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Judgment of the Court in Case C-321/22 | Provident Polska

### Consumer protection: a requirement that a consumer pay excessive non-interest credit costs can constitute an unfair term

Three citizens concluded consumer credit agreements in Poland. Under those agreements they are required to pay, in addition to the sums borrowed and interest, additional costs and commission fees. Those non-interest credit costs are very high and amount to several tens of percentage points of the amounts loaned. Claiming that those costs are excessive and unreasonable, those consumers applied to a Polish court for a declaration that the relevant terms are unfair. Two of those agreements also provide that the loan repayments may only be made in cash to an agent of the lender at the borrower's home.

The Polish court asked the Court of Justice to interpret the directive on unfair contractual terms in consumer contracts<sup>1</sup>. It wishes to know whether the terms relating to non-interest credit costs may be held to be unfair on the sole ground that those costs are clearly excessive in relation to the service provided by the seller or supplier. It also asks whether the contract may continue in existence after a declaration of invalidity of the provisions requiring repayment in person at the home of the consumer.

In its reply, the Court recalls that **a contractual term is regarded as unfair if it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. Such an imbalance may arise from the sole fact that the non-interest costs charged to the consumer are clearly disproportionate in relation to the amount loaned and the services supplied in exchange, connected with the grant and management of a loan.** However, as a general rule, the unfairness of terms can be determined only if they do not define the main subject matter of the contract, or relate to the adequacy of the price and remuneration as against the services or goods supplied in exchange. It is for the national court to ascertain whether that is so in the present case. If that is not the case, the national court must examine whether the national law, as legislation ensuring a maximum degree of protection, permits such a determination to be made.

Finally, where the national court declares a term requiring a repayment at the home of the consumer to be invalid on the ground that it allows the lender to exert unlawful pressure, the contract may prove to be unenforceable and therefore null and void **in its entirety**. However, if the unfair element of that term is separable from the rest of it, its deletion may suffice to re-establish real balance between the parties to the contract. In that case, the contract **may continue in existence** and the consumer **may choose any method of payment** from among those which are permissible under national law.

**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 EU law or the validity of an EU 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 and, as the case may be, an abstract](#) of the judgment are published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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<sup>1</sup> [Council Directive 93/13/EEC](#) of 5 April 1993 on unfair terms in consumer contracts.