C-531/22

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

9 August 2022

Referring court:

Sąd Rejonowy dla Warszawy – Śródmieścia w Warszawie (District Court for Warsaw-Śródmieście, Poland)

Date of the decision to refer:

5 July 2022

Parties in the main proceedings:

Creditors: Getin Noble Bank S.A., TF, C2, PI

Debtor: TL

Subject matter of the main proceedings

Case concerning an application by creditors for supervision of enforcement in relation to immovable property.

Subject matter and legal basis of the request

Interpretation of Articles 3(1), 6(1), 7(1) and (2), and 8 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, Article 47 of the Charter of Fundamental Rights of the European Union, the principles of legal certainty, inviolability of final court judgments, effectiveness and proportionality, and the right to be heard, in conjunction with Article 267 of the Treaty on the Functioning of the European Union (TFEU) and Article 105(1) of the Rules of Procedure of the Court of Justice.

Questions referred for a preliminary ruling

1. Are Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts and the principles of legal certainty,

inviolability of final court judgments, effectiveness, and proportionality to be interpreted as precluding national legislation which provides that a national court may not carry out, of its own motion, a review of unfair contractual terms and attach consequences thereto where it is supervising enforcement proceedings conducted by a court enforcement officer pursuant to a final and enforceable order for payment issued in proceedings in which no evidence is taken?

2. Are Articles 3(1), 6(1) and 7(1) and (2), and 8 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, Article 47 of the Charter of Fundamental Rights and the principles of legal certainty, effectiveness and proportionality, and the right to be heard by a court, to be interpreted as precluding a judicial interpretation of national legislation under which the entry of an unfair term in the register of unlawful terms renders that term unfair in any proceedings involving a consumer, including:

- in respect of a seller or supplier other than that against which proceedings for entry of an unfair term in the register of unlawful terms were under way,

- in respect of a term which is not linguistically identical but which has the same meaning and produces the same effect vis-à-vis the consumer?

Provisions of EU law cited

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts: the fourth, twenty-first and twenty-fourth recitals, and Articles 3(1), 4(1), 6(1), 7(1) and (2), and 8;

Charter of Fundamental Rights of the European Union: Articles 38 and 47;

Treaty on the Functioning of the European Union: Articles 169(1) and 267;

Rules of Procedure of the Court of Justice: Article 105(1).

Provisions of national law and case-law cited

Constitution of the Republic of Poland of 2 April 1997: Article 76

Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny (Law of 23 April 1964 establishing the Civil Code: Articles 22^1, 43^1, 58(1), 385^1(1) to (4), and 385^2;

Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego (Law of 17 November 1964 establishing the Code of Civil Procedure: Articles 363(1), 365(1), 366, 479^{36}, 479^{42}(1), 479^{43}, 479^{45}(1) to (3), Article 505^{30}(2), 505^{31}(2), 505^{32}(1), 758, 776, 777(1), 804(1), and 840(1);

Ustawa z dnia 5 sierpnia 2015 r. o zmianie ustawy o ochronie konkurencji i konsumentów oraz niektórych innych ustaw (Law of 5 August 2015 amending the

Law on competition and consumer protection and certain other laws): Articles 2(2), 8(1), 9, and 12.

Resolution of the Sąd Najwyższy (Supreme Court) of 20 November 2015, III CZP 175/15.

Succinct presentation of the facts and procedure in the main proceedings

1 On 9 January 2006, the debtor concluded with Getin Bank S.A. a loan agreement, pursuant to which the bank granted the borrower a PLN loan indexed to CHF, which was the equivalent in PLN to CHF 15 645.27, for the period from 9 January 2009 to 16 January 2016. Under the agreement, the loan is to be disbursed in PLN at the buying rate of the indexing currency, as set out in the 'Bank currency exchange rate table for foreign currency loans indexed to foreign currencies' (the 'exchange rate table') in force on the date on which the agreement was concluded. The exchange rate on the date on which the agreement was concluded was PLN 2.3930. The loan was intended to finance the purchase of a car and the related commission and fees. The agreement provided that all liabilities under the agreement were to be repaid in PLN. The amount of the liability was to be established as the equivalent of the amount to be repaid expressed in the indexing currency, after the conversion thereof at the selling rate of the indexing currency as set out in the exchange rate table in force on the date on which the amount due is received by the bank. On the date on which the agreement was drawn up, that exchange rate was PLN 2.5410.

2 On 13 May 2008, the debtor concluded a loan agreement with Getin Bank S.A., pursuant to which the bank granted the borrower a PLN loan indexed to CHF, which was the equivalent in PLN to CHF 36 299.30, for a period of 120 months. Under the agreement, the loan is to be disbursed in PLN at the buying rate of the indexing currency, as set out in the exchange rate table in force on the date on which the agreement was drawn up. On the date on which the agreement was drawn up, that exchange rate was PLN 2.0110. The loan was intended to finance the purchase of a car and the related commission and fees. The agreement provided that all liabilities under the agreement were to be repaid in PLN. The amount of the liability was to be established as the equivalent of the amount to be paid expressed in the indexing currency, after the conversion thereof at the selling rate of the indexing currency as set out in the exchange rate table in force on the date on which the amount due is received by the bank. On the date on which the agreement was drawn up, that exchange rate was PLN 2.1680.

3 On 3 June 201[5], Getin Noble Bank S.A. (formerly Getin Bank S.A.') brought, in the electronic first phase of the main proceedings, an action requesting that the debtor be ordered to pay it the amount of PLN 87 469.51, plus contractual interest, statutory interest, and legal costs. In support of its action, the bank stated that on 13 May 2008 the parties had concluded a loan agreement which was terminated on account of the debtor's failure to make payments and therefore the bank was

seeking payment from the debtor of the remainder of the loan principal, outstanding fees, and capitalised interest. On 23 June 2015, the Sąd Rejonowy Lublin-Zachód w Lublinie (District Court for Lublin-Zachód, Lublin) issued an order for payment in the first phase of the main proceedings, ordering the debtor to pay Getin Noble Bank S.A., within two weeks of the order being served, the amount demanded, plus contractual interest, statutory interest and legal costs, or to lodge an objection within that period. The debtor did not lodge an objection to the above order for payment, which thus became final, and the abovementioned court issued him with an order for enforcement by order of 27 August 2015.

4 On 28 December 2016, Getin Noble Bank S.A. brought, in the electronic first phase of the main proceedings, an action requesting that the debtor be ordered to pay it the amount of PLN 7 499.58, plus legal costs. In support of its action, the bank stated that on 9 January 2006 the parties had concluded a loan agreement which was terminated on account of the debtor's failure to make payments and therefore the bank was seeking payment from the debtor of the remainder of the loan principal, outstanding fees, and capitalised interest. On 13 February 2017, the Sąd Rejonowy Lublin-Zachód w Lublinie issued an order for payment in the first phase of the main proceedings, ordering the debtor to pay Getin Noble Bank S.A., within two weeks of the order being served, the amount demanded, plus legal costs, or to lodge an objection within that period. The debtor did not lodge an objection to the above order for payment, which thus became final, and the abovementioned court issued him with an order for enforcement by order of 21 April 2017.

5 On the basis of the two above enforcement instruments, the bank initiated enforcement proceedings carried out by a court enforcement officer, in the course of which immovable property of the debtor, in the form of a dwelling in Warsaw, was seized, and other creditors subsequently joined the enforcement proceedings. The referring court is supervising those enforcement proceedings.

Succinct presentation of the reasoning in the request for a preliminary ruling

6 With regard to the first question, the referring court states that its supervision of the enforcement in relation to immovable property in the present case has been carried out since 2017, but the need for the present question referred for a preliminary ruling has nevertheless arisen by reason of the need to interpret EU law in order correctly to apply national law in the light of the recent judgments of the Court of Justice in Case C-600/19, Joined Cases C-693/19 and C-831/19, Case C-725/19, and Case C-869/19.

7 In paragraph 68 of the judgment of 17 May 2022, C-693/19 and C-831/19, *SPV Project 1503*, the Court of Justice held that Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as precluding national legislation which provides that, where an order for payment issued by a court on application by a creditor has not been the subject of an objection lodged by the debtor, the court

hearing the enforcement proceedings may not, on the ground that the force of *res judicata* of that order applies by implication to the validity of those terms, thus excluding any examination of their validity, subsequently review the potential unfairness of the contractual terms on which that order is based. The fact that, at the time when the order became final, the debtor was unaware that he or she could be classified as a 'consumer', within the meaning of that directive, is irrelevant in that regard.

8 In addition, in paragraph 52 of its judgment of 17 May 2022, C-600/19, *Ibercaja Banco*, the Court of Justice held that Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as precluding national legislation which, by virtue of the effect of *res judicata* and time-barring, neither allows a court to examine of its own motion whether contractual terms are unfair in the course of mortgage enforcement proceedings, nor a consumer, after the expiry of the period for lodging an objection, to raise the unfairness of those terms in those proceedings or in subsequent declaratory proceedings, where the potential unfairness of those terms has already been examined by the court of its own motion, at the stage when the mortgage enforcement proceedings were initiated, but the judicial decision authorising the mortgage enforcement does not contain any grounds, even of a summary nature, attesting to the existence of that examination, nor state that the assessment of that court at the end of that examination could no longer be called into question if an objection were not lodged within the aforementioned period.

9 In the view of the referring court, issues similar to those above have arisen in the present case. The debtor concluded with Getin Bank S.A. (now Getin Noble Bank S.A.) two loan agreements in which the amounts of the loan amounts were expressed in PLN but the debt balance was indexed to the CHF. Most importantly, however, the borrower could repay the loan instalments only in PLN, while the bank credited the borrower's payments in PLN to the CHF balance according to the bank's internal exchange rate table, the rules on which were not set out in any of the loan agreements. On the other hand, the actual amount of the balance of the loan was fixed in CHF by applying the buying rate from the bank's foreign exchange table. Thus, both loan agreements contained 'conversion clauses', which most national courts consider to be unlawful terms under Article 385^1(1) of the Civil Code and also conclude that the inclusion of such clauses in a loan agreement renders an agreement invalid under Article 58(1) of the Civil Code. Therefore, it can be assumed with a high degree of probability that, if the bank had brought an action against the borrower for payment of amounts due under the loan agreements before an ordinary national court hearing civil cases, that court would, after examining the documentation attached to the application, have found, of its own motion, that the loan agreements contain unlawful clauses rendering the agreement invalid, and consequently dismissed the action.

10 However, the referring court notes that in the present case the proceedings which led to the enforcement instruments against the debtor were different. The bank brought two actions for payment against the borrower in the electronic first phase of the main proceedings. In those actions, the bank set out the reasons for its

claims, referring to the loan agreements concluded with the debtor, but did not state that those agreements are indexed to a foreign currency or that they contained conversion clauses (and obviously did not state that there were clauses in the agreement which could be regarded as unfair terms). It is particularly significant that neither of the loan agreements was attached to the applications on account of the procedural rules governing the electronic first phase of the main proceedings and the technical characteristics of the system underlying that phase, which do not allow any evidence to be presented during that phase. Consequently, the national court conducting that phase of proceedings also had no legal and technical possibility of requesting the bank to present the loan agreements. That court issued two orders for payment which were not contested by the borrower and therefore became final. Those orders were made enforceable and pursuant to the enforceable instruments thus created enforcement proceedings were initiated against the debtor (borrower) in which the court enforcement officer seized immovable property belonging to the debtor.

11 In the light of the foregoing, the loan agreements were only submitted by the bank to the court in the present proceedings, and therefore the content thereof has not previously been subject to judicial review. Having examined the content of those agreements, the referring court concluded that there is a well-founded concern that the conversion clauses contained in the agreements constitute unfair terms without which the agreements could not be performed and therefore the loan agreements have to be declared invalid, with the result that the bank cannot demand any payment due from the debtor. However, national procedural rules prevent the referring court from attaching any practical consequences to such conclusions. Those provisions stipulate that a final judgment, including an order for payment issued in the electronic first phase of the main proceedings, is binding on all courts (Article 365(1) of the Code of Civil Procedure), and, in addition, it is not permissible to examine the legitimacy of an obligation covered an enforceable instrument (Article 804(1) of the Code of Civil Procedure), that is to say, in this case, an enforceable order for payment.

12 The referring court further observes that, in a situation where the borrower has not challenged the orders for payment, he no longer has any legal remedy which could, in practice, result in a challenge to the obligations arising from the orders for payment allowing claims arising from agreements containing unfair terms.

13 In the light of the foregoing, the referring court is uncertain whether the procedural situation here in question is contrary to Articles 6(1) and 7(1) of Directive 93/13 and the principle of effectiveness. The Court of Justice has repeatedly emphasised that national courts have an obligation to examine, of their own motion, consumer agreements for unfair terms, and that fulfilling that obligation is certainly not possible in the electronic first phase of the main proceedings where the court has no possibility at all of collecting and analysing any evidence (Article 505^{32}(1) of the Code of Civil Procedure) and relies solely on the content of the application, and thus on the statements of the applicant, who has an obvious interest in remaining silent about any questionable terms. Whilst it is

true that judicial review of the loan agreements concluded by the parties would have been possible if the borrower had challenged the orders for payment (in which case the cases would have been heard by another national court having territorial and substantive jurisdiction, which normally conducts civil proceedings and therefore, inter alia, gathers and analyses evidence), that did not occur in this case. The borrower adopted a passive stance, which is often seen in people with significant debts. However, according to the case-law of the Court of Justice, national courts are to examine contracts for unfair terms of their own motion, and thus also where the parties fail to take the initiative. It would therefore appear that even a passive attitude on the part of the consumer in this case does not justify relieving the court of its obligation to carry out, of its own motion, an analysis of whether an agreement contains unfair terms.

14 Consequently, the national court is uncertain whether a situation where, in declaratory proceedings, the national court has not analysed whether there are unfair terms in an agreement, can justify a breach of the principle, arising from Articles 365(1) and 804(1) of the Code of Civil Procedure, that the court supervising the enforcement proceedings is bound by the final decision constituting the enforceable instrument. The abovementioned rules of EU law might provide the basis for an exceptional derogation from the above rules. Otherwise, a situation may arise where the borrower's immovable property will be auctioned off by a court enforcement officer and the proceeds of the enforcement transferred to the bank whose claim arises from agreements containing unlawful clauses. Thus, the consumer will sustain substantial loss from the enforcement of claims arising from credit agreements containing unlawful terms. Such a situation appears not only to fail to comply with Directive 93/13, but also to be contrary to the principle of effectiveness and the objectives referred to in Article 169(1) TFEU and Article 38 of the Charter of Fundamental Rights.

15 The referring court proposes that the Court of Justice answer the first question in the affirmative. The provisions of Directive 93/13 require, in absolute terms, that the national court carry out, of its own motion, a review of the contract concluded by the parties in order to establish whether it contains unlawful terms. In principle, such a review should already be carried out in declaratory proceedings, but if that review has not been carried out in those proceedings (in particular in a situation where the court hearing the case did not have the legal and technical possibility of carrying out such a review), that obligation falls on the court supervising the enforcement proceedings carried out pursuant to an enforceable instrument in the form of an enforceable order for payment. As to the substance, final judgments of the courts should be inviolable, but that does not rule out the possibility of accepting exceptions to that rule justified by particular circumstances, which include the need to carry out the abovementioned review of the agreement.

16 With regard to the second question, the referring court states that if it is accepted that, in the present case, the court supervising enforcement proceedings has the possibility of reviewing whether there are unfair terms in agreements concluded with the debtor, it will be necessary to carry out an analysis in that regard.

However, in the present case the debtor continues to be passive, lodges no pleadings, submits no applications, provides no explanation and does not even collect the correspondence addressed to him, which – as has already been mentioned – is typical of people who have substantial debts. Therefore, with a degree of probability bordering on certainty, the referring court will not be able to hear the borrower or even receive written clarifications from him. This situation is all the more problematic since Article 4(1) of Directive 93/13 provides that unfairness of a contractual term is to be assessed, taking into account the circumstances attending the conclusion of the contract. Since it is not possible to hear the borrower himself, it will also be impossible in principle to establish the circumstances in which the agreement was concluded.

17 The referring court is uncertain, however, whether or not the provisions of Directive 93/13 preclude the above problem being avoided by recourse to a national measure for protecting consumers, namely the so-called 'extending effect' of judgments of the Sąd Ochrony Konkurencji i Konsumentów (Court for the Protection of Competition and Consumers, Poland) referred to in Article 479^{43} of the Code of Civil Procedure. That provision stipulates that the final judgment is to produce its effects in relation to third parties once the term contained in the standard conditions of business which has been declared unlawful has been entered in the register.

18 The referring court notes in this regard that Articles 7(2) and 8 of Directive 93/13 – unlike the earlier provisions of that directive – are not mandatory in nature. In particular, the Member States do not have an obligation to introduce procedures for declaring standard conditions of business unlawful, as referred to in Article 7(2) of Directive 93/13. However, the referring court considers that if a Member State decides to make it possible to conduct such proceedings, the form thereof cannot be entirely arbitrary. Since those procedures pursue the objectives of Directive 93/13, they must satisfy the requirements laid down by the other provisions of that directive, including Article 7(1), to which, moreover, Article 7(2) refers directly. Furthermore, the proceedings for declaring standard conditions of business unlawful and the effects of the judgment given in those proceedings must comply with the principles of effectiveness, proportionality and legal certainty.

19 The referring court notes that the terms to be analysed in order to establish whether they constitute unlawful terms are worded as follows:

- The loan shall be disbursed in PLN at the buying rate of the indexing currency, as set out in the exchange rate table in force on the date on which the loan agreement was concluded (Paragraph 1(2) of the agreement of 9 January 2006);

- The loan shall be disbursed in PLN at the buying rate of the indexing currency, as set out in the exchange rate table in force on the date on which the loan agreement was drawn up (Paragraph 1(2) of the agreement of 13 May 2008);

- All liabilities under the present agreement shall be repaid in PLN. The amount of the liability shall be established as the equivalent of the amount to be repaid expressed in the indexing currency, after the conversion thereof at the selling rate of the indexing currency, as set out in the exchange rate table in force on the date on which the amount due is received by the bank (Paragraph 5(1) of the agreement of 9 January 2006);

- All liabilities under the present agreement shall be repaid in PLN. The amount of the liability shall be established as the equivalent of the amount to be repaid expressed in the indexing currency, after the conversion thereof at the selling rate of the indexing currency, as set out in the exchange rate table in force at Getin Bank S.A. on the date on which the amount due is received by the bank (Paragraph 4(1) of the agreement of 13 May 2008).

20 However, the following terms in standard conditions of business, inter alia, appear in the register of terms in standard conditions of business which have been declared unlawful:

- The loan shall be indexed to CHF/USD/EUR, after conversion of the disbursed amount at the CHF/USD/EUR buying rate according to the Foreign Exchange Table in force at the Bank Millennium on the date on which the loan or tranche is advanced (term number 3178, entry concerning Bank Millennium S.A.);

- In the case of a loan indexed to a foreign currency, the amount of the repayment instalment shall be calculated in accordance with the foreign exchange selling rate in force at the Bank on the basis of the Bank's Foreign Exchange Table as at the date of repayment (term number 3179, entry concerning Bank Millennium S.A.);

- The loan shall be converted into the currency of valorisation by the bank at the buying rate of the currency in question, as set out in the bank's exchange table in force on the date and at time of the loan's advancement (term number 7770, entry concerning mBank S.A.).

21 A juxtaposition of the content of the abovementioned terms used by Getin Bank S.A. and the terms of other banks entered in the register of unlawful terms leads to the conclusion that, although they were used by different banks, there are significant similarities between them. The greatest similarity arises between Paragraph 5(1) of the agreement of 9 January 2006 and Paragraph 4(1) of the agreement of 13 May 2008 and the term entered in the register under number 3179, and also between the terms in Paragraph 1(2) of the two loan agreements and the terms entered in the register under numbers 3178 and 7770.

22 Although the meaning of these terms is the same and the same effects for consumers arise from them, these terms were worded differently and authored by different banks. Consequently, the referring court is uncertain whether the provisions of EU law allow the effects of the entry of a term in the register of

unlawful terms to be extended also to a seller or supplier which was not party to the proceedings which led to the making of that entry.

23 A similar issue has already been analysed by the Court of Justice in its judgment of 21 December 2016, C-119/15, *Biuro Podróży Partner*, which, in paragraph 47 thereof, held that Article 6(1) and Article 7 of Directive 93/13, read in conjunction with Articles 1 and 2 of Directive 2009/22 and in the light of Article 47 of the Charter, must be interpreted as not precluding the use of standard contract terms with content identical to that of terms which have been declared unlawful by a judicial decision having the force of law and which have been entered in a national register of unlawful standard contract terms from being regarded, in relation to another seller or supplier which was not a party to the proceedings culminating in the entry in that register, as an unlawful act, provided, which it is for the referring court to verify, that that seller or supplier has an effective judicial remedy against the decision declaring the terms compared to be equivalent in terms of the question whether, in the light of all relevant circumstances particular to each case, those terms are materially identical, having regard in particular to their harmful effects for consumers, and against the decision fixing the amount of the fine imposed, where applicable.

24 In the light of the above case-law of the Court of Justice, there is nothing to prevent the effects of an entry in the register of unlawful terms from applying to all sellers or suppliers which use a particular term, and not only the seller or supplier which was party to the proceedings declaring the term unlawful or entering it in the above register. Furthermore, that effect concerns every term which is ‘materially identical’ but not necessarily linguistically identical.

25 Nevertheless, the referring court has doubts as to whether the above interpretation of EU law applies to all judicial proceedings involving sellers or suppliers, including proceedings in which one of the parties is a consumer who has concluded an agreement with that seller or supplier. The referring court notes that the question which the Court of Justice answered in its judgment of 21 December 2016 was referred by the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw) in proceedings between an undertaking and the Prezes Urzędu Ochrony Konkurencji i Konsumentów (President of the Office of Competition and Consumer Protection), who had imposed an administrative penalty on that undertaking for using terms whose substance was similar to an entry in the register of unlawful terms.

26 Furthermore, the Polish Sąd Najwyższy (Supreme Court) issued on 20 November 2015 seven-judge-panel resolution III CZP 175/15, under which an entry in the register of unlawful terms does not apply to sellers or suppliers other than that concerned by the proceedings in question. The Sąd Najwyższy stated the following reasons for its finding: ‘The position that a judgment granting an action for a declaration that a term in a standard condition of business is unlawful operates in favour of all, but only against the defendant seller or supplier, is in keeping with the requirement of guaranteeing the right to be heard. (…) On the

other hand, restricting the final effect of a judgment granting an action for a declaration that a standard condition business is unlawful solely to the defendant seller or supplier means that the unfavourable effects of that judgment are directed only at the person who had a guaranteed right to be heard in the proceedings. Those effects are expressed in a far-reaching interference in the legal sphere of the defendant seller or supplier which has to be prepared for the fact that, in each individual dispute in which it is involved, the court – which remains bound by the preliminary effect of that judgment – will have to declare the term concerned unlawful and that if it uses the contested term the President will be able to initiate proceedings against it for failure to take such action as a practice infringing the collective interests of the consumer set out in Article 24 of the Ustawa o ochronie konkurencji i konsumentów (Law on competition and consumer protection) with all possible consequences. If such effects were also to extend to other sellers or suppliers which do not appear in the proceedings on the side of the defendant, that would require – precisely because of their type and scope – normative solutions which would adequately ensure that they could exercise their right to be heard'.

27 In the light of the foregoing, the referring court has doubts as to whether the principle expressed in the judgment of the Court of Justice of 21 December 2016 relates to all judicial proceedings involving seller or suppliers, or only to some of them. To assume that the provisions of EU law allow the appropriate consequences to be attached to an entry in the register of unlawful terms vis-à-vis any seller or supplier in any proceedings would necessarily lead to a derogation from the principle arising from the resolution of 20 November 2015, which the Sąd Najwyższy had made more than a year earlier.

28 The above conclusion would have a bearing on the outcome of the present case. If it is found that the referring court has the possibility of examining unfair contractual terms contained in the debtor's agreements with Getin Bank S.A. and that, in order to declare them unfair, it would be suffice to establish that they are 'materially identical' to the terms entered under numbers 3178, 3179 and 7770 in the register of unlawful terms, that will mean that Getin Noble Bank S. A. had no legal basis to initiate enforcement proceedings against the debtor in the present case and, therefore, those proceedings should be discontinued by the court enforcement officer.

29 The referring court proposes that the Court of Justice should answer the second question in the negative for the following reasons. The register of unfair terms is one of the most effective instruments for protecting consumers against unfair terms. This in turn justifies the widest possible use of the effects of entries in that register. Each entry in the register was made pursuant to a final judgment of the Sąd Ochrony Konkurencji i Konsumentów – the court specialising in consumer protection cases, whose judgments are also subject to appeal, and judgments delivered at second instance are subject to review by the Supreme Court in the event of an appeal on a point of law. Thus, the lack of participation of a specific seller or supplier in the proceedings declaring a particular term unlawful does not preclude the application of all the consequences of an entry in the register of

unlawful terms also in respect of it. There is also no need for the term used by the seller or supplier and the term entered in the register of unlawful terms to be linguistically identical, and the decisive criterion should instead be the actual meaning of those terms, that is to say, the consequences which the terms concerned have for the consumer. Applying excessively far-reaching restrictions to the scope of the register of unlawful terms (narrowing the effects thereof solely to sellers or suppliers which were parties to proceedings before the Sąd Ochrony Konkurencji i Konsumentów and to terms literally the same as the entry in the register) would lead to an excessive narrowing of the protection to be afforded to consumers. It is common for a large group of sellers or suppliers to use unfair terms which have the same meaning but are worded differently; in such a case, a fresh action would have to be brought on each occasion to remove these terms from the market, something which is unrealistic in practice. Thus, the objectives of Directive 93/13 would not be attained.

30 As regards the request by the referring court for application of the expedited procedure, that court points out that, in the enforcement proceedings under its supervision, the court enforcement officer has seized immovable property, drawn up a description and valuation thereof and, following the submission of relevant requests by the creditors, an electronic auction of the property is to be carried out. At the same time, the referring court clarifies that, as a consequence of these questions being referred for a preliminary ruling, proceedings before that court have been stayed, but the enforcement proceedings themselves, which are being conducted by the court enforcement officer, have not. Enforcement proceedings can be stayed in strictly defined cases, but the referral of a question for a preliminary ruling does not constitute grounds for doing so. Consequently, the auction of the immovable property and the subsequent acceptance of a bid, the grant of ownership and the distribution of the sums obtained from the enforcement may lead to a situation in which, firstly, the debtor is deprived of his immovable property and, secondly, the creditor obtains from the enforcement sums which are not due to him. Those effects may be difficult to remedy or even irreversible, and the consumer may possibly, in future, exercise his rights by an action for damages, which, however, does not fully protect his rights.

31 The referring court notes in this respect that, as the Court of Justice ruled in paragraph 57 of its judgment of 17 May 2022, C-600/19, *Ibercaja Banco*, in a situation such as that in the main proceedings, in which the mortgage enforcement proceedings have ended and the ownership rights in that property have been transferred to a third party, a court, acting of its own motion or at the request of the consumer, can no longer carry out an examination of the unfairness of contractual terms which would lead to the annulment of the acts transferring ownership and call into question the legal certainty of the transfer of ownership already made to a third party.