Reports of Cases

OPINION OF ADVOCATE GENERAL
RANTOS
delivered on 4 October 2024 [1]

Case C-365/23 [Arce] [i]

SIA ‘A’
v
C,
D,
E

(Request for a preliminary ruling from the Augstākā tiesa (Senāts) (Supreme Court (Senate), Latvia))

(Reference for a preliminary ruling – Consumer protection – Directive 93/13/EEC – Unfair terms in consumer contracts – Article 1 – Scope – Article 2(b) – Concept of ‘consumer’ – Article 3(1) – Article 4(2) – Article 5 – Article 6(1) – Article 8a – Pre-formulated standard contract – Contract between a supplier providing sports development and career support services and a ‘rising star’ sportsperson of minor age represented by his parents – Term establishing the obligation to pay to that supplier remuneration equal to 10% of the income received by that sportsperson during the following 15 years – Charter of Fundamental Rights of the European Union – Article 17 – Right to property – Article 24 – Rights of the child)

I. Introduction

1. The present request for a preliminary ruling concerns the interpretation of Article 2(b), Article 3(1), Article 4(2), Article 5, Article 6(1) and Article 8a of Directive 93/13/EEC [2] on unfair terms in consumer contracts, read in the light of Article 17(1) and Article 24 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2. The request has been made in proceedings between A, a limited liability company established under Latvian law in order to provide development services for sportspersons in Latvia (‘Company A’) and the natural persons C, an amateur ‘rising star’ sportsperson, and his parents, D and E (‘the parents’) concerning the recovery by Company A of the remuneration due from C for the

[1] Original language: French.

[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.

[2] Council Directive of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), as amended by Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 (OJ 2011 L 304, p. 64).

provision of its sports development and career support services, provided for under the sports development and career support services contract concluded on 14 January 2009 between Company A, on the one hand, and C and his parents, on the other hand ('the contract at issue').

3. In the present case, the Court will have the task of assessing the applicability of EU law on consumer protection, in particular Directive 93/13, to a type of sports development and career support services contract, such as the contract at issue, in the particular context of a consumer initially of minor age, represented by his parents, who attained majority and became a professional sportsperson in the course of the contract. The judgment to be delivered, which will therefore determine the scope of that directive, will clearly affect the content of that type of contract far beyond the field of sport.

II. Legal framework

A. European Union law

1. Directive 93/13

4. According to the tenth, thirteenth and sixteenth recitals of Directive 93/13:

'Whereas more effective protection of the consumer can be achieved by adopting uniform rules of law in the matter of unfair terms; whereas those rules should apply to all contracts concluded between sellers or suppliers and consumers; whereas as a result *inter alia* contracts relating to employment, contracts relating to succession rights, contracts relating to rights under family law and contracts relating to the incorporation and organization of companies or partnership agreements must be excluded from this Directive;

…

Whereas the statutory or regulatory provisions of the Member States which directly or indirectly determine the terms of consumer contracts are presumed not to contain unfair terms; whereas, therefore, it does not appear to be necessary to subject the terms which reflect mandatory statutory or regulatory provisions and the principles or provisions of international conventions to which the Member States or the Community are party; whereas in that respect the wording "mandatory statutory or regulatory provisions" in Article 1(2) also covers rules which, according to the law, shall apply between the contracting parties provided that no other arrangements have been established;

…

Whereas the assessment, according to the general criteria chosen, of the unfair character of terms, in particular in sale or supply activities of a public nature providing collective services which take account of solidarity among users, must be supplemented by a means of making an overall evaluation of the different interests involved; whereas this constitutes the requirement of good faith; whereas, in making an assessment of good faith, particular regard shall be had to the strength of the bargaining positions of the parties, whether the consumer had an inducement to agree to the term and whether the goods or services were sold or supplied to the special order of

the consumer; whereas the requirement of good faith may be satisfied by the seller or supplier where he deals fairly and equitably with the other party whose legitimate interests he has to take into account.'

5. Article 1(1) of that directive states:

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

6. According to Article 2(b) of that directive, the concept of 'consumer' is defined as 'any natural person who … is acting for purposes which are outside his trade, business or profession'. Under Article 2(c) of the directive, 'seller or supplier' means 'any natural or legal person who … is acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned'.

7. 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.

2. A term shall always be regarded as not individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.

The fact that certain aspects of a term or one specific term have been individually negotiated shall not exclude the application of this Article to the rest of a contract if an overall assessment of the contract indicates that it is nevertheless a pre-formulated standard contract.

Where any seller or supplier claims that a standard term has been individually negotiated, the burden of proof in this respect shall be incumbent on him.

…'

8. 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.'

9. Article 5 of that directive states in particular that, '[i]n 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'.

10. Article 6(1) of that directive 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.'

11. Article 8 of Directive 93/13 provides that 'Member States may adopt or retain the most stringent provisions compatible with the Treaty in the area covered by this Directive, to ensure a maximum degree of protection for the consumer'.

12. According to Article 8a(1) of that directive;

'Where a Member State adopts provisions in accordance with Article 8, it shall inform the Commission thereof, as well as of any subsequent changes, in particular where those provisions:

– extend the unfairness assessment to individually negotiated contractual terms or to the adequacy of the price or remuneration; or

– contain lists of contractual terms which shall be considered as unfair.'

2. Directive 2005/29/EC

13. Article 5(3) of Directive 2005/29/EC[3] is worded as follows:

'Commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group. This is without prejudice to the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally.'

[3] Directive 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 ('the Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22).

B. Latvian law

1. The Civil Code

14. Article 186 of the Latvijas Republikas Civillikums (Civil Code of the Republic of Latvia; 'the Civil Code'), of 20 February 1937,[4] states that 'parents shall jointly represent a child in his or her personal and property relations (joint representation)'.

15. According to Article 223 of the Civil Code, 'the father and mother shall be the natural guardians of their minor children, on the basis of their right of custody'.

16. Article 293 of that code provides:

'A guardian may, in the interests of the minor, enter into any type of contract concerning that minor and receive and make payments. All the foregoing acts shall be binding on the minor, provided the guardian has acted in good faith and within the limits of sound financial management, but shall not be binding on the minor, in the absence of special requirements, beyond the time at which he or she reaches full age.'

17. Under Article 1408 of that code, 'minors lack the capacity to act'.

2. Law on Consumer Rights Protection

18. Points 3 and 4 of Article 1 of the Patērētāju tiesību aizsardzības likums (Law on Consumer Rights Protection), of 1 April 1999,[5] entitled 'Terms used in this law', in the version in force on the date on which the contract at issue in the main proceedings was concluded, defined the following terms:

'"consumer" – a natural person who expresses a wish to acquire or who acquires or may acquire or use goods or services for purposes outside his or her economic activity or profession;

"service provider" – any person who, within the scope of that person's economic activity or profession, provides a service to a consumer; …'

19. In the version in force on the date on which the contract at issue was concluded, Article 6 of that law, entitled 'Unfair contractual terms', provided:

'…

(2) Contractual terms shall be expressed in plain and intelligible language.

(3) A contractual term which has not been individually negotiated by the parties shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations established in the contract, to the detriment of the consumer.

…

[4] *Valdības Vēstnesis*, 1937, No 41.

[5] *Latvijas Vēstnesis*, 1999, No 104/105.

(8) Unfair terms used in a contract concluded with a consumer by a manufacturer, seller or service provider shall be null and void from conclusion of the contract, but the contract shall remain effective if it is capable of continuing in existence without the unfair terms.

…'

20. Article 6 of that law, which transposed Article 4(2) of Directive 93/13 into Latvian law, in the version that came into force on 1 July 2014, stated in paragraph 2^2 thereof:

'This article shall not apply to contractual terms that define the subject matter of the contract or relate to the adequacy of the price and remuneration, on the one hand, as against the services or goods, on the other, in so far as these terms are in plain intelligible language. …'

III. The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court of Justice

21. A, a limited liability company established under Latvian law, aims to provide development services for sportspersons in Latvia. To that end, it offered to sportspersons a range of services for the development of their professional skills and careers by concluding contracts containing an obligation to pay the company in the future subject to certain conditions.

22. C, a natural person, was a minor of 17 years of age who, at the very beginning of 2009, was a young sportsperson in the field of basketball who had not yet begun his sporting career at a professional level (he was not therefore employed by any club).

23. On 14 January 2009, Company A, on the one hand, and C and his parents, on the other hand, concluded the contract at issue for C. The purpose of that contract was to enable C to have a successful career as a professional sportsperson in the field of basketball. That contract was concluded for a duration of 15 years, that is to say, until 14 January 2024.

24. To that end, that contract provided that Company A offered to C a whole range of services.[6] In return, under clause 6.1 of that contract ('the term at issue'), C undertook to pay to that company remuneration amounting to 10% of all net income from sports events, advertising, marketing and media appearances linked to the sport in question received during the duration of the contract at issue, plus the VAT applicable in Latvia, provided that that income was at least EUR 1 500 per month.

25. It is clear from the evidence provided by the referring court that the term at issue was predetermined by Company A and was not individually negotiated within the meaning of Article 3(1) of Directive 93/13. The contract in question is therefore a pre-formulated standard contract which would have also been signed, in the same terms, by other young sportspersons.

26. According to the referring court, in 2009 and in 2010, Company A provided C with sports development and career support services such as those set out in the contract at issue, in particular individual and team training sessions under the supervision of specialists, which

[6] The services provided by Company A included, inter alia, coaching and training, sports medicine and psychology services, career guidance – development, application and monitoring of a career plan and the conclusion of contracts between the sportsperson and sports clubs – and marketing, legal and accountancy services.

required financial contributions from that company. Although some of the services offered were not used by C, according to Company A, by failing to pay to that company the remuneration established for the services received, C and his parents breached that contract.

27. Since the income earned by C, who, in the meantime, had become a professional basketball player, from contracts signed with sports clubs amounted to a total of EUR 16 637 779.90 during the period concerned, C would therefore be obliged to pay 10% of that amount to Company A, that is to say, a sum of EUR 1 663 777.99.

28. On 29 June 2020, Company A brought proceedings against C and his parents seeking payment of the remuneration under the contract at issue.

29. The court of first instance, then the appeal court, dismissed the actions brought by Company A on the ground, inter alia, that the contract at issue did not comply with national consumer protection rules and that the term at issue was unfair.

30. Company A lodged an appeal on a point of law with the Augstākā tiesa (Senāts) (Supreme Court (Senate), Latvia), which is the referring court, in support of which that company claims that the consumer protection rules do not apply in the present case, since the contract in question should be regarded as falling within the category of contracts for 'young rising star' sportspersons to which those rules do not apply. In its appeal, Company A has applied for a reference to be made to the Court of Justice for a preliminary ruling.

31. According to that court, the Court of Justice has already interpreted the term 'consumer' but has not, to date, in its case-law, examined the applicability of the consumer protection rules in the area of sport.

32. In that regard, the referring court finds that there are grounds for considering that those rules should apply in the area of sport. In the absence of specific legislation excluding contracts concluded in the area of sport from the scope of Directive 93/13, those contracts, according to the provisions of that directive, may be classified as 'contracts concluded between a seller or supplier and a consumer'.

33. Moreover, according to that court, no importance can be attached to the fact that the young sportsperson's activity subsequently became predominantly professional, since that fact cannot in itself deprive the recipient of the services of the status of 'consumer' within the meaning of Directive 93/13.[7]

[7] Therefore, the present case is different from those relating to the Court's case-law on the application of the rules determining jurisdiction (see judgments of 25 January 2018, *Schrems* (C-498/16, EU:C:2018:37, paragraphs 31, 38 and 39 and the case-law cited), and of 10 December 2020, *Personal Exchange International* (C-774/19, EU:C:2020:1015, paragraphs 40 and 42 and the case-law cited)).

34. Furthermore, according to that court, the need to refer questions for a preliminary ruling on whether the consumer protection requirements of Directive 93/13 apply to contracts of that type concluded by young sportspersons and sports clubs is also plain in the light of the divergences in the case-law of the EU Member States. [8]

35. In those circumstances, the Augstākā tiesa (Senāts) (Supreme Court (Senate), Latvia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does a contract for the provision of services for development and career support for a sportsperson, concluded between a trader carrying on its professional activity in the field of the development and coaching of sportspersons, on the one hand, and, on the other, a minor represented by his or her parents who, at the time the contract was concluded was not carrying on a professional activity in the field of the sport in question, fall within the scope of [Directive 93/13]?

(2) In the event that the answer to the first question is in the negative, does Directive 93/13 preclude national case-law that interprets the legislation transposing that directive into national law in such a way that the consumer protection provisions contained in that legislation are also applicable to such contracts?

(3) In the event that the answer to the first or the second question is in the affirmative, may a national court carry out an assessment of the unfair nature, in accordance with Article 3 of Directive 93/13, of a contractual term which provides that, in exchange for the provision of the services, specified in the contract, for development and career support in a particular sport, the young sportsperson agrees to pay remuneration consisting of 10% of the income received over the following 15 years, and find the term in question not to be one whose unfair nature is not, in accordance with Article 4(2) of Directive 93/13, subject to assessment?

(4) In the event that the answer to the third question is in the affirmative, must a contractual term be found to have been drafted in plain, intelligible language within the meaning of Article 5 of Directive 93/13 where it provides that, in exchange for the provision of the services, specified in the contract, for development and career support for a sportsperson, the young sportsperson agrees to pay remuneration consisting of 10% of the income received over the following 15 years, having regard to the fact that, at the time the contract was concluded, the young sportsperson did not have clear information about the value of the service provided or the amount he would have to pay in return for that service such as to enable him to evaluate the economic consequences it could have for him?

[8] See, to that effect, on the importance of ensuring a uniform interpretation of EU law, judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi* (C-561/19, EU:C:2021:799, paragraph 49). According to the information available to the referring court, the Cour d'appel de Paris (Court of Appeal, Paris, France), in its judgment of 23 May 2019, held that a basketball player who, as a future player, had concluded a contract for services with a sports agency, under which the agency undertook to negotiate the player's employment with sports clubs on behalf of the sportsperson, in return for which the basketball player undertook to pay that agency a particular amount corresponding to a share of the income generated from the contracts concluded as a result of that cooperation, was acting as a consumer and not as a seller or supplier (CA Paris, 2, 23.05.2019, No 1602277). A contrario, the Oberlandesgericht München (Higher Regional Court, Munich, Germany), by a judgment of 7 November 2002, in a dispute between a young tennis player and a sports agency arising from a contract for services similar to that concluded between the parties in the present case, did not apply national consumer protection rules to that legal relationship (OLG München, 07.11.2002 – 19 U 3238/02).

(5) In the event that the answer to the third question is in the affirmative, must it be found that a contractual term according to which, in return for the provision of the services, specified in the contract, for development and career support for a sportsperson, the young sportsperson agrees to pay remuneration consisting of 10% of the income received over the following 15 years, is, in accordance with Article 3(1) of Directive 93/13, a term that causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer, in view of the fact that under that Article 3(1) the value of the service provided is not linked to the cost it involves for the consumer?

(6) In the event that the answer to the fifth question is in the affirmative, would a decision of a national court be contrary to Article 6(1) of Directive 93/13 where it reduces the amount that a consumer may be required to pay to the service provider to the amount of the actual expenditure incurred by the service provider in providing the services to the consumer under the contract?

(7) In the event that the answer to the third question is in the negative, if a contractual term which provides that, in exchange for the provision of the services, specified in the contract, for development and career support for a sportsperson, the consumer agrees to pay remuneration consisting of 10% of the income received over the following 15 years, is not, by virtue of Article 4(2) of Directive 93/13, subject to an assessment of whether it is unfair, may a national court, which has found the amount of the remuneration to be manifestly disproportionate to the contribution made by the service provider, nevertheless declare the contractual term in question to be unfair on the basis of national law?

(8) In the event that the answer to the seventh question is in the affirmative, in the case of a contract concluded with a consumer before Article 8a of Directive 93/13 came into force, must regard be had to the information provided by the Member States to the European Commission under Article 8a of that directive on the measures adopted by the Member State under Article 8 of the directive and, if it must, is the jurisdiction of the national courts limited by the information provided by that Member State under Article 8a of Directive 93/13 where the Member State has indicated that its legislation does not go beyond the minimum standard established in that directive?

(9) In the event that the answer to the first or the second question is in the affirmative, in the light of Article 17(1), in conjunction with Article 24, of the Charter of Fundamental Rights of the European Union, what is the significance as regards the application of the legislation transposing the provisions of Directive 93/13 into national law, of the fact that, at the time of conclusion of the contract for the provision of services in question, with a term of 15 years, the young sportsperson was a minor and, therefore, the contract was concluded by the minor's parents on his behalf, and established an obligation on him to pay remuneration of 10% of all income received in the following 15 years?

(10) In the event that the answer to the first or the second question is in the negative, having regard to the fact that sporting activities fall within the scope of EU law, are the fundamental rights enshrined in Article 17(1), in conjunction with Article 24(2), of the Charter of Fundamental Rights of the European Union, infringed by a contract for the provision of services with a term of 15 years concluded with a young sportsperson, who is a minor – concluded on his behalf by his parents – under which the minor is obliged to pay remuneration consisting of 10% of all income received in the following 15 years?'

36. Written observations were submitted to the Court by Company A, C, the Latvian Government and the European Commission. Those interested parties, and the parents of C, who had not submitted written observations, also presented oral argument and responded to the questions for oral answer put by the Court at the hearing held on 13 June 2024.

IV. Analysis

A. Admissibility of some of the questions referred

37. Company A, in its written observations, argues that the third, fourth, fifth, seventh, ninth and tenth questions referred for a preliminary ruling are inadmissible, on the ground, in the first place, that by its third to fifth questions, the referring court essentially requests the Court to apply and not to interpret EU law, in particular by assessing (i) whether it must be considered that the terms establishing the remuneration must be classified not as falling within the scope of Article 4(2) of Directive 93/13 but of Article 3 thereof (third question) and (ii) whether those terms comply with the requirements stemming from Article 5 and Article 3(1) of that directive (fourth and fifth questions), and, in the second place, that the seventh question is hypothetical, and, in the third and last place, that the ninth and tenth questions are too abstract and constitute a request for an advisory opinion.

38. In that regard, it must be noted that, according to settled case-law of the Court, in the context of cooperation between that Court and national courts established in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case in the main proceedings, the relevance of the questions which it submits to the Court. Where the questions referred concern the interpretation or validity of a rule of EU law, the Court is in principle required to give a ruling. It follows that a question referred for a preliminary ruling concerning EU law enjoys a presumption of relevance. The Court may refuse to rule on such a question only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it. [9]

39. In the present case, it should be noted that the order for reference describes in sufficient detail the factual and legal framework of the case in the main proceedings and the information provided by the referring court makes it possible to determine the scope of the questions asked and to conclude that they are neither unrelated to the subject of that dispute, nor hypothetical. In particular, first, as regards the third to fifth and ninth and tenth questions, it is apparent from the request for a preliminary ruling that the referring court is uncertain as to the meaning and scope of a number of provisions of Directive 93/13 in order to determine whether it can review the unfairness of the term at issue in accordance with that directive. Therefore, that court is not asking the Court of Justice to apply those provisions to the facts of the case or to replace the assessment of the referring court by its own assessment, which, in any event, it could not do. [10] Second, as to the hypothetical nature of the seventh question referred, resulting from, according to Company A, the fact that there is no possibility in Latvian law of establishing the excessiveness

[9] See, inter alia, judgment of 29 June 2023, *International Protection Appeals Tribunal and Others (Attack in Pakistan)* (C-756/21, EU:C:2023:523, paragraphs 35 and 36 and the case-law cited).

[10] See, to that effect, judgment of 26 January 2017, *Banco Primus* (C-421/14, 'the judgment in *Banco Primus*', EU:C:2017:60, paragraph 57 and the case-law cited).

of a return on investment, it is sufficient to note that, in the context of the procedure laid down in Article 267 TFEU, the functions of the Court of Justice and those of the referring court are clearly distinct and that it is only for the referring court to interpret national legislation. [11]

40. In those circumstances, I consider all the questions submitted by the referring court to be admissible.

B. Substance

41. The referring court, considering that the factual context of the dispute in the main proceedings raises a number of questions relating to the interpretation and application of Directive 93/13, has decided to refer a number of questions for a preliminary ruling which thematically concern various aspects of that directive and which may be summarised as follows:

– the scope of Directive 93/13 (first question);

– the extension of the scope in relation to the minimum level of protection conferred by that directive (second question) and the procedure for implementing national legislation on the basis of Article 8 thereof (seventh and eighth questions);

– the treatment of contractual terms relating to 'the main subject matter of the contract' or to 'the price and remuneration' within the meaning of Article 4(2) of that directive (third question);

– the requirement of 'transparency' within the meaning of Article 4(2) and Article 5 of that directive (fourth question);

– the assessment of the 'significant imbalance' when assessing the unfairness of a term within the meaning of Article 3(1) of Directive 93/13 (fifth question);

– the consequences of classifying a contractual term as 'unfair' under Article 6(1) of that directive (sixth question);

– the application of the provisions of the Charter when assessing unfair terms in contracts concluded with consumers (ninth and tenth questions).

1. The scope of Directive 93/13 (first question)

42. By its first question, the referring court asks, in essence, whether the terms of a contract concluded between, on the one hand, a seller or supplier exercising an activity in the field of sports development and, on the other hand, a minor represented by his or her parents, who, at the time when that contract was concluded, was not yet employed in the field of sport, fall within the scope of Directive 93/13.

[11] See judgment of 15 January 2013, *Križan and Others* (C-416/10, EU:C:2013:8, paragraph 58 and the case-law cited).

43. In that context, C and his parents, the Latvian Government and the Commission argue that such a contract falls within the scope of that directive, whereas Company A submits that the question should be answered in the negative, maintaining, inter alia, in that regard, that the future nature of a professional activity does not detract from the nature of the contract.

44. First of all, as a preliminary point, it should be noted that the purpose of Directive 93/13, according to Article 1(1) thereof, is to approximate the provisions of the Member States relating to unfair terms in contracts concluded between a seller or supplier and a consumer. That directive is therefore a horizontal legislative act which aims to ensure a high level of consumer protection [12] by protecting consumers against unfair terms included in all types of contracts concluded with sellers or suppliers. Therefore, that directive is intended to apply in all sectors of economic activity, and, in principle, to all types of contracts for the purchase of goods and the provision of services which have been concluded between a seller or supplier and a consumer. [13]

45. Next, as the Court has repeatedly stated, 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. [14] Having regard to such a weaker position, Article 6(1) of that directive provides that unfair terms are not binding on consumers. That is a mandatory provision which aims to replace the formal balance which the contract establishes between the rights and obligations of the parties with an effective balance which re-establishes equality between them. [15]

46. It follows that that directive aims, first, to address situations of inequality of the parties in relation to contract terms, which can be due to an asymmetry of information or expertise, [16] or bargaining power, [17] in relation to the contract terms and, second, to deter sellers or suppliers from using unfair terms in the future. [18]

47. It is in the light of those objectives pursued by Directive 93/13, that it is necessary to examine whether the contract at issue in the main proceedings falls within the scope of that directive.

48. In that regard, it should be recalled that Directive 93/13 applies, as is apparent from Article 1(1) and Article 3(1) thereof, to the terms of 'contracts concluded between a seller or supplier and a consumer' which 'have not been individually negotiated'. As the tenth recital of Directive 93/13 states, the uniform rules of law in the matter of unfair terms should apply to 'all

[12] See Article 114 TFEU, which now serves as a legal basis for Directive 93/13, as well as Article 169 TFEU and Article 38 of the Charter.

[13] See, to that effect, judgment of 18 November 2020, *DelayFix* (C-519/19, 'the judgment in *DelayFix*', EU:C:2020:933, paragraph 52 and the case-law cited), and Commission Notice entitled 'Guidance on the interpretation and application of Council Directive 93/13/EEC on unfair terms in consumer contracts' (OJ 2019 C 323, pp. 4 to 92; 'Commission Guidance', p. 5).

[14] See judgment of 15 June 2023, *Bank M. (Consequences of the annulment of the contract)* (C-520/21, EU:C:2023:478, paragraph 54 and the case-law cited).

[15] See judgment of 11 April 2024, *Air Europa Líneas Aéreas* (C-173/23, EU:C:2024:295, paragraph 28 and the case-law cited).

[16] See judgment of 17 May 2018, *Karel de Grote – Hogeschool Katholieke Hogeschool Antwerpen* (C-147/16, 'the judgment in *Karel de Grote*', EU:C:2018:320, paragraph 59), which concerned an inequality between an educational establishment and a student resulting from the asymmetry of information and expertise between those parties.

[17] See, by way of example, judgment of 3 September 2015, *Costea* (C-110/14, 'the judgment in *Costea*', EU:C:2015:538, paragraph 27 and the case-law cited), in which the Court emphasised that, although it would be considered that a lawyer displays a high level of technical knowledge, that did not allow it to be presumed that he was the weaker party vis-à-vis a seller or supplier.

[18] See, to that effect, judgments of 21 December 2016, *Gutiérrez Naranjo and Others* (C-154/15, C-307/15 and C-308/15, 'the judgment in *Gutiérrez Naranjo and Others*', EU:C:2016:980, paragraph 63), and of 15 June 2023, *Bank M. (Consequences of the annulment of the contract)* (C-520/21, EU:C:2023:478, paragraph 58), and Opinion of Advocate General Pitruzzella in *Dziubak* (C-260/18, EU:C:2019:405, point 53 and the case-law cited). See also Commission Guidance (p. 9).

contracts' concluded between 'sellers or suppliers' and 'consumers', as defined in Article 2(b) and (c) of that directive.[19] Therefore, for a contract to fall within the scope of that directive, one party to the contract must be a 'seller or supplier' within the meaning of Article 2(c) of Directive 93/13 and the other party must be a 'consumer' within the meaning of Article 2(b) of that directive. In other words, where the contract is concluded between a seller or supplier and a consumer, that contract is deemed to fall within the scope of that directive.

49. In the present case, I note, first, that, while it appears from the evidence in the file submitted to the Court that the contract at issue was a 'standard contract', drawn up using a pre-established form and signed by many other young sportspersons, Company A submits that the term at issue was individually negotiated.[20] It is therefore a matter for the referring court to rule in that regard, taking into consideration the rules relating to the apportionment of the burden of proof laid down in the first and third subparagraphs of Article 3(2) of Directive 93/13, which provide inter alia that where the seller or supplier claims that a standard term has been individually negotiated, the burden of proof in this respect is incumbent on him or her.[21]

50. Second, it is not in dispute that the contract at issue in the main proceedings was signed by Company A, which was acting as the 'seller or supplier' within the meaning of Article 2(c) of that directive. In those circumstances, the first question must be understood as meaning that the referring court asks, in essence, (i) whether a natural person, such as C, who, at the time when the contract at issue was concluded, was not carrying on a professional activity in the field of the sport in question, but who subsequently became a professional sportsperson, must be regarded, in the context of that contract, as a 'consumer' within the meaning of Article 2(c) of that directive, and that therefore that contract falls within the scope *ratione personae* of that directive (a) and, (ii) whether the very subject matter of the contract, which, according to Company A should be regarded as 'falling within the category of contracts for "young rising star" sportspersons', may constitute an exception to the scope *rationae materiae* of Directive 93/13, thereby justifying the non-application of those provisions (b).

(a) The scope ratione personae *of Directive 93/13*

51. In the first place, as regards the application *ratione personae* of Directive 93/13 and, more specifically, of the concept of 'consumer', I note that, under Article 2(b) of that directive, 'consumer' means 'any natural person who, in contracts covered by [that directive], is acting for purposes which are outside his trade, business or profession'. Article 2(c) of that directive confers on the concept of 'seller or supplier' a broader definition according to which a 'seller or supplier' means 'any natural or legal person who, in contracts covered by [that directive], is acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned'.

52. It follows that it is therefore by reference not to the identity of the parties to the dispute but to the *capacity of the contracting parties*, according to whether or not they are acting for purposes relating to their trade, business or profession, that Directive 93/13 defines the contracts to which

[19] See the judgment in *Karel de Grote* (paragraphs 45 and 46).

[20] More specifically, Company A claimed at the hearing that C and his parents had the possibility of negotiating the contract at issue, in so far as, before it was signed, the signatory parties met several times. Even so, that company has recognised that, during those meetings, no question was raised as to the duration of the contract, the amounts attaching to future commitments, for example as regards the amount of compensation due, or any other contractual term, and that the discussions primarily concerned basketball, infrastructures, trainers, living conditions, catering, etc.

[21] See judgment of 13 July 2023, *Banco Santander (Reference to an official index)* (C-265/22, 'the judgment in *Banco Santander*', EU:C:2023:578, paragraph 62).

it applies.[22] That approach, often referred to as 'functional', corresponds to the idea, already referred to in point 45 of this Opinion, on which the protection system introduced by that directive is based, namely that the consumer is in *a weaker position* vis-à-vis the seller or supplier, as regards both his or her bargaining power and his or her level of knowledge.[23]

53. It follows that whether a person qualifies as a 'consumer' must be assessed on a case-by-case basis in relation to the specific contract at issue, taking account of the nature and purpose of the contract in question and the fact that Directive 93/13 aims at the protection of consumers as the typically weaker party.[24] In order to establish whether a person is a 'consumer', it is therefore imperative to look at the balance of power between the parties in relation to the contract in question. Typical factors are the asymmetry of information, knowledge and expertise or bargaining power.

54. Similarly, the concept of 'consumer' is objective and reflects his or her typically weaker position vis-à-vis the seller or supplier. The objective nature of that concept consists in its being distinct from the knowledge and concrete information that the person concerned actually has.[25] As the Court has held, the use of an abstract reference criterion for reviewing the transparency of a contractual term makes it possible to avoid making that review dependent on the combination of a complex set of subjective factors which it is difficult, if not impossible, to establish.[26]

55. In the present case, subject to verification by the referring court, it is not disputed that, at the time when the contract at issue was concluded, C's career had not yet begun, since no professional club had employed him. However, there is, in principle, an inequality between Company A and C owing to the asymmetry of the information and expertise between those parties. Such a company has, as a general rule, at its disposal a permanent organisation, a legal department specialised in the matter and expertise which a young sportsperson – acting on a private basis, who is not a professional sportsperson at the time the contract is concluded – does not necessarily have available to him or her when faced incidentally with such a contract. It would therefore seem legitimate to presume that C, a fortiori by reason of his minor age, was objectively in a weaker position compared with that of Company A. First, C did not have the same level of knowledge as that company relating to the various services provided for in the contract at issue and, second, he was in a weaker bargaining position, in particular in so far as, at the time when that contract was concluded, Company A seemed to be the only company providing that type of sports development services in Latvia.[27] However, it will also be for the referring court to verify whether that imbalance of powers between Company A and C was offset by the fact that C was represented by his parents, since his father, according to the oral argument of Company A, was a basketball coach at the time the contract at issue was concluded. In that regard, it should be noted that the Court has established that, even if a specific 'consumer' has superior knowledge and experience, that does not prevent him or her from being a 'consumer' within the meaning of Directive 93/13.[28]

[22] See to that effect, the judgments in *Karel de Grote* (paragraph 53 and the case-law cited) and in *DelayFix* (paragraphs 53 and 54 and the case-law cited). See, more generally, on the concept of 'consumer', Djurovic, M., 'The Average Consumer', *European Law on Unfair Commercial Practices and Contract Law*, Hart Publishing, Oxford, 2016, pp. 25 and 26.

[23] See the judgment in *Karel de Grote* (paragraph 54 and the case-law cited).

[24] See, to that effect, Commission Guidance (p. 11).

[25] See, to that effect, judgment of 21 March 2019, *Pouvin and Dijoux* (C-590/17, 'the judgment in *Pouvin and Dijoux*', EU:C:2019:232, paragraphs 24, 25 and 30 and the case-law cited).

[26] See judgment of 4 July 2024, *Caixabank and Others (Review of transparency in collective actions)* (C-450/22, 'the judgment in *Caixabank*', EU:C:2024:577, paragraph 49 and the case-law cited).

[27] That finding being based solely on Company A's statements at the hearing, which must be verified by the referring court.

[28] See the judgments in *Costea* (paragraph 21) and in *Pouvin and Dijoux* (paragraphs 25 to 28).

56. It is clear from all of the factors referred to in the previous paragraph that, in principle, C, at the time when the contract at issue was concluded, would have acted as a 'consumer' within the meaning of Directive 93/13 and that, therefore, the provisions of that directive should apply to that contract.

57. That conclusion cannot, in my view, be undermined by the fact that the status of the sportsperson concerned as a 'consumer' changed after that contract was concluded, when he became a 'professional' sportsperson for the purposes of Article 2(c) of that directive. Like the referring court, I consider that that change is not a relevant factor, in the specific context of consumer law, to the assessment of the legal relationship existing between the two parties. Thus, unlike situations which concern the application of legal provisions on determination of jurisdiction,[29] as regards the scope of consumer law, it is, in my view, irrelevant that the young sportsperson's activity in the field to which the contract relates subsequently became professional in nature. This also applies where it is established that the young sportsperson used the services provided by the seller or supplier only in order to acquire professional expertise, the key factor being that, at the time when the contract at issue was concluded, the young sportsperson was not a professional.

58. First, as required by Article 4(1) of Directive 93/13, 'the unfairness of a contractual term is assessed by taking account of the nature of the services for which the contract in question was concluded and by reference, *on the date on which the contract was concluded*, to all the circumstances attending its conclusion'.[30] As the Court has confirmed, it is therefore the date of conclusion of the contract which is relevant to the assessment of the unfairness of a term, and therefore the applicability of that directive must be assessed at that time, irrespective of any subsequent change in status from a 'consumer' to a 'professional' sportsperson. Any other more 'dynamic' interpretation of the status of 'consumer', consisting in maintaining that that status may be lost over time, would run counter to the very wording of that provision.

59. Second, that interpretation is also consistent with the objective pursued by Directive 93/13 in so far as it is on the date on which the contract was concluded, which is when the consumer may be at a disadvantage in relation to the seller or supplier, that the contract may have unfavourable consequences, even in the long-term, for the consumer.

(b) The scope ratione materiae *of Directive 93/13*

60. In the second place, as regards the application *ratione materiae* of Directive 93/13 and, more specifically. whether a contract for a 'young rising star' sportsperson can be excluded from it, it will be recalled that that directive applies to 'all types of contract' concluded between sellers or suppliers and consumers in all sectors of economic activity,[31] and that the decisive criterion for

[29] See judgments of 25 January 2018, *Schrems* (C-498/16, EU:C:2018:37, paragraphs 31, 38 and 39 and the case-law cited) and of 10 December 2020, *Personal Exchange International* (C-774/19, EU:C:2020:1015, paragraphs 40 and 41). As the Commission has explained, in other areas of EU law, such as the rules of jurisdiction of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1), the national court may possibly take into account any change in the consumer's status in the course of the contract, for example, in the case of contracts for use of services extending over a longer period, since the contract concluded by the consumer may have changed, with the use of services for private purposes becoming a purely professional activity and since, consequently, the natural person may thereby lose his or her status as a 'consumer'.

[30] Emphasis added. See, to that effect, the judgments in *DelayFix* (paragraph 60) and in *Caixabank* (paragraph 29 and the case-law cited).

[31] See point 44 of this Opinion.

the purposes of applying that directive is the capacity in which parties acted when they concluded the contract at issue and not the subject matter of that contract, which is, in principle, irrelevant to the definition of its scope.[32] However, there are some exceptions to that rule.[33]

61. First, Article 1(2) of Directive 93/13 excludes from the scope of that directive 'the contractual terms which reflect mandatory statutory or regulatory provisions and the provisions or principles of international conventions to which the Member States or the Community are party, particularly in the transport area'. In that regard, the Court has held that, in the light in particular of the objective pursued by that directive, namely the protection of consumers from unfair terms in contracts concluded with a seller or supplier, the exclusion established in Article 1(2) thereof must be interpreted strictly, in order to ensure its effectiveness.[34] It has also stated that, in any event, a contractual term included in a contract concluded by a seller or supplier with a consumer falls outside the scope of that directive only if that contractual term reflects the content of a mandatory statutory or regulatory provision for the purposes of Article 1(2) of Directive 93/13, read in the light of the thirteenth recital thereof. Such an exclusion was justified by the fact that it may legitimately be supposed that the national legislature has struck a balance between all the rights and obligations of the parties to certain contracts, a balance which the EU legislature has expressly intended to preserve.[35]

62. Second, the tenth recital of Directive 93/13 adds that 'contracts relating to employment, contracts relating to succession rights, contracts relating to rights under family law and contracts relating to the incorporation and organisation of companies must be excluded from [that directive]'. Like the exclusion provided for in Article 1(2) of that directive, the *ratio legis* of the exclusion of those types of contracts is based on the fact that the *lex specialis* which governs all of those contracts enables any asymmetries between the rights and obligations of the parties to be removed.

63. In the present case, Company A claims that the contract at issue in the main proceedings is subject to the national legislation on contracts for 'young rising star' sportspersons and that therefore the provisions of Directive 93/13 do not apply. In the light of the foregoing, it is for the referring court to verify the content of that legislation in order to establish whether the contractual terms at issue reflect mandatory provisions which would be applicable in the present case, such as to make it possible, in an abstract manner, to remedy any imbalance between 'young rising stars' and sellers or suppliers, and to exclude certain terms, in particular the term at issue of that contract concerning remuneration, from the scope of that directive. However, in so doing, that court may take into account the following factors: first of all, such an exception to the application of that directive should, in my view, be interpreted restrictively;[36] next, as to the

[32] See, to that effect, the judgment in *Pouvin and Dijoux* (paragraphs 24, 25 and 30 and the case-law cited). It should be noted, however, that, when the draft directive was drawn up, the Commission analysed, in the different Member States, certain types of standard-term contracts proposed to consumers, such as contracts of sale, car rental contracts, contracts concerning certain banking and insurance services, contracts concerning various types of tourist services (rented accommodation, holiday clubs, package holidays, timeshares, etc.), contracts in the field of air transport (terms and conditions recommended by the International Air Transport Association (IATA)), and contracts concerning the provision of general interest services. Those studies not only demonstrated the ubiquity of unfair terms in standard-form contracts used by undertakings, but also the enormous difficulty of getting hold of them before concluding a contract (see Report from the Commission on the implementation of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (COM(2000) 248 final), p. 9).

[33] See order of 19 November 2015, *Tarcău* (C-74/15, EU:C:2015:772, paragraph 22 and the case-law cited).

[34] See judgment of 30 May 2024, *Raiffeisen Bank* (C-176/23, 'the judgment in *Raiffeisen Bank*, EU:C:2024:443, paragraph 22 and the case-law cited).

[35] See, to that effect, judgment of 26 March 2020, *Mikrokasa and Revenue Niestandaryzowany Sekurytyzacyjny Fundusz Inwestycyjny Zamknięty* (C-779/18, EU:C:2020:236, paragraphs 52 to 54 and the case-law cited) and the judgment in *Raiffeisen Bank* (paragraphs 22 to 24 and the case-law cited).

[36] See, to that effect, Commission Guidance (p. 12).

mandatory nature of the national legislation, according to the Court's case-law, in order to exclude application of that directive, that court will be required to ensure that it applies to the contracting parties independently of their choice, and in a supplementary manner (by default), in the absence of other arrangements established by the parties in that regard;[37] furthermore, that court must also take into account the fact that, where other provisions of national law apply in addition to Directive 93/13, one will, in general, favour an interpretation that preserves as much as possible the *effet utile* of that directive;[38] lastly, there is nothing to prevent the possibility that other provisions exist from being taken into account when assessing the transparency and unfairness of contractual terms in the context of that directive.[39]

64. In the light of the foregoing, I propose that the answer to the first question should be that Article 1(1) and (2) of Directive 93/13 must be interpreted as meaning that a contract for the provision of services for development and career support concluded between, on the one hand, a seller or supplier carrying on its professional activity in the field of the development and coaching of sportspersons, and, on the other, a minor represented by his or her parents who, at the time the contract was concluded was not carrying on a professional activity in the field of the sport in question, falls, in principle, within the scope of Directive 93/13, provided that the other conditions of application laid down in that directive are satisfied.

2. The extension of the minimum level of protection conferred by Directive 93/13 (second question)

65. By its second question, submitted in the event that the first question is answered in the negative, the referring court asks the Court, in essence, whether Directive 93/13 precludes the extension of its scope, solely by way of judicial development of the law, with the result that its provisions can be applied to contracts not falling within the scope of that directive.

66. Having regard to the answer which I propose should be given to the first question, there is no need, in my view, to analyse the second question.

67. In any event, and for the sake of completeness, as is apparent from the answer that I propose should be given to the first question, Directive 93/13 concerns only contracts concluded between a 'seller or supplier' and a 'consumer' and therefore, *a contrario*, it does not apply to contracts where no consumer is involved. However, as regards a partial and minimum harmonisation, nothing prevents the Member States from extending the scope of the national rules transposing Directive 93/13 to other contracts, such as, for example, contracts concluded between two 'consumers', or, conversely, between two 'sellers or suppliers'.[40] The Court has confirmed that it remains open to the Member States, in particular, to apply the provisions of that directive, as rules of national law, to situations which do not fall within the scope of that directive, provided that this is compatible with the objectives pursued by that directive and with the Treaties.[41] For instance, Member States may decide to extend the application of the rules of that directive to legal persons or to natural persons who are not 'consumers' within the meaning of that directive, while remaining

[37] See judgment of 3 April 2019, *Aqua Med* (C-266/18, EU:C:2019:282, paragraph 33 and the case-law cited).

[38] See, by analogy, Commission Guidance (pp. 15 and 16) which contains a list of the other rules of EU law which may apply in parallel.

[39] See, for example, the second to last sentence of paragraph 2 of the operative part of the judgment of 15 March 2012, *Pereničová and Perenič* (C-453/10, EU:C:2012:144), in relation to the finding of unfairness.

[40] Where, for example, one of the sellers or suppliers is in a weaker position than the other. That situation remains hypothetical, however, in so far as no such extension seems to have been made in the national legislation of the Member States (see Annex II to the Commission Guidance which contains an overview of notifications under Article 8a of Directive 93/13).

[41] See, by analogy, judgments of 2 April 2020, *Condominio di Milano, via Meda* (C-329/19, EU:C:2020:263, paragraphs 32 to 38 and the case-law cited), and of 21 December 2021, *Trapeza Peiraios* (C-243/20, EU:C:2021:1045, paragraph 45 and the case-law cited).

competent to apply the provisions of that directive to areas not falling within its scope.[42] Moreover, such an 'extension' of the scope of Directive 93/13, whether made by operation of law or by judicial development of the law,[43] would be a matter exclusively for the national law of the Member State in question.

3. The application of Article 4(2) of Directive 93/13 (third question)

68. By its third question, the referring court wishes, in essence, to know whether a contractual term which, in particular, fixes the amount of remuneration for the service provided for in the contract at issue falls within the scope of Article 4(2) of Directive 93/13 where, at the time when that contract was concluded, that provision had not yet been transposed into the national legal order.[44]

69. In the first place, it should be recalled that, according to Article 4(2) of Directive 93/13, '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 [supplied] in exchange, on the other, in so far as these terms are in plain intelligible language' or, namely, in other words, whether those terms meet the transparency requirement of that directive. As the Court has established, the terms referred to in that provision, while they come within the area covered by that directive, escape any assessment under Article 3(1) thereof as to whether they are unfair only if the national court having jurisdiction should form the view, following a case-by-case examination, that they were drafted by the seller or supplier in plain, intelligible language.[45]

70. That provision is therefore concerned solely with establishing the detailed rules and the scope of the substantive assessment of contract terms which have not been individually negotiated and which describe the essential obligations of contracts concluded between a seller or supplier and a consumer.[46] Consequently, where a contractual term relates to the definition of the main subject matter of the contract or to the adequacy of the price and remuneration, the assessment of unfairness under Article 3(1) of Directive 93/13 is not required if that term is in plain, intelligible language.[47]

42 See judgment of 2 April 2020, *Condominio di Milano, via Meda* (C-329/19, EU:C:2020:263, paragraph 34).

43 In that regard, in the judgment of 7 August 2018, *Banco Santander and Escobedo Cortés* (C-96/16 and C-94/17, EU:C:2018:643, paragraph 69), the Court held that the case-law of a supreme court (in the case in question, the Tribunal Supremo (Supreme Court, Spain)) admittedly does not appear to come within the ambit of the stricter measures which may be adopted by the Member States in order to ensure a higher level of protection for consumers pursuant to Article 8 of Directive 93/13, given, in particular, that that case-law does not appear to have the force of law or constitute a source of law in the Spanish legal order. However, the fact remains that the development of a criterion derived from case-law, such as that identified in that case by that court, is wholly consistent with the objective of consumer protection pursued by that directive. It follows from Article 3(1) of Directive 93/13 and from the general scheme of the directive that the latter does not so much aim to guarantee an overall contractual balance between the rights and obligations of the parties to the agreement as to prevent an imbalance between those rights and obligations from arising to the detriment of consumers. See, also, judgment of 14 March 2019, *Dunai* (C-118/17, EU:C:2019:207, paragraphs 60 to 64).

44 In fact, the transposition into Latvian law of Article 4(2) of Directive 93/13 only occurred subsequently, that is to say, in 2014. Furthermore, it is clear from Annex II to the Commission Guidance that Latvian national law does not go beyond the minimum standard of Directive 93/13.

45 Judgments of 3 June 2010, *Caja de Ahorros and Monte de Piedad de Madrid* (C-484/08, 'the judgment in *Caja de Ahorros*', EU:C:2010:309, paragraph 32), and of 21 March 2024, *Profi Credit Bulgaria (Services ancillary to a credit agreement)* (C-714/22, EU:C:2024:263, paragraph 63 and the case-law cited).

46 The judgment in *Caja de Ahorros* (paragraph 34).

47 The judgment in *Caja de Ahorros* (paragraphs 40 to 44).

71. In the second place, as regards the transposition of that provision into national law, the Court has held that nothing prevents a Member State from retaining or introducing, throughout the area covered by that directive, including Article 4(2) thereof, rules which are more stringent than those provided for by the directive itself, on condition that they are designed to afford consumers a higher level of protection. [48] The terms referred to in Article 4(2) do indeed come within the area covered by that directive and, consequently, Article 8 of that directive, which allows Member States to adopt more stringent provisions in order to ensure a higher level of consumer protection, applies equally to Article 4(2). [49] On that point, the Court has explained that, in order to safeguard in practice the objectives of consumer protection pursued by Directive 93/13, any transposition of Article 4(2) had to be complete, with the result that the prohibition of the assessment of the unfairness of the terms relates solely to those which are drafted in plain, intelligible language. [50]

72. It follows that, in the case of non-transposition of Article 4(2) of Directive 93/13, a national court may, in all circumstances, assess, in a dispute concerning a contract concluded between a seller or supplier and a consumer, the unfairness of a term which was not individually negotiated and which relates to, inter alia, the main subject matter of the contract or to the adequacy of the price or remuneration, even in cases where those terms were drawn up in advance by the seller or supplier in plain, intelligible language. [51] In authorising the possibility of a full judicial review as to the unfairness of terms, such a choice makes it possible for consumers to be afforded, in accordance with Article 8 of that directive, a higher level of protection than that established by that directive. [52]

73. In the present case, since the contract at issue in the main proceedings was concluded in 2009 and Article 4(2) of Directive 93/13 was not transposed into Latvian law until 2014, a national court, such as the referring court, should therefore, in any event, be able to assess the unfairness of a contractual term of that contract, irrespective of whether that term relates to the subject matter of the contract or to the adequacy of the price or remuneration, on the one hand, and of the services or goods to be provided in exchange, on the other hand, even if the seller or supplier drafted it in advance in plain, intelligible language. [53]

74. In the light of the foregoing, the answer to the third question should be that although, at the time when the contract at issue was concluded, Article 4(2) of Directive 93/13 had not been transposed into national law, a national court must be able, in any event, to assess the unfairness of a given contractual term within the meaning of Article 3 of that directive, irrespective of whether that term relates to the main subject matter of the contract or to the adequacy of the price or remuneration, on the one hand, and of the services or goods to be provided in exchange, on the other hand, even if the seller or supplier drafted it in advance in plain, intelligible language.

48 The judgment in *Caja de Ahorros* (paragraph 40).

49 The judgment in *Caja de Ahorros* (paragraph 35).

50 National legislation excluding any possibility of judicial review of terms describing the essential obligations in the contracts concluded between a seller or supplier and a consumer, even where the drafting of those terms was obscure and ambiguous, with the result that the consumer was absolutely prevented from invoking the unfair nature of a term relating to the definition of the main subject matter of the contract or to the adequacy of the price as against the services or goods to be supplied in exchange, was held to be incomplete (the judgment in *Caja de Ahorros* (paragraphs 37 and 38), which refers to the judgment of 10 May 2001, *Commission* v *Netherlands* (C-144/99, EU:C:2001:257)). See, also, Commission Guidance (p. 23, and footnote 147) as well as Annex II thereof, which contains a list of the Member States whose legislation has broadened the scope of the unfairness assessment to contract terms relating to the definition of the main subject matter of the contract and to the adequacy of the price or remuneration, regardless of whether such terms are in plain, intelligible language.

51 See, to that effect, the judgment in *Caja de Ahorros* (paragraphs 41 and 42).

52 See, to that effect, the judgment in *Caja de Ahorros* (paragraph 43).

53 That answer is based on the premiss that the law transposing Article 4(2) of Directive 93/13 does not apply retroactively.

4. The requirement of 'transparency' within the meaning of Article 5 of Directive 93/13 (fourth question)

75. By its fourth question, the referring court seeks, in essence, to ascertain whether and, where appropriate, under what conditions a contractual term, such as the term at issue in the main proceedings, which provides that, in exchange for the provision of services for sports development and career support, a sportsperson agrees to pay remuneration consisting of 10% of the income received over the following 15 years, must be regarded as being drafted in 'plain, intelligible language' within the meaning of Article 5 of Directive 93/13.

76. More specifically, that question concerns the extent and nature of the transparency required of a term which is not deemed unfair. In that regard, it must be remembered that, under Article 5 of Directive 93/13, (i) in the case of contracts where all or certain terms offered to the consumer are in writing, those terms must always be drafted in plain, intelligible language and (ii) where there is doubt about the meaning of a term, the interpretation most favourable to the consumer must prevail.

77. As regards the requirement of transparency of contractual terms, as is clear from Article 5 or Article 4(2) of that directive, the Court has ruled that that requirement cannot be reduced merely to their being formally and grammatically intelligible, but that, to the contrary, since the system of protection introduced by Directive 93/13 is based on the idea that the consumer is in a position of weakness vis-à-vis the seller or supplier, in particular as regards his or her level of knowledge, that requirement of plain and intelligible drafting of contractual terms must be understood in a broad sense. [54]

78. Consequently, that requirement of transparency requires not only that a term is formally and grammatically intelligible to the consumer concerned, [55] but also that an average consumer, who is reasonably well informed and reasonably observant and circumspect, is in a position to understand the specific functioning of that term and thus evaluate, on the basis of clear, intelligible criteria, the potentially significant economic consequences of such a term for his or her financial obligations. [56]

79. Therefore, the requirement that a contractual term must be drafted in plain, intelligible language is to be understood as requiring also that the contract should set out transparently the specific functioning of the mechanism to which the relevant term relates and, where appropriate, the relationship between that mechanism and that provided for by other contractual terms, so that that consumer is in a position to evaluate, on the basis of clear, intelligible criteria, the economic consequences for him or her which derive from it. [57]

[54] See judgments of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282, paragraph 72); of 20 September 2017, *Andriciuc and Others* (C-186/16, 'the judgment in *Andriciuc*', EU:C:2017:703, paragraph 44 and the case-law cited); and the judgment in *Caixabank* (paragraph 36 and the case-law cited).

[55] This implies, first, that the consumer has actually been able to become acquainted with a contractual term prior to the conclusion of the contract, and, second, that the various terms are intelligible, taking into account the clarity of their wording and the specific nature of the terminology used, and, where appropriate, other contractual terms to be considered together. In that regard, account should also be taken of the position or point of view of the consumers to which the relevant terms are addressed (see, to that effect, judgment of 23 April 2015, *Van Hove* (C-96/14, EU:C:2015:262, paragraphs 48 and 50)).

[56] See judgment of 18 November 2021, *A. S.A.* (C-212/20, EU:C:2021:934, paragraph 42 and the case-law cited) and the judgment in *Caixabank* (paragraph 37 and the case-law cited). The Court has specified the requirement of transparency further, in particular with regard to contract terms which are essential as regards the extent of the obligations consumers accept to undertake, for instance with regard to contract terms relevant for establishing the payments which consumers have to make under a loan contract. Some of those rulings concern in particular mortgage credit contracts (denominated) in a foreign currency or indexed to a foreign currency (see Commission Guidance (pp. 26 and 27)).

[57] See the judgment in *Andriciuc* (paragraph 45 and the case-law cited).

80. In the present case, the referring court states that, at the time when the contract at issue was concluded, C did not have information about the value of the service provided or the amount he would have to pay in return for that service such as to enable him to evaluate the economic consequences it could have for him. Although it is not for the Court to make such an assessment, the following factors appear relevant to me in assessing the transparency of the term concerned.

81. First, it seems to me that it is common ground that the term at issue relating to remuneration can be easily understood by an 'average consumer, who is reasonably well-informed and reasonably observant and circumspect', [58] both formally and grammatically and from the point of view of the calculation linked to the remuneration which is due from C to Company A. I believe that it is common ground that C and his parents were in a position to understand the specific functioning of that term on the basis of a criterion which is clear (the calculation of remuneration is simple because it amounts to '10% of all net income received during the term of the contract', that is to say, a pre-determined period of 15 years) and intelligible (there is no reference to factors making the calculation method more complex, such as indexing). Therefore, there appears to be no doubt about the fact that the sportsperson was able to understand the calculation method used, assuming, of course, that Company A explained what constitutes 'all net income'.

82. Second, since it was objectively impossible to provide for the exact amount of remuneration in so far it depends on the amount of income to be generated by C, the requirement of transparency must, according to the case-law of the Court, be assessed by reference to the information available to that seller or supplier on the date of conclusion of the contract with the consumer. The seller or supplier cannot therefore be required to inform the consumer of the final financial consequences of his or her commitment, which depend on future events which are unpredictable and beyond the control of that seller or supplier. [59]

83. Third, and in that regard, the Court has held that the fact remains that the information which the seller or supplier is required to provide before the conclusion of the contract must enable the consumer to take a prudent decision in full knowledge of the possibility that (i) such events may occur and (ii) of the consequences which they are likely to have. [60] It is therefore for the national court to assess, taking into account all the relevant factors surrounding the conclusion of that contract, whether the information provided by the seller or supplier before the conclusion of the contract enabled the consumer, who is reasonably well informed, to take a prudent decision in full knowledge of the consequences of concluding the contract. In that regard, it will be for the national court to assess in particular whether Company A informed C of the wide range of services offered, [61] and of their duration, with the result that C was able to estimate their value as a whole as compared with the remuneration which would potentially be due to that company, since it is precisely on the basis of those two factors that the decision whether or not to enter into a contractual relationship with that company would rationally have had to be taken.

84. In the light of all the foregoing considerations, the answer to the fourth question should be that Article 5 of Directive 93/13 must be interpreted as meaning that the fact that the requirement that contractual terms be worded in 'plain and intelligible' language requires a company which offers sports development and career support services to provide sufficient

[58] Namely, the assessment criterion applied in the context of analysing the Unfair Commercial Practices Directive (see recital 18 thereof).

[59] Judgment of 12 January 2023, *D.V. (Lawyers' fees – Principle of an hourly rate)* (C-395/21, 'the judgment in *D.V.*', EU:C:2023:14, paragraph 43).

[60] See, by analogy, the judgment in *D.V.* (paragraphs 42 and 43 and the case-law cited).

[61] See footnote 6 to this Opinion.

information to a young sportsperson for him or her to take an informed decision based on specific data, such that the contractual term must not only be formally and grammatically intelligible, but also enable the consumer (i) to fully understand the significant financial consequences which could arise from that term with regard to his or her financial commitments, and (ii) to evaluate their adequacy in relation to the total value of the services offered by that company.

5. The unfairness of the remuneration term in the light of Article 3(1) of Directive 93/13 (fifth question)

85. By its fifth question, the referring court asks, in essence, whether the term at issue in the main proceedings causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer, within the meaning of Article 3(1) of Directive 93/13, since that term does not establish a link between the value of the service provided and its cost for the consumer. That question therefore aims to assess the unfairness of the term at issue, and in particular the compatibility of the calculation of remuneration in the contract at issue with Article 3(1) of Directive 93/13.

86. As a preliminary point, it appears to me to be useful to make some initial remarks concerning the assessment of the unfairness of the term at issue.

87. First, it is important to note that the term at issue can be considered as being relevant to both 'the main subject matter of the contract' [62] and to 'the adequacy of the price and remuneration' [63] within the meaning of Article 4(2) of Directive 93/13. Therefore, under that provision, such a term falls within the scope of that directive, but the assessment of its unfairness under Article 3(1) of that directive is precluded if it meets the requirement of transparency laid down in that directive. Consequently, the following analysis is relevant only if the referring court concludes either that the term at issue does not meet the requirement of transparency – in so far as the fact that a term is not drafted in plain, intelligible language is not, in itself, capable of rendering it unfair [64] – or that it can assess the unfairness since Article 4(2) of Directive 93/13 is not applicable in the present case because, at the time when the contract at issue was concluded, that provision had not been transposed into Latvian law. [65] In any event, the transparency of a contractual term, as required by Article 5 of that directive, is one of the main factors also to be taken into account in assessing the unfairness of that term. [66]

88. Second, it is important to make clear that the jurisdiction of the Court extends to the interpretation of the concepts used in Directive 93/13 and to the criteria which the national court may or must apply when examining a contractual term in the light of the provisions of that directive, but that it is for the national court to determine, in the light of those criteria, whether a

[62] In the sense that that term 'lays down the essential obligations of the contract and, as such, characterise it' (see the judgment in *Andriciuc*, (paragraph 35 and the case-law cited)).

[63] In the sense that that term relates to the 'quality/price ratio of the goods or services supplied' (see the nineteenth recital of Directive 93/13).

[64] See analysis in connection with the fourth question for a preliminary ruling relating to the judgment in *Banco Santander* (paragraph 66 and the case-law cited). National law may, however, provide that lack of transparency can lead directly to the invalidity of terms without having to apply the unfairness-test under Article 3(1) of Directive 93/13. See, also, Commission Guidance (p. 19).

[65] See analysis in connection with the third question for a preliminary ruling. See also, Commission Guidance, (p. 24 and footnote 163), according to which national law may give courts the possibility to assess the adequacy of the price even where such terms are clear and intelligible.

[66] See, to that effect, judgment of 26 April 2012, *Invitel* (C-472/10, EU:C:2012:242, paragraphs 27 and 28) and the judgment in *Banco Santander* (paragraph 66). For example, according to point 1(e) of the Annex to Directive 93/13 and the twentieth recital thereof, the fact that the consumer has not actually been given the opportunity to examine a contractual term is indicative of its unfairness.

particular contractual term is actually unfair in the circumstances of the case. It follows that the Court must limit itself to providing the referring court with guidance which the latter must take into account. [67]

89. Having made those clarifications, it should be remembered that Article 3(1) of Directive 93/13 provides that a contractual term which has not been individually negotiated is 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. It follows that it is for the national court to assess, having regard to all the circumstances of the case, first, the possible failure to observe the requirement of 'good faith' and, second, the possible existence of a 'significant imbalance' to the detriment of the consumer within the meaning of Article 3(1) of Directive 93/13. [68]

90. First, as regards the requirement of 'good faith', the sixteenth recital of that directive states, in particular, that that requirement 'may be satisfied by the trader where he deals fairly and equitably with the other party whose legitimate interests he should take into account' and that it is for the national court to 'have particular regard to the strength of the bargaining positions of the parties, whether the consumer had an inducement to agree to the term and whether the goods or services were sold or supplied to the special order of the consumer'. [69] The national court must therefore assess whether the seller or supplier, dealing fairly and equitably with the consumer, could reasonably assume that the consumer would have agreed to such a term in individual contract negotiations. [70]

91. Second, as regards the requirement relating to the 'significant imbalance' in the parties' rights and obligations arising under the contract, which is specifically referred to in the fifth question for a preliminary ruling, the Court has stated that particular account must be taken of which rules of national law would apply in the absence of an agreement by the parties, in order to evaluate whether and, as the case may be, to what extent, the contract places that consumer in a legal situation less favourable than that provided for by the national law in force. [71] Such a comparative analysis will enable the national court to assess whether the contract places the consumer in a legal situation less favourable than that provided for by the national law in force. [72] However, if there are no relevant additional provisions provided for by the national law (as may be the case with regard to the determination of remuneration in contracts for 'young rising star' sportspersons), the significant imbalance must be assessed by taking other reference factors into consideration, such as fair and equitable practices on the date of conclusion of the contract in the matter of remuneration in the field of sport concerned [73] or a comparison of the rights and obligations of the parties under a given contract, taking into account its nature and the related contractual terms. [74] To that end, an assessment should also be carried out of the legal situation of that consumer having regard to the means at his or her disposal, under national legislation, to prevent continued use of unfair terms. [75] Lastly, in accordance with Article 4(1) of Directive 93/13, the national court is required to assess the unfairness of a contractual term taking into account the

67 The judgment in *Banco Santander* (paragraph 50 and the case-law cited).

68 The judgment in *Banco Santander* (paragraph 63 and the case-law cited).

69 See, to that effect, the judgment in *Banco Primus* (paragraph 59 and the case-law cited).

70 The judgment in *Banco Santander* (paragraph 64 and the case-law cited).

71 The judgment in *Banco Santander* (paragraph 65 and the case-law cited).

72 See, to that effect, the judgment in *Banco Primus* (paragraph 59 and the case-law cited).

73 See, by analogy, the judgment in *Banco Santander* (paragraph 65 and the case-law cited).

74 See, to that effect, the judgment in *Banco Primus* (first indent of paragraph 67). See, also, Commission Guidance (p. 33 and footnote 241).

75 See judgment of 14 March 2013, *Aziz* (C-415/11, EU:C:2013:164, paragraph 68).

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 that contract and to all the other terms of the contract or of another contract on which it is dependent.[76]

92. It is for the referring court to assess the situation at issue in the main proceedings, in the light of the information referred to in points 89 to 91 of this Opinion, after determining the facts of the present case and the national legal framework.

93. In the present case, as is apparent from the information in the file submitted to the Court, the referring court will have to verify whether the national legislation relating to contracts for 'young rising star' sportspersons does not contain provisions on remuneration from which the contract at issue deviates. In the absence of such legislation, it will be for the referring court to refer to fair and equitable practices in the matter of remuneration for the services mentioned in the field of sport concerned which were current at the time of conclusion of that contract. In addition, in accordance with Article 4(1) of Directive 93/13, that court will have to take into account the nature of the services for which that contract was concluded and determine whether the absence of a link, where applicable, between the value of the service provided by Company A and the remuneration for those services to be paid by C can render the term at issue unfair.

94. In that regard, it seems to me that the referring court, when assessing any significant imbalance between the rights and obligations of the parties, will have to take into account whether the service provider can demonstrate that the remuneration amounting to 10% of all income generated by C during the duration of the contract at issue was actually linked to the services provided by Company A and whether that remuneration corresponds to the market value in the sports sector concerned. Total disproportion between the service provided and the price paid cannot, in my view, be accepted even if it were permitted or not expressly prohibited by the national legislation.[77]

95. On that point, I consider it to be important, however, that the referring court should take into account the following factors which argue in favour of the absence of a 'significant imbalance': (i) the fact that such remuneration becomes due only provided that that income is at least EUR 1 500 per month; (ii) the fact that, under the contract at issue, C could have decided to unilaterally terminate that contract without paying compensation if, inter alia, he decided not to pursue his professional career;[78] and (iii) the fact that the services provided by Company A did not guarantee that C would achieve the intended result, namely, to become a professional sportsperson, which means that, by its very nature, the contract contained a considerable risk factor for that company.[79] On that point, it seems to me that the referring court will have to take into account the fact that the remuneration received by C will be used not only to finance the services offered by Company A to C, but also to finance all other 'young rising stars' who have concluded similar contracts with that company (in particular, those who have not become professional sportspersons), potentially for several years. The system must therefore be assessed as a whole.

[76] The judgment in *Banco Primus* (paragraph 61 and the case-law cited).

[77] See, by analogy, judgments of 16 July 2020 *Caixabank and Banco Bilbao Vizcaya Argentaria* (C-224/19 and C-259/19, EU:C:2020:578, paragraph 79), which concerned a contractual term charging all of the costs of creating and cancelling a mortgage to the borrower, in which the Court held that the costs charged to the borrower must correspond to services actually provided, and of 16 March 2023, *Caixabank (Loan arrangement fees)*, (C-565/21, EU:C:2023:212, paragraph 59) relating to a term concerning loan arrangement fees which, in order to be regarded as incapable of adversely affecting the legal position of the consumer as provided for by national law, could only charge to the consumer in connection with that fee an amount proportional to the amount of the loan.

[78] That finding, based solely on the information provided by Company A at the hearing, will have to be verified by the referring court.

[79] See, by analogy, judgment of 16 March 2010, *Olympique Lyonnais* (C-325/08, EU:C:2010:143, paragraph 42).

96. Lastly, the referring court will also nonetheless have to take into account factors favouring the existence of an imbalance, in particular the fact that the contract at issue did not appear to contain any term providing for the possibility for the parties of agreeing to reduce the young sportsperson's obligations or to alter the duration of that contract, for example, when the young sportsperson reaches the age of majority or according to the extent and duration of the services received, since such a term is normally required in order to take into account the young sportsperson's interests.

97. In the light of all the foregoing considerations, the answer to the fifth question should be that Article 3(1) of Directive 93/13 must be interpreted as meaning that the possible failure to observe the requirement of 'good faith' and the existence of any 'significant imbalance' to the detriment of the consumer are relevant for assessing the unfairness of a term of a contract for sports development and career support services providing that, for the provision of those services, the young sportsperson, acting as a consumer, agrees to pay remuneration consisting of 10% of the income that he or she will receive over the following 15 years if he or she becomes professional. With regard to the above, particular account should be taken of rules of national law which would apply in the absence of an agreement by the parties, in order to evaluate whether and, as the case may be, to what extent, the contract places that consumer in a legal situation less favourable than that provided for by the national law in force and, in the absence of such rules, the market practices on the date of conclusion of the contract in the matter of remuneration in the field of sport concerned, provided that they are fair and equitable, and 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 that contract and to all the other terms of the contract or of another contract on which it is dependent, and, in particular, whether the required remuneration corresponds to the market value in the sports sector concerned also in the light, in particular, of the risk involved, for the seller or supplier, in there being no guarantee that it will receive any remuneration if the young sportsperson does not become professional.

6. The non-binding nature of an unfair term within the meaning of Article 6(1) of Directive 93/13 (sixth question)

98. By its sixth question, the referring court asks, in essence, whether, if it is found that a contractual term is unfair within the meaning of Article 3(1) of Directive 93/13, Article 6(1) of that directive precludes the national court from being able to reduce the amount due from the consumer to the amount of the actual expenditure incurred by the professional service provider in the performance of the contract.

99. It follows that the sixth question concerns whether the referring court has any discretion to revise or amend a term which it regards as unfair.

100. In that regard, it should be remembered that Article 6(1) of Directive 93/13 provides that unfair terms used in a contract concluded with a consumer by a seller or supplier are not binding on the consumer, as provided for under the national law concerned. That provision also provides that the contract will continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.

101. As the Court has repeatedly stated, it is a mandatory provision which aims to replace the formal balance which the contract establishes between the rights and obligations of the parties with an effective balance which re-establishes equality between them.[80] Also, given the nature and importance of the public interest on which the protection that Directive 93/13 affords to consumers is based, Article 6 of that directive must be regarded as a provision of equal standing to that of national rules that have, within the domestic legal system, the character of rules of public policy.[81]

102. Thus, the Court has already ruled that Article 6(1) of Directive 93/13 must be interpreted as meaning that a contractual term held to be unfair must be regarded, in principle, as never having existed, so that it cannot have any effect on the consumer.[82] Therefore, the determination by a court that such a term is unfair must, in principle, have the consequence of restoring the consumer to the legal and factual situation that he or she would have been in if that term had not existed.[83]

103. It follows in that regard, in the first place, that the obligation for the national court to exclude an unfair contract term imposing the payment of amounts that prove not to be due entails, in principle, a corresponding restitutionary effect in respect of those amounts. The absence of such restitutionary effect would be liable to call into question the dissuasive effect that Article 6(1) of Directive 93/13, read in conjunction with Article 7(1) of that directive, is designed to attach to a finding of unfairness in respect of terms in contracts concluded between consumers and sellers or suppliers.[84] A fortiori, if, as in the present case, a consumer has not made payments that prove not to be due owing to the unfairness of the term imposing them, he or she cannot be required to pay, even in part, amounts due on the basis of that term, since that term must be regarded as never having existed.[85] If that were not the case, the term in question would continue to be partially binding and the seller or supplier would derive some benefit from its use.

104. In the second place, as regards the discretion to amend or revise an unfair term, the Court has held that the national court may not amend or revise the content of unfair terms, lest it contribute to eliminating the dissuasive effect for sellers or suppliers of the straightforward non-application with regard to the consumer of those unfair terms.[86] The Court has explicitly held that Article 6(1) of Directive 93/13 cannot be interpreted as allowing the national court, in the case where it establishes that a penalty clause in a contract concluded between a seller or supplier and a consumer is unfair, to reduce the amount of the penalty imposed on the consumer

[80] The judgment in *Banco Primus* (paragraph 41 and the case-law cited).

[81] See the judgment in *Gutiérrez Naranjo and Others* (paragraph 54 and the case-law cited).

[82] Consequently, while it is for the Member States, by means of their national legislation, to define the detailed rules under which the unfairness of a contractual clause is established and the actual legal effects of that finding are produced, the fact remains that such a finding must allow the restoration of the legal and factual situation that the consumer would have been in if that unfair term had not existed, by inter alia, creating a right to restitution of advantages wrongly obtained, to the consumer's detriment, by the seller or supplier on the basis of that unfair term (see judgments of 25 April 2024, *Caixabank (Limitation period)* (C-484/21, 'the judgment in *Caixabank (Limitation period)*', EU:C:2024:360, paragraphs 15 to 20 and the case-law cited), and of 25 April 2024, *Banco Santander (Point from which the limitation period starts to run)* (C-561/21, EU:C:2024:362, paragraphs 18 to 23 and the case-law cited).

[83] See the judgment in *Caixabank (Limitation period)* (paragraph 15 and the case-law cited).

[84] See the judgment in *Caixabank (Limitation period)* (paragraphs 16 and 17 and the case-law cited).

[85] See, by analogy, judgment of 21 March 2024, *Profi Credit Bulgaria (Services ancillary to a credit agreement)* (C-714/22, EU:C:2024:263, paragraph 88), in which the Court ruled that Article 6(1) and Article 7(1) of Directive 93/13, read in the light of the principle of effectiveness, must be interpreted as precluding national legislation which makes it possible to require a consumer to bear part of the costs of the proceedings where, following a finding that a contractual term is void for being unfair, that consumer's claim for reimbursement of sums which he or she overpaid under that term is upheld only in part on the ground that it is impossible in practice or excessively difficult to determine the extent of that consumer's right to reimbursement of those sums.

[86] See the judgment in *Gutiérrez Naranjo and Others* (paragraph 60 and the case-law cited). The imperative character of Article 6(1) of Directive 93/13 implies that consumers cannot, in principle, waive the protection granted by that directive, neither by way of contract nor by unilateral declaration (see Commission Guidance (p. 38)).

instead of excluding the application of that clause in its entirety with regard to that consumer. In that regard, the Court has held that, having regard to the objective and overall scheme of that directive, if it were open to the national court to revise the content of unfair terms included in such contracts, such a power would be liable to compromise attainment of the long-term objective of Article 7 of that directive, since it would weaken the dissuasive effect on sellers or suppliers of the straightforward non-application of those unfair terms with regard to the consumer, in so far as those sellers or suppliers would still be tempted to use those terms in the knowledge that, even if they were declared invalid, the contract could nevertheless be modified, to the extent necessary, by the national court in such a way as to safeguard the interest of those sellers or suppliers. [87]

105. Consequently, I take the view that, if a national court were to find that the term concerned was unfair, the power that would be granted to it to revise or amend that contractual term would be inconsistent with Article 6(1) of Directive 93/13. The only possibility available to that court is to annul the unfair term, in order then to examine whether, under the national legal rules, the contract can, from a legal point of view, be continued without that unfair term, which is to be determined objectively. [88]

106. In the light of the foregoing, I propose that the answer to the sixth question should be that Article 6(1) of Directive 93/13 must be interpreted as meaning that a contractual term held to be unfair must be regarded, in principle, as never having existed, so that it cannot have any effect on the consumer, who must be restored to the legal and factual situation that he or she would have been in if that term had not existed, without the national court being able to require the consumer to pay any amount by way of the remuneration provided for in the term held to be unfair, whether or not reduced to the amount of the actual expenditure incurred by the professional service provider in the performance of the contract.

7. The scope of Articles 8 and 8a of Directive 93/13 (seventh and eighth questions)

107. By its seventh and eighth questions, which I propose to examine together, the referring court seeks, in essence, to ascertain, in the event that Article 4(2) of Directive 93/13 is applicable, whether the national court, if it finds that the amount of the remuneration is manifestly disproportionate to the contribution made by the service provider, may declare the contractual term to be unfair on the basis of the provisions of national law (*seventh question*) and, if so, where it is dealing with a contract which was concluded before the entry into force of Article 8a of that directive, whether that court must also have regard only to the information concerning the provisions adopted by the Member State in accordance with Article 8 of that directive and notified by that Member State to the Commission under Article 8a of that directive, where the Member State has indicated that its legislation does not go beyond the minimum standard established in the directive (*eighth question*).

[87] Judgments of 30 May 2013, *Asbeek Brusse and de Man Garabito* (C-488/11, EU:C:2013:341, paragraphs 58 and 59 and the case-law cited), and of 26 March 2019, *Abanca Corporación Bancaria and Bankia* (C-70/17 and C-179/17, EU:C:2019:250, paragraphs 53 and 54 and the case-law cited). Following the same logic, the Court has held that Article 6(1) of Directive 93/13 precludes national case-law that temporally limits the restitutory effects connected with a finding of unfairness by a court, in accordance with Article 3(1) of that directive, in respect of a clause contained in a contract concluded between a consumer and a seller or supplier, to amounts overpaid under such a clause after the delivery of the decision in which the finding of unfairness is made (see the judgment in *Gutiérrez Naranjo and Others* (paragraph 75)).

[88] See, to that effect, judgment of 3 October 2019, *Dziubak* (C-260/18, EU:C:2019:819, paragraph 39 and the case-law cited).

108. Since those two questions, which are closely linked, were raised in the event that Article 4(2) of Directive 93/13 prevents the national court from assessing the potential unfairness of a term such as that at issue in the main proceedings, where, in the light of the answer proposed to the third question, that court must be able to assess its unfairness if, at the time when the contract was concluded, Article 4(2) of that directive had not been transposed into national law, there is no need, in my view, to provide an answer.

109. In any event, and for the sake of completeness, first, as regards the seventh question, as was stated in point 67 of this Opinion, it will be recalled that Directive 93/13 is subject to minimum harmonisation, and that, therefore, in accordance with Article 8 of that directive, Member States may afford a higher level of protection than that provided for therein, in so far as that is compatible with the objectives pursued by it. In other words, Member States may rely on Article 8 of that directive in order to adopt provisions that extend the range of types of contractual terms the unfairness of which may be assessed to other such terms, such as, in particular, those relating to the main subject matter of the contract or the adequacy of the quality/price ratio, even if they are drafted in plain, intelligible language. [89]

110. Second, as regards the eighth question, it should be noted that Article 8a of Directive 93/13 requires Member States adopting provisions in accordance with Article 8 thereof to inform the Commission of the adoption of those provisions and of any subsequent changes, in particular where those provisions extend the assessment of their unfairness to individually negotiated contractual terms or to terms relating to the adequacy of the price or remuneration, or contain lists of contractual terms which are to be considered as unfair. According to the information available to the Commission, the Republic of Latvia has not notified any measure under Article 8a which goes beyond the minimum standard established in Directive 93/13. However, that does not affect the possibility of applying national legislative texts designed to improve consumer protection, in so far as Article 8a of that directive does not provide for any legal consequence to the fact that a Member State has not notified its legislation. In other words, the fact that such a national measure has not been notified does not mean that it cannot be applied in the Member State concerned. That directive does not provide that notification of the provisions adopted under Article 8a of the directive is a necessary condition for their validity and for their binding effect. Therefore, the fact that a Member State has not effected the notification in question cannot be used as an argument for considering that the legislation of the Member State in question has not entered into force or is not binding.

8. The application of Article 17(1) and Article 24(2) of the Charter (ninth and tenth questions)

111. By its ninth question, the referring court seeks, in essence, in the event that the first or second questions for a preliminary ruling are answered in the affirmative, to determine the effect in the present case of Article 17(1) and Article 24(2) of the Charter, in view of the fact that, first, the contract at issue was binding on C for a period of 15 years and could have significant financial implications, and, second, at the time when that contract was concluded, C was a minor. The tenth question concerns, in essence, the same aspects as the ninth question, and is asked in the alternative, that is, in the event of a negative reply to the first or second questions. In view of the answer which I propose should be given to the first question, it does not appear to be necessary to answer the tenth question.

[89] See, to that effect, the judgment in *Caja de Ahorros* (paragraph 44) and points 71 to 74 of this Opinion.

112. It follows that, by those two questions, the referring court seeks to ascertain whether, in view of the duration and the level of remuneration envisaged, a contract such as that in the main proceedings concluded between a seller or supplier and a consumer who was a minor at the time of its conclusion is contrary to the child's 'best interests', within the meaning of Article 24(2) of the Charter, and to the right to property established in Article 17 thereof, and, second, whether, in the light of Directive 93/13, that fact may influence the assessment of the unfairness of a term.

113. First of all, it appears to me to be appropriate to note that if the Court considers, as I suggest in my answer to the first question, that Directive 93/13 is applicable in the case in the main proceedings, the Charter would be too. Under Article 51(1), the provisions of the Charter apply, in particular, where the Member States are implementing EU law. Consequently, the fundamental rights which it establishes must be respected, including those laid down in Articles 17 (right to property) and 24 (rights of the child).

114. First, as regards the effect of the right to property, the Court has not, to my knowledge, so far held that Article 17(1) of the Charter, which governs the right to property in general terms, has any specific scope in respect of the application of Directive 93/13. This seems to me to be entirely logical and consistent.

115. Second, as regards the effect of the rights of the child, Article 24(2) of the Charter provides that, 'in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration'. Although, to my knowledge, that term has never been interpreted by the Court, in the context of interpreting Directive 93/13, it is itself worded in broad terms and should, in my view, be able to apply to legal instruments such as the contract at issue which have potentially significant consequences for the minor concerned.[90] That finding is confirmed by Article 3(1) of the International Convention on the Rights of the Child,[91] to which the explanations relating to Article 24 of the Charter expressly refer. According to Article 3(1) of that convention, the best interests of the child are to be taken into account in all decisions concerning children. Therefore, such a provision covers, in general terms, all decisions and actions directly or indirectly affecting children,[92] as was pointed out by the UN Committee on the Rights of the Child.[93] The expression 'best interests of the child' refers to a substantive right, an interpretative legal principle and a rule of procedure.[94]

116. In so far as that expression refers to an 'interpretative principle', I consider that that provision may be relevant in interpreting and applying the provisions of Directive 93/13 where the consumer concerned, as in the present case, was a minor at the time when the contract at issue was concluded.

117. However, it should be noted that Directive 93/13 makes no reference to the age of the consumers nor, a fortiori, to their minority. Nonetheless, Article 5(3) of the Unfair Commercial Practices Directive contains a specific provision on commercial practices relating to 'a clearly

[90] See, to that effect and by analogy, judgment of 11 March 2021, *État belge (Return of the parent of a minor)* (C-112/20, EU:C:2021:197, paragraph 36).

[91] Adopted by the UN General Assembly on 20 November 1989.

[92] See, to that effect and by analogy, judgment of 11 March 2021, *État belge (Return of the parent of a minor)* (C-112/20, EU:C:2021:197, paragraphs 37 and 38).

[93] See, in that regard, General comment No 14 (2013) of the UN Committee on the Rights of the Child on the right of the child to have his or her best interests taken as primary consideration (art. 3, para.1), CRC/C/GC/14, paragraph 19.

[94] Judgment of 11 June 2024, *Staatssecretaris van Justitie en Veiligheid (Women identifying with the value of gender equality)* (C-646/21, EU:C:2024:487, paragraph 73) which refers to General comment No 14 (2013) of the UN Committee on the Rights of the Child on the right of the child to have his or her best interests taken as primary consideration (art. 3, para. 1), CRC/C/GC/14, paragraph 6.

identifiable group of consumers who are particularly vulnerable'. Factors determining that vulnerability include, in particular, the age of the consumer. The latter directive consequently provides that, when such a group is targeted, the commercial practice concerned must be assessed from the 'perspective of the average member of that group'. [95]

118. Therefore, if Directive 93/13 is to be interpreted in the light of Article 24(2) of the Charter, in order to assess the unfairness of the term in question from the perspective of the 'average consumer, who is reasonably well informed and reasonably observant and circumspect', account must be taken, *mutatis mutandis*, of the fact that the consumer was a minor and, consequently, particularly vulnerable. As was stated in point 58 of this Opinion, as required by Article 4(1) of Directive 93/13, the unfairness of a contractual term is assessed by taking account of the nature of the services for which the contract in question was concluded and by reference 'to all the circumstances attending its conclusion', including, where appropriate, by reference to the minority of the consumer.

119. However, in the present case, although the consumer's minority may constitute a circumstance which will have to be taken into account, account must also be taken of the fact that, at the time when the contract at issue was concluded, the minor was represented by his parents and that that contract was signed barely one year before C's majority.

120. In the light of the foregoing considerations, I propose that the ninth question for a preliminary ruling should be answered to the effect that Article 3(1) and Article 4(1) of Directive 93/13, read in the light of Article 24(2) of the Charter, must be interpreted as meaning that, when assessing the unfairness of a term, it is necessary to take into consideration the fact that the consumer concerned, being a minor at the time when the contract was concluded, belongs to a particularly vulnerable group, but without overlooking other circumstances which prevailed at the time when that contract was concluded, such as the fact that that minor was represented by his or her parents and the degree of maturity of the minor.

V. Conclusion

121. In the light of the foregoing considerations, I propose that the Court should answer the questions for a preliminary ruling submitted by the Augstākā tiesa (Senāts) (Supreme Court (Senate), Latvia) as follows:

(1) Article 1(1) and (2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, as amended by Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011,

must be interpreted as meaning that a contract for the provision of services for development and career support concluded between, on the one hand, a seller or supplier carrying on its professional activity in the field of the development and coaching of sportspersons, and, on the other, a minor represented by his or her parents who, at the time the contract was concluded was not carrying on a professional activity in the field of the sport in question, falls, in principle, within the scope of Directive 93/13, provided that the other conditions of application laid down in that directive are satisfied.

(2) Article 4(2) of Directive 93/13, as amended by Directive 2011/83,

[95] See recitals 18 and 19 of the Unfair Commercial Practices Directive.

must be interpreted as meaning that although, at the time when the contract at issue was concluded, that provision had not been transposed into national law, a national court must be able, in any event, to assess the unfairness of a given contractual term within the meaning of Article 3 of that directive, irrespective of whether that term relates to the main subject matter of the contract or to the adequacy of the price or remuneration, on the one hand, and of the services or goods to be provided in exchange, on the other hand, even if the seller or supplier drafted it in advance in plain, intelligible language.

(3) Article 5 of Directive 93/13, as amended by Directive 2011/83,

must be interpreted as meaning that the fact that the requirement that contractual terms be worded in 'plain and intelligible' language requires a company which offers sports development and career support services to provide sufficient information to a young sportsperson for him or her to take an informed decision based on specific data, such that the contractual term must not only be formally and grammatically intelligible, but also enable the consumer (i) to fully understand the significant financial consequences which could arise from that term with regard to his or her financial commitments, and (ii) to evaluate their adequacy in relation to the total value of the services offered by that company.

(4) Article 3(1) of Directive 93/13, as amended by Directive 2011/83,

must be interpreted as meaning that the possible failure to observe the requirement of 'good faith' and the existence of any 'significant imbalance' to the detriment of the consumer are relevant for assessing the unfairness of a term of a contract for sports development and career support services providing that, for the provision of those services, the young sportsperson, acting as a consumer, agrees to pay remuneration consisting of 10% of the income that he or she will receive over the following 15 years if he or she becomes professional. With regard to the above, particular account should be taken of rules of national law which would apply in the absence of an agreement by the parties, in order to evaluate whether and, as the case may be, to what extent, the contract places that consumer in a legal situation less favourable than that provided for by the national law in force and, in the absence of such rules, the market practices on the date of conclusion of the contract in the matter of remuneration in the field of sport concerned, provided that they are fair and equitable, and 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 that contract and to all the other terms of the contract or of another contract on which it is dependent, and, in particular, whether the required remuneration corresponds to the market value in the sports sector concerned also in the light, in particular, of the risk involved, for the seller or supplier, in there being no guarantee that it will receive any remuneration if the young sportsperson does not become professional.

(5) Article 6(1) of Directive 93/13, as amended by Directive 2011/83,

must be interpreted as meaning that a contractual term held to be unfair must be regarded, in principle, as never having existed, so that it cannot have any effect on the consumer, who must be restored to the legal and factual situation that he or she would have been in if that term had not existed, without the national court being able to require the consumer to pay any amount by way of the remuneration provided for in the term held to be unfair, whether or not reduced to the amount of the actual expenditure incurred by the professional service provider in the performance of the contract.

(6) Article 3(1) and Article 4(1) of Directive 93/13, as amended by Directive 2011/83, read in the light of Article 24(2) of the Charter of Fundamental Rights of the European Union,

must be interpreted as meaning that, when assessing the unfairness of a term, it is necessary to take into consideration the fact that the consumer concerned, being a minor at the time when the contract was concluded, belongs to a particularly vulnerable group, but without overlooking other circumstances which prevailed at the time when that contract was concluded, such as the fact that that minor was represented by his or her parents and the degree of maturity of the minor.