Case C-426/23

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:

11 July 2023

Referring court:

Sofiyski rayonen sad (Bulgaria)

Date of the decision to refer:

11 July 2023

Applicants:

D. D.

B. Zh.

Defendant:

‘Financial Bulgaria’ EOOD

Subject matter of the main proceedings

Two sets of proceedings in which the respective applicant claims that the contract which he concluded with the defendant company, under which the defendant company agreed to guarantee for pecuniary interest the applicant’s obligations towards another company arising from a credit agreement, is void on the ground that it was concluded in the exercise of an unfair term in the credit agreement concluded between the applicant and that other company

Subject matter and legal basis of the request

Request for a preliminary ruling under Article 267 TFEU concerning the interpretation of Directives 93/13, 2005/29, 2008/48 and 2009/138. The present request for a preliminary ruling raises the same questions as those referred to the Court in Case C-337/23.

Questions referred for a preliminary ruling

1. Are Article 4(2) and Article 6(1) of Council Directive 93/13/EEC on unfair terms in consumer contracts ('Directive 93/13/EEC') to be interpreted as meaning that:

   where a credit agreement imposes an obligation on the consumer to conclude a contract of guarantee with a guarantor nominated by the creditor, the content of the contract of guarantee is not the 'main subject matter' of the contract with that third party but forms part of the content of the credit agreement? Is it relevant in that regard whether the creditor and the guarantor are connected persons?

2. Is point 1(i) of the Annex to Directive 93/13/EEC to be interpreted as meaning that:

   where the consumer is required to provide a guarantor in connection with a credit agreement which has already been concluded – one of the options being for him or her to appoint a person nominated by the creditor – the content of the consumer's obligation under the contract of guarantee concluded later on the day on which the credit agreement was concluded must be regarded as unclear, since it was not possible for the consumer himself or herself to select or propose the person to be nominated by the creditor as the future guarantor?

3. If the answer to the preceding question is that the subject matter of the contract of guarantee is clear, is point 1(i), (j) and (m) of the Annex to Directive 93/13/EEC to be interpreted as meaning that:

   where the consumer has undertaken to provide a guarantor in connection with a credit agreement which has already been concluded – one of the options being for him or her to appoint a person nominated by the creditor – the content of the consumer's obligation under the credit agreement must be regarded as unclear and may lead to the nullity of the credit agreement or particular terms thereof?

4. Is Article 4(1) of Directive 93/13/EEC, read in conjunction with Article 8 of Directive 2005/29/EC concerning unfair commercial practices, to be interpreted as meaning that:

   where a person granting credit requires the consumer to conclude an agreement with a person nominated by the creditor to secure the creditor's claim against the consumer, that always constitutes exploitation of the consumer's disadvantageous position and is therefore an aggressive commercial practice?

5. If Question 4 is answered in the negative: are Article 4(1) and Article 7 of Directive 93/13/EEC, read in conjunction with Article 8 of Directive

2005/29/EC concerning unfair commercial practices, to be interpreted as meaning that:

in unilateral legal proceedings, such as the order for payment procedure, to which the consumer is not a party, the court may base doubts as to the fairness of a contractual term solely on its suspicion that the term was accepted by the consumer on the basis of an unfair commercial practice, or must the latter be established with certainty?

6. Is Article 15(2) of Directive 2008/48/EC on credit agreements for consumers ('Directive 2008/48/EC') to be interpreted as meaning that:

it applies in cases where the credit agreement is linked to an ancillary service, namely the provision of a guarantee by a third party in return for a fee, and allows the consumer not only to pursue his or her claims on grounds of wrongful conduct on the part of the guarantor, such as payment after the expiry of a statutory time limit, but also to rely on procedural objections which rule out the obligation to the guarantor?

7. Does Article 15(2) of Directive 2008/48/EC, taken in conjunction with the principle of effectiveness, or – on the assumption that the credit agreement and the contract of guarantee constitute related transactions – do Articles 5 and 7 of Directive 93/13/EEC, read in conjunction with point 1(b) and (c) of the Annex thereto, permit:

national case-law according to which the guarantor of a contract linked to a consumer credit agreement who has received a fee from the consumer for the collateralisation of the credit agreement and who has paid the principal creditor on the basis of a contractual term, despite the expiry of the period laid down in Article 147 of the Zakon za zadalzheniata i dogovorite (Law on obligations and contracts), which, according to the relevant case-law, extinguishes the guarantee in its entirety, may nevertheless plead that he has succeeded to the rights of the original creditor and, citing contradictory case-law on the application of the law, claim payment from the principal debtor?

8. Is Article 3(g) of Directive 2008/48/EC, read in conjunction with Article 5 of Directive 93/13/EEC, to be interpreted as meaning that:

in the case of an obligation under a credit agreement to conclude a linked contract of guarantee, which has the effect of increasing the total amount of the credit liability, the annual percentage rate of charge (APR) for the credit must also be calculated on the basis of the increased instalments resulting from the fee paid to the guarantor? Is it relevant in that regard who selected the guarantor and whether he is a person connected with the principal creditor?

9. Is Article 10(2)(g) of Directive 2008/48/EC to be interpreted as meaning that:

the incorrect indication of the APR in a credit agreement concluded between a seller or supplier and a consumer-borrower must be regarded as a failure to indicate the APR in the credit agreement and that the national court must apply the legal consequences laid down by national law for failure to indicate the APR in a consumer credit agreement? Is it to be assumed that those consequences must also apply to the guarantor who has paid in his relationship with the consumer?

10. Is the second sentence of Article 23 of Directive 2008/48/EC to be interpreted as meaning that:

the penalty for which the national legislature provides, namely the nullity of the consumer credit agreement, whereby only the principal amount granted is repayable, must be regarded as proportionate in cases where the consumer credit agreement does not contain a precise indication of the APR in that it does not indicate the cost of a commercial guarantor selected by the creditor, even though the APR is indicated in numerical form in the text of the credit agreement?

11. Is Article 2(2) of Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ('Directive 2009/138/EC'), read in conjunction with point 14 of Part A of Annex 1 to that directive, to be interpreted as meaning that:

the professional pursuit of a remunerated activity as guarantor, in the context of which the guaranteeing company pays, in all cases of default, the total amount of credit contracted by a consumer who is the principal debtor and the fee is paid with each instalment of credit, irrespective of the consumer's default, constitutes an 'insurance activity' within the meaning of that directive?

12. If Question 11 is answered in the affirmative: is Article 14(1) of Directive 2009/138/EC to be interpreted as meaning that:

a person pursuing the activity referred to in Question 11 is subject to an obligation to obtain authorisation from the national regulatory authorities responsible for granting authorisations to insurers?

Provisions of European Union law relied on

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts

Directive 2005/29/EC 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)

Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC

Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)

Provisions of national law and case-law relied on

Grazhdanski protsesualen kodeks (Code of civil procedure), Articles 5, 6, 7, 410, 411, 413, 414, 414a, 415 and 416

Zakon za potrebitelskia kredit (Law on consumer credit), Articles 2, 9, 10, 10a, 11, 14, 19, 20, 21, 22, 23, 24, 26, 28 and 33, and Paragraph 2 of the Dopalnitelni razporedbi (Additional provisions)

Zakon za zashtita na potrebitelite (Law on consumer protection), Articles 143, 144, 145, 146 and 147, and Paragraph 13a of the Dopalnitelni razporedbi (Additional provisions)

Zakon za zadalzheniata i dogovorite (Law on obligations and contracts; 'the ZZD'), Articles 22, 86, 138, 141, 142, 143, 146 and 147

Postanovlenie No 426 ot 18 dekemvri 2014 g. za opredelyane razmera na zakonnata lihva po prosrocheni parichni zadalzhenia (Decree No 426 of 18 December 2014 setting the amount of the statutory interest rate for monetary debts not paid on time) – single Article – and Paragraph 1 of the Dopalnitelni razporedbi (Additional provisions)

Zakon za sadebnata vlast (Law on the judiciary), Article 130

Kodeks za zastrahovaneto (Code of insurance law), Articles 3, 28 and 29 and Annex 1

Interpretative Decision No 4/2013 of the Obshto sabranie na grazhdanskata i targovskata kolegii (General Assembly of Civil and Commercial Chambers; 'the OSGTK') of the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria; 'the VKS') of 18 June 2014

Interpretative Decision No 5/2019 of the VKS OSGTK of 21 January 2022

Order No 5389 of the Sofiyski gradski sad (Sofia City Court, Bulgaria) of 1 March 2019 in civil appeal case No 2165/2019

Succinct presentation of the facts and procedure in the main proceedings

1 The applicant in the first set of proceedings is D. D. – a Bulgarian national who received a loan from a non-bank financial institution. The defendant is Financial Bulgaria EOOD – a company registered in Bulgaria which is chiefly engaged in securing the debts of natural persons [in their capacity] as consumers.

2 The applicant claims that, on 19 January 2021, he concluded a credit agreement with Easy Asset Management AD (a financial institution outside the banking sector), under which he was to obtain BGN 1 250. The contract provided for an APR of 41.34%.

3 Article 4 of that contract stipulated that the applicant was to provide security in the form of two natural persons selected by him as guarantors or [in the form of] a bank guarantee. The guarantors had to have net salaries of at least BGN 1 000, be employed on open-ended contracts, and not have taken out or secured any other loans.

4 It is not claimed that the credit agreement contains a term relating to the consequences of non-performance of that obligation by the consumer.

5 On the day on which the credit was granted, 19 January 2021, the applicant also concluded a contract of guarantee with the defendant, Financial Bulgaria EOOD (a subsidiary of Easy Asset Management AD), whereby the defendant undertook to perform the debtor's obligation towards the original creditor if the creditor required it to do so. For assuming that obligation, Financial Bulgaria EOOD was to receive remuneration of BGN 500, to be paid directly to the original creditor, Easy Asset Management AD, by way of a supplementary charge in the monthly instalments.

6 The applicant challenged the credit agreement before the referring court on the ground that the fee paid for the guarantor's service had not been included in and factored into the APR. He also challenged the contract of guarantee on the ground that the fee it provided for was excessively high.

7 The defendant contends that the applicant concluded the contract of guarantee voluntarily and that the contract contains no unfair terms.

8 In the second set of proceedings (in which the applicant is the Bulgarian national B. Zh.), the facts and the forms of order sought by the parties are almost identical to those in the first set of proceedings; the only differences are that the agreement and contract were concluded with the applicant on 17 January 2020, the amount drawn down is BGN 2 250, the APR is 49% and the guarantor's fee is BGN 900.

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

Connection to EU law and need for interpretation: the link between the credit agreement and the contract of guarantee – the first three questions referred

9 First of all, the referring chamber wishes to clarify the extent to which the credit agreements concluded by the debtors are linked to the contracts of guarantee, so that it can assess the unfair nature of the terms they contain. In the present case, there is a suspicion that the contracts of guarantee are being concluded for the primary purpose of circumventing the restriction laid down by the Law on consumer credit, which provides for a maximum APR for consumer credit agreements.

10 It is for the referring chamber to examine of its own motion whether the terms of both the initial credit agreement and the contract of guarantee are unfair. Under Bulgarian law, the contract of guarantee is classed as an agency contract within the meaning of Article 280 of the ZZD, as the future guarantor makes a commitment to the original creditor to fulfil the debtor's obligation. That follows from the fact that, under Bulgarian law, the contract of guarantee is independent of the principal credit agreement and that the parties to the contract of guarantee are the creditor and the guarantor (Article 138(1) of the ZZD). The obligation to guarantee the specific credit agreement and the price for the provision of that financial service therefore constitute the main subject matter of that contract of guarantee, the unfair nature of which is not possible to assess under Article 4(2) of Directive 93/13/EEC. This interpretation is consistent with the rulings of the Court of Justice, for example in paragraph 62 of the judgment of 16 July 2020 in Joined Cases C-224/19 and C-259/19, *Caixabank*, and the case-law cited: since the contract in question is concluded between a consumer-debtor and a commercial guarantor, the parties are not the same as the parties to a credit agreement, and their obligations differ. If the provision of the guarantee and the price are not agreed, the contract cannot exist.

11 However, the question arises whether, in a case such as the present one, the classification of the contract of guarantee as an independent transaction with different main subject matter from that of the credit agreement is capable of ensuring effective consumer protection within the meaning of the Member States' obligation under Article 7(1) of Directive 93/13/EEC. In that regard, there is no doubt that the contract of guarantee was concluded between parties other than those who concluded the initial agreement and that it contains different rights and obligations.

12 There are, however, many reasons to believe that both contracts actually govern a single legal relationship, which is intended to secure an increase in the consumer's debt as the borrower, for under the terms of the principal credit agreement, consumers themselves cannot select the guarantor but are required to accept the guarantor designated by the creditor if they have not found one themselves. The guarantor, in turn, is directly connected with the creditor, being its subsidiary.

Moreover, the concluded contracts of guarantee provided for fees representing a high percentage of the total payable amounts of the loans. Furthermore, the fee for providing the guarantee is paid on the same dates as those on which the monthly loan instalments fall due and, from the consumer's perspective, is part of his or her obligation under the credit agreement. Finally, the price for providing the guarantee is not included in the APR of the principal credit agreement and considerably increases its cost in breach of national rules.

13 On the other hand, there is also the question of the nature of the contract of guarantee, which, though concluded at the request of a consumer, is concluded with a person selected unilaterally by the original creditor. The limited choice available to consumers effectively leaves them in the dark, at the time when the credit agreement is concluded, about the identity of the guarantor to which they will be bound and the conditions under which that will be done.

14 The question therefore arises whether, in the case of such a twofold contractual relationship (credit agreement and contract of guarantee), the content of the contract of guarantee may be regarded *in toto* as contrary to point 1(i) of the Annex to Directive 93/13/EEC. In those circumstances, but only if the two contracts are interpreted as a single contractual relationship, the referring chamber might consider that the contract of guarantee is void in its entirety, since the main subject matter of the contract for the provision of the guarantee is not determined by the consumer, who is nevertheless required to accept the guarantor selected by the original creditor.

15 However, the uncertainty as to the identity of the guarantor could also be regarded as an ambiguity in the credit agreement which was initially concluded, since the absence of a guarantor for that agreement could lead to non-performance of the agreement if the term is valid. An answer is therefore needed to the question whether the inclusion in the credit agreement of an obligation to conclude a contract of guarantee with a person designated by the creditor may be regarded as an unfair term within the meaning of point 1(i), (j) and (m) of the Annex to Directive 93/13/EEC.

The link between the practice of nomination of a guarantor by the original creditor and the unfairness of contractual terms – the fourth and fifth questions referred

16 According to the case-law of the Court of Justice (paragraphs 43 to 44 of the judgment of 15 March 2012, *Perenicovà and Perenic*, C-453/10, and paragraphs 48 to 50 of the judgment of 19 September 2018, *Bankia*, C-109/17), whether a party has resorted to an unfair commercial practice within the meaning of Directive 2005/29/EC to include a term in a contract is one element in the assessment of unfairness within the meaning of Article 4 of Directive 93/13/EEC.

17 In the view of the referring chamber, the amount of the debtors' obligations in the pending cases depends on whether or not those debtors provide the creditor with a

guarantee. In this respect, it is necessary to assess whether the fact that the creditor's selection of a guarantor binds the consumer may be interpreted as an unfair commercial practice within the meaning of Directive 2005/29/EC. In this context, the referring chamber needs an answer to the question whether the unfair nature of the commercial practice as aggressive within the meaning of Article 8 of Directive 2005/29/EC can be determined in the present case on the sole basis of the nature of the legal transaction between the parties in the form of a credit agreement and the consequences envisaged for the absence of a guarantee, or whether that assessment must also be made on the basis of additional factors.

18 On the other hand, the referring chamber considers that, in the context of a unilateral procedure, which the order for payment procedure is, it would be prevented from applying the rules relating to the overall assessment of the existence of an unfair commercial practice, since consumers are not yet involved in the order for payment procedure. According to the guidance given by the Court of Justice in paragraph 38 of the judgment of 11 May 2020, *Lintner*, C-511/17, in unilateral proceedings such as the order for payment procedure the court may also find that a party to a contract is not entitled to protection if, though not having established with certainty that a particular term should be regarded as unfair within the meaning of Directive 93/13/EEC, it nevertheless has reasonable doubts in that regard. This obligation stems from the requirement laid down in Article 7 of Directive 93/13/EEC to provide effective means to protect consumers from being bound by unfair terms. In the present case, however, the reasonable doubts of the court as to the fairness of a contractual term are prompted by other reasonable doubts, namely a suspicion that the term has become an integral part of the contract as a result of recourse to an aggressive commercial practice within the meaning of Article 8 of Directive 2005/29/EC. It must therefore be determined whether, in such an event, a possible doubt as to the fairness of the commercial practice may lead to the conclusion that there are also reasonable grounds to suspect unfairness of a term within the meaning of Article 4(1) of Directive 93/13/EEC.

Effective application of the time limit for releasing the guarantor from his obligations to the creditor and the consumer – the sixth and seventh questions referred

19 A question also arises in the light of settled national case-law on the application of the time limit under Article 147 of the ZZD for releasing guarantors from their liability. That case-law leaves the consumer-borrower in the dark regarding the effects of the consumer credit agreement at the time of its conclusion if the agreement prescribes the mandatory purchase of a guarantee.

20 Under Article 147 of the ZZD, the obligation of the guarantor to pay the principal creditor ceases if the latter does not assert his claim against the principal debtor within six months of the date on which the claim falls due. That provision is mandatory. According to a binding national interpretative decision, that is a cut-off period, for if the creditor has not asserted its rights against the principal debtor,

the legal relationship between it and the guarantor is extinguished in full. Payments made by the guarantor or confirmation of his obligations to the principal debtor are of no consequence in terms of the effects of that time limit, since it is subject to review by the court, acting of its own motion. The prescribed time limit does not constitute a limitation period.

21 At the same time, some judicial chambers consider that the conclusions relating to the complete termination of the guarantee may be applied to the creditor's claims against the guarantor but not to the guarantor's rights against the consumer-debtor. Contrary to the interpretative decision, they consider that the termination of the guarantee does not have absolute effect and that only the guarantor can rely on it. This position raises problems when it comes to applying the Consumer Credit Directive, especially Article 15(2) of Directive 2008/48/EC. The referring chamber doubts whether that provision can be applied in the present case, as the debtors in all of the proceedings, besides their respective consumer credit agreements, also concluded contracts for the provision of a guarantee for a fee, which, in the view of the referring court, constitutes a financial service to the consumer.

22 For those reasons, the question arises as to whether Article 15(2) of Directive 2008/48/EC may be applied in situations where the guarantor has not fulfilled his obligation to refuse to pay because of the expiry of the period for liability under national law by invoking the extinction of the guarantee pursuant to Article 147 of the ZZD. According to the definition in Article 3(n) of Directive 2008/48/EC, such application is possible if it is accepted that the two contracts form a whole and finance each other, since the consumer pays for the guarantee together with the instalments specified in the credit agreement. If the provision is applicable with regard to the guarantor too, there will also be a need to answer the question whether it applies not only to reciprocal claims which the consumer might assert against the service provider in the context of a contract for the provision of services but also to his or her procedural defences, such as the refusal to settle a claim for recourse made by a person whose obligation had already expired.

23 It is also necessary to examine the compatibility with EU law of the national case-law according to which the guarantor may rely on the expiry of his period of liability under Article 147 of the ZZD on the ground that the original creditor has not asserted his claim under the credit agreement against the consumer-debtor within six months of the final due date, but the consumer cannot rely on the expiry of that period against the guarantor who has paid.

24 Even if Article 15(2) of Directive 2008/48/EC is not applicable in the present case, the question to be answered is whether such national case-law is not contrary to Article 7 of Directive 93/13/EEC, in so far as that case-law allows the commercial guarantor himself to determine the scope of his obligation in breach of point 1(b) and (c) of the Annex to Directive 93/13/EEC. If the guarantor chose to object to the original creditor that he was being asked to pay after the expiry of the time limit laid down in Article 147 of the ZZD, the borrower-debtor would not

be liable to the guarantor for the monthly loan instalments. However, if the guarantor does not make this objection and pays, even though, under a binding interpretative decision relating to the order for payment procedure, the guarantor is under no such obligation, the consumer, as the principal debtor, would remain liable to the guarantor, since, according to the case-law set out above, he could not rely on the guarantor's period of liability having expired. In at least one of the proceedings, this effect results from an explicit contractual term based on a contradictory interpretation by the national courts of the rules relating to the enforceability of that time limit, which should be based on mandatory statutory rules, namely those in Article 147 of the ZZD, governing the content of the contract of guarantee, but the consumer is being denied the protection of those rules. The contradictory national case-law therefore allows the guarantor to formulate the terms of the contract of guarantee, thereby depriving consumer protection under national law of its practical effectiveness.

25 Accordingly, an answer is needed to the question whether the principle of effective consumer protection against unfair terms in the contract of guarantee, which govern how a seller or supplier who has undertaken to provide a guarantee must deal, after the expiry of the guarantor's period of liability, with an order for payment addressed to him by the original creditor, precludes the application of national case-law according to which only the guarantor himself may rely on the expiry of his period of liability.

26 The question must also be answered, in the light of Article 5 of Directive 93/13/EEC, whether that provision allows contradictory national case-law on a particular question of national law to be used to interpret contractual terms unclearly to the detriment of consumers, as is happening in the present case.

Impact of payment of the guarantee on the determination of the APR in the credit agreement

27 The next three questions are identical to those referred to the Court of Justice in the pending Case C-714/22 *Profi Credit Bulgaria*. They concern the creditor's obligation, in the context of a consumer credit agreement, to state clearly the APR in the text of the credit agreement so as not to mislead the consumer. Referring to the full grounds of that request for a preliminary ruling, the referring chamber expresses reservations as to whether Directive 2008/48/EC does not require, in addition to the annual percentage rate of charge in the text of the credit agreement, the indication of an APR calculated correctly in accordance with the method laid down by that directive. In the present case, since the costs for contracts of guarantee are not a component part of credit agreements, they are not taken into account in the determination of the APR for credit agreements. The referring chamber is unsure whether the cost of providing the guarantee should not be part of the APR, particularly in cases where the guarantor who agrees to secure the consumer's obligations is selected by the original creditor but remunerated by the consumer. The definition in Article 3(g) of Directive 2008/48/EC stipulates that costs in respect of ancillary services must also be included in the APR if the use of

those services is a condition for the credit being granted at all or being granted under the terms and conditions laid down in the credit agreement.

28 In order to determine whether the fee for the guarantor under a linked contract with the debtor must be included in the APR of the credit agreement, the question should also be answered whether and under what conditions that cost may be regarded as part of the APR if the debtor had the option to propose a guarantor himself in the short term. For this reason, the voluntary nature of the choice should also be taken into account, particularly as regards the determination of the guarantor, which ultimately depends on the will of the original creditor, the conditions, if any, for the creditor's acceptance of a different guarantor, and the period available to the debtor to find such a guarantor.

29 Furthermore, it is necessary to consider again whether the incorrect indication of the APR in a credit agreement must be regarded as failure to indicate the APR, since an incorrect indication defeats the purpose of the obligation to provide that information, namely to enable the consumer to compare offers in the credit market effectively. Following on from that question, the question also arises whether equating the indication of an incorrect APR with failure to indicate such a rate would not also lead, in more general terms, to a disproportionate penalty under national law for miscalculation.

The nature of the contract for provision of the guarantee and its classification as an insurance transaction

30 The referring chamber also has doubts as to the correct legal classification, in the light of EU law, of transactions whereby consumers agree that a particular person will guarantee their debts to another creditor for a fee where such transactions are conducted continuously on a professional basis. Chambers of the Sofia City Court and the Supreme Court of Cassation implicitly assume that such cases are ordinary guarantee transactions which are not subject to licensing regulations and could be conducted by anyone.

31 In such transactions, however, a person undertakes, in the event of delay, to assume the liability of the consumer-debtor for the non-performance of his or her specific obligation to the creditor, the debtor paying a fee for that service. The main features of that obligation are similar to those of a credit insurance contract, namely the assumption of liability, for a consideration, if a future and uncertain adverse event (non-performance of a contract) occurs. For that reason, the referring chamber needs an interpretation to determine whether contracts such as those concluded with the debtors (on the provision of a guarantee to their creditors for a fee) can be classed as insurance contracts. The relevant Directive 2009/138/EC does not define the content of insurance contracts, but such a definition can be found in the case-law of the Court of Justice, namely the judgment of 23 April 2015, *Van Hove*, C-96/14, paragraph 34: under the insurance contract, the insurer is required, in return for prior payment of a premium, to

indemnify the insured against the damage resulting from the materialisation of any insured risk indicated in the contract.

32 The cases pending before the referring chamber relate to such fees and to an adverse event for the consumer-debtor in the form of default of payment, but it seems that no risk is specified which is normally classed as an insurance risk. In fact, the guarantor secures any non-payment on the part of the consumer, for whatever reason, including a deliberate refusal to repay the loan. That distinguishes the said contract to some extent from an insurance contract.

33 On the other hand, a contract of guarantee with a professional guarantor reduces to a minimum the risks for the original debtor in the case of an adverse event in the form of non-repayment of the loan, and the contract is remunerative in nature, which makes it comparable with insurance. In the present case, consideration may be given to the question whether, in such a situation, the consumer, who is the principal debtor, is not acting as an insurer in relation to the original creditor, for whom he provides security against loss by remunerating the guarantor. For that reason, it should be ascertained whether such a contract may fall within the scope of the term ‘insurance contract’ within the meaning of Directive 2009/138/EC and whether, consequently, the recipient of a premium under such a contract is not subject to an authorisation requirement under Article 14 of that directive.