



Reports of Cases

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE
delivered on 6 October 2021¹

Case C-385/20

**EL,
TP**

v

Caixabank SA

(Request for a preliminary ruling from the Juzgado de Primera Instancia n.º 49 de Barcelona
(Court of First Instance No 49, Barcelona, Spain))

(Reference for a preliminary ruling – Unfair terms in consumer contracts – Directive 93/13/EEC – Credit agreement – Judicial proceedings for a declaration that a contractual term is unfair – Order requiring the seller or supplier to pay the costs – Amount of costs recoverable by the consumer – Limit applicable to lawyers’ fees based on the value of the claim – Procedural autonomy – Principle of effectiveness)

I. Introduction

1. By this request for a preliminary ruling, the Juzgado de Primera Instancia n.º 49 de Barcelona (Court of First Instance No 49, Barcelona, Spain) has referred two questions to the Court relating to the interpretation of Directive 93/13/EEC on unfair terms in consumer contracts.²

2. That request was made in the context of proceedings between EL and TP, two consumers, and Caixabank SA, a financial institution, concerning the lawyers’ fees claimed by the former from the later in proceedings for taxation of costs. Those proceedings follow a judgment on the merits which, at the request of those consumers, found contractual terms contained in a loan agreement between the parties to be unfair, ordered the repayment of the amounts unduly paid by the consumers on the basis of those terms, and ordered Caixabank to pay the costs.

3. In that context, the referring court asks the Court, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13, read in conjunction with the principle of effectiveness, require the Member States to lay down, in their national law, in connection with civil proceedings relating to

¹ Original language: French.

² Council Directive of 5 April 1993 (OJ 1993 L 95, p. 29).

unfair terms, the right for successful consumers to obtain, from the unsuccessful seller or supplier, the legal costs incurred by the former, including the fees freely agreed with their lawyers,³ it being impossible for those States to set certain limits in that regard.

4. In this Opinion, I will explain that, within the scope of their procedural autonomy, the Member States enjoy broad discretion to draw up the rules on the taxation of legal costs applicable to civil proceedings relating to unfair terms, which include, in relation to the lawyers' fees of the successful party, a limit based on the value of the claim. In my view, Article 6(1) and Article 7(1) of Directive 93/13, read in conjunction with the principle of effectiveness, require only that those rules allow the consumers to recover a reasonable and proportionate amount in relation to the costs that they are objectively required to incur in order to bring such proceedings. It will be for the referring court to determine whether that is the case in the main proceedings.

II. Legal context

A. Directive 93/13

5. Article 6(1) of Directive 93/13 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 ...'

6. Under Article 7(1) of that directive:

'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.'

B. Spanish law

7. In Spanish law, the rules on costs in civil proceedings are contained in Ley 1/2000 de Enjuiciamiento Civil (Law 1/2000 on the Code of Civil Procedure) of 7 January 2000 (BOE No 7 of 8 January 2000, p. 575; 'the LEC').

8. Article 243 of the LEC provides:

'1. In all types and at all stages of proceedings, the taxation of costs shall be conducted by the registrar of the court which was seised of the proceedings or appeal respectively, or, as the case may be, by the registrar responsible for enforcement.

2. ...

The registrar shall reduce the amount of the fees charged by lawyers and other professionals who are not subject to a specific scale of costs where the amount of those fees exceeds the limit referred

³ In this Opinion, I will use the term 'legal costs' in the broad sense such that it includes the lawyers' fees incurred by the applicants in the context of legal proceedings.

to in Article 394(3) and the party ordered to pay the costs has not been found to be a vexatious litigant.

...'

9. Article 251 of the LEC provides:

'The value of the claim shall be fixed on the basis of the financial interest of the claim, which shall be calculated in accordance with the following rules:

1. If a specified sum of money is claimed, the value of the claim shall be represented by that sum, and if no sum is specified, even in relative terms, the claim shall be deemed to be for an unspecified amount.

...

8. In proceedings concerning the existence, validity or effectiveness of a debt instrument, the value of that instrument shall be represented by the total amount owed, even if payment is made in instalments. That rule of valuation shall apply in proceedings concerning the creation, amendment or extinguishment of a debt instrument or of an individual debt, provided that another rule laid down in this article does not apply.

...'

10. Article 394 of the LEC provides:

'1. In declaratory proceedings, where a party has had all its claims dismissed, that party shall be ordered to pay the costs of the proceedings at first instance unless the court finds, and gives due reasons for so finding, that the case raised serious doubts on matters of fact or of law.

...

3. Where, under paragraph 1 of this article, the unsuccessful party is ordered to pay the costs, that party shall be required to pay, of the portion of costs corresponding to the remuneration of lawyers or other professionals not subject to a scale of costs or fees, only a total sum which does not exceed one third of the amount at issue in the proceedings, in respect of each of the parties to the proceedings who obtained such an order. For those purposes alone, claims the amount of which cannot be estimated shall be valued at EUR 18 000 unless the court orders otherwise on account of the complexity of the case.

The provisions of the preceding paragraph shall not apply if the court finds the party ordered to pay the costs to be a vexatious litigant.

...'

11. Article 411 of the LEC provides:

'Changes which occur after the commencement of proceedings in relation to the domicile of the parties, the property in dispute or the subject matter of the action shall not alter jurisdiction or

competence, which shall be determined in accordance with the information furnished at the outset of the proceedings.’

III. The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

12. It is apparent from the order for reference and from the observations submitted before the Court that, on 25 April 2008, EL and TP concluded with Caixabank a credit agreement for, in essence, an amount of EUR 159 000. However, that agreement contained a number of ‘multi-currency’ terms and the loan was thus denominated in Japanese yen (JPY).

13. On 10 October 2016, EL and TP brought proceedings before the Juzgado de Primera Instancia n.º 49 de Barcelona (Court of First Instance No 49, Barcelona) against Caixabank seeking, first, a declaration that those ‘multi-currency’ terms are null and void because they are unfair, next, a recalculation of the balance of the loan (with the contract continuing in euro) and, lastly, an order that the bank repay the undue amounts which the applicants paid on the basis of those terms since the conclusion of the contract.

14. In their application, the applicants in the main proceedings stated the value of the claim was of an unspecified amount. In that regard, they claimed, in essence, that, if the balance of the loan on the day on which proceedings were brought was EUR 127 269.15, that balance should be revised as a result of the cancellation of the ‘multi-currency’ terms and adjusted once all the charges and commissions incurred by virtue of those terms are known. That value was subsequently established as such in the decision finding the proceedings to be admissible.

15. By judgment of 29 November 2018, the Juzgado de Primera Instancia n.º 49 de Barcelona (Court of First Instance No 49, Barcelona) allowed the action brought by EL and TP. That court found the contested ‘multi-currency’ terms to be null and void and ordered Caixabank to repay to the consumers any amounts paid by them and which exceed those which they would have been paid had the loan been denominated in euro from the outset, plus statutory interest. Furthermore, that court ordered Caixabank to pay the costs. That judgment has since become final.

16. Subsequently, in the context of the incidental proceedings for taxation of costs, the lawyer representing EL and TP submitted, to the competent registrar, an application for repayment of the costs associated with the proceedings in the amount of EUR 25 188.91, including a note for lawyers’ fees in the amount of EUR 19 007.89. In calculating those fees, that application took as a basis, as the value of the claim, the amount of EUR 127 269.15, that is to say the balance of the loan on the date on which proceedings were brought.⁴

17. Caixabank contested the costs claimed, arguing that they are excessive. By decision of 1 October 2019, the registrar upheld that challenge. He took the view, *inter alia*, that, in accordance with Article 251 and Article 411 of the LEC, as interpreted by the Spanish courts, the value of the claim, once established when proceedings are brought, can no longer be amended at a later stage in the proceedings, nor *a fortiori* during the taxation of costs. In the present case, since it had been established, in the decision finding the proceedings to be admissible, in accordance with the statement made in the application, that the value of the claim was of an unspecified

⁴ This information is not contained in the order for reference. It is apparent from the observations submitted by EL and TP and by Caixabank (see, in this regard, point 23 of this Opinion).

amount, it also had to be regarded as such in the context of the taxation of costs. That value therefore had to be estimated at EUR 30 000 for the purposes of the lawyers' fees recoverable, in accordance with the guidance criteria for the taxation of costs produced by the Barcelona Bar. In addition, pursuant to Article 394(3) of the LEC, Caixabank could only be required to repay to the applicants in the main proceedings lawyers' fees not exceeding one third of that amount.

18. The applicants in the main proceeding then brought an action for revision against the latter decision. In that context, the Juzgado de Primera Instancia n.º 49 de Barcelona (Court of First Instance No 49, Barcelona), given its doubts as to the compatibility with Directive 93/13 of Article 251, Article 394(3) and Article 411 of the LEC, as interpreted by the Spanish courts, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does the interpretation of Articles 251, 394(3) and 411 of the [LEC] set out in the reasoned decision of 1 October 2019, which equates the amount at issue in the proceedings with the financial interest of the dispute and, consequently, leads to a reduction of the fees that the consumer has paid his or her lawyer, on the basis of a fixed sum (EUR 18 000), established in law only in respect of an amount that cannot be estimated and not an amount that is unspecified, conflict with Articles 6(1) and 7(1) of [Directive 93/13], since it cannot restore the consumer to the factual and legal position which he or she would have been in if that term had not existed, even though there is, in the consumer's favour, a judicial declaration that the term is unfair, and since it does not remove an unreasonable procedural requirement relating to a limitation of costs where such removal would ensure that the consumer has the most suitable and effective means of legitimately exercising his or her rights?

(2) Does Article 394(3) of the LEC in itself conflict with Articles 6(1) and 7(1) of [Directive 93/13] and make it impossible or excessively difficult to exercise in court the rights which the Directive grants to consumers, since the limitation which that article imposes on consumers, in the sense that they have to bear a portion of their own procedural costs, means that the consumer cannot be restored to the factual and legal position which he or she would have been in if that term had not existed, even though there is, in the consumer's favour, a judicial declaration that the term is unfair, and since it does not remove an unreasonable procedural requirement relating to a limitation of costs where such removal would ensure that the consumer has the most suitable and effective means of legitimately exercising his or her rights?’

19. The request for a preliminary ruling, dated 7 July 2020, was received at the Court on 12 August 2020. EL and TP, Caixabank, the Spanish and Polish Governments and the European Commission lodged written observations before the Court. The same parties and interested persons, with the exception of the Polish Government, also replied in writing to questions put by the Court on 11 May 2021.

IV. Analysis

A. Jurisdiction

20. As a preliminary point, the Spanish Government and, in essence, Caixabank claim that the Court lacks jurisdiction to hear and determine the questions referred for a preliminary ruling in this case.

21. That plea must be dismissed in my view. Whilst it is true that questions relating to the taxation of costs in civil proceedings do not fall, as such, within the scope of Directive 93/13, I would point out that the dispute in the main proceedings concerns the unfairness, for the purposes of that directive, of a number of contractual terms. These procedural questions are therefore raised in the context of proceedings concerning the rights that consumers derive from the directive. In that context, the question is whether Article 6(1) and Article 7(1) of the same directive, read in conjunction with the principle of effectiveness, preclude the Spanish rules on costs. The situation does therefore fall within the scope of EU law, and the questions submitted relate to the interpretation of EU law. The Court thus manifestly has jurisdiction to hear and determine them.⁵

B. Admissibility

22. Caixabank and the Spanish Government also claim that the questions referred for a preliminary ruling are inadmissible. In their view, *first*, the order for reference does not contain the factual and legal material necessary for the Court to give a useful answer to the questions submitted.

23. Admittedly, the amount of the fees claimed by the lawyer who represented the applicants in the main proceedings in the context of the taxation of costs is not stated in the order for reference, which also does not state whether that amount exceeds the limit laid down in Article 394(3) of the LEC. However, in addition to the fact that that information is contained in the observations submitted by the parties to the main proceedings, the description of the facts contained in the order for reference, as brief as it is, is in my view sufficient to understand the situations forming the basis of the questions referred for a preliminary ruling and to allow the Court to provide useful answers to them.

24. *Secondly*, Caixabank points to a contradiction between the wording of the first question and the contents of the order for reference. The referring court suggests in that question that the amount of EUR 18 000 mentioned in the second sentence of the first subparagraph of Article 394(3) of the LEC was taken as the basis for the calculation of the lawyers' fees recoverable by EL and TP, whereas it is stated in the order for reference that, in reality, the registrar took as the basis the amount of EUR 30 000 provided for in the guidance criteria for the taxation of costs produced by the Barcelona Bar.

25. It appears to me that there is indeed, in this respect, a contradiction in the order for reference. Furthermore, that order likewise fails to explain the reasons why that amount of EUR 30 000 was applied instead of the amount mentioned in Article 394(3) of the LEC. That said, that contradiction is, in my view, insufficient to declare the questions submitted inadmissible. The Court will have to give a general answer relating to the compatibility of a national scheme for the taxation of costs that provides for a limit on recoverable lawyers' fees based on the value of the claim, regardless of the value actually determined in the case in the main proceedings. That amount is therefore not decisive with respect to the interpretation sought.

⁵ See, by analogy, judgment of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria* (C-224/19 and C-259/19, EU:C:2020:578; 'the judgment in *Caixabank and Banco Bilbao Vizcaya Argentaria*'; paragraph 45.). Although, in the judgments of 27 March 2014, *Torralbo Marcos* (C-265/13, EU:C:2014:187) and of 8 December 2016, *Eurosaneamientos and Others* (C-532/15 and C-538/15, EU:C:2016:932), invoked by Caixabank and the Spanish Government, the Court declared that it lacked jurisdiction to answer questions relating to the compatibility of national procedural rules with EU law, that was specifically because those questions had been submitted in the context of proceedings that did not concern rights derived from EU law.

26. *Thirdly*, Caixabank and the Spanish Government claim that the order for reference contains unsubstantiated, or even incorrect, statements. In particular, the referring court suggests in that order that the applicants in the main proceedings have paid, or at the very least will have to pay, all the fees claimed by their lawyer in the context of the taxation of costs without substantiating that point, whereas it is apparent from the documents in the case file that that is not the case. For the same reason, they claim that the questions submitted are hypothetical. There can be no doubt that the applicants in the main proceedings will obtain from Caixabank, pursuant to the Spanish rules on costs, the repayment of all the legal costs that they have incurred.⁶

27. In that regard, it is sufficient to recall that, in proceedings under Article 267 TFEU, the national court has jurisdiction to assess the facts of the case. The Court is only permitted to rule on the interpretation of provisions of EU law based on the facts put before it by that court.⁷ Caixabank and the Spanish Government cannot therefore call into question before the Court the factual premiss, established by the referring court in its questions, that the applicants in the main proceedings have paid the fees claimed by their lawyer or, at the very least, will have to do so in so far as those fees cannot be passed on to the defendant in the main proceedings.

28. *Finally*, the Spanish Government specifically contests the admissibility of the first question in so far as it concerns the principle of '*perpetuatio jurisdictionis*', as codified in Article 411 of the LEC, relying on several facts which, in my view, go to the substance of that question.⁸ Accordingly, whilst those circumstances may be taken into account in answering the question, they are, in my view, irrelevant as far as concerns an assessment of its admissibility.⁹

C. Substance

29. The background to this case is the issue, an issue with which the Court is very familiar,¹⁰ of loan agreements denominated in foreign currencies concluded by consumers with banking institutions, in particular Spanish institutions.

30. In the present case, EL and TP had concluded such a credit agreement, denominated in Japanese yen, with Caixabank. However, those consumers brought proceedings for a declaration of the unfairness of the 'multi-currency' terms in that agreement, which had the effect of indexing the monthly loan payments to the rate of that currency.

31. The questions referred for a preliminary ruling by the referring court do not concern the compatibility of the contested terms with EU law. That court has already found them to be unfair, within the meaning of Article 3(1) of Directive 93/13, in a judgment which is now

⁶ The fee agreement concluded by the applicants in the main proceedings with their lawyer states that the parties agreed to fixed fees and variable fees, which apply in the event of a favourable judgment and the bank being ordered to pay the costs. Only the fixed portion, of a value of EUR 1 200 (excluding tax), has to be paid by the applicants. By contrast, the variable fees have to be directly deducted by the lawyer from the amount of the costs obtained. In addition, the amount of EUR 1 200 falls below the limit laid down in Article 394(3) of the LEC and is largely covered by the amount that Caixabank agrees to pay by way of costs.

⁷ See, *inter alia*, judgment of 29 April 2021, *Bank BPH* (C-19/20, EU:C:2021:341, paragraph 37 and the case-law cited).

⁸ For those facts, see points 76 and 77 of this Opinion.

⁹ See, by analogy, judgment of 4 October 1991, *Society for the Protection of Unborn Children Ireland* (C-159/90, EU:C:1991:378, paragraph 15).

¹⁰ See, *inter alia*, judgments of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282); of 20 September 2017, *Andriciuc and Others* (C-186/16, EU:C:2017:703); and of 10 June 2021, *BNP Paribas Personal Finance* (C-609/19, EU:C:2021:469).

final.¹¹ In that context, the court, pursuant to Article 6(1) of that directive, disapplied those terms (finding them to be null and void absolutely, as provided for in Spanish law) and found, as to the remainder, that the contract continued to be valid, with the euro thus becoming the sole currency for the loan.¹² That same court also ordered Caixabank to refund to the applicants in the main proceedings any sums wrongly paid by them on the basis of those terms, which entailed the recalculation of the monthly payments that they would have paid if the loan had been denominated in euro from the outset and the determination of the amount of the charges and commissions charged by that bank in connection with the ‘multi-currency’ arrangements.

32. By contrast, the questions referred for a preliminary ruling here concern the precise amount of the costs, and more specifically of the lawyers’ fees, which the applicants in the main proceedings are entitled to have repaid to them by Caixabank at the end of those proceedings, in accordance with Spanish law.

33. In that regard, the Spanish rules provide, in essence, that, in the context of civil proceedings, the unsuccessful party is in principle ordered to bear the legal costs incurred by the successful party, including the fees of the latter’s lawyer.¹³ In the present case, Caixabank was thus ordered to repay to EL and TP the costs incurred by them.

34. Once the order to pay costs has become final, the registrar of the court seised of the proceedings, who is competent in this regard,¹⁴ is to determine and adjust the precise amount of the costs recoverable by the successful party in the context of proceedings for the taxation of costs, having regard to the fee notes submitted by the lawyers, solicitors or other experts involved, and taking into account the circumstances of the individual case, in particular *the value of the claim*, but also the work actually performed by those professionals, the time devoted to the case and its complexity.

35. However, *first*, Article 394(3) of the LEC provides, in the first sentence of the first subparagraph thereof, a limit applicable, inter alia, to the lawyers’ fees of the successful party. Specifically, the party ordered to pay the costs can, in principle,¹⁵ be required to pay, in relation to such fees, at most, only a total sum *which does not exceed one third of the value of the claim*. If the lawyers’ fees claimed exceed that limit, the registrar is usually required to ‘reduce’ those fees.¹⁶

36. In that context, *secondly*, under Article 251 of the LEC, the value of the claim must be specified in the application, on the basis of the financial interest that the claim represents for the applicant. In that connection, paragraph 1 of that article provides that, if a specified sum is claimed, the value of the claim corresponds to that sum, and if no sum is specified, even in relative terms, the value of the claim is deemed to be of an unspecified amount.

¹¹ The order for reference does not explain the reasons why the contested terms were found to be unfair. It is, however, clear from the observations of the Spanish Government that the Spanish courts subject this type of ‘multi-currency’ terms to strict review and generally take the view that they are not sufficiently transparent for the consumers. For the case-law of the Court on the requirements of transparency applicable to similar terms, see judgment of 10 June 2021, *BNP Paribas Personal Finance* (C-609/19, EU:C:2021:469, paragraphs 40 to 57 and the case-law cited).

¹² For the circumstances in which a contract is continued, see, inter alia, judgment of 14 March 2019, *Dunai* (C-118/17, EU:C:2019:207, paragraph 40).

¹³ See Article 394(1) of the LEC.

¹⁴ See Article 243 of the LEC.

¹⁵ See, to that effect, point 67 of this Opinion.

¹⁶ See Article 243 of the LEC.

37. In the present case, EL and TP had initially stated, in their application, the value of the claim to be an unspecified amount. In that context, they had explained, in essence, that, although the financial interest that the proceedings represent for them corresponds to the balance of the loan on the day on which those proceedings were brought (approximately EUR 120 000), that balance should be revised as a result of the cancellation of the ‘multi-currency’ terms at issue. Accordingly, it was necessary to wait for the judgment on the merits in order to determine that value precisely. Subsequently, in connection with the taxation of costs, the applicants in the main proceedings established that same value, for the purposes of calculating the recoverable lawyers’ fees, as the balance of the loan.

38. However, in accordance with settled case-law of the Tribunal Supremo (Supreme Court, Spain), in accordance with the procedural principle of ‘*perpetuatio jurisdictionis*’, as codified in Article 411 of the LEC, the value of the claim, once established in the decision finding the proceedings to be admissible, in accordance with the information provided in the application, could not be amended at a later stage in the proceedings, nor a fortiori after their closure, in connection with the taxation of costs. That case-law was followed by the registrar in the case in the main proceedings. He took the view that, in the present case, the value of the claim was to be regarded as remaining, including for the purposes of such taxation, of an unspecified amount.¹⁷

39. That interpretation has the effect of limiting the amount of the lawyers’ fees that can be recovered by the applicants in the main proceedings from Caixabank. In accordance once again with (at the very least one line of)¹⁸ Spanish case-law, claims of an ‘unspecified’ value must be treated in the same way as those of a value which ‘cannot be estimated’, within the meaning of the second sentence of the first subparagraph of Article 394(3) of the LEC. That sentence provides that, in principle,¹⁹ such claims are estimated, solely for the purposes of the taxation of costs, at EUR 18 000. Therefore, in accordance with the limit laid down in the first sentence of the first subparagraph of Article 394(3) of the LEC, the unsuccessful party may only be required to reimburse lawyers’ fees up to a maximum of one third of that amount, that is to say, EUR 6 000.

40. I would, however, point out that, in the present case, the indicative amount of EUR 18 000 does not appear to have been applied. A value of EUR 30 000 was instead used.²⁰ In accordance with the contested limit, a maximum amount of EUR 10 000 could therefore be claimed by the applicants in the main proceedings from Caixabank in respect of lawyers’ fees. In any case, the problem remains the same. Where, as in the case in the main proceedings, the consumer and his or her lawyer have agreed to fees of an amount greater than that limit (here: approximately EUR 26 000), the excess will have to be covered by the consumer.

41. However, according to EL and TP, whose view the Commission endorses before the Court, such an outcome is incompatible with EU law. If a consumer were have to bear all or part of the costs incurred to enforce before the courts the rights that he or she derives from Directive 93/13, including the fees agreed with his or her lawyer, and when the consumer has been successful on the merits (after the court seised has found the contested term to be unfair and ordered the seller or supplier to repay the amounts paid on the basis of that term), that same consumer could not be restored to the factual and legal position which he or she would have been in if that term had not

¹⁷ See points 16 and 17 of this Opinion.

¹⁸ This point is contested by EL and TP (see point 74 of this Opinion).

¹⁹ Unless, on account of the complexity of the case, the court orders otherwise.

²⁰ See points 24 and 25 of this Opinion.

existed, as required by Article 6(1) and Article 7(1) of that directive, as interpreted in the judgment in *Gutiérrez Naranjo and Others*.²¹ This would also hinder the exercise by consumers of the rights which they derive from the directive.

42. In that context, in the *first place*, the second question put by the referring court, which should be dealt with first, concerns, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13, read in conjunction with the principle of effectiveness, preclude national legislation, such as Article 394(3) of the LEC, which provides, in connection with the taxation of the costs incurred by the parties to proceedings concerning the unfairness of a contractual term, for a limit applicable to the lawyer's fees recoverable by the successful consumer from the seller or supplier ordered to pay the costs, as the value of the claim. I will explain, in Section 1, why that is not the case in principle.

43. *In the second place*, by its first question, which should be dealt with secondly, the referring court asks whether the interpretation in case-law of Article 251, Article 394(3) and Article 411 of the LEC, to the effect that, when a consumer has stated, in his or her application, the value of the claim as being of an unspecified amount, that consumer cannot subsequently alter that figure in the context of the taxation of costs, and that claims of an unspecified value are to be estimated at EUR 18 000 (or rather, in the present case, at EUR 30 000) for the purposes of calculating the recoverable lawyers' fees, is contrary to Article 6(1) and Article 7(1) of Directive 93/13. I will set out, in Section 2, the reasons why, subject to certain verifications by the referring court, I do not believe this to be so.

1. EU law does not preclude, in principle, national legislation which limits the amount of the costs recoverable by a consumer (second question)

44. As the Polish Government observes, the second question put by the referring court, as reworded in point 42 of this Opinion, essentially asks whether Directive 93/13 requires the Member States to provide for the right, for a consumer who has been successful in proceedings for a declaration that a term is unfair, to obtain from the seller or supplier concerned the repayment of all the legal costs incurred by the consumer in the context of those proceedings.

45. Unlike EL and TP, and in line with the Spanish and Polish Governments, I disagree with that view.

46. *In the first place*, I do not believe that the interpretation provided by the Court, in the judgment in *Gutiérrez Naranjo*, of Article 6(1) of Directive 93/13 provides an answer, as such, to that question.

47. In that regard, I would point out that Article 6(1) of that directive lays down the objective that unfair terms in contracts concluded between sellers or suppliers and consumers are not to 'be binding on' the latter. In the judgment in *Gutiérrez Naranjo*, the Court clarified that, under that provision, an unfair term 'must be regarded, in principle, as never having existed, so that it cannot have any effect on the consumer'. Therefore, the determination by a court that a contractual term is unfair 'must, in principle, have the consequence of restoring the consumer to the legal and factual situation that he or she would have been in if that term had not existed'.²²

²¹ Judgment of 21 December 2016 (C-154/15, C-307/15 and C-308/15, EU:C:2016:980; 'the judgment in *Gutiérrez Naranjo*'; paragraphs 61 and 62).

²² Judgment in *Gutiérrez Naranjo* (paragraph 61).

48. By virtue of the latter finding, the Court infers from that same Article 6(1) a ‘remedy’ in favour of the consumers, that is to say the right to repayment of any amounts unduly paid on the basis of an unfair term, in order that the effects already produced by such a term, contrary to the objective laid down in that provision, can, in so far as possible, be erased retroactively.²³

49. In the present case, the applicants in the main proceedings successfully enforced that right before the courts. The effects already produced by the contested “multi-currency” terms must, in accordance with the final judgment given by the referring court, be retroactively erased by Caixabank. The consumers were therefore, in legal terms, restored to the legal and factual situation they would have been in if that term had not existed, within the meaning intended by the Court.

50. However, the question of the ‘remedy’ obtained, as to the merits, by the consumer cannot be confused with that of the taxation of the costs incurred by them in connection with the judicial proceedings, which is not governed by Article 6(1) of Directive 93/13.

51. The rules related to the taxation of costs in civil proceedings are procedural rules. When they are applied in the context of proceedings brought by a consumer for a declaration that a contractual term is unfair, within the meaning of Directive 93/13, those rules number amongst, to use the wording laid down in case-law, the ‘detailed procedural rules designed to ensure the protection of the rights which individuals acquire under EU law’.²⁴ As the Spanish and Polish Governments point out, in accordance with the settled case-law of the Court, such detailed procedural rules fall, in the absence of harmonisation in EU law, within *the procedural autonomy of the Member States*, subject to compliance with the principles of equivalence and effectiveness.²⁵

52. In that context, and *in the second place*, it should be recalled, as the Polish Government observes, that, in general terms, the principle of effectiveness (the only principle at issue in the present case)²⁶ does not preclude, in principle, a consumer from incurring certain legal costs when he or she brings proceedings for a declaration that a contractual term is unfair. However, the cost of the proceedings cannot be so high as to make it ‘impossible in practice or excessively difficult’ for the consumer to exercise the rights which he or she derives from Directive 93/13. In other words, that principle precludes such proceedings from representing a prohibitive cost for the consumer.²⁷

53. Thus, the fact that the bringing of such proceedings requires the assistance of a lawyer, as appears to be the case in Spain, and that the consumer is required to bear, at the very least, some of the fees of that lawyer is not, in itself, contrary to the principle of effectiveness.²⁸ However, since

²³ See the judgment in *Gutiérrez Naranjo* (paragraph 62: ‘the obligation for the national court to exclude an unfair contract term imposing the payment of amounts that prove not to be due entails, in principle, a corresponding restitutory effect in respect of those same amounts’).

²⁴ See, inter alia, the judgment in *Caixabank and Banco Bilbao Vizcaya Argentaria* (paragraphs 83 and 95 and the case-law cited).

²⁵ See, inter alia, the judgment in *Caixabank and Banco Bilbao Vizcaya Argentaria* (paragraphs 83 and 95 and the case-law cited).

²⁶ The Court is not asked about the principle of equivalence. In any event, there is nothing in the documents before the Court capable of casting doubt on the compliance of Article 394(3) with that principle. According to the information provided by Caixabank and the Spanish Government, that provision applies indiscriminately to proceedings concerning the rights derived from EU law and those concerning rights derived from national law. See, to that effect, the judgment in *Caixabank and Banco Bilbao Vizcaya Argentaria* (paragraph 96).

²⁷ See, to that effect, judgments of 5 December 2013, *Asociación de Consumidores Independientes de Castilla y León* (C-413/12, EU:C:2013:800, paragraph 41); of 12 February 2015, *Baczó and Viznyiczai* (C-567/13, EU:C:2015:88, paragraphs 50, 52 and 53); and of 3 April 2019, *Aqua Med* (C-266/18, EU:C:2019:282, paragraph 54). See also Opinion of Advocate General Mengozzi in *Asociación de Consumidores Independientes de Castilla y León* (C-413/12, EU:C:2013:532, points 35, 36 and 56).

²⁸ See, to that effect, judgment of 12 February 2015, *Baczó and Viznyiczai* (C-567/13, EU:C:2015:88, paragraphs 54 and 55).

those fees generally constitute a substantial part of the costs incurred in the context of judicial proceedings,²⁹ if a consumer, in the event that he or she were to be successful, could pass on to the seller or supplier only a small portion of those fees, or even nothing at all, this could strongly deter that consumer from taking legal action.³⁰ The lawyers' fees could then become, in a good many situations, according to the rates applied and as compared with the benefit that the consumer would derive from the proceedings, a prohibitive cost for the latter, making it excessively difficult for him or her to exercise before the courts the rights that he or she derives from Directive 93/13.³¹

54. That said, it follows, in my view, that a consumer who has been successful in legal proceedings should be able to recover from the unsuccessful seller or supplier, in the context of the taxation of costs, not all the fees agreed with the consumer's lawyer, but rather *a reasonable and proportionate amount* in relation to the costs that that consumer was objectively required to incur in order to bring such proceedings, that is to say, a sufficient amount to mitigate the potentially prohibitive nature represented by such fees. Otherwise, as Caixabank has observed, consumers could request, in the context of such taxation, the reimbursement of fees freely agreed with their lawyer that exceed, or even go far beyond, what was objectively necessary.³²

55. Within the scope of their procedural autonomy, the Member States enjoy broad discretion in this regard. They can, in principle, ensure compliance with the requirement referred to in the previous point within the context of their national rules on the taxation of costs, rules which, as the Polish Government has helpfully noted in its observations, contain disparities that are inherent in the lack of European harmonisation in this area: some provide that the unsuccessful party must reimburse all the lawyers' fees of the successful party; others, into which the Spanish rules fall, provide for a kind of 'happy medium', with the successful party able to recover only part of those fees in the context of the taxation of costs.³³ All those rules are compatible with the principle of effectiveness, as long as, as I have said, they allow the consumer to recover from the seller or supplier, by way of lawyers' fees, a reasonable and proportionate amount.

56. Unlike EL and TP, and in line with Caixabank and the Spanish Government, I do not believe that that interpretation is called into question by the judgment in *Caixabank and Banco Bilbao Vizcaya Argentaria*.

57. In that judgment, the Court held that Article 6(1) and Article 7(1) of Directive 93/13, read in conjunction with the principle of effectiveness, preclude 'a system whereby the consumer may be liable to bear part of the costs of the proceedings depending on the level of the unduly paid sums which are refunded to him or her following a finding that a contractual term is void for being

²⁹ See, to that effect, judgment of 28 July 2016, *United Video Properties* (C-57/15, EU:C:2016:611, paragraph 22).

³⁰ In its observations, Caixabank insisted that the fees claimed by lawyers in proceedings for the taxation of costs do not necessarily correspond to those charged to their clients, contending, once again, that, in the present case, the fees to be paid by the applicants in the main proceedings are far lower than those applied for by their lawyer (see footnote 5 of this Opinion). Thus, the questions referred for a preliminary ruling seek to defend not the interest of consumers in not incurring legal costs, but that of their lawyers in claiming higher fees. It is, however, my view that there is a clear link between these two factors.

³¹ See, to that effect, judgment of 13 September 2018, *Profi Credit Polska* (C-176/17, EU:C:2018:711, paragraph 68) and, by analogy, Opinion of Advocate General Campos Sánchez-Bordona in *United Video Properties* (C-57/15, EU:C:2016:201, point 68). Furthermore, the Court has already found that, 'in disputes where the amounts involved are often limited, the lawyers' fees may be higher than the amounts at stake, which may deter the consumer from contesting the application of an unfair term' (see, in particular, judgment of 27 June 2000, *Océano Grupo Editorial and Salvat Editores* (C-240/98 to C-244/98, EU:C:2000:346, paragraph 26)).

³² See, in that regard, Opinion of Advocate General Campos Sánchez-Bordona in *United Video Properties* (C-57/15, EU:C:2016:201, points 53, 65 and 66).

³³ For a detailed analysis of the different rules on costs existing in the Member States, see <https://e-justice.europa.eu/37/FR/costs?init=true>.

unfair'. According to the Court, such a system of costs creates a substantive obstacle that is likely to discourage consumers from applying to a court for a declaration that a contractual term is unfair.³⁴

58. More specifically, the case that gave rise to that judgment concerns Article 394(1) and (2) of the LEC. Whereas the first paragraph provides, as I have said, that the unsuccessful party must bear the costs incurred by the successful party, the second paragraph states that, if the claims of one of the parties are upheld in part or their respective claims are rejected, each of them must, in principle, pay its own costs and bear half of the joint costs. Pursuant to those provisions, if a consumer submitted, in the context of the same action, an application for a declaration of the invalidity of a term and an application for restitution of the amounts unduly paid on the basis of that term, and if the first application was well founded but the amount claimed in the second did not reflect the amount to which that consumer was actually entitled, the seller or supplier was not, in principle, ordered to pay all the costs.³⁵ It is that rule on the allocation of costs that the Court found to be contrary to EU law.

59. However, *first*, I have reservations as regards that interpretation. In my view, the rule that each party must assume its own costs when some claims are upheld and others rejected is a rule of fairness which is frequently found in the law of the Member States (and in the Rules of Procedure of the Court³⁶), and that rule does not make it 'impossible in practice or excessively difficult' for consumers to exercise the rights that they derive from Directive 93/13. If the consumer is unsuccessful in some of its claims, even though the court correctly applied EU law, as the case may be by raising the unfairness of the contested terms of its own motion, I see nothing to prevent the costs from being shared between the parties.

60. In any case, *secondly*, assuming that the Court does not share my view, I would point out that the judgment in *Caixabank and Banco Bilbao Vizcaya Argentaria* concerned a rule on the *allocation of costs* between the parties. The Court has not, however, ruled on the question, at issue in the present case, of *the precise amount of the costs*, and in particular of the lawyers' fees, that the successful consumer can pass on to the seller or supplier ordered to pay the costs. It cannot therefore rightly be inferred from the foregoing that the consumer should be able to recover, in the context of the taxation of costs, all the fees agreed with his or her lawyer.

61. On the basis of the foregoing, it is my view that a national rule such as the first sentence of the first subparagraph of Article 394(3) of the LEC, which limits the lawyers' fees that the successful consumer may pass on to the seller or supplier ordered to pay the costs, is in principle compatible with the principle of effectiveness. Such a system does not go beyond, in itself, the discretion enjoyed by the Member States within the scope of their procedural autonomy.

62. *First*, as the Spanish Government argues, such a limit allows for a degree of standardisation as to what constitutes a reasonable and proportionate amount of recoverable costs based on the value and/or the type of claim, and excludes the reimbursement of unusually high lawyers' fees.³⁷

³⁴ See the judgment in *Caixabank and Banco Bilbao Vizcaya Argentaria* (paragraphs 96, 98 and 99).

³⁵ See the judgment in *Caixabank and Banco Bilbao Vizcaya Argentaria*.

³⁶ See, to that effect, Article 138(2) of the Rules of Procedure of the Court.

³⁷ See, by analogy, judgment of 28 July 2016, *United Video Properties* (C-57/15, EU:C:2016:611, paragraph 25). As for the issue of which costs are necessary for a consumer to enforce his or her rights or to mount his or her defence effectively, I – like the Polish Government – am of the view that the national authorities are, in principle, the best placed to determine, in agreement with the legal professions and the other individuals concerned, the cost of cases of a certain type or of a particular value (see, by analogy, Opinion of Advocate General Campos Sánchez-Bordona in *United Video Properties* (C-57/15, EU:C:2016:201, points 73 and 75)).

63. *Secondly*, I would recall that, in accordance with settled case-law of the Court, as far as concerns the application of the principle effectiveness, every case in which the question arises as to whether a national procedural provision makes the application of EU law impossible in practice or excessively difficult must be analysed by reference to the role of that provision in the procedure as a whole, its progress and its special features, before the various national bodies. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the principle of legal certainty and respect for the rights of the defence.³⁸

64. However, *first and foremost*, the latter principle argues in favour of a platform such as that provided for in the first sentence of the first subparagraph of Article 394(3) of the LEC. The rules on costs must, in so far as possible, be simple and their results foreseeable.³⁹ In that regard, as the Spanish Government argues, that limit contributes, specifically, to making the costs that the parties to the proceedings may have to bear foreseeable.

65. *Next*, as the Spanish and Polish Governments contend, a limit on recoverable costs strikes, out of concern for respect for the rights of the defence, a balance between the benefit that individuals can derive from judicial proceedings and the risk that they assume in entering into the process. From that viewpoint, such a limit affords protection to consumers. If the consumer were to run the risk, in the absence of such a limit,⁴⁰ of having to bear all the costs of the seller's or supplier's lawyer (which could be very high) if that supplier or seller were to be successful, this could strongly discourage the consumer from taking legal action.⁴¹ Viewed from that perspective, a provision such as Article 394(3) of the LEC has the effect not of discouraging but rather of encouraging consumers to enforce their rights before the courts.

66. *Lastly*, as Caixabank contends, it is necessary to take into consideration the mechanisms provided for in the national legislation which seek to mitigate any financial difficulties experienced by consumers, such as legal aid, which may help to offset the lawyers' fees which, as the case may be, continue to be borne by consumers after the taxation of costs.⁴²

67. *Moreover*, as the Spanish Government observes, in the present case, the limit provided for in the first sentence of the first subparagraph of Article 394(3) of the LEC is not an absolute limit. It can be removed, at the very least, if the court finds the party ordered to pay the costs to be a vexatious litigant.⁴³

³⁸ See, inter alia, judgment of 10 June 2021, *BNP Paribas Personal Finance* (C-776/19 to C-782/19, EU:C:2021:470, paragraph 28 and the case-law cited).

³⁹ See, to that effect, judgment of 6 October 2015, *Orizzonte Salute* (C-61/14, EU:C:2015:655, paragraph 61); and, by analogy, judgments of 13 February 2014, *Commission v United Kingdom* (C-530/11, EU:C:2014:67, paragraphs 54 and 58); and of 17 October 2018, *Klohn* (C-167/17, EU:C:2018:833, paragraph 70).

⁴⁰ It, of course, cannot be claimed, in the name of consumer protection, that a limit on recoverable costs does not apply when the consumer is successful but does apply where the seller or supplier is the successful party. Such an interpretation would constitute a breach of the principle of equality of arms (or of procedural fairness) and would, therefore, be incompatible with Article 47 of the Charter of Fundamental Rights of the European Union. In relation to that principle, see, inter alia, judgment of 30 June 2016, *Toma and Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci* (C-205/15, EU:C:2016:499, paragraphs 36 and 47).

⁴¹ See, by analogy, Opinion of Advocate General Campos Sánchez-Bordona in *United Video Properties* (C-57/15, EU:C:2016:201, points 67 and 68).

⁴² See, inter alia, judgments of 5 December 2013, *Asociación de Consumidores Independientes de Castilla y León* (C-413/12, EU:C:2013:800, paragraph 42), and of 12 February 2015, *Baczó and Vizsnyiczai* (C-567/13, EU:C:2015:88, paragraph 55).

⁴³ As provided for in the second subparagraph of Article 394(3) of the LEC. The Spanish Government contends that, in accordance with the case-law of the Spanish courts, the contested limit may also be removed if the registrar or the court seised finds the claim to be particularly complex. This point is contested by the Commission, in whose view the complexity of the claim can be taken into account only within the confines of that limit. Be that as it may, that issue is not a decisive point, in my view, in order to answer the questions submitted.

68. *That said*, and in line with my explanation in point 54 of this Opinion, the principle of effectiveness would preclude a national rule that provides, as regards costs recoverable by the successful party, for a limit so low that consumers could not, as a general rule, obtain reimbursement of a reasonable and proportionate amount in relation to the costs they are objectively required to incur in order to bring judicial proceedings.⁴⁴

69. Besides the fact that such a limit would risk consumers being strongly discouraged from enforcing their rights before the courts, it is my view that if a seller or supplier had to bear, in the context of such proceedings, only an insignificant portion of the lawyers' fees incurred by the consumer, the dissuasive effect that Article 6(1) of Directive 93/13, read in conjunction with Article 7(1) of that directive, seeks to attach to the finding that a contractual term is unfair would be seriously diminished, as both EL and TP as well as the Commission rightly claim.⁴⁵

70. In the light of the foregoing considerations, I suggest that the Court answer the second question to the effect that Article 6(1) and Article 7(1) of Directive 93/13, read in conjunction with the principle of effectiveness, do not preclude national legislation which provides, in the context of the costs in connection with proceedings concerning the unfairness of a contractual term, for a limit applicable to the lawyers' fees recoverable by the successful consumer from the seller or supplier ordered to pay the costs, provided that that limit allows the consumer to obtain, in that connection, the reimbursement of a reasonable and proportionate amount in relation to the costs that he or she was objectively required to incur in order to bring such proceedings.

2. The detailed rules for determining the value of the claim for the purposes of calculating the costs recoverable by the consumer (first question)

71. The first question submitted by the referring court, as summarised in point 43 of this Opinion, concerns, as I have said, the rules laid down in Spanish procedural law for determining the value of claims. I would point out from the outset that the Court has jurisdiction to examine such rules, particularly technical rules, only in so far as the value constitutes a basis for the calculation of the amount of the costs that the consumer may be reimbursed should he or she be successful⁴⁶ (in the light, in particular, of the limit laid down in the first sentence of the first subparagraph of Article 394(3) of the LEC) and where that same value thereby has an impact on the costs that the consumer might have to bear in order to exercise before the courts the rights which he or she derives from Directive 93/13.

72. The Court will therefore have to take care, in the present case, not to delve – as the parties to the main proceedings seek to prompt it to do – into the details of the calculation of the value of the claim under the rules of Spanish law. It must, on the contrary, restrict itself to examining those

⁴⁴ See, by analogy, judgment of 28 July 2016, *United Video Properties* (C-57/15, EU:C:2016:611, paragraphs 26, 29, 30 and 32).

⁴⁵ See, by analogy, judgments in *Gutiérrez Naranjo* (paragraph 63) and of 28 July 2016, *United Video Properties* (C-57/15, EU:C:2016:611, paragraph 27).

⁴⁶ As the referring court explains, the value of the claim is a fact which has an impact on other procedural questions, such as the nature of the procedure and the remedies available.

rules in the light of the principle of effectiveness,⁴⁷ in accordance with the broad outlines in relation to the costs incurred by consumers which I have drawn in answer to the previous question.

73. With regard, *in the first place*, to the fact that, under Articles 253 and 411 of the LEC, as interpreted by the Spanish courts, the value of the claim must be determined at the start of the proceedings, based on the information provided by the consumer in the application, and cannot then be amended at a later stage in the proceedings, nor a fortiori in the context of the taxation of costs, I would note the following.

74. *First of all*, whilst EL and TP claim that there is a diverging line of national case-law in accordance with which, in Spanish law, the recoverable costs should, in fact, always be calculated on the basis of the actual financial interest of the proceedings for the consumer, regardless of the value of the claim established in the substantive proceedings, I would point out that it is not for the Court to settle disputes in national case-law. The Court is required to answer the question submitted having regard to the explanations given in that regard in the order for reference.⁴⁸

75. *Next*, I note that, as I have stated in point 63 of this Opinion, every case in which the question arises as to whether a national procedural provision infringes the principle of effectiveness must be analysed by reference to the role of that provision in the procedure as a whole, its progress and its special features, before the various national bodies, as well as, in that context, the principles which lie at the basis of the national legal system.

76. In that regard, Caixabank and the Spanish Government have contended that the principle of '*perpetuatio jurisdictionis*', as codified in Article 411 of the LEC, is justified, inter alia, by considerations relating to legal certainty. That certainty means that the parties, including the seller or supplier, should be able to ascertain, from the start of the proceedings, the potential financial cost of the proceedings and the foreseeable financial effort which they entail.⁴⁹ The individuals concerned might alter their conduct, and in particular their trial strategy, accordingly. Such considerations echo those which I set out in point 64 of this Opinion. Thus, it seems to me reasonable that the value of the claim has to be established at the start of the proceedings and cannot then be amended at the taxation of costs stage.

77. That said, and *finally*, Caixabank and the Spanish Government have stated that, in accordance with Spanish law, the court has the power to review, in the context of the substantive proceedings, and if necessary of its own motion, the value of the claim stated by the applicant. This point is, in my view, significant. In my opinion, since the consumer is not necessarily aware of his or her rights, the national court must engage in the 'positive action', to which repeated reference is made in the case-law of the Court,⁵⁰ by determining, if necessary of its own motion, that the value stated by that consumer in his or her application reflects the financial interest that that

⁴⁷ I would point out that the Court is not asked about the principle of equivalence. EL and TP have, however, claimed that, as far as concerns the determination of the value of claims, more favourable rules are applied to mortgage foreclosure proceedings, in the context of which the value of the claim used is generally the balance of the loan in question. Caixabank and the Commission are of the view that that type of proceedings cannot be compared with proceedings such as those at issue in the main proceedings; I also tend towards that view. In any event, it is solely for the national court, which has direct knowledge of the detailed procedural rules applicable, to ascertain whether the actions concerned are similar (see, inter alia, judgment of 9 July 2020, *Raiffeisen Bank and BRD Groupe Société Générale* (C-698/18 and C-699/18, EU:C:2020:537, paragraph 77 and the case-law cited)).

⁴⁸ See, to that effect, judgment of 29 April 2021, *Bank BPH* (C-19/20, EU:C:2021:341, paragraph 37).

⁴⁹ See Opinion of Advocate General Campos Sánchez-Bordona in *United Video Properties* (C-57/15, EU:C:2016:201, points 63 and 74).

⁵⁰ See, inter alia, judgments of 27 June 2000, *Océano Grupo Editorial and Salvat Editores* (C-240/98 to C-244/98, EU:C:2000:346, paragraph 27); of 6 October 2009, *Asturcom Telecomunicaciones* (C-40/08, EU:C:2009:615, paragraph 31); and of 14 April 2016, *Sales Sinués and Drame Ba* (C-381/14 and C-385/14, EU:C:2016:252, paragraph 23).

claim actually represents for him or her. If the amount stated by the consumer is too low, the court should inform him or her of the consequences that this might have for the taxation of costs and allow him or her to revise that amount, whilst ensuring that the rights of the defence are respected.

78. As regards, *in the second place*, the fact that the value of a claim such as that in the main proceedings, which was established as ‘unspecified’ at the start of the proceedings, is regarded as being of an amount that ‘cannot be estimated’, within the meaning of the second sentence of the first subparagraph of Article 394(3) of the LEC, resulting in the application, for the purposes of the taxation of costs, of an indicative value of EUR 18 000 (or rather, in the present case, of EUR 30 000), it is a simple matter, in my view.

79. A number of elements discussed in great detail before the Court are, ultimately, irrelevant for the answer which the Court must provide. In this regard, I note that the parties to the main proceedings do not agree, *first of all*, about the status of the national case-law on Article 394(3) of the LEC. EL and TP claim that, in accordance with the case-law of the Tribunal Supremo (Supreme Court), the only claims the value of which ‘cannot be estimated’ are those which have no asset value, such as actions for the annulment of an electoral procedure. By contrast, claims with an asset value that simply cannot be determined exactly from the outset cannot be regarded as claims that cannot be estimated, therefore, are not covered by that provision, a fact which Caixabank contests. *Next*, the parties to the main proceedings disagree as to the method of determining the value of the claim in a case such as that in the main proceedings. According to EL and TP, pursuant to Article 251(8) of the LEC, the basis that should be taken, in this regard, is the balance of the loan, since the validity of the contract is contested, if only in part. In Caixabank’s view, since the balance of the loan is a claim held by the bank, it cannot be taken into account to determine the value of a claim initiated by the consumer, the borrower. Instead, the basis that should be taken, pursuant to Article 251(1) of that law, is the excess amounts unduly paid by the consumers, the repayment of which they are seeking. *Finally*, the parties are in disagreement as to whether, in the present case, EL and TP could properly state, in their application, a specified amount, at the very least in relative terms, in connection with the value of the claim.

80. However, as I have already set out in point 74 of this Opinion, it is not for the Court to settle case-law disputes with regard to the interpretation of national law, and it is certainly not for it to rule on what should be the value of proceedings such as those at issue in the present case in the light of the Spanish procedural rules. Nor does it fall to it to determine whether or not EL and TP in the main proceedings could have properly stated a specified value in their application.

81. That said, in my view, regardless of the national case-law and the method of determining the value of the claim for the purposes of applying the Spanish rules on the taxation of costs, the principle of effectiveness simply requires, as I have stated in answer to the second question, that those rules allow the consumer to obtain from the seller or supplier, in respect of lawyers’ fees, the reimbursement of a reasonable and proportionate amount in relation to the costs that that consumer was objectively required to incur in order to bring the proceedings. In the present case, it will be for the referring court to establish whether setting the value of the claim at EUR 30 000, meaning that, pursuant to the limit laid down in the first sentence of the first subparagraph of Article 394(3) of the LEC, the applicants in the main proceedings will be able to obtain from Caixabank only the reimbursement of lawyers’ fees up to the amount of EUR 10 000, satisfies that

requirement.⁵¹

82. In the light of all of the foregoing considerations, I suggest that the Court answer the first question to the effect that Article 6(1) and Article 7(1) of Directive 93/13, read in conjunction with the principle of effectiveness, do not preclude national legislation under which the value of a claim, which constitutes the basis for the calculation of the costs recoverable by a successful consumer, must be specified in the application, there being no possibility of amending that figure subsequently, and which sets that value, for certain claims, at an indicative amount, provided that those rules do not make it impossible or excessively difficult for the consumer to exercise the rights that he or she derives from that directive. In that context, it falls to the court seised to review, if necessary of its own motion, that the value stated by the consumer in his or her application reflects the financial interest that the claim actually represents for him or her.

V. Conclusion

83. In the light of all of the foregoing considerations, I suggest that the Court answer the questions referred by the Juzgado de Primera Instancia n.º 49 de Barcelona (Court of First Instance No 49, Barcelona, Spain) as follows:

- (1) Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read in conjunction with the principle of effectiveness, are to be interpreted as not precluding national legislation which provides, in the context of the taxation of the costs in connection with proceedings concerning the unfairness of a contractual term, for a limit applicable to the lawyers' fees recoverable by the successful consumer from the seller or supplier ordered to pay the costs, provided that that limit allows the consumer to obtain, in that connection, the reimbursement of a reasonable and proportionate amount in relation to the costs that he or she was objectively required to incur in order to bring such proceedings.
- (2) Article 6(1) and Article 7(1) of Directive 93/13, read in conjunction with the principle of effectiveness, are to be interpreted as not precluding national legislation under which the value of a claim, which constitutes the basis for the calculation of the costs recoverable by a successful consumer, must be specified in the application, there being no possibility of amending that figure subsequently, and which sets that value, for certain claims, at an indicative amount, provided that those rules do not make it impossible or excessively difficult for the consumer to exercise the rights that he or she derives from that directive. In that context, it falls to the court seised to review, if necessary of its own motion, that the value stated by the consumer in his or her application reflects the financial interest that the claim actually represents for him or her.

⁵¹ I note, in this connection, that the referring court has failed to explain how the more than EUR 25 000 claimed by the lawyer representing the applicants in the main proceedings constitute a reasonable and proportionate amount. By contrast, it is apparent from the observations submitted by Caixabank that the Barcelona Bar has issued an opinion finding the amount applied for to be inflated.