Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

16 January 2025 *

(Reference for a preliminary ruling – Markets in financial instruments – Directive 2004/39/EC – Article 52(2) – Action brought in the interests of consumers – Consumer organisations having a legitimate interest in protecting consumers – Standing to bring legal proceedings to defend the individual interests of their members – Loss of standing in the case of investments in high-value financial products – Exemption from court fees and from the obligation to pay the costs incurred by the opposing party – Procedural autonomy – Principle of effectiveness)

In Case C-346/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Supreme Court, Spain), made by decision of 17 May 2023, received at the Court on 1 June 2023, in the proceedings

**Banco Santander SA**, successor to Banco Banif SA,

v

**Asociación de Consumidores y Usuarios de Servicios Generales – Auge**, on behalf of its members Andrea y Alberto

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Third Chamber, acting as President of the Fourth Chamber, S. Rodin and O. Spineanu-Matei (Rapporteur), Judges,

Advocate General: L. Medina,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 8 May 2024,

after considering the observations submitted on behalf of:

– Banco Santander SA, successor to Banco Banif SA, by J.M. Blanco Saralegui, A. Capilla Casco and J.M. Martínez Gimeno, abogados,

* Language of the case: Spanish.

– the Asociación de Consumidores y Usuarios de Servicios Generales – Auge, by E. Avilés Alcarria, procuradora, and J.M. Davó Escrivá, abogado,

– the Spanish Government, by A. Gavela Llopis, acting as Agent,

– the European Commission, by C. Auvret, G. Goddin, P. Němečková and P. Vanden Heede, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 September 2024,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 52(2) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1).

2 The request has been made in proceedings between Banco Santander SA, successor to Banco Banif SA, and the Asociación de Consumidores y Usuarios de Servicios Generales – Auge (Association of Consumers and Users of General Services – Auge; 'Auge') regarding the validity of contracts for the acquisition of financial instruments concluded by retail clients.

### Legal context

#### *European Union law*

*Directive 2004/39*

3 Recitals 2, 5, 17 and 31 of Directive 2004/39 stated:

'(2) … it is necessary to provide for the degree of harmonisation needed to offer investors a high level of protection and to allow investment firms to provide services throughout the [European] Community, being a Single Market, on the basis of home country supervision. …

…

(5) It is necessary to establish a comprehensive regulatory regime governing the execution of transactions in financial instruments irrespective of the trading methods used to conclude those transactions so as to ensure a high quality of execution of investor transactions and to uphold the integrity and overall efficiency of the financial system. A coherent and risk-sensitive framework for regulating the main types of order-execution arrangement currently active in the European financial marketplace should be provided for. …

…

(17) Persons who provide the investment services and/or perform investment activities covered by this Directive should be subject to authorisation by their home Member States in order to protect investors and the stability of the financial system.

…

(31) One of the objectives of this Directive is to protect investors. Measures to protect investors should be adapted to the particularities of each category of investors (retail, professional and counterparties).'

4 Under Article 4(1)(12) of that directive:

'For the purposes of this Directive, the following definitions shall apply:

…

12) "Retail client" means a client who is not a professional client'.

5 Article 52 of that directive provided:

'1. Member States shall ensure that any decision taken under laws, regulations or administrative provisions adopted in accordance with this Directive is properly reasoned and is subject to the right to apply to the courts. The right to apply to the courts shall also apply where, in respect of an application for authorisation which provides all the information required, no decision is taken within six months of its submission.

2. Member States shall provide that one or more of the following bodies, as determined by national law, may, in the interests of consumers and in accordance with national law, take action before the courts or competent administrative bodies to ensure that the national provisions for the implementation of this Directive are applied:

(a) public bodies or their representatives;

(b) consumer organisations having a legitimate interest in protecting consumers;

(c) professional organisations having a legitimate interest in acting to protect their members.'

*Directive 2014/65/EU*

6 Article 74 of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ 2014 L 173, p. 349) provides:

'1. Member States shall ensure that any decision taken under the provisions of Regulation (EU) No 600/2014 [of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ 2014 L 173, p. 84),] or under laws, regulations or administrative provisions adopted in accordance with this Directive is properly reasoned and is subject to the right of appeal before a tribunal. The right of appeal before

a tribunal shall also apply where, in respect of an application for authorisation which provides all the information required, no decision is taken within six months of its submission.

2. Member States shall provide that one or more of the following bodies, as determined by national law, also may, in the interests of consumers and in accordance with national law, take action before the courts or competent administrative bodies to ensure that Regulation … No 600/2014 and the national provisions adopted in the implementation of this Directive are applied:

(a) public bodies or their representatives;

(b) consumer organisations having a legitimate interest in protecting consumers;

(c) professional organisations having a legitimate interest in acting to protect their members.'

7 Pursuant to Article 94 of Directive 2014/65, Directive 2004/39 was repealed with effect from 3 January 2017.

*Directive (EU) 2020/1828*

8 Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ 2020 L 409, p. 1) states, in recitals 13 and 14:

'(13) The scope of this Directive should reflect recent developments in the field of consumer protection. Since consumers now operate in a wider and increasingly digitalised marketplace, achieving a high level of consumer protection requires that areas such as data protection, financial services, travel and tourism, energy, and telecommunications be covered by the Directive, in addition to general consumer law. In particular, as there is increased consumer demand for financial and investment services, it is important to improve the enforcement of consumer law in those areas. The consumer market has also evolved in the area of digital services, and there is an increased need for more efficient enforcement of consumer law, including as regards data protection.

(14) This Directive should cover infringements of the provisions of Union law referred to in Annex I to the extent that those provisions protect the interests of consumers, regardless of whether those consumers are referred to as consumers, travellers, users, customers, retail investors, retail clients, data subjects or something else. However, this Directive should only protect the interests of natural persons who have been harmed or may be harmed by those infringements if those persons are consumers under this Directive. Infringements that harm natural persons qualifying as traders under this Directive should not be covered by it.'

## *Spanish law*

### *Royal Legislative Decree 1/2007*

9 Real Decreto Legislativo 1/2007 por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias (Royal Legislative Decree 1/2007 approving the recast text of the General Law for the protection of consumers and users and other supplementary laws) of 16 November 2007 (BOE No 287 of 30 November 2007, p. 49181), provides, in Article 8(1)(e):

'The following shall be basic rights of consumers, users and vulnerable consumers:

…

(e) consultation, participation in the process of drawing up general provisions of direct concern to them and representation of their interests through legally established associations, groups, federations or confederations of consumers and users.'

### *Law 1/2000*

10 Ley de Enjuiciamiento Civil 1/2000 (Law 1/2000 on Civil Procedure) of 7 January 2000 (BOE No 7 of 8 January 2000, p. 575) provides, in Article 11(1) thereof:

'Without prejudice to the individual standing to bring proceedings of injured parties, legally established consumer and user associations shall have standing to bring proceedings to defend in a court of law the rights and interests of their members and those of the association, as well as the general interests of consumers and users.'

### *Law 1/1996*

11 The second additional provision of Ley 1/1996 de asistencia jurídica gratuita (Law 1/1996 on legal aid) of 10 January 1996 (BOE No 11 of 12 January 1996, p. 793) confers on consumer and user associations the right to legal aid where actions brought 'relate directly to products or services of common, ordinary and widespread use or consumption'.

12 In accordance with Article 36(2) of that law, conferring that right on such associations means that, if the given association is unsuccessful in the proceedings, neither it nor the individual members whom it represents are required to pay the costs of the opposing party, irrespective of the value of the dispute.

### *Royal Decree 1507/2000*

13 Real Decreto 1507/2000 por el que se actualizan los catálogos de productos y servicios de uso o consumo común, ordinario y generalizado y de bienes de naturaleza duradera, a efectos de lo dispuesto, respectivamente, en los artículos 2, apartado 2, y 11, apartados 2 y 5, de la Ley General para la Defensa de los Consumidores y Usuarios y normas concordantes (Royal Decree 1507/2000 updating the catalogues of products and services of common, ordinary and widespread use and of goods of durable nature, for the purposes of the provisions, respectively, of Article 2(2) and of

Article 11(2) and (5), of the General Law for the protection of consumers and users and relevant provisions) of 1 September 2000 (BOE No 219 of 12 September 2000, p. 31349) includes, in point 13 of Section (c) of Annex I thereto, banking and financial services among services of common, ordinary and widespread use or consumption.

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

14 Between 4 May 2007 and 7 January 2010, Andrea and Alberto subscribed for several purchase orders in respect of financial products with Banco Banif for a total sum of EUR 900 000.

15 Auge, acting as representative of its members, Alberto and Andrea, brought an action against that bank, seeking a declaration that the contracts for the acquisition of those financial products were null and void, on the grounds that those contracts were not properly accepted, and for reimbursement of part of the sums paid under those contracts, plus commission, costs and interest.

16 The court of first instance upheld the action in part. The appeal brought against that decision was dismissed by a judgment of the Audiencia Provincial de Granada (Provincial Court, Granada, Spain), on the grounds that that bank did not take account of the customers' investor profile and did not provide them with clear and complete pre-contractual information concerning the risks associated with the products that they were agreeing to invest in.

17 Banco Santander, successor to Banco Banif, applied for an exceptional review procedure on the basis of procedural defects and brought an appeal on a point of law against that judgment before the Tribunal Supremo (Supreme Court, Spain), which is the referring court. In support of that application and that appeal, it submits, in essence, that Auge does not have standing to bring legal proceedings on behalf of its members, on the ground that the products subscribed for by those members are high-value speculative financial products, and not products of common and widespread use, with the result that the action brought does not fall within the scope of consumer protection.

18 It is in that context that that court expresses uncertainties as to the interpretation of Article 52(2) of Directive 2004/39 which relate to the standing of consumer organisations to bring proceedings.

19 First of all, that court states that it has as a general rule accepted that consumer associations have standing to bring proceedings in order to defend the individual interests of their members in actions falling within the scope of that directive. It states, however, that it had found that they do not have standing in the case of investments in speculative financial products or high-value financial products, since those products were not in common, ordinary and widespread use.

20 In the view of the referring court, in accordance with Article 11(1) of Law 1/2000, consumer associations have standing to bring proceedings to defend in a court of law the rights and interests of their members only where they relate directly to products or services of common, ordinary and widespread use or consumption. Although, in accordance with point 13 of Section (c) of Annex I to Royal Decree 1507/2000, banking and financial services do, in principle, come within the scope of such services, there are nevertheless financial services which, by reason of their nature and the circumstances in which the recipient subscribed for those services, cannot be regarded as services of common, ordinary and widespread use.

21 According to the referring court, such an interpretation of Spanish law avoids, in disputes in which 'the status of consumer is diluted in the light of the characteristics and the amount of the dispute', fraudulent or wrongful use of the specific standing of consumer associations to bring proceedings by investors with significant financial means, with a view to exercising the right to legal aid which Law 1/1996 grants to those associations, by exempting them from bearing the legal costs associated with bringing an action and from paying the costs incurred by the opposing party in the event that the investors are unsuccessful, without, however, depriving the investors concerned of their independent right to bring legal proceedings.

22 Next, that court notes that the Court of Justice has not yet expressly ruled on the discretion enjoyed by national courts as regards the standing of consumer and user associations to exercise the right to bring proceedings provided for in Article 52(2) of Directive 2004/39.

23 In its judgment of 2 April 2020, *Reliantco Investments and Reliantco Investments Limassol Sucursala București*, (C-500/18, EU:C:2020:264), which was relied on by Auge, the Court merely held that factors such as the value of transactions carried out, the extent of the risks of financial loss associated with the conclusion of consumer contracts, any knowledge or expertise that person has in the field of financial instruments or his or her active conduct in the context of such transactions, much like the fact that that person has carried out a high volume of transactions within a relatively short period of time or invested significant sums in those transactions or the fact that he or she may be classified as a 'retail client', are, in principle, irrelevant as concerns whether or not they can be classified as being a consumer.

24 In the present case, however, it is not a matter of refusing to acknowledge that investors with significant financial means who purchase complex and high-risk financial products can be classified as consumers, which the referring court states that it has never done, but of determining whether a consumer association's standing to bring proceedings on behalf of one of those investor-consumers may be limited where there is an established risk of procedural fraud giving rise to unjustified harm both to the opposing party and to the public purse.

25 That court adds that paragraphs 45 and 46 of the judgment of 27 February 2014, *Pohotovosť* (C-470/12, EU:C:2014:101), and paragraphs 35 and 36 of the judgment of 20 September 2018, *EOS KSI Slovensko* (C-448/17, EU:C:2018:745), relating to Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), appear to indicate that the review of whether consumer associations have standing to bring proceedings comes exclusively within the jurisdiction of the national courts.

26 Lastly, that court points out that, since the actions brought before it call into question Auge's standing to bring proceedings on behalf of its members, the answer to the question referred for a preliminary ruling set out in the following paragraph of the present judgment is necessary in order to resolve the dispute before it. In addition, it takes the view that that answer cannot be inferred from the case-law of the Court that was relied on by that association.

27 In those circumstances the Tribunal Supremo (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'On the basis that consumer associations have standing to represent in legal proceedings [investor-consumers] claiming a breach of duty by an investment firm in the marketing of complex financial products, can that standing be restricted exceptionally by national courts, in the context of an individual claim, in cases involving high-worth investors who carry out

transactions that cannot be regarded as being of ordinary and widespread use and who bring proceedings under the aegis of a consumer association with the result that they are able to benefit from a possible exemption from legal costs in very high-value court proceedings, avoiding the payment of court fees and avoiding paying the costs of the opposing party in the case of unfounded or even frivolous claims?'

**Jurisdiction of the Court and the admissibility of the reference for a preliminary ruling**

28 Banco Santander and the Spanish Government submit that the Court has no jurisdiction to answer the question referred by the referring court, on the ground that that question concerns the interpretation of national law. According to Banco Santander, it also follows that the request for a preliminary ruling is inadmissible.

29 Banco Santander and the Spanish Government are in agreement, in essence, in so far as they claim that, like other pieces of EU consumer legislation, Directive 2004/39 merely imposes an obligation on Member States to grant consumer associations standing to bring proceedings before the national courts in order to protect the collective interests of consumers. However, they submit that that directive does not require Member States to grant those associations standing to bring proceedings before those courts in order to defend the individual interests of their members or to ensure that they are entitled to legal aid. Such a possibility is, therefore, solely a matter of Spanish law.

30 Consequently, the question raised by the referring court concerns the interpretation of Spanish law, which grants consumer associations standing to bring proceedings before those courts in order to defend the individual interests of their members.

31 In that regard, it is established that, 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, the jurisdiction of the Court thus being confined to considering provisions of EU law alone (see, to that effect, judgment of 17 May 2022, *Impuls Leasing România*, C-725/19, EU:C:2022:396, paragraph 34 and the case-law cited).

32 However, in the present case, the referring court is asking the Court not about the interpretation of national law, but about the interpretation of Article 52(2) of Directive 2004/39, in order to be able to resolve the dispute in the main proceedings before it.

33 It follows that the Court does have jurisdiction to rule on the present request for a preliminary ruling.

34 It should also be recalled that, in the proceedings for which provision is made in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of each case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling. It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no

relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 29 July 2024, *LivaNova*, C-713/22, EU:C:2024:642, paragraph 53 and the case-law cited).

35 In the present case, as mentioned in particular in paragraph 26 of the present judgment, the referring court has indicated precisely the reasons why it considers that the answer to the question referred is necessary in order to resolve the dispute before it. Therefore, it is not obvious that the interpretation sought by the referring court bears no relation to the purpose or the actual facts of the main proceedings, with the result that the request for a preliminary ruling is admissible.

**Consideration of the question referred**

36 By its question, the referring court asks, in essence, whether Article 52(2) of Directive 2004/39 must be interpreted as precluding national case-law which makes the standing of consumer organisations to bring legal proceedings in order to defend the individual interests of their members and, consequently, the right of those organisations to benefit from legal aid subject to restrictions relating to the financial means of those members, the monetary value and the type of financial products in which those members have invested and the complexity of those products.

37 As a preliminary point, it should be noted that, as is apparent from recital 31 of Directive 2004/39, which, as the Advocate General observes in point 32 of her Opinion, is applicable *ratione temporis* to the case in the main proceedings, that directive seeks, inter alia, to protect 'investors', namely retail clients, professionals and undertakings.

38 According to the Court's case-law, a 'retail client', within the meaning of Article 4(1)(12) of that directive, may be classified as a 'consumer' if he or she is a natural person acting outside any commercial activity (see, to that effect, judgment of 3 October 2019, *Petruchová*, C-208/18, EU:C:2019:825, paragraph 76).

39 Furthermore, as the Advocate General stated in point 67 of her Opinion, the dual status of investor-consumer is confirmed by Directive 2020/1828, recital 14 of which states that its provisions protect the interests of consumers, regardless of whether those consumers are referred to as 'travellers, users, customers, retail investors, retail clients, data subjects or something else'. In particular, it is apparent from recital 13 of that directive that it covers, in addition to general consumer law, fields such as that of financial services.

40 Although that directive was adopted after the facts in the main proceedings, the fact remains that it may be of assistance for the purposes of determining the concept of 'consumer' in the context of Directive 2004/39, in so far as it refers, in Annex I thereto, to Directive 2014/65, which repealed and replaced Directive 2004/39 and Article 74(2) of which, which concerns the right to bring proceedings in the interests of consumers, corresponds to Article 52(2) of Directive 2004/39, with the wording of those two articles being almost identical.

41 With the benefit of those preliminary clarifications, the Court observes that Article 52(2) of Directive 2004/39 requires Member States to provide that one or more of the bodies listed in that provision, namely (i) public bodies or their representatives, (ii) consumer organisations having a legitimate interest in protecting consumers and (iii) professional organisations having a

legitimate interest in acting to protect their members, may, in the interests of consumers and in accordance with national law, take action before the courts or competent administrative bodies to ensure that the national provisions for the implementation of that directive are applied.

42 In order to answer the question referred by the national court, it is first necessary to determine the material scope of that provision and to establish whether an action brought by a consumer organisation to defend the individual interests of a number of consumers falls within the scope of that same provision. In order to do so, it is necessary to interpret the expression 'the interests of consumers' in that provision.

43 In that regard, the Court recalls that, according to settled case-law, it is necessary, in order to interpret a provision of EU law, to consider not only its wording but also its context and the objectives of the legislation of which it forms part (judgment of 17 November 2022, *TOYA*, C-243/21, EU:C:2022:889, paragraph 36 and the case-law cited).

44 As regards the wording of Article 52(2) of Directive 2004/39, the Court notes that, in all language versions except for the Dutch version, that provision refers to 'consumers' in the plural. The use of the plural indicates, as the Advocate General observed in point 40 of her Opinion, that the action brought by a consumer organisation must relate to the interests of a plurality of consumers in the field of financial and investment services.

45 However, that provision does not specify whether that collective dimension of the action brought by a consumer organisation requires that the purpose of such an action be confined to the defence of the general interest of consumers or, on the contrary, that it may also concern the individual interests of a number of consumers. Article 52(2) of Directive 2004/39 merely refers to the law of the Member States both as regards the determination of the bodies which may represent the interests of consumers and as regards the detailed procedural rules according to which that representation must actually be exercised.

46 The broad wording of that provision thus permits the inference that the Member States remain free to determine which organisations have standing to bring proceedings in the interests of consumers, the individual or collective nature of the interests which may be defended by those organisations and the detailed procedural rules under which those organisations must act in the defence of those interests.

47 That discretion enjoyed by the Member States reflects the scheme and objective of Directive 2004/39, which, as is apparent from recitals 2, 5 and 31 of that directive, seeks to establish a comprehensive regulatory regime in certain areas of financial markets, which is essential in order to provide for the degree of harmonisation needed, inter alia, to offer investors a high level of protection.

48 It follows from the foregoing that Article 52(2) of Directive 2004/39 requires Member States to put in place procedural mechanisms to protect the interests of consumers, but allows them, in accordance with their respective legal traditions, to configure those procedural mechanisms, in particular by granting consumer organisations standing to bring proceedings in order to protect the individual interests of their members.

49 In the latter regard, Article 52(2) of Directive 2004/39 provides for a right to bring an action in the interests of all consumer-investors, without distinguishing, inter alia, according to their financial means and the financial instruments in which they have invested, provided that those instruments fall within the scope of that directive.

50 Therefore, it does not follow from that provision that, where the Member State concerned has granted consumer organisations standing to bring proceedings in order to defend the individual interests of a number of their members, that standing to bring proceedings may be restricted to a certain category of consumers identified on the basis of such criteria.

51 In the present case, it follows from the national legal framework, as presented by the referring court that, in the exercise of its jurisdiction under Article 52(2) of Directive 2004/39, the Spanish legislature granted consumer associations standing to bring legal proceedings in order to defend the individual interests of their members.

52 That court states, first, that, in its case-law, it has accepted that consumer associations have standing to bring proceedings in order to defend the interests of their members in actions coming within the scope of Directive 2004/39 and, second, that the two members represented by the consumer association at issue in the main proceedings do have the status of 'consumers'.

53 Furthermore, that court held that consumer associations do not have standing to bring proceedings in order to defend the individual interests of consumers with significant financial means who invest in high-value, speculative financial products, which cannot be regarded as being of common, ordinary and widespread use.

54 In that regard, the Court observes that the case-law referred to in the preceding paragraph of the present judgment leads certain consumers, on account of their financial means and the monetary value, type and complexity of their investments, to be excluded from the benefit of representation by an association having a legitimate interest in protecting consumers.

55 Article 52(2) of Directive 2004/39 precludes national case-law which excludes certain consumers from the right to be represented by a consumer association in judicial proceedings.

56 However, as regards the legal aid scheme, the Court observes that Article 52(2) of Directive 2004/39 merely provides for a right for consumer organisations having a legitimate interest in protecting consumers to take action, without requiring such aid to be granted in order to facilitate the exercise of that right.

57 In the absence of EU legislation concerning the grant of legal aid to consumer organisations bringing actions in the interests of consumers under Article 52(2) of Directive 2004/39, it is for the national legal order of each Member State to establish such rules, in accordance with the principle of procedural autonomy, provided, however, that those rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness) (see, to that effect, judgment of 20 September 2018, *EOS KSI Slovensko*, C-448/17, EU:C:2018:745, paragraph 36 and the case-law cited).

58 In the present case, the referring court states that, where the actions brought by those associations have a direct link with products or services of common, ordinary and widespread use or consumption, which include banking and financial services in general, those associations enjoy

the right to legal aid. They are therefore not required either to pay the legal costs relating to the bringing of an action or to pay the costs incurred by the opposing party if they are unsuccessful. Nor are those costs to be borne by the individual members whom they represent.

59 In that regard, it is for that court to assess whether financial instruments such as those at issue in the main proceedings come within the scope of 'products and services of common, ordinary and widespread use and consumption' which give those associations the right to legal aid.

60 However, according to that court, in disputes in which 'the status of consumer is diluted in the light of the characteristics and the amount of the dispute', circumvention of procedure or an abuse of process could result from the defence, by a consumer association, of individual interests of consumers with significant financial means who invest in high-value, speculative financial products which cannot be regarded as being of common, ordinary and widespread use.

61 In that regard, the Court does not have before it any evidence capable of raising doubts as to whether the procedural rules at issue in the main proceedings are in line with the principle of equivalence. Nor does the potential absence of legal aid undermine the principle of effectiveness, provided that the court fees that an association is required to pay if it does not receive legal aid do not constitute insurmountable costs that are capable of making it impossible in practice or excessively difficult to exercise the right to take action provided for in Article 52(2) of Directive 2004/39, which it is for the referring court to ascertain.

62 That is all the more so since, as the Spanish Government submitted at the hearing before the Court and subject to verification by the referring court, the criteria that must be met under Spanish law in order for consumer associations to benefit from the right to legal aid do not limit the right of consumers to bring an individual action and to apply for legal aid if they do not have sufficient resources, in accordance with the relevant provisions of Spanish law.

63 In the light of the foregoing, the answer to the question referred by the referring court is that Article 52(2) of Directive 2004/39 must be interpreted as:

– precluding national case-law which, where the Member State concerned has granted consumer organisations standing to bring legal proceedings in order to defend the individual interests of a number of their members, makes such standing to bring proceedings subject to restrictions relating to the financial means of those members, the monetary value and the type of financial products in which those members have invested and the complexity of those products;

– not precluding, in principle, such criteria from being taken into consideration in order to decide whether those organisations are entitled to legal aid.

## Costs

64 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fourth Chamber) hereby rules:

**Article 52(2) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC**

**must be interpreted as**

– **precluding national case-law which, where the Member State concerned has granted consumer organisations standing to bring legal proceedings in order to defend the individual interests of a number of their members, makes such standing to bring proceedings subject to restrictions relating to the financial means of those members, the monetary value and the type of financial products in which those members have invested and the complexity of those products;**

– **not precluding, in principle, such criteria from being taken into consideration in order to decide whether those organisations are entitled to legal aid.**

[Signatures]