



A Member State may provide that an unfair contract term that has been declared void following an action brought in the public interest by a consumer protection authority against a seller or supplier is not binding on any consumer who has entered into a contract with that seller or supplier to which the same general business conditions apply

Such a rule constitutes an adequate and effective means of preventing the continued use of unfair terms

The Directive on unfair contract terms¹ provides that consumers are not bound by such terms used in a contract concluded with a seller or supplier.

In Hungary, the Nemzeti Fogyasztóvédelmi Hatóság (national consumer protection authority) may apply to the courts for a declaration that an unfair term used in a consumer contract is void if the use of such a term by a seller or supplier affects a significant number of consumers or causes substantial disadvantage. According to the Hungarian legislation, the declaration of invalidity of an unfair term by a court, following such an action brought in the public interest (class action), is applicable to any consumer who has entered into a contract with a seller or supplier in which that term is used.

The Hungarian consumer protection authority received a large number of complaints from consumers concerning the company Invitel, a fixed-line telephone network operator, on the ground that it had unilaterally introduced a term into the general business conditions of its subscriber contracts granting it the right retroactively to charge customers 'money order fees', that is to say, fees applied in the event of payment of invoices by money order. In addition, the method by which those money order fees were calculated was not specified in those contracts.

As it took the view that the term in question constitutes an unfair contract term, the authority brought an action before the Hungarian courts in which it sought a declaration that the contested term was void and an order requiring the reimbursement to Invitel's customers of the amounts improperly received as 'money order fees'.

The Pest Megyei Bíróság (Pest County Court, Hungary), before which the action was brought, has asked the Court of Justice, in essence, whether the Hungarian legislative provision allowing any consumer concerned to benefit from the legal effects of a declaration of invalidity of an unfair term, following an action brought in the public interest, is compliant with the Directive.

In its judgment delivered today, the Court first points out that the Directive requires that the Member States allow persons or organisations having a legitimate interest under national law in protecting consumers to bring an action for an injunction before the courts in order to obtain a decision as to whether contract terms drafted for general use are unfair and, where appropriate, to have those terms prohibited. In this respect, the Court nevertheless specifies that the Directive does not seek to harmonise the penalties applicable in the event of a term being found to be unfair in proceedings brought by those persons or organisations.

¹ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

The Court then goes on to point out that effective implementation of the dissuasive purpose of actions brought in the public interest requires that terms which have been declared to be unfair in such an action brought against the seller or supplier concerned should not be binding on either those consumers who may be parties to the proceedings or those who are not parties to the proceedings but who have entered into a contract with that seller or supplier to which the same general business conditions apply. In this respect, the Court notes that actions in the public interest designed to eliminate unfair terms may also be brought before those terms are used in contracts.

In those circumstances, the Court finds that **the contested Hungarian legislation is entirely consistent with the requirement of the Directive that Member States must ensure that adequate and effective means exist to prevent the continued use of unfair terms.** Consequently, that legislation is compatible with the Directive.

The Court adds that national courts are required, of their own motion, and also as regards the future, to draw all the consequences of a declaration of invalidity in an action for an injunction, in order to ensure that consumers who have concluded a contract to which the same general business conditions apply, and which contains such an unfair term, will not be bound by that term.

Lastly, as regards the assessment of the unfair nature of the term used by Invitel, the Court's answer is that this is a matter within the jurisdiction of the national court. As part of this assessment, the Hungarian court will have to determine, *inter alia*, whether, in light of all the terms featuring in the contract, and in light of the applicable national legislation, the reasons for, or the method of, the amendment of the fees connected with the service to be provided are set out in plain, intelligible language and whether consumers have a right to terminate the contract.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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