Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

13 March 2025*

(Reference for a preliminary ruling – Consumer protection – Directive 93/13/EEC – Unfair terms in consumer contracts – Article 6(1) and Article 7(1) – Principle of equivalence – Mortgage loan agreements – Term stipulating that costs relating to the contract are to be paid by the consumer – Action for invalidity – Limitation period for an action seeking repayment of sums paid but not due – Actions seeking, respectively, a declaration that a contractual term is invalid and seeking to enforce the restitutory effects of such a declaration subject to different limitation periods)

In Case C-230/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de Primera Instancia No 8 de La Coruña (Court of First Instance No 8, A Coruña, Spain), made by decision of 12 March 2024, received at the Court on 26 March 2024, in the proceedings

**MF**

v

**Banco Santander SA,**

THE COURT (Ninth Chamber),

composed of N. Jääskinen, President of the Chamber, M. Condinanzi and R. Frendo (Rapporteur), Judges,

Advocate General: D. Spielmann,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Banco Santander SA, by G. Fernández-Bravo, C. García Vega and J. Rodríguez Cárcamo, abogados,

– the Spanish Government, by A. Pérez-Zurita Gutiérrez, acting as Agent,

* Language of the case: Spanish.

– the European Commission, by I. Galindo Martín and P. Kienapfel, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of the principle of equivalence and of Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

2 The request has been made in proceedings between MF, a consumer, and Banco Santander SA, concerning an application seeking a declaration that a term in a loan agreement is invalid on the ground that it is unfair.

## Legal context

### *European Union law*

3 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, …’

4 Article 7(1) of that directive provides:

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

### *Spanish law*

#### *The General Law for the protection of consumers and users*

5 The 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 consolidating 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), recast that law, which was amended by Law 5/2019 (‘the General Law for the protection of consumers and users’).

6 Article 82 of the General Law for the protection of consumers and users, entitled ‘Definition of unfair terms’, provides:

‘1. All contractual terms not individually negotiated and all practices for which express consent has not been given and which, contrary to the requirement of good faith, cause a significant

imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer or user shall be regarded as unfair terms.

…

3. The unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.

…'

7 Under Article 83 of the General Law for the protection of consumers and users, entitled 'Invalidity of unfair terms and continued existence of the contract':

'Unfair terms shall automatically be void and deemed not to have formed part of the contract. To that end, the court, having heard the parties, shall declare the invalidity of unfair terms included in the contract, which shall nevertheless continue to bind the parties on the same terms if it is capable of continuing in existence without the unfair terms.

…'

*The Civil Code*

8 Article 6(3) of the Código Civil (Civil Code) is worded as follows:

'Any action contrary to a mandatory rule or a statutory prohibition shall automatically be void, unless they provide for different consequences in the event of their infringement.'

9 Article 1303 of the Civil Code provides:

'Once an obligation has been declared void, the contracting parties must restore to each other the things which formed the subject matter of the contract, together with the proceeds therefrom and the price plus interest …'

10 On the date on which the mortgage loan agreement at issue in the main proceedings was signed, Article 1964 of that code provided:

'Mortgage enforcement proceedings shall become time-barred after 20 years and personal actions for which there is no special limitation period shall become time-barred after 15 years.'

11 In the course of the performance of the contract, Article 1964 was amended by Ley 42/2015 de reforma de la Ley 1/2000 de Enjuiciamiento Civil (Law 42/2015 reforming the Law on Civil Procedure 1/2000) of 5 October 2015 (BOE No 239 of 6 October 2015, p. 90240). Following that amendment, that provision reads as follows:

'1. Mortgage enforcement proceedings shall become time-barred after 20 years.

2. Personal actions not subject to a particular limitation period shall become time-barred after five years from the date on which performance of the obligation becomes enforceable. In the case

of ongoing obligations to take or refrain from action, the limitation period shall begin to run from the occurrence of each failure to fulfil those obligations.'

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

12 On 19 January 2009, MF concluded a mortgage loan agreement with Banco Santander. A term of that agreement required MF, as the borrower, to bear all the costs relating to the creation of the mortgage, such as the costs of preparing the transaction and the costs and taxes incurred in creating the mortgage, its registration in the land register, the management costs and the costs of amending or cancelling the agreement ('the term regarding costs').

13 On 27 February 2023, MF brought an action before the Juzgado de Primera Instancia No 8 de La Coruña (Court of First Instance No 8, A Coruña, Spain), which is the referring court, seeking a declaration that the term regarding costs is invalid on the ground that it is unfair. By that action, MF also seeks repayment of a sum corresponding to half of the notaries' fees and to the total amount of the costs of registration in the land register, together with statutory interest.

14 Banco Santander maintains that the action seeking repayment of that sum is time-barred. Although at the time when the mortgage loan agreement was signed, Article 1964 of the Civil Code provided that such an action was time-barred after 15 years, that period was amended by Law No 42/2015 and reduced to 5 years.

15 The referring court is uncertain as to whether it is possible, in the light of the principle of equivalence, to treat differently, on the one hand, an application seeking a declaration of invalidity of an allegedly unfair term and, on the other hand, an application based on the restitutory effects of that declaration, such as the application before it.

16 There is no rule of law or case-law in the Spanish legal system which would allow the limitation period for an action seeking a declaration of invalidity of a contractual term to be different from the limitation period which applies to an action based on the effects of such a declaration.

17 In those circumstances, the Juzgado de Primera Instancia No 8 de La Coruña (Court of First Instance No 8, A Coruña) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is it contrary to Directive [93/13] and the principle of equivalence to apply the possibility of dissociating invalidity on the basis of unfairness from restitutory effects, whereby invalidity is not subject to a limitation period and, at the same time, actions for restitution are subject to a limitation period, when, in Spanish domestic law, there is no legislation or case-law which applies [such a dissociation] to other legal relationships?'

## Admissibility of the request for a preliminary ruling

18 Banco Santander disputes the admissibility of the request for a preliminary ruling on the ground that it does not identify precisely the alleged national rule which would apply more favourably to actions based on an infringement of national law than to those based on an infringement of EU law. Accordingly, the Court does not have the necessary information under Spanish law to ascertain whether the principle of equivalence has been observed.

19 According to the settled case-law of the Court, 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 the 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, which enjoy a presumption of relevance. Therefore, in so far as a question referred concerns the interpretation or validity of a rule of EU law, the Court is, in principle, required to give a ruling, unless it is quite obvious that the interpretation sought bears no relation to the actual facts of the main action, it is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the question submitted to it (judgment of 12 December 2024, *Kutxabank*, C-300/23, EU:C:2024:1026, paragraph 59 and the case-law cited).

20 It should also be noted that the principle of equivalence means that the detailed rules governing the implementation of EU law which fall within the domestic legal system of the Member States, by virtue of the principle of procedural autonomy of those States, must be no less favourable than those governing similar domestic actions (see, to that effect, judgment of 17 May 2022, *Unicaja Banco*, C-869/19, EU:C:2022:397, paragraph 22 and the case-law cited).

21 In its request for a preliminary ruling, the referring court refers to there being, in Spanish law, a number of actions based on the effects of a declaration of invalidity whose limitation rules are no different from those of the action which led to that declaration.

22 It follows, according to the referring court, that, in the Spanish legal system, the conditions for bringing actions based on the restitutory effects of a declaration that an unfair contractual term is invalid are less favourable than the conditions to which other comparable actions based on the effects of a declaration of invalidity are subject.

23 Also, it is not clear that the interpretation of EU law sought, in particular regarding the principle of equivalence, is irrelevant in the light of the decision which the referring court is called upon to give or that the interpretation of the provisions of EU law sought by the question raised bears no relation to the facts of the dispute in the main proceedings.

24 The Spanish Government is also uncertain as to the admissibility of the request for a preliminary ruling in so far as it disputes the premiss on which the referring court based that request, namely there being, in the national legal system, legislation or case-law providing, in general, that an action seeking to enforce the restitutory effects of a declaration of invalidity is subject to the same limitation period as an action by which that invalidity was declared. The European Commission expresses the same uncertainties as to whether, in Spanish law, the national rule relied on by the referring court exists.

25 However, it is not for the Court, in the context of the judicial cooperation established by Article 267 TFEU, to call into question or to verify the accuracy of the interpretation of national law made by the national court, as such interpretation falls within the exclusive jurisdiction of that court. In addition, when hearing a reference for a preliminary ruling from a national court, the Court of Justice must base its reasoning on the interpretation of national law as described to it by that court (see, by analogy, judgment of 12 December 2024, *Volvo Group Belgium*, C-436/23, EU:C:2024:1023, paragraph 18 and the case-law cited).

26 It follows that the request for a preliminary ruling is admissible.

## Consideration of the question referred

27 By its question, the referring court is asking, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13 and the principle of equivalence must be interpreted as precluding national legislation or case-law which, while providing that an action seeking a declaration of invalidity of an unfair term in a contract concluded between a seller or supplier and a consumer is not subject to a time limit, makes an action seeking to enforce the restitutory effects of that declaration subject to a limitation period, whereas, in the national legal system, other actions based on the effects of a declaration of invalidity are not subject to limitation rules different from those of the action which led to that declaration.

28 The referring court states that, in Spanish law, there is, in principle, no situation in which invalidity and its effects are subject to two different sets of limitation rules.

29 Against that background, it should be noted that, according to the Court's case-law, Article 6(1) of Directive 93/13 must be interpreted as meaning that a contractual term held to be unfair 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 such a 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. It follows that 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 (judgment of 9 July 2020, *Raiffeisen Bank and BRD Groupe Société Générale*, C-698/18 and C-699/18, EU:C:2020:537, paragraph 54 and the case-law cited).

30 However, first, the Court has already recognised that consumer protection is not absolute and that the setting of reasonable time limits for bringing actions on pain of foreclosure, in the interests of legal certainty, is compatible with Union law (judgment of 22 April 2021, *Profi Credit Slovakia*, C-485/19, EU:C:2021:313, paragraph 57).

31 Second, Article 6(1) and Article 7(1) of Directive 93/13 do not preclude a national rule which, while providing that an action seeking a declaration of invalidity of an unfair term in a contract concluded between a seller or supplier and a consumer is not subject to a time limit, subjects the action seeking to enforce the restitutory effects of that finding to a limitation period, provided that that period is not less favourable than those governing similar domestic actions (principle of equivalence) and that it does not render practically impossible or excessively difficult the exercise of rights conferred by the EU legal order, in particular Directive 93/13 (principle of effectiveness) (see, to that effect, judgments of 9 July 2020, *Raiffeisen Bank and BRD Groupe Société Générale*, C-698/18 and C-699/18, EU:C:2020:537, paragraph 58, and of 8 September 2022, *D.B.P. and Others (Mortgage loans denominated in foreign currency)*, C-80/21 to C-82/21, EU:C:2022:646, paragraph 90).

32 As regards, in particular, the principle of equivalence, to which the question referred for a preliminary ruling relates, it should be noted that compliance with that principle requires the national rule in question to apply without distinction to actions based on an infringement of EU law and those based on an infringement of national law having a similar purpose and cause of action (see, to that effect, judgment of 9 July 2020, *Raiffeisen Bank and BRD Groupe Société Générale*, C-698/18 and C-699/18, EU:C:2020:537, paragraph 76 and the case-law cited).

33 Accordingly, Directive 93/13 and the principle of equivalence do not preclude an action seeking to enforce the restitutory effects of a declaration of invalidity of an unfair contractual term from being subject to a limitation period, whereas an action seeking a declaration of invalidity of such a term is not subject to a time limit, provided that that limitation period is not less favourable than that applicable to actions based on an infringement of domestic law having a similar purpose and cause of action.

34 In the present case, it is for the national court to ascertain whether there is a similarity, as regards their purpose, cause of action and essential characteristics, between the actions in the main proceedings and the other types of actions based on national law which it cites in its request for a preliminary ruling (see, by analogy, judgment of 9 July 2020, *Raiffeisen Bank and BRD Groupe Societé Générale*, C-698/18 and C-699/18, EU:C:2020:537, paragraph 77).

35 For the purposes of that examination, that court will, therefore, have to ascertain whether the Spanish legal system provides, in areas other than those covered by Directive 93/13, for actions based on the effects of a declaration of invalidity which are similar, as regards their purpose, cause of action and essential characteristics, to the action brought before it by MF but which, in accordance with national law or case-law, are not, however, subject to a limitation period comparable to that which applies to the action brought before it by MF. If so, the national legislation providing for that limitation period to apply to the action in the main proceedings would breach the principle of equivalence.

36 In those circumstances, it is for the referring court to examine any disregard which there may be of the principle of equivalence, by taking into account the aspects referred to in paragraphs 32 to 35 of the present judgment (see, by analogy, judgment of 26 September 2018, *Staatssecretaris van Veiligheid en justitie (Suspensory effect of the appeal)*, C-180/17, EU:C:2018:775, paragraph 42 and the case-law cited).

37 In the light of all the foregoing considerations, the answer to the question raised is that Article 6(1) and Article 7(1) of Directive 93/13 and the principle of equivalence must be interpreted as not precluding national legislation or case-law which, while providing that an action seeking a declaration of invalidity of an unfair term in a contract concluded between a seller or supplier and a consumer is not subject to a time limit, subjects the action seeking to enforce the restitutory effects of that declaration to a limitation period, in so far as the national legal system provides, in areas other than those covered by Directive 93/13, for actions based on the effects of a declaration of invalidity which are similar, as regards their purpose, cause of action and essential characteristics, to actions seeking to enforce those restitutory effects and which are subject to a limitation period comparable to that which applies to the latter actions.

## Costs

38 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 (Ninth Chamber) hereby rules:

**Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and the principle of equivalence,**

**must be interpreted as not precluding national legislation or case-law which, while providing that an action seeking a declaration of invalidity of an unfair term in a contract concluded between a seller or supplier and a consumer is not subject to a time limit, subjects the action seeking to enforce the restitutory effects of that declaration to a limitation period, in so far as the national legal system provides, in areas other than those covered by Directive 93/13, for actions based on the effects of a declaration of invalidity which are similar, as regards their purpose, cause of action and essential characteristics, to actions seeking to enforce those restitutory effects and which are subject to a limitation period comparable to that which applies to the latter actions.**

[Signatures]