



## Reports of Cases

### JUDGMENT OF THE COURT (Fourth Chamber)

3 September 2015 \*

(Reference for a preliminary ruling — Directive 93/13/EEC — Article 2(b) — Concept of ‘consumer’ — Credit agreement concluded by a natural person who practises as a lawyer — Repayment of a loan secured on a building owned by the borrower’s law firm — Borrower who has the necessary knowledge to assess the unfairness of a term before signing the agreement)

In Case C-110/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Judecătoria Oradea (Romania), made by decision of 25 February 2014, received at the Court on 7 March 2014, in the proceedings

**Horațiu Ovidiu Costea**

v

**SC Volksbank România SA,**

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, K. Jürimäe, J. Malenovský, M. Safjan (Rapporteur) and A. Prechal, Judges,

Advocate General: P. Cruz Villalón,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 28 January 2015,

after considering the observations submitted on behalf of:

- Mr Costea, by himself,
- SC Volksbank România SA, by F. Marinău, lawyer,
- the Romanian Government, by R.-H. Radu, R.I. Hațieganu and A. Buzoianu, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and M. Santoro, avvocato dello Stato,
- the Netherlands Government, by M. Bulterman and M. Noort, acting as Agents,
- the European Commission, by L. Nicolae and M. van Beek, acting as Agents,

\* Language of the case: Romanian.

after hearing the Opinion of the Advocate General at the sitting on 23 April 2015  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).
- 2 The request has been made in proceedings between Mr Costea and and SC Volksbank România SA ('Volksbank') concerning an application for a declaration of unfairness of a term of a loan agreement.

### **Legal context**

#### *EU law*

- 3 The fifth, ninth and tenth recitals in the preamble to Directive 93/13 state:

'Whereas, generally speaking, consumers do not know the rules of law which, in Member States other than their own, govern contracts for the sale of goods or services; whereas this lack of awareness may deter them from direct transactions for the purchase of goods or services in another Member State;

...

Whereas ... acquirers of goods and services should be protected against the abuse of power by the seller or supplier, in particular against one-sided standard contracts and the unfair exclusion of essential rights in contracts;

...

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 ...'

- 4 According to Article 1(1) of that directive:

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

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

'For the purposes of this Directive:

...

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

- 6 Article 6(1) of the same 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.’

*Romanian law*

- 7 Article 2 of Law No 193/2000 on unfair terms in contracts concluded between consumers and traders, in the version in force on the date when the credit agreement at issue in the main proceedings was signed, provides, in paragraphs 1 and 2:

‘1. “Consumer” means any natural person (or group of natural persons forming an association) who, on the basis of a contract covered by this law, is acting for purposes that are outside his trade, business, industry or profession.

2. “Trader” means any natural person or duly authorised legal person who, on the basis of a contract covered by this law, is acting for purposes that relate to his trade, business, industry or profession, as well as any other person acting for those purposes for and on behalf of that person.’

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

- 8 Mr Costea practises as a lawyer and, as such, primarily handles cases in the field of commercial law. On 4 April 2008, he concluded a credit agreement with Volksbank. The repayment of that loan was secured by a mortgage registered against a building belonging to Mr Costea’s law firm, ‘Ovidiu Costea’. That credit agreement was signed by Mr Costea, not only in his capacity as borrower but also in his capacity as representative of his law firm, owing to the latter’s status of mortgage guarantor. On the same day, that mortgage was created by separate notarised agreement, between Volksbank and that law firm which was represented, in that act, by Mr Costea.
- 9 On 24 May 2013 Mr Costea filed a petition before the Judecătoria Oradea (District Court, Oradea) seeking, first, a declaration that a contractual term relating to a ‘risk charge’ was unfair and, second, a declaration of invalidity of that term and the reimbursement of that charge collected by Volksbank.
- 10 In those circumstances, the Judecătoria Oradea decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must Article 2(b) of Directive 93/13 be interpreted as including in, or as excluding from, the definition of “consumer” a natural person who practises as a lawyer and concludes a credit agreement with a bank, in which the purpose of the credit concerned is not specified, when in that agreement that natural person’s law firm is stated to be the guarantor for the mortgage?’

**The question referred for a preliminary ruling**

*Preliminary observations*

- 11 The referring court states, in its order for reference, that the credit agreement at issue in the main proceedings does not mention the purpose for which the loan at issue was granted.

- 12 However, the Romanian Government and the European Commission note that the agreement stipulates, in the section concerning the purpose of the contract, that the loan is to be granted to ‘cover [Mr Costea’s] personal current expenditure’.
- 13 It should be pointed out that, according to the settled case-law of the Court, in connection with the procedure provided for in Article 267 TFEU, which is based on a clear separation of functions between the national courts and the Court of Justice, the latter is empowered only to give rulings on the interpretation or the validity of an EU law provision on the basis of the facts which the national court puts before it. As regards, specifically, the alleged factual errors in the order for reference, it is sufficient to note that it is not for the Court of Justice but for the national court to ascertain the facts which have given rise to the dispute and to establish the consequences which they have for the judgment which it is required to deliver (see judgment in *Traum*, C-492/13, EU:C:2014:2267, paragraph 19 and the case-law cited).

*Consideration of the question referred for a preliminary ruling*

- 14 By its question, the referring court is essentially asking whether Article 2(b) of Directive 93/13 must be interpreted as meaning that a natural person who practises as a lawyer and concludes a credit agreement with a bank, in which the purpose of the credit is not specified, may be regarded as a ‘consumer’ within the meaning of that provision. Moreover, that court questions the Court on the implications in that regard of the fact that the debt arising out of that contract is secured by a mortgage taken out by that person in his capacity as representative of his law firm and involving goods intended for the exercise of that person’s profession, such as a building belonging to that firm.
- 15 In that regard, it should be noted that, as the tenth recital of Directive 93/13 states, uniform rules of law in the matter of unfair terms should apply to all contracts concluded between ‘consumers’ and ‘sellers or suppliers’, terms defined in Article 2(b) and (c) of that directive.
- 16 According to those definitions, a ‘consumer’ is any natural person who, in contracts covered by the directive, is acting for purposes which are outside his trade, business or profession. Likewise, a ‘seller or supplier’ is any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned.
- 17 It is therefore by reference to the capacity of the contracting parties, according to whether or not they are acting for purposes relating to their trade, business or profession, that the directive defines the contracts to which it applies (judgments in *Asbeek Brusse and de Man Garabito*, C-488/11, EU:C:2013:341, paragraph 30, and *Šiba*, C-537/13, EU:C:2015:14, paragraph 21).
- 18 That criterion corresponds to the idea on which the system of protection implemented by that directive is based, namely that the consumer is in a weaker position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge. This leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of those terms (judgments in *Asbeek Brusse and de Man Garabito*, C-488/11, EU:C:2013:341, paragraph 31, and *Šiba*, C-537/13, EU:C:2015:14, paragraph 22).
- 19 As regards that weaker position, Article 6(1) of Directive 93/13 provides that unfair terms are not binding on the consumer. 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 (judgment in *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraph 23 and the case-law cited).
- 20 At the same time, it should be noted that one and the same person can act as a consumer in certain transactions and as a seller or supplier in others.

- 21 The concept of ‘consumer’, within the meaning of Article 2(b) of Directive 93/13, is, as the Advocate General observes in points 28 to 33 of his Opinion, objective in nature and is distinct from the concrete knowledge the person in question may have, or from the information that person actually has.
- 22 A national court before which an action relating to a contract which may be covered by that directive has been brought is required to determine, taking into account all the evidence and in particular the terms of that contract, whether the purchaser may be categorised as a consumer within the meaning of that directive (see, by analogy, judgment in *Faber*, C-497/13, EU:C:2015:357, paragraph 48).
- 23 In order to do that, the national court must take into account all the circumstances of the case, particularly the nature of the goods or service covered by the contract in question, capable of showing the purpose for which those goods or that service is being acquired.
- 24 In relation to the services offered by lawyers by means of contracts for legal services, the Court has already taken into account the inequality between ‘client-consumers’ and lawyers owing in particular to the asymmetry of information between those parties to the contracts (see judgment in *Šiba*, C-537/13, EU:C:2015:14, paragraphs 23 and 24).
- 25 That consideration cannot, however, rule out a lawyer from being categorised as a ‘consumer’ within the meaning of Article 2(b) of that directive where that lawyer is acting for purposes which are outside his trade, business or profession (see, by analogy, judgment in *Di Pinto*, C-361/89, EU:C:1991:118, paragraph 15).
- 26 A lawyer who concludes, with a natural or legal person acting for purposes relating to his trade, business or profession, a contract which, particularly as it does not relate to the activity of his firm, is not linked to the exercise of the lawyer’s profession, is, vis-à-vis that person, in the weaker position referred to in paragraph 18 of this judgment.
- 27 In such a situation, even if a lawyer were considered to display a high level of technical knowledge (see judgment in *Šiba*, C-537/13, EU:C:2015:14, point 23), he could not be assumed not to be a weak party compared with a seller or supplier. As has been noted in paragraph 18 of the present judgment, the weaker position of the consumer vis-à-vis the seller or supplier, which the system of protection implemented by Directive 93/13 is intended to remedy, relates both to the consumer’s level of knowledge and to his bargaining power under terms drawn up in advance by the seller or supplier the content of which that consumer is unable to influence.
- 28 As regards the fact that the debt arising out of the contract in question is secured by a mortgage taken out by a lawyer in his capacity as representative of his law firm and involving goods intended for the exercise of that lawyer’s profession, such as a building belonging to that firm, it should be held that, as the Advocate General observed, essentially, in points 52 to 54 of his Opinion, it has no bearing on the assessment carried out in paragraphs 22 and 23 of this judgment.
- 29 The case in the main proceedings concerns the determination of the status (that of consumer or of seller or supplier) of the person who has concluded the main agreement (the credit agreement) and not the status of that person under the ancillary agreement (the mortgage), securing the payment of the debt arising from the main agreement. In a case such as that at issue in the main proceedings, the categorisation, as a consumer or as a seller or supplier, of the lawyer in the context of his taking out a mortgage cannot, consequently, determine his status under the main credit agreement.
- 30 Having regard to the foregoing considerations, the answer to the question asked is that Article 2(b) of Directive 93/13 must be interpreted as meaning that a natural person who practises as a lawyer and concludes a credit agreement with a bank, in which the purpose of the credit is not specified, may be regarded as a ‘consumer’ within the meaning of that provision, where that agreement is not linked to

that lawyer's profession. The fact that the debt arising out of the same contract is secured by a mortgage taken out by that person in his capacity as representative of his law firm and involving goods intended for the exercise of that person's profession, such as a building belonging to that firm, is not relevant in that regard.

### **Costs**

- <sup>31</sup> Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

**Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a natural person who practises as a lawyer and concludes a credit agreement with a bank, in which the purpose of the credit is not specified, may be regarded as a 'consumer' within the meaning of that provision, where that agreement is not linked to that lawyer's profession. The fact that the debt arising out of the same contract is secured by a mortgage taken out by that person in his capacity as representative of his law firm and involving goods intended for the exercise of that person's profession, such as a building belonging to that firm, is not relevant in that regard.**

[Signatures]