ECLI:EU:C:2024:282

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

9 April 2024 (*)

(Reference for a preliminary ruling – Principles of EU law – Article 4(3) TEU – Principle of sincere cooperation – Procedural autonomy – Principles of equivalence and effectiveness – Principle of interpreting national law in conformity with EU law – National legislation providing for an extraordinary remedy allowing the reopening of civil proceedings closed by a final judgment – Grounds – Subsequent decision of a constitutional court declaring that a provision of national law on the basis of which that judgment was given is incompatible with the Constitution – Loss of the opportunity to take action on account of a breach of the law – Broad application of that remedy – Alleged infringement of EU law resulting from a subsequent judgment of the Court of Justice ruling under Article 267 TFEU on the interpretation of EU law – Directive 93/13/EEC – Unfair terms in consumer contracts – Default judgment – Failure of the court hearing the case to ascertain of its own motion whether contractual terms are unfair)

In Case C-582/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy Warszawa-Praga (Regional Court, Warszawa-Praga, Warsaw, Poland), made by decision of 31 August 2021, received at the Court on 17 September 2021, in the proceedings

FY

v

Profi Credit Polska S.A. w Bielsku Białej,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, K. Jürimäe, F. Biltgen, N. Piçarra and O. Spineanu-Matei (Rapporteur), Presidents of Chambers, S. Rodin, P.G. Xuereb, I. Ziemele, J. Passer and D. Gratsias, Judges,

Advocate General: N. Emiliou,

Registrar: M. Siekierzyńska, Administrator,

having regard to the written procedure and further to the hearing on 24 January 2023,

after considering the observations submitted on behalf of:

– the Polish Government, by B. Majczyna and S. Żyrek, acting as Agents,

– the European Commission, by N. Ruiz García, A. Szmytkowska and P. Van Nuffel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 September 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(3) TEU, Article 19(1) TEU, the principle of equivalence and the principle of interpreting national law in conformity with EU law.

2 The request has been made in proceedings between FY and Profi Credit Polska S.A. w Bielsku Białej (‘Profi Credit Polska’) concerning sums payable by FY under a consumer credit agreement.

Legal context

European Union law

3 The twenty-fourth recital of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) states:

‘Whereas the courts or administrative authorities of the Member States must have at their disposal adequate and effective means of preventing the continued application of unfair terms in consumer contracts’.

4 Article 3(1) of that directive provides:

‘A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the consumer.’

5 Article 6(1) of that 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.’

6 Article 7(1) of that directive provides:

‘Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.’

Polish law

The Polish Constitution

7 Article 188(1) of the Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland; ‘the Polish Constitution’) provides that the Trybunał Konstytucyjny (Constitutional Court, Poland) is to rule on the conformity of, inter alia, laws with that Constitution.

8 Article 190(1) to (4) of the Polish Constitution provides:

‘1. The decisions of the Trybunał Konstytucyjny [(Constitutional Court)] are binding *erga omnes* and final.

2. Decisions of the Trybunał Konstytucyjny [(Constitutional Court)] regarding the matters specified in Article 188 shall be immediately published in the official publication in which the original legislative act was promulgated. If a legislative act has not been promulgated, then the decision shall be published in the official gazette of the Republic of Poland, “*Monitor Polski*”.

3. The decision of the Trybunał Konstytucyjny [(Constitutional Court)] shall take effect from the day of its publication; however, the Trybunał Konstytucyjny [(Constitutional Court)] may specify another date for the end of the binding force of a legislative act. …

4. A decision of the Trybunał Konstytucyjny [(Constitutional Court)] on the non-conformity with the Constitution, an international agreement or statute, of a legislative act on the basis of which a legally effective judgment of a court, a final administrative decision or settlement of other matters has been issued, shall constitute a basis for reopening proceedings, or for quashing the decision or other settlement in a manner and in accordance with principles specified in provisions applicable to the given proceedings.’

Code of Civil Procedure

9 Article 399(1) of the ustawa – Kodeks postępowania cywilnego (Law on the Code of Civil Procedure), of 17 November 1964 (Dz. U. of 1964, No 43, item 296), in the version thereof applicable to the main proceedings (‘the Code of Civil Procedure’), provides:

‘In the cases provided for in this section, an application may be made to reopen proceedings which have been closed by a final judgment.’

10 Under Article 401(2) of the Code of Civil Procedure, the reopening of proceedings may be applied for on grounds of invalidity ‘if a party … has been deprived of the opportunity to take action on account of a breach of the law; however, a request for the resumption of the proceedings cannot be made if the impossibility of bringing an action has ended before the judgment has acquired the force of *res judicata* or if the lack of representation has been pleaded in the application or if the party has given consent to proceeding with [previous] stages of the proceedings’.

11 Article 401^1 of the Code of Civil Procedure states:

‘An application to reopen proceedings shall also be possible if the Trybunał Konstytucyjny [(Constitutional Court)] declares a piece of legislation, on the basis of which a ruling was issued, to be incompatible with the Constitution, a ratified international agreement or a statute.’

12 Article 407(1) and (2) of the Code of Civil Procedure provides:

‘1. An application to reopen proceedings shall be filed within three months; the time period shall begin on the day on which the party becomes aware of the grounds for reopening, and if those grounds are the party being deprived of the ability to act or the absence of due representation, on the day on which the party, its governing body or legal representative becomes aware of the judgment.

2. In the situation referred to in Article 401^1 the application to reopen proceedings shall be filed within three months of the entry into force of the decision of the Trybunał Konstytucyjny [(Constitutional Court)]. If, on the date of delivery of the decision of the Trybunał Konstytucyjny [(Constitutional Court)], the decision referred to in Article 401^1 has not yet become final as a result of the lodging of an appeal, which has been subsequently dismissed, the time period shall begin from the date of notification of the rejection decision or, if it was given at a public hearing, from the date of delivery of that decision.’

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

13 On 16 June 2015, FY concluded a consumer credit agreement with Profi Credit Polska, a credit undertaking, for an amount of 4 000 zlotys (PLN) (approximately EUR 920). That agreement provided that the total amount payable by FY would be PLN 13 104 (approximately EUR 3 020), repayable in 48 monthly instalments of PLN 273 (approximately EUR 63).

14 On conclusion of that agreement, FY issued a blank promissory note, which was subsequently completed by Profi Credit Polska, indicating the sum of PLN 8 170.11 (approximately EUR 1 880) and a due date for payment.

15 On 30 October 2017, Profi Credit Polska brought an action before the Sąd Rejonowy dla Warszawy Sąd Rejonowy dla Warszawy Pragi – Południe (District Court, Warszawa Praga-Południe, Warsaw, Poland; ‘the court of first instance’) seeking payment of the principal sum of PLN 8 170.11 plus contractual interest. The only documents annexed to the application concerning that action were the promissory note and notification of the termination of the credit agreement at issue in the main proceedings, which referred to a credit balance to be repaid of PLN 6 779 (approximately EUR 1 560) and the total amount of arrears, the latter corresponding to the sum of PLN 8 170.11.

16 On 17 April 2018, the court of first instance delivered a default judgment (‘the default judgment’), endorsed with authority to enforce immediately, ordering FY to pay Profi Credit Polska the sum of PLN 8 170.11, plus default interest at the statutory rate, and dismissed the action as regards the head of claim relating to contractual interest.

17 It is apparent from the order for reference that that judgment was based solely on the promissory note signed by FY and the statements in Profi Credit Polska’s application. Profi Credit Polska did not submit the credit agreement at issue in the main proceedings and the court of first instance did not ask it to submit it.

18 FY did not lodge an objection against the default judgment, which became final at the end of the period of two weeks prescribed for that purpose.

19 On 25 June 2019, FY applied to the court of first instance for the reopening of the proceedings closed by the default judgment. FY based that application on Article 401(2) of the Code of Civil Procedure, asserting that that court had misinterpreted Directive 93/13 and had thus deprived her of the opportunity to take action on account of a breach of the law within the meaning of that provision. More specifically, FY criticised that court for having upheld Profi Credit Polska's application on the basis of the promissory note issued by it, without examining whether terms of the credit agreement which it had concluded with her were unfair, in particular as regards the non-interest cost of the credit. In that regard, FY relied, inter alia, on the judgment of 13 September 2018, *Profi Credit Polska* (C-176/17, 'the judgment in *Profi Credit Polska I*', EU:C:2018:711). Profi Credit Polska, for its part, contended that the application to reopen the proceedings should be rejected on the ground that it had been lodged after the expiry of the period prescribed for that purpose. It also relied on the fact that FY, who was aware of the content of the default judgment, had not lodged an objection against it.

20 By order of 27 August 2020, the court of first instance dismissed the application to reopen the proceedings on the ground that it had been lodged out of time and also noted that there was no legal basis for that application.

21 FY lodged an appeal against that order before the Sąd Okręgowy Warszawa-Praga (Regional Court, Warszawa-Praga, Warsaw, Poland), which is the referring court, alleging, inter alia, that the court of first instance failed to take into consideration EU law and the case-law of the Court of Justice, in particular the obligation for national courts to examine of their own motion whether terms of a contract concluded with a consumer are unfair.

22 The referring court considers that, since the court of first instance did not examine the credit agreement at issue in the main proceedings or, accordingly, whether the terms it contains are unfair, it is likely that the default judgment infringes Articles 6 and 7 of Directive 93/13, as interpreted by the Court, in particular in the judgment in *Profi Credit Polska I*.

23 In those circumstances, the referring court is uncertain as to whether EU law does not require it to grant FY's application to reopen the proceedings, irrespective of the fact that FY did not lodge an objection against the default judgment.

24 In that regard, first, the referring court emphasises the importance of the principle of *res judicata* and the irreversible nature of final judgments, refers to the fact that Polish law does not include any provision expressly providing that a judgment of the Court of Justice constitutes a ground for reopening proceedings and points out that EU law does not impose on national courts a general obligation to reopen proceedings which have given rise to a final decision in order to take account of a judgment of the Court of Justice concerning the interpretation of EU law.

25 Secondly, the referring court asks whether the principle of equivalence and the principle of interpreting national law in conformity with EU law do not require it to interpret the relevant provisions of Polish law in such a way as to enable the proceedings in the main proceedings to be reopened. More specifically, it refers to two provisions of the Code of Civil Procedure.

26 In the first place, that court refers to Article 401^1 of the Code of Civil Procedure, which allows the reopening of proceedings that have culminated in a final judgment following a decision of the Trybunał Konstytucyjny (Constitutional Court) declaring that the provision of national law

on the basis of which that judgment was given was unconstitutional. It asks whether the principle of equivalence does not require it to apply that provision, by analogy, in a situation where, after a national judgment has acquired the force of *res judicata*, a judgment of the Court of Justice leads to a finding that the provision of national law on which that judgment is based is incompatible with EU law.

27 In the second place, the referring court refers to Article 401(2) of the Code of Civil Procedure, which permits the reopening of proceedings that have culminated in a final judgment where a party has been deprived of the opportunity to take action on account of a breach of the law. That court asks whether the principle of interpreting national law in conformity with EU law does not require that provision to be interpreted as also covering situations in which a national court that has ruled by default on the action of a seller or supplier based on a contract concluded with a consumer did not examine of its own motion the potential existence in that contract of unfair terms, in breach of Directive 93/13. In that regard, that court notes that the rules governing the exercise of the right to lodge an objection against a default judgment are broadly similar to those relating to the right to lodge an objection against a judicial order for payment in respect of which the Court of Justice held, in the judgment in *Profi Credit Polska I*, that, because of their particularly restrictive nature, they entailed a real risk that the consumer concerned would not exercise that right and that they therefore did not ensure observance of the rights which consumers derive from that directive.

28 In those circumstances the Sąd Okręgowy Warszawa-Praga (Regional Court, Warszawa-Praga, Warsaw) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Articles 4(3) and 19(1) TEU, having regard to the principle of equivalence …, be interpreted as meaning that a judgment of the [Court of Justice] concerning the interpretation of EU law given pursuant to Article 267(1) TFEU constitutes grounds for reopening civil proceedings which ended with a final judgment, if a provision of national law, such as Article 401^1 of the [Code of Civil Procedure], allows proceedings to be reopened in the event that a final judgment is given on the basis of a provision [of national law] which has been held by a judgment of the Trybunał Konstytucyjny [(Constitutional Court)] to be incompatible with a higher-ranking law?

(2) Does the principle of interpretation of national law in conformity with EU law arising from Article 4(3) TEU … require a broad interpretation of a provision of national law, such as Article 401(2) of the Code of Civil Procedure, so as to include in the grounds for reopening proceedings set out therein a final default judgment in which the court, infringing the obligations arising from the judgment of the Court of Justice in [*Profi Credit Polska I*], omitted to examine a contract between a consumer and a lender in terms of unfair contractual terms and limited itself to examining only the formal validity of the promissory note?’

Consideration of the questions referred

The first question

29 As a preliminary point, it should be noted that, following the request for information sent to it by the Court on 13 July 2022, the referring court stated that, in the context of the first question, it refers both to the decisions referred to in Article 190(4) of the Polish Constitution, by which the Trybunał Konstytucyjny (Constitutional Court) found that a provision of national law on the basis of which a final judgment had been given was incompatible with that Constitution or another higher-ranking rule and to the ‘negative interpretative decisions’, by which that court found a

certain interpretation of a provision of national law used as the basis for such a judgment to be incompatible with that Constitution or another higher-ranking rule.

30 The referring court submitted that, although the scope of those negative interpretative decisions in civil proceedings closed by a final judgment is open to question, it considers that the occurrence of such a decision constitutes a ground for reopening such proceedings under Polish law. The Polish Government disputes that interpretation.

31 In that regard, it is necessary to state that, in accordance with settled case-law, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law (judgments of 14 June 2012, *Banco Español de Crédito*, C-618/10, EU:C:2012:349, paragraph 76, and of 22 September 2022, *Servicios prescriptor y medios de pagos EFC*, C-215/21, EU:C:2022:723, paragraph 26).

32 The present question, as clarified by the information provided by the referring court referred to in paragraph 29 of this judgment, must therefore be taken into consideration.

33 Consequently, it must be held that, by its first question, the referring court asks, in essence, whether Article 4(3) and Article 19(1) TEU and the principle of equivalence must be interpreted as requiring, where an exceptional remedy established by a national procedural provision allows an individual to apply for the reopening of proceedings that culminated in a final judgment by relying on a subsequent decision of the constitutional court of the Member State concerned declaring that a provision of national law does not comply with the Constitution or with another higher-ranking rule, or a certain interpretation of such a provision, based on which that judgment was given, that that remedy also be available where reliance is placed on a preliminary ruling of the Court of Justice given pursuant to Article 267 TFEU concerning the interpretation of EU law ('the preliminary ruling on interpretation').

34 As regards Article 19(1) TEU, the second subparagraph of that provision, which is the only one referred to by the referring court, obliges Member States to provide remedies sufficient to ensure effective legal protection for individual parties in the fields covered by EU law (judgment of 21 December 2021, *Randstad Italia*, C-497/20, EU:C:2021:1037, paragraph 56 and the case-law cited).

35 However, respect for the right to effective judicial protection does not mean that Member States are obliged to provide for extraordinary remedies which allow, following a preliminary ruling on interpretation, the reopening of proceedings closed by a final judgment.

36 It follows from the Court's case-law that EU law does not require a judicial body automatically to go back on a judgment having the authority of *res judicata* in order to take into account the interpretation of a relevant provision of EU law adopted by the Court after delivery of that judgment (see, to that effect, judgments of 10 July 2014, *Impresa Pizzarotti*, C-213/13, EU:C:2014:2067, paragraph 60, and of 6 October 2015, *Târşia*, C-69/14, EU:C:2015:662, paragraph 38).

37 In that connection, attention should be drawn to the importance, both for the EU legal order and for the national legal systems, of the principle of *res judicata*. In order to ensure both stability of the law and legal relations and the sound administration of justice, it is important that decisions of courts or tribunals which have become definitive after all rights of appeal have been exhausted or after expiry of the time limits provided for in that connection can no longer be called into question

(judgments of 6 October 2015, *Târşia*, C-69/14, EU:C:2015:662, paragraph 28 and the case-law cited, and of 17 May 2022, *Ibercaja Banco*, C-600/19, EU:C:2022:394, paragraph 41 and the case-law cited).

38 Accordingly, EU law does not require a national court to disapply domestic rules of procedure conferring finality on a judgment, even if to do so would make it possible to remedy a domestic situation which is incompatible with EU law (judgments of 6 October 2015, *Târşia*, C-69/14, EU:C:2015:662, paragraph 29 and the case-law cited, and of 17 May 2022, *Ibercaja Banco*, C-600/19, EU:C:2022:394, paragraph 42 and the case-law cited).

39 Thus, in the absence of EU legislation in this area, the rules implementing the principle of *res judicata* are a matter for the national legal order, in accordance with the principle of the procedural autonomy of the Member States, but must be consistent with the principles of equivalence and effectiveness (judgments of 10 July 2014, *Impresa Pizzarotti*, C-213/13, EU:C:2014:2067, paragraph 54, and of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 21).

40 In accordance with the principle of sincere cooperation enshrined in Article 4(3) TEU, the detailed procedural rules governing actions for safeguarding an individual's rights under EU law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render impossible in practice or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (judgment of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 22 and the case-law cited).

41 The observance of the requirements stemming from the principles of equivalence and effectiveness must be analysed by reference to the role of the rules concerned in the proceedings as a whole, the way in which the proceedings are conducted and the special features of those rules, before the various national courts (judgment of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 24 and the case-law cited).

42 It follows from the foregoing that if the applicable domestic rules of procedure provide the possibility, under certain conditions, for a national court to go back on a decision having the authority of *res judicata* in order to render the situation compatible with national law, that possibility must prevail if those conditions are met, in accordance with the principles of equivalence and effectiveness, so that the situation at issue is brought back into line with EU law (judgment of 6 October 2015, *Târşia*, C-69/14, EU:C:2015:662, paragraph 30 and the case-law cited).

43 As regards, in particular, the requirements stemming from the principle of equivalence, which is the sole subject of the present question, it is for the national court to determine, in the light of the detailed procedural rules applicable in national law, whether that principle is observed, having regard to the subject matter, cause of action and essential elements of the actions concerned (see, to that effect, judgments of 20 September 2018, *EOS KSI Slovensko*, C-448/17, EU:C:2018:745, paragraph 40, and of 17 May 2022, *Unicaja Banco*, C-869/19, EU:C:2022:397, paragraph 23).

44 In the context of the case in the main proceedings, that determination entails examining whether, where national law confers on individuals the right to apply for reopening of proceedings closed by a final judgment based on a provision of national law or on a certain interpretation of such a provision, which has been declared incompatible with the Polish Constitution or another higher-ranking rule by a subsequent decision of the Trybunał Konstytucyjny (Constitutional Court), individuals must have an equivalent right where it follows from a preliminary ruling on interpretation given by the Court subsequent to such a final judgment that that judgment is based on a provision of national law or an interpretation of such a provision that is incompatible with EU

law. As the Advocate General observed, in essence, in point 54 of his Opinion, that determination ultimately leads to an assessment of whether such a decision of that constitutional court can be found to be equivalent to such a judgment of the Court of Justice.

45 In that regard, and subject to the determinations to be made by the referring court, it appears, in the light of Article 188(1) and Article 190(4) of the Polish Constitution and the information provided by that court, that the purpose of an action before the Trybunał Konstytucyjny (Constitutional Court) is to obtain a ruling from that court on the validity of a provision of national law or of a certain interpretation of such a provision. The cause of that action lies in the alleged incompatibility of that provision, or of that interpretation, with that Constitution or with other higher-ranking laws.

46 Furthermore, an essential element of that procedure appears to lie in the effect of a decision upholding such an appeal, by which the Trybunał Konstytucyjny (Constitutional Court) finds that the provision of national law at issue is incompatible with the Polish Constitution or with another higher-ranking rule. According to the information in the order for reference, as a result of such a decision of the Trybunał Konstytucyjny (Constitutional Court), the provision concerned is deprived of its binding force. Since Article 190(1) of that Constitution provides that the decisions of that court are to be binding *erga omnes* and final, that decision thus appears to have the consequence that that provision is excluded from the national legal order.

47 It also follows from that information that the right laid down in Article 190(4) of the Polish Constitution and Article 401^1 of the Code of Civil Procedure in favour of any individual, to call into question a final judgment based on a provision of national law which was subsequently found to be incompatible with that Constitution or with another higher-ranking rule by a decision of the Trybunał Konstytucyjny (Constitutional Court) stems from the loss, by that provision, of its binding force, that judgment having no legal basis as a result of that decision.

48 Subject to the determination to be made in that regard by the referring court, in view of the fact that that court treats a negative interpretative decision as a decision finding that a provision of national law does not comply with the Polish Constitution or with another higher-ranking rule, it appears that, where a certain interpretation of such a provision is at issue before the Trybunał Konstytucyjny (Constitutional Court), the effect of the decision of that court finding that that interpretation is incompatible with that Constitution or with another higher-ranking rule is, by analogy, to deprive that interpretation *ipso facto* of its capacity to support a judgment.

49 As the Advocate General observed, in essence, in points 78 and 88 of his Opinion, it thus appears that the decisions of the Trybunał Konstytucyjny (Constitutional Court) referred to in paragraphs 46 to 48 of the present judgment contain a finding that the provision of national law at issue, or a certain interpretation of such a provision, is incompatible with the Polish Constitution or with another higher-ranking rule. Such a finding does not require the adoption of a subsequent judicial decision and has the effect of depriving that provision or that interpretation of its binding force and of removing it from the national legal order, which has the direct consequence of depriving the final judgment given on the basis of that provision or of that interpretation of its legal basis.

50 In that regard, preliminary rulings on questions of interpretation differ from the relevant decisions of the Trybunał Konstytucyjny (Constitutional Court). It is common ground that, although the role of the Court of Justice is to provide a binding interpretation of EU law, the consequences of that interpretation for the specific case are the responsibility of the national courts.

51 In that regard, it should be recalled that the preliminary ruling procedure provided for in Article 267 TFEU sets up a dialogue between the Court of Justice and the courts of the Member States, having the object of securing uniform interpretation of EU law, thereby serving to ensure its consistency, its full effect and its autonomy as well as, ultimately, the particular nature of the law established by the Treaties (judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 27 and the case-law cited).

52 The system set up by that provision therefore establishes between the Court of Justice and national courts or tribunals direct cooperation as part of which the latter are closely involved in the correct application and uniform interpretation of EU law and also in the protection of individual rights conferred by it (judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 29 and the case-law cited).

53 In the context of that cooperation, the Court of Justice provides national courts, in their capacity as courts responsible for the application of EU law, with the points of interpretation of EU law which they need in order to decide the disputes before them (judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 30 and the case-law cited).

54 Moreover, as recalled in paragraph 31 of the present judgment, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to interpret and apply national law. It follows that the application, in the case pending before the referring court, of the interpretation provided by the Court in response to a request for a preliminary ruling which that court has referred to it in that case is the responsibility of that court (see, to that effect, judgment of 7 July 2022, *F. Hoffmann-La Roche and Others*, C-261/21, EU:C:2022:534, paragraph 55).

55 Thus, in the context of the preliminary ruling procedure, it is not for the Court to rule on the compatibility of a national provision with EU law. It is for the national court to carry out such an assessment, in the light of the guidance thus provided by the Court (see, to that effect, judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraph 30 and the case-law cited).

56 Consequently, unlike the relevant decisions of the Trybunał Konstytucyjny (Constitutional Court), by which that court finds that a provision of national law or a certain interpretation of such a provision is not compatible with the Polish Constitution or with another higher-ranking rule, preliminary rulings on interpretation delivered by the Court are intended to provide the national court with the guidance on the interpretation of EU law which it requires in order to decide the dispute before it. As regards the possible incompatibility with EU law of a provision of national law, or a given interpretation of such a provision, at issue before the national court, and the consequences of any such incompatibility, the findings and findings to be made in that regard in the light of the preliminary ruling on interpretation ultimately fall within the jurisdiction of that national court, having regard to the separation of functions which characterises the procedure by which the Court of Justice rules on the interpretation of EU law under Article 267 TFEU.

57 In that regard, it must be borne in mind that such assessments and findings are liable to depend not only on whether the provision of EU law concerned has direct effect, since only a provision of EU law which has such effect may be relied on, as such, in a dispute falling within the scope of EU law, in order to disapply, in accordance with the principle of the primacy of EU law, a provision of national law which conflicts with it (see, to that effect, judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 61 and 62), but also on the possibility of interpreting the national provision at issue in a manner that is consistent with EU law. Under the

principle that national law must be interpreted in conformity with EU law, the national court is required, to the fullest extent possible, to interpret national law in conformity with the requirements of EU law (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 55).

58 It follows that, subject to the determinations to be made by the referring court, the scope of a decision of the Trybunał Konstytucyjny (Constitutional Court) declaring that a provision of national law, or a certain interpretation of such a provision, is incompatible with the Polish Constitution or another higher-ranking rule appears to be different from that of a preliminary ruling on interpretation in that, in such a judgment, the Court of Justice does not rule directly, by interpreting EU law, on whether a provision of national law or an interpretation of such a provision is incompatible with EU law, that question having ultimately to be decided by the referring court.

59 Consequently, the answer to the first question is that Article 4(3) TEU and the principle of equivalence must be interpreted as not requiring, where an extraordinary remedy laid down by a national procedural provision allows an individual to apply for the reopening of proceedings that have culminated in a final judgment by relying on a subsequent decision of the constitutional court of the Member State concerned declaring incompatible with the Constitution, or another higher-ranking rule, a provision of national law or a certain interpretation of such a provision, on the basis of which that judgment was given, that that remedy also be available where reliance is placed on a preliminary ruling on interpretation, since the specific consequences of such a decision of that constitutional court concerning the provision of national law or the interpretation of such a provision on which that final judgment is based flow directly from that decision.

The second question

60 By its second question, the referring court asks, in essence, whether the principle of interpreting national law in conformity with EU law must be interpreted as meaning that a provision of national law establishing an extraordinary remedy allowing a party to apply for the reopening of proceedings closed by a final judgment if that party has been deprived of the opportunity to take action on account of a breach of the law must be given a broad interpretation so as to include within its scope a situation in which the court which upheld an application by a seller or supplier based on a contract concluded with a consumer, by a final default judgment, failed to examine that contract of its own motion with regard to whether it included unfair terms, in breach of its obligations under Directive 93/13.

61 It must be noted that the principle of interpreting national law in conformity with EU law is inherent in the system of the Treaties, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they determine the disputes before them (judgment of 21 January 2021, *Whiteland Import Export*, C-308/19, EU:C:2021:47, paragraph 61 and the case-law cited).

62 In accordance with that principle, it is for the national courts, taking into account the whole body of rules of national law and applying methods of interpretation recognised by that law, to decide whether and to what extent a national provision can be interpreted in a manner that is consistent with the relevant provisions of EU law (judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 71 and the case-law cited).

63 That principle has certain limits. Thus the obligation on national courts to refer to the content of EU law when interpreting and applying the relevant rules of domestic law is limited by general principles of law and cannot serve as the basis for an interpretation of national law that is *contra*

legem (judgment of 18 January 2022, *Thelen Technopark Berlin*, C-261/20, EU:C:2022:33, paragraph 28 and the case-law cited).

64 In view of the fact that the national courts alone have jurisdiction to interpret national law, in accordance with the case-law referred to in paragraph 31 of the present judgment, it is for the referring court to determine whether or not the interpretation which it considers giving to Article 401(2) of the Code of Civil Procedure is possible in view of the limits referred to in the above paragraph. That said, it is for the Court to provide the referring court with some useful guidance in the light of the information contained in the order for reference.

65 As regards the national case-law referred to by the referring court relating to the ground for reopening the proceedings concerned, to the effect that the fact that a party has been deprived of the opportunity to take action on account of a breach of the law, within the meaning of Article 401(2) of the Code of Civil Procedure, concerns only infringements of procedural rules, it should be noted that the requirement to interpret national law in conformity with EU law includes, in particular, the obligation for national courts to change established case-law, where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of a directive. Consequently, a national court cannot, in particular, validly consider that it is impossible for it to interpret a provision of national law in a manner that is consistent with EU law merely because that provision has consistently been interpreted in a manner that is incompatible with EU law (judgment of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 68 and the case-law cited).

66 In any event, it must be borne in mind that, in accordance with settled case-law, the obligation to examine of their own motion the unfairness of certain terms in an agreement concluded with a consumer constitutes a procedural rule placed on the courts (see, to that effect, judgment of 7 November 2019, *Profi Credit Polska*, C-419/18 and C-483/18, EU:C:2019:930, paragraph 74 and the case-law cited).

67 In addition, it is apparent from the information contained in the order for reference that the considerations of the referring court underlying its second question do not relate exclusively to the fact that the court of first instance delivered the default judgment solely on the basis of the promissory note issued by FY and the notification by Profi Credit Polska of the termination of the credit agreement concluded with FY, without examining whether terms of that agreement were unfair, but also to the procedural rules governing the exercise of the right to lodge an objection against such a judgment.

68 In that regard, it is apparent from the case-law of the Court that the procedure before the court of first instance must be examined in its entirety, including taking into consideration FY’s right to lodge an objection against that judgment (see, to that effect, the judgment in *Profi Credit Polska I*, paragraph 54).

69 In the case in the main proceedings, it must be observed that the detailed procedural rules governing the lodging of the objection which could be brought against the default judgment could be subject, as described by the referring court, namely observance of a time limit of two weeks for lodging an objection, the obligation to express all objections and claims immediately, the obligation to bear costs equivalent to half of those of an appeal and the lack of suspensory effect of lodging an objection, display strong similarities to the procedural rules examined by the Court in paragraphs 64 to 68 of the judgment in *Profi Credit Polska I*, which it deemed, in paragraph 70 of that judgment, liable to give rise to a real risk that the consumers concerned would not lodge an objection.

70 It is therefore for the referring court to determine whether the detailed rules at issue in the main proceedings, in so far as they do not make it possible to ensure observance of the rights which the consumer derives from Directive 93/13, may be regarded as reflecting a situation in which a party is deprived of the opportunity to take action on account of a breach of the law, within the meaning of Article 401(2) of the Code of Civil Procedure.

71 That said, it must be observed that the recognition of a right to reopen proceedings closed by a final judgment in accordance with the principle of interpreting national law in conformity with EU law cannot, in principle, be regarded as the only means capable of guaranteeing a consumer the protection intended by Directive 93/13 in circumstances such as those in the main proceedings.

72 In that regard, it must be borne in mind that, in view of a consumer's weaker position vis-à-vis a seller or supplier, Article 6(1) of that directive provides that unfair terms are not binding on the consumer. It 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 of 17 May 2022, *Ibercaja Banco*, C-600/19, EU:C:2022:394, paragraph 36 and the case-law cited). That provision must be regarded as a provision of equal standing to that of national rules that have, within the domestic legal system, the character of rules of public policy (judgment of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 54 and the case-law cited).

73 Moreover, given the nature and significance of the public interest constituted by the protection of consumers, Directive 93/13, as is apparent from Article 7(1) thereof, read in conjunction with its twenty-fourth recital, obliges the Member States to provide for adequate and effective means 'to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers' (judgment of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 56 and the case-law cited).

74 In that regard, EU law does not harmonise the procedures applicable to examining whether a contractual term is unfair, with the result that those procedures fall within the domestic legal system of the Member States, in accordance with the principle of the procedural autonomy of the Member States, on condition, however, that they comply with the principles of equivalence and effectiveness (see, to that effect, the judgment in *Profi Credit Polska I*, paragraph 57 and the case-law cited).

75 In the present case, it is not apparent from the documents before the Court that the principle of equivalence could require the application of Article 401(2) of the Code of Civil Procedure in circumstances such as those in the main proceedings. There is nothing to indicate that that provision would be applicable in the event of failure on the part of the court hearing the case to raise of its own motion a plea based on a national rule of public policy, given that Article 6(1) of Directive 93/13 must be regarded as equivalent to such a rule, as pointed out in paragraph 72 of the present judgment.

76 As regards the principle of effectiveness, it must be stressed that the obligation on the Member States to ensure the effectiveness of the rights that individuals derive from EU law, particularly the rights deriving from Directive 93/13, implies a requirement for effective judicial protection, also guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union, which applies, in particular, to the definition of detailed procedural rules relating to actions based on such rights (judgment of 22 April 2021, *Profi Credit Slovakia*, C-485/19, EU:C:2021:313, paragraph 54 and the case-law cited).

77 In that regard, if, in the main proceedings, the referring court were to reach the conclusion, having regard in particular to the matters set out in paragraphs 67 to 69 of the present judgment, that the procedural rules governing the exercise of the right to lodge an objection against the default judgment do not enable observance of the rights that consumers derive from Directive 93/13, it would follow that that procedure is not consistent with the consumer's right to an effective remedy.

78 Consequently, if the referring court were to consider that the situation at issue in the main proceedings is not capable of falling within the scope of the ground for reopening civil proceedings laid down in Article 401(2) of the Code of Civil Procedure, concerning unlawful deprivation of a party's opportunity to take action on account of a breach of the law, it would be necessary to find that a consumer such as FY must have another legal remedy available to him or her so that the protection intended by Directive 93/13 is effectively guaranteed. The force of *res judicata* attaching to the default judgment, which was given without examining whether terms of the contract at issue are unfair, cannot preclude that finding.

79 It should be noted that it follows from the Court's case-law that observance of the rights guaranteed by that directive must also be capable of being ensured, where appropriate, in the context of enforcement proceedings, or even after that procedure has come to an end.

80 First, where a seller or supplier has obtained an enforceable instrument against a consumer based on a contract concluded with that consumer without any examination of whether all or part of the terms of that contract are unfair, the principle of effectiveness means that the court ruling on the enforcement of that instrument may, if necessary of its own motion, carry out that examination (see, to that effect, judgment of 18 February 2016, *Finanmadrid EFC*, C-49/14, EU:C:2016:98, paragraph 55).

81 It is irrelevant that the lack of prior examination of such terms results, as in the case which gave rise to the judgment referred to in paragraph 80 of the present judgment, from the lack of competence on the part of the authority that issued the enforceable instrument to carry out that examination or, as in the case in the main proceedings, from the failure by the court which gave a default judgment that was immediately enforceable together with the potentially excessively restrictive nature of the detailed rules governing the exercise of the right to lodge an objection against that judgment. Without effective review of whether the terms of the contract concerned are unfair, observance of the rights conferred by Directive 93/13 cannot be guaranteed (the judgment in *Profi Credit Polska I*, paragraph 62).

82 It should, however, be pointed out that, in such a situation, the full effectiveness of the consumer protection intended by Directive 93/13 also requires that the enforcement proceedings may be suspended, where appropriate according to rules which are not liable to discourage the consumer from bringing and pursuing an action, until the court having jurisdiction has carried out the review of whether terms of the contract concerned are unfair (see, to that effect, judgments of 17 July 2014, *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraph 27 and the case-law cited, and of 17 May 2022, *Impuls Leasing România*, C-725/19, EU:C:2022:396, paragraph 60).

83 Secondly, in a situation in which the enforcement proceedings have come to an end, the consumer must, in accordance with Article 6(1) and Article 7(1) of Directive 93/13, read in the light of the principle of effectiveness, be able to rely, in separate subsequent proceedings, on the unfairness of the terms of the contract in order to be able to exercise effectively and in full his or her rights under that directive, with a view to obtaining compensation for the financial damage caused

by the application of those terms (see, to that effect, judgment of 17 May 2022, *Ibercaja Banco*, C-600/19, EU:C:2022:394, paragraph 58).

84 In those circumstances, the answer to the second question is that the principle of interpreting national law in conformity with EU law must be interpreted as meaning that it is for the national court to assess whether a provision of national law establishing an exceptional remedy, which allows a party to apply for the reopening of proceedings closed by a final judgment if that party has been deprived of the opportunity to take action on account of a breach of the law, may be interpreted so broadly as to include within its scope a situation in which a court which has upheld an application by a seller or supplier based on an agreement concluded with a consumer, by a final default judgment, failed to examine of its own motion whether that agreement contained unfair terms, in breach of its obligations under Directive 93/13, and in which it is apparent that the procedural rules governing the exercise by that consumer of his or her right to lodge an objection against that default judgment are such as to entail a real risk that that consumer would not make use of it and consequently, do not make it possible to ensure observance of the rights that that consumer derives from that directive. If such a broad interpretation is not feasible on account of the limitations imposed by general principles of law and the fact that it is not possible to provide an interpretation that is *contra legem*, the principle of effectiveness requires that observance of those rights be ensured in proceedings for the enforcement of that default judgment or in separate subsequent proceedings.

Costs

85 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 (Grand Chamber) hereby rules:

1. **Article 4(3) TEU and the principle of equivalence**

must be interpreted as not requiring, where an extraordinary remedy laid down by a national procedural provision allows an individual to apply for the reopening of proceedings that have culminated in a final judgment by relying on a subsequent decision of the constitutional court of the Member State concerned declaring incompatible with the Constitution, or another higher-ranking rule, a provision of national law or a certain interpretation of such a provision, on the basis of which that judgment was given, that that remedy also be available where reliance is placed on a preliminary ruling of the Court of Justice given pursuant to Article 267 TFEU concerning the interpretation of EU law, since the specific consequences of such a decision of that constitutional court concerning the provision of national law or the interpretation of such a provision on which that final judgment is based flow directly from that decision.

2. **The principle of interpreting national law in conformity with EU law**

must be interpreted as meaning that it is for the national court to assess whether a provision of national law establishing an exceptional remedy, which allows a party to apply for the reopening of proceedings closed by a final judgment if that party has been deprived of the opportunity to take action on account of a breach of the law, may be interpreted so broadly as to include within its scope a situation in which a court which has upheld an application by a seller or supplier based on an agreement concluded with a consumer, by a final default

judgment, failed to examine of its own motion whether that agreement contained unfair terms, in breach of its obligations under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and in which it is apparent that the procedural rules governing the exercise by that consumer of his or her right to lodge an objection against that default judgment are such as to entail a real risk that that consumer would not make use of it and consequently, do not make it possible to ensure observance of the rights that that consumer derives from that directive. If such a broad interpretation is not feasible on account of the limitations imposed by general principles of law and the fact that it is not possible to provide an interpretation that is *contra legem*, the principle of effectiveness requires that observance of those rights be ensured in proceedings for the enforcement of that default judgment or in separate subsequent proceedings.

[Signatures]

---

* Language of the case: Polish.