, those procedures fall within the domestic legal system of the Member States, in accordance with the principle of the procedural autonomy of the Member States, on condition, however, that they comply with the principles of equivalence and effectiveness (see, to that effect, judgment of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraph 74 and the case-law cited).

51 In accordance with the principle of effectiveness, the detailed procedural rules governing actions for safeguarding an individual's rights under EU law must not render impossible in practice or excessively difficult the exercise of rights conferred by EU law. The observance of the requirements stemming from that principle must be analysed by reference to the role of the rules concerned in the proceedings as a whole, the way in which the proceedings are conducted and the special features of those rules, before the various national courts (see, to that effect, judgment of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraphs 40 and 41 and the case-law cited).

52 It should also be noted that the obligation on the Member States to ensure the effectiveness of the rights that individuals derive from EU law, particularly the rights deriving from Directive 93/13, implies a requirement for effective judicial protection, also guaranteed in Article 47 of the Charter of Fundamental Rights, which applies, in particular, to the detailed procedural rules governing actions based on such rights (see, to that effect, judgment of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraph 76 and the case-law cited).

53 Therefore, although it is for the Member States, by means of their national legislation, to define the detailed rules under which the unfairness of terms in contracts concluded with consumers by sellers or suppliers is established and the actual legal effects of that finding are produced, that

finding must enable the legal and factual situation that the consumer concerned would have been in if those unfair terms had not existed to be restored, where appropriate by recognising that he or she has a right to restitution of advantages wrongly obtained by the seller or supplier. Such regulation by national law of the protection afforded to consumers by Directive 93/13 cannot adversely affect the substance of that protection (see, to that effect, judgment of 15 June 2023, *Getin Noble Bank (Suspension of the performance of a loan agreement)*, C-287/22, EU:C:2023:491, paragraph 39 and the case-law cited).

54 In that regard, the Court has held that it is contrary to Article 7(1) of Directive 93/13 to deprive a consumer of the possibility of obtaining a stay of enforcement proceedings initiated pursuant to a right to seek enforcement based on a contractual term the validity of which is challenged before the courts on the ground that it is unfair, where, in the absence of that stay, the forthcoming decision on the substance of the case, finding that that term is unfair, would provide that consumer with only *ex post* protection of a purely compensatory nature, which would be incomplete and insufficient and, therefore, would not constitute either an adequate or effective means of preventing the continued use of that term (see, to that effect, judgment of 14 March 2013, *Aziz*, C-415/11, EU:C:2013:164, paragraph 60).

55 Consequently, the protection guaranteed to consumers by Directive 93/13, in particular by Article 6(1) and Article 7(1) thereof, requires that, where there is sufficient evidence that the contractual terms challenged by the consumer, or even the contract itself, are null and void, so that repayment of all or part of the sums paid by that consumer is likely, the national court must be able to grant an appropriate protective measure, if that is necessary to ensure the full effectiveness of the forthcoming decision on the unfairness of contractual terms (see, to that effect, judgments of 14 March 2013, *Aziz*, C-415/11, EU:C:2013:164, paragraphs 59, 60 and 64; of 26 June 2019, *Addiko Bank*, C-407/18, EU:C:2019:537, paragraphs 57 and 58; and of 15 June 2023, *Getin Noble Bank (Suspension of the performance of a loan agreement*), C-287/22, EU:C:2023:491, paragraphs 43 and 60).

56 The full effectiveness of the forthcoming decision on the substance of the case requires, inter alia, that it be possible for the consumer to be spared having to pay, in the course of legal proceedings the duration of which may be considerable, sums higher than would actually be due if that decision were to find that the contested terms were unfair, with the result that it may be necessary to grant protective measures in such a situation (see, to that effect, order of 26 October 2016, *Fernández Oliva and Others*, C-568/14 to C-570/14, EU:C:2016:828, paragraph 35, and judgment of 15 June 2023, *Getin Noble Bank (Suspension of the performance of a loan agreement)*, C-287/22, EU:C:2023:491, paragraph 42).

57 Furthermore, the question whether the grant of protective measures is necessary must be assessed in the light of all the circumstances of the case (see, to that effect, judgment of 15 June 2023, *Getin Noble Bank (Suspension of the performance of a loan agreement)*, C-287/22, EU:C:2023:491, paragraph 59).

58 In that regard, in the case of a loan agreement, the possibility for national courts to grant such a measure is all the more necessary where, in performance of that agreement, the consumer has already paid or runs the risk of having to pay the credit institution an amount higher than that borrowed (see, to that effect, judgment of 15 June 2023, *Getin Noble Bank (Suspension of the performance of a loan agreement)*, C-287/22, EU:C:2023:491, paragraphs 52 and 59).

59 However, as the referring court pointed out, a finding that the contractual terms challenged by the consumer are unfair does not mean that all claims held by the credit institution against that consumer cease to exist.

60 In the present case, the referring court's queries essentially concern the fact that national law, in particular Article 135(1) and (4) of the Law on the Bank Guarantee Fund, excludes any possibility of protective measures being granted where the seller or supplier who has concluded with a consumer a contract the validity of which is rightly, in accordance with a prima facie assessment, challenged before the courts, is a credit institution under resolution.

61 In the light of the question submitted by the referring court, it is therefore necessary to determine whether, where a credit institution is under resolution and in the context of that resolution the bridge institution tool has been applied, by creating a bank to which substantially all of the assets, rights and liabilities of that credit institution have been transferred, Article 34(1)(b) and (g) of Directive 2014/59 has any bearing on the possibility that must be afforded to national courts of granting protective measures requested by a consumer in order to ensure the full effectiveness of the forthcoming court decision on the alleged unfairness of a term of a contract which remains part of the assets of the residual institution.

62 Article 34(1)(b) of Directive 2014/59 essentially establishes the order in which persons affected by the initiation of a resolution procedure are, in principle, to bear the losses of the institution under resolution, namely the shareholders followed by the institution's creditors in accordance with the order of priority of their claims under normal insolvency proceedings, proceedings which, under point 47 of Article 2(1) of Directive 2014/59, are a matter of national law.

63 Article 34(1)(b) does not therefore contain any indication as to whether it is possible for a consumer to secure the suspension of his or her own obligations vis-à-vis the institution under resolution.

64 Article 34(1)(g) of Directive 2014/59 lays down the principle that no creditor is to incur greater losses than would have been incurred if the institution under resolution had been wound up under normal insolvency proceedings, in accordance with Articles 73 to 75 of that directive.

65 As the Advocate General stated, in essence, in points 72 to 74 of her Opinion, the fact that that provision expressly refers to Articles 73 to 75 of Directive 2014/59 means that it is concerned with a safeguard measure which admittedly benefits, inter alia, the creditors of an institution under resolution, but which applies only *ex post*. That measure involves a comparison between the losses which those creditors in fact incurred in the light of how they were actually treated in the context of the resolution of that institution and the losses which they would have incurred if that institution had entered into normal insolvency proceedings at the time when the decision to adopt a resolution action was taken. If the former losses prove to be higher than the latter, the safeguard measure makes it possible for the creditors concerned to be paid the difference out of the resolution financing arrangements.

66 Accordingly, the 'no creditor worse off principle', referred to in recital 5 of Directive 2014/59, in relation to Article 34(1)(g) of that directive, read in conjunction with Articles 73 to 75 thereof, does not entail possible procedural protection in relation to the grant of protective measures, such as those at issue in the main proceedings, for which the creditors of a residual institution

might qualify in the context of a resolution procedure. Article 34(1)(g) is therefore also irrelevant to the answer to the question whether a national court must have the power to grant protective measures such as those at issue in the main proceedings.

67 In addition, it should be noted, as the Advocate General did, in essence, in point 75 of her Opinion, that no other provision of Directive 2014/59 entails such protection either, in the absence of specific provisions concerning applications for protective measures made by creditors of an institution under resolution against that institution.

68 It follows that provisions such as Article 135(1) and (4) of the Law on the Bank Guarantee Fund fall within the scope of Article 1(2) of Directive 2014/59, which provides that Member States may adopt or maintain rules that are stricter than or additional to those laid down in that directive and in the delegated and implementing acts adopted on the basis of it.

69 In accordance with Article 1(2) of Directive 2014/59, Member States may adopt such rules provided that they are of general application and do not conflict with that directive and with the delegated and implementing acts adopted on the basis of it.

70 In those circumstances, it is necessary to ascertain whether the application of the relevant provisions of Directive 93/13, in a context such as that of the case in the main proceedings, is likely to hinder the implementation of the resolution procedure or deprive it of practical effect.

71 In that regard, the Court has already held that the objectives of ensuring the stability of the banking and financial system and preventing a systemic risk are objectives of public interest pursued by the European Union. Directive 2014/59 therefore establishes the use, in an exceptional economic context, of a procedure that may affect in particular the rights of creditors of a credit institution or investment firm, in order to preserve the financial stability of the Member States, by creating an insolvency regime derogating from the ordinary law governing insolvency proceedings, which may only be applied in exceptional circumstances and must be justified by an overriding public interest. The nature of this regime as a derogation implies that the application of other provisions of EU law may be disregarded where these are likely to hinder the implementation of the resolution procedure or deprive it of practical effect (judgment of 5 May 2022, *Banco Santander (Resolution of Banco Popular)*, C-410/20, EU:C:2022:351, paragraphs 36 and 37).

72 That said, it should be observed that, in a context such as that of the case in the main proceedings, the practical effect of the resolution procedure was achieved, in principle, as soon as the bridge institution tool was applied, at the same time as the transfer to the bridge institution of substantially all of the assets, rights and liabilities of the institution under resolution, so that procedural matters arising in proceedings relating to assets which remain part of the assets of the residual institution are not likely to undermine that practical effect or impede the implementation of the resolution procedure. It should also be noted that, from that point onwards, the residual institution's fate is to be wound up under normal insolvency proceedings, pursuant to Article 37(6) of Directive 2014/59.

73 The circumstances of the case in the main proceedings can therefore be distinguished from those at issue in the judgments of 5 May 2022, *Banco Santander (Resolution of Banco Popular)* (C-410/20, EU:C:2022:351), and of 5 September 2024, *Novo Banco and Others* (C-498/22

to C-500/22, EU:C:2024:686), since the cases in which those two judgments were delivered concerned entities created after the resolution procedure had been initiated, not a residual institution.

74 Furthermore, according to the referring court's prima facie assessment, as set out in the request for a preliminary ruling, the grant of protective measures in circumstances such as those of the case in the main proceedings, seeking to prevent payments from continuing to be made on the basis of contractual terms the unfairness of which is apparent from settled national case-law, would have the effect of preventing an increase in the residual institution's assets only up to the amounts not due, for which, in practice, consumers would be liable only on account of the continuation of the proceedings brought by them dealing with the merits. In a situation where, as here, the consumer appears to have made payments in a total amount that is approximately the same as the loan principal, it is important that the national court should be able to suspend that consumer's obligation to pay the monthly instalments due under the loan agreement in respect of which a declaration of invalidity is sought, so as to prevent that residual institution from receiving sums in excess of those to which it would be legally entitled if that agreement were declared invalid.

75 It follows from all the foregoing considerations that Article 6(1) and Article 7(1) of Directive 93/13, read in the light of the principle of effectiveness and in conjunction with Directive 2014/59, must be interpreted as precluding national legislation which requires a national court to dismiss a consumer's application for protective measures, seeking suspension of the payment of the monthly instalments owed by the consumer under a loan agreement in respect of which he or she has brought an action for annulment on the ground that it contains unfair terms, pending a final decision on that action, solely because the bank with which that agreement was concluded is under resolution, within the meaning of Directive 2014/59, and in the context of that resolution the bridge institution tool was applied by creating another bank to which substantially all of the assets, rights and liabilities of the bank under resolution were transferred, but not the agreement concerned, which remains part of the assets of the residual institution, even though such protective measures would be necessary to ensure the full effectiveness of that final decision. In the context of its examination as to whether the grant of those protective measures is necessary, the national court must take account of the fact that the consumer has paid or risks paying in the course of the legal proceedings an amount higher than would actually be due if that agreement were declared invalid.

Costs

76 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 (Third Chamber) hereby rules:

Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read in the light of the principle of effectiveness and in conjunction with Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU

and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council

must be interpreted as precluding national legislation which requires a national court to dismiss a consumer's application for protective measures, seeking suspension of the payment of the monthly instalments owed by the consumer under a loan agreement in respect of which he or she has brought an action for annulment on the ground that it contains unfair terms, pending a final decision on that action, solely because the bank with which that agreement was concluded is under resolution, within the meaning of Directive 2014/59, and in the context of that resolution the bridge institution tool was applied by creating another bank to which substantially all of the assets, rights and liabilities of the bank under resolution were transferred, but not the agreement concerned, which remains part of the assets of the residual institution, even though such protective measures would be necessary to ensure the full effectiveness of that final decision. In the context of its examination as to whether the grant of those protective measures is necessary, the national court must take account of the fact that the consumer has paid or risks paying an amount higher than would actually be due if that agreement were declared invalid.

[Signatures]