Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

8 May 2025 *

(Reference for a preliminary ruling – Consumer protection – Consumer credit agreements – Directive 93/13/EEC – Unfair terms in consumer contracts – Article 3(1) – Acceleration clause – Judicial review – No national legislation governing the acceleration clause – Criteria for assessing unfairness)

In Joined Cases C-6/24 and C-231/24,

REQUESTS 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 decisions of 19 December 2023 and 26 February 2024 respectively, received at the Court on 4 January and 26 March 2024, in the proceedings

Abanca Corporación Bancaria SA

v

WE (C-6/24),

VX (C-231/24),

THE COURT (Eighth Chamber),

composed of S. Rodin (Rapporteur), President of the Chamber, N. Piçarra and N. Fenger, Judges,

Advocate General: D. Spielmann,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Abanca Corporación Bancaria SA, by M.Á. Cepero Aránguez, J.M. Martínez Gimeno and C. Vendrell Cervantes, abogados,

– the Spanish Government, by P. Pérez Zapico, acting as Agent,

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

* Language of the case: Spanish.

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

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 3(1) and Article 7 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

2 The requests have been made in proceedings between, on the one hand, Abanca Corporación Bancaria SA, a banking institution governed by Spanish law, and, on the other, consumers, namely WE, in Case C-6/24, and VX, in Case C-231/24, concerning an acceleration clause that is contained in personal loan agreements concluded between those parties and is alleged to be unfair.

Legal context

European Union law

3 Under Article 3(1) of Directive 93/13:

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

4 Article 4 of that directive provides:

‘1. Without prejudice to Article 7, 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, at the time of conclusion of the contract, 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.

2. Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as these terms are in plain intelligible language.’

5 Article 7(1) of that directive is worded as follows:

‘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

6 Article 693(2) of Ley 1/2000 de Enjuiciamiento Civil (Law 1/2000 on Civil Procedure) of 7 January 2000 (BOE No 7 of 8 January 2000, p. 575), as amended by Ley 42/2015 de reforma de la Ley 1/2000 (Law 42/2015 reforming Law 1/2000) of 5 October 2015 (BOE No 239 of 6 October 2015), on the accelerated repayment of debts repayable in instalments, provides:

'The total amount due by way of principal and interest may be claimed on the terms agreed in the instrument creating the loan and entered in the respective register. In the case of a loan or credit which is entered into by a natural person and secured by a mortgage on a dwelling or the purpose of which is the acquisition of immovable property for residential use, the provisions of Article 24 of Law 5/2019 on mortgage loan agreements, and, as the case may be, Article 129a of the Law on Mortgages shall apply.'

7 Article 24 of Ley 5/2019 reguladora de los contratos de crédito inmobiliario (Law 5/2019 on mortgage loan agreements) of 15 March 2019 (BOE No 65 of 16 March 2019) is worded as follows:

'1. In loan agreements where the borrower, guarantor or surety is a natural person, and which are secured by a mortgage or other security *in rem* on immovable property for residential use or which are intended for the acquisition or retention of property rights in land or immovable property built or to be built for residential use, the borrower shall lose the right to the loan term agreed on and will become liable for accelerated repayment in respect of the agreement where the following cumulative conditions are satisfied:

(a) the borrower defaults on payment of part of the principal of the loan or of interest;

(b) the amount of instalments that are due and not paid is at least equal to:
   i. three per cent of the amount of principal granted, if the default takes place during the first half of the term of the loan. This condition shall be considered to be satisfied where the instalments due and not paid are equivalent to the non-payment of 12 monthly instalments or a number of instalments such that the debtor has failed to fulfil his or her obligation for a period of at least 12 months;
   ii. seven per cent of the amount of principal granted, if the default takes place during the second half of the term of the loan. This condition shall be considered to be satisfied where the instalments due and not paid are equivalent to the non-payment of 15 monthly instalments or a number of instalments such that the debtor has failed to fulfil his or her obligation for a period of at least 15 months;

(c) the lender has given the borrower notice to pay, granting him or her a period of at least one month in which to do so and warning him or her that, failing such payment, the lender will demand repayment in full of the outstanding balance on the loan.

2. The rules of this Article may not be derogated from by agreements to the contrary.'

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

8 On 5 July and 15 September 2022, respectively, WE and VX each concluded a personal loan agreement with Abanca Corporación Bancaria, in the amount of EUR 10 600 repayable over five years in respect of WE, and in the amount of EUR 6 000 repayable over eight years in respect of VX.

9 In accordance with clause No 13 of the general terms and conditions of those loan agreements ('the term at issue'), in the event of non-payment, the bank may trigger the accelerated repayment procedure in respect of the loan agreement, making the outstanding balance due for immediate repayment.

10 The term at issue states that non-payment is present if three cumulative conditions are satisfied. First, the borrower is liable to pay part of the principal borrowed or interest. Second, the amount of the instalments due and not paid is equal to at least 3% of the principal lent if non-payment occurs during the first half of the term of the loan or to at least 7% of the loan if non-payment occurs during the second half of the term of the loan. Third, the borrower must have been given notice by the banking institution to pay the sums owed within one month.

11 After triggering the accelerated repayment procedure in accordance with the term at issue, Abanca Corporación Bancaria lodged two applications seeking an order for payment with the Juzgado de Primera Instancia No 8 de La Coruña (Court of First Instance No 8, A Coruña, Spain), which is the referring court, against WE and VX.

12 That court is uncertain as to whether the term at issue complies with Directive 93/13 in the light of the judgments of 14 March 2013, *Aziz* (C-415/11, EU:C:2013:164, paragraph 73), and of 26 January 2017, *Banco Primus* (C-421/14, EU:C:2017:60, paragraphs 66 and 67), in which the Court of Justice held that the factors which may be taken into account in order to assess the unfairness of such a term include whether the national legislation provides for means enabling the consumer to avoid the accelerated repayment of the loan or to remedy the effects thereof, which is not the case under Spanish law as regards personal loan agreements, such as those at issue in the main proceedings. The term at issue contained in those agreements nevertheless affords the borrower that possibility, similar to what is provided for in the national legislation applicable to mortgage loan agreements. Furthermore, the referring court is uncertain whether a period of one month in which to settle the sums that are overdue on the loan, such as the period prescribed by that term, is sufficient effectively to enable the consumer to avoid the accelerated repayment of the loan or to deprive it of effect following the declaration thereof.

13 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 questions to the Court of Justice for a preliminary ruling:

'(1) Is an acceleration clause which provides for the possibility of [depriving of effect] or preventing acceleration within a certain period of time consistent with [Article] 3(1) and [Article 7] of Directive 93/13 …, or does such [an option] have to be recognised in a specific provision of national law?

(2) If the answer to the foregoing question is in the affirmative, what period of time would be reasonable?'

14 By decision of the President of the Court of 26 April 2024, Cases C-6/24 and C-231/24 were joined for the purposes of the written and oral parts of the procedure and of the judgment.

Consideration of the questions referred

The first question

15 It should be noted as a preliminary point that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it (judgment of 7 November 2024, *ERB New Europe Funding II*, C-178/23, EU:C:2024:943, paragraph 26 and the case-law cited).

16 In that regard, it should be pointed out that, in the main proceedings, the referring court carried out a review of its own motion as to whether the term at issue, the implementation of which has given rise to the applications for an order for payment before that court, might be unfair. The referring court has doubts not as to whether there are judicial means of preventing the continued use of unfair terms, in the light of Article 7 of Directive 93/13, but rather as to the very classification of such terms as unfair within the meaning of Article 3(1) of Directive 93/13.

17 Accordingly, in order to provide an answer that will be of use to the referring court, it must be considered that, by its first question, that court asks, in essence, whether Article 3(1) of Directive 93/13 must be interpreted as meaning that, for the purpose of assessing whether an acceleration clause contained in a personal loan agreement is unfair, account may be taken of the fact that that clause allows the consumer to avoid the accelerated repayment of the loan or to remedy the effects thereof, or whether that possibility must be provided for in a rule of national law specifically applicable to personal loan agreements.

18 In order to answer that question, it must be borne in mind that, according to settled case-law of the Court, the system of protection introduced by Directive 93/13 is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his or her bargaining power and his or her level of knowledge (judgment of 18 January 2024, *Getin Noble Bank and Others (Review by a national court of its own motion of unfair contractual terms)*, C-531/22, EU:C:2024:58, paragraph 63).

19 Under Article 3(1) of that directive, a contractual term which has not been individually negotiated is to be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under that contract, to the detriment of the consumer concerned, while, under Article 6(1) of that directive, such an unfair term is not binding on that consumer.

20 In that context, and in order to ensure the high level of consumer protection set out in Article 38 of the Charter of Fundamental Rights of the European Union, a national court is required to assess, of its own motion, whether a contractual term falling within the scope of Directive 93/13 is unfair, compensating in that way for the imbalance which exists between the consumer and the seller or supplier, where it has available to it the legal and factual elements necessary for that task. In that regard, Article 3(1) and Article 4(1) of Directive 93/13 define, as a whole, the general criteria enabling the national court to assess whether contractual terms subject to the provisions of that directive are unfair (see, to that effect, judgment of 9 November 2023, *Všeobecná úverová banka*, C-598/21, EU:C:2023:845, paragraphs 74 and 75).

21 In referring to concepts of 'good faith' and 'significant imbalance' in the parties' rights and obligations arising under the contract, to the detriment of the consumer, Article 3(1) of Directive 93/13 merely defines in a general way the factors that render unfair a contractual term that has not been individually negotiated (judgment of 9 November 2023, *Všeobecná úverová banka*, C-598/21, EU:C:2023:845, paragraph 76).

22 As regards the circumstances in which a significant imbalance is caused 'contrary to the requirement of good faith', the national court must, having regard to the sixteenth recital of Directive 93/13, assess for those purposes whether the seller or supplier, dealing fairly and equitably with the consumer, could reasonably assume that the consumer would have agreed to such a term in individual contract negotiations (judgment of 9 November 2023, *Všeobecná úverová banka*, C-598/21, EU:C:2023:845, paragraph 78).

23 Furthermore, in accordance with Article 4(1) of that directive, the unfairness of a contractual term must be assessed by taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, 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 (judgment of 9 November 2023, *Všeobecná úverová banka*, C-598/21, EU:C:2023:845, paragraph 79).

24 In paragraph 66 of the judgment of 26 January 2017, *Banco Primus* (C-421/14, EU:C:2017:60), which concerned not a personal loan agreement but a long-term mortgage loan agreement, the Court held, in essence, that in order to establish whether a term in a contract causes a significant imbalance to the detriment of the consumer, within the meaning of Article 3(1) of Directive 93/13, the national court must examine, inter alia, whether the option available to the seller or supplier to call in the totality of the loan is conditional upon the non-compliance by the consumer with an obligation which is of essential importance in the context of the contractual relationship in question, whether that option is provided for in cases in which such non-compliance is sufficiently serious in the light of the term and amount of the loan, whether that option derogates from the applicable rules of ordinary law, where specific contractual provisions are lacking, and whether national law provides for adequate and effective means enabling the consumer subject to such a term to remedy the effects of the loan being called in.

25 Furthermore, in paragraph 35 of the judgment of 8 December 2022, *Caisse régionale de Crédit mutuel de Loire-Atlantique et du Centre Ouest* (C-600/21, EU:C:2022:970), the Court stated that those criteria cannot be understood either as being cumulative or as being alternative, but must be understood as forming part of all the circumstances surrounding the conclusion of the contract in question, which the national court must examine in order to assess the unfairness of a contractual term, as provided for in Article 3(1) of Directive 93/13.

26 In the present case, as the referring court states, the Spanish legislation does not provide a framework for acceleration clauses in personal loan agreements, as it does for mortgage loan agreements. Nonetheless, the term at issue contained in the loan agreements at issue in the main proceedings provides a means for the consumer to avoid the accelerated repayment of the loan or to remedy the effects thereof, by paying the sums that are overdue on the loan within a period of one month of being put on notice by the banking institution, similar to what is provided for by that legislation concerning mortgage loan agreements.

27 In accordance with the case-law recalled in paragraphs 24 and 25 of the present judgment, it is for the national court to establish whether an acceleration clause causes a significant imbalance to the detriment of the consumer, within the meaning of Article 3(1) of Directive 93/13, in the light of various criteria, including the existence of adequate and effective means enabling the consumer to avoid the application of that clause or to remedy the effects thereof. The fact that the means of achieving that result are provided for by the contractual acceleration clause itself and not by a rule of national law specifically applicable to the agreements at issue in the main proceedings is irrelevant and, in any event, is not such as to render that contractual term unfair within the meaning of Article 3(1) of Directive 93/13.

28 In the light of the foregoing, the answer to the first question is that Article 3(1) of Directive 93/13 must be interpreted as meaning that, for the purpose of assessing whether an acceleration clause contained in a personal loan agreement is unfair, account may be taken of the fact that that clause allows the consumer to avoid the accelerated repayment of the loan or to remedy the effects thereof, without it being necessary for that possibility to be provided for by a rule of national law specifically applicable to personal loan agreements.

The second question

29 By its second question, the referring court asks, in essence, whether Article 3(1) of Directive 93/13 must be interpreted as meaning that the contractual option afforded to a consumer to pay the sums that are overdue on the loan within a period of one month from the date on which that consumer is put on notice by the banking institution constitutes an adequate and effective means enabling the consumer to avoid the implementation of the acceleration clause set out in the personal loan agreement or to remedy the effects thereof.

30 In that regard, it should be recalled that, in accordance with settled case-law, the jurisdiction of the Court extends to the interpretation of the concept of 'unfair term' used in Article 3(1) of the directive and in the annex thereto, and to the criteria which the national court may or must apply when examining a contractual term in the light of the provisions of that directive, bearing in mind that it is for that court to determine, in the light of those criteria, whether a particular contractual term is actually unfair in the circumstances of the case (judgment of 8 December 2022, *Caisse régionale de Crédit mutuel de Loire-Atlantique et du Centre Ouest*, C-600/21, EU:C:2022:970, paragraph 38 and the case-law cited).

31 As regards the term at issue relating to the accelerated repayment procedure in respect of the personal loan agreement in the event of non-payment, it is for the referring court to examine, inter alia, whether the option available to the seller or supplier to call in the totality of the loan is conditional upon the non-compliance by the consumer with an obligation which is of essential importance in the context of the contractual relationship in question, whether that option is provided for in cases in which such non-compliance is sufficiently serious in the light of the term and amount of the loan, whether that option derogates from the applicable rules of ordinary law, and whether national law or a contractual term provides for adequate and effective means enabling the consumer to avoid the application of an acceleration clause or to remedy the effects thereof (see, to that effect, judgment of 26 January 2017, *Banco Primus*, C-421/14, EU:C:2017:60, paragraph 66).

32 In paragraphs 47 and 48 of the judgment of 25 January 2024, *Caixabank (Limitation period for the repayment of mortgage charges)* (C-810/21 to C-813/21, EU:C:2024:81), the Court held, as regards a limitation period, in essence, that, in order to be regarded as being compatible with the principle

of effectiveness, first, that period had to be sufficient in practical terms to enable a consumer to prepare and bring an effective action in order to enforce the rights that he or she derives from Directive 93/13 and, second, that the consumer must have had the opportunity to become aware of his or her rights before that period began to run or expired.

33 In the present case, it is apparent from the requests for a preliminary ruling that the obligation not complied with by the consumers concerned, namely the repayment of the loan instalments, is essential in the context of the contractual relationship in question and is sufficiently serious in the light of the term and amount of the loan. The referring court's questions are limited to assessing whether the one-month period granted to those consumers is adequate and effective in order to avoid the implementation of the clause requiring immediate repayment of the outstanding balance on the loan or to remedy the effects thereof.

34 According to the referring court, that clause corresponds to a provision of national law applicable to loan agreements which are secured by a mortgage on immovable property for residential use or the purpose of which is the acquisition of such property. The provision in question thus intends to strike a balance between all the rights and obligations of the parties to that type of agreement. That provision, namely Article 24(1) of Law 5/2019, states that accelerated repayment may take place only if the lender has given the borrower a period of at least one month to remedy the identified non-payment.

35 Therefore, in order to assess whether the means afforded to the consumer to avoid the accelerated repayment of the loan or to remedy the effects thereof are adequate and effective, in the context of its overall analysis of whether there is a significant imbalance to the detriment of the consumer, which an acceleration clause is liable to create, the referring court may usefully take into account, inter alia, the fact that the cure period is sufficient in practical terms to enable the consumer to make the requested payment. In that regard, the existence of provisions in national legislation providing, in the context of similar contractual relations, for such a period for the benefit of the borrower is particularly relevant.

36 In the light of the foregoing, it is conceivable that a national court could be led to consider that a one-month period granted to the consumer by an acceleration clause in order to settle the amount that is overdue on the loan, as from the date on which that consumer is put on notice by the lender, constitutes an adequate and effective means enabling the consumer to avoid the application of that clause or to remedy the effects thereof.

37 Consequently, the answer to the second question is that Article 3(1) of Directive 93/13 must be interpreted as meaning that, for the purpose of assessing whether an acceleration clause contained in a loan agreement is unfair, it is for the national court to ascertain whether the means enabling the consumer to avoid the accelerated repayment of the loan or to remedy the effects thereof are adequate and effective, by taking into consideration, in particular, whether the period afforded to the consumer to make the requested payment of the sums that are overdue on the loan is sufficient in practical terms. In that regard, the existence of provisions in national legislation providing, in the context of similar contractual relations, for such a period for the benefit of the borrower is a particularly relevant factor.

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 (Eighth Chamber) hereby rules:

1. **Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts**

   must be interpreted as meaning that, for the purpose of assessing whether an acceleration clause contained in a personal loan agreement is unfair, account may be taken of the fact that that clause allows the consumer to avoid the accelerated repayment of the loan or to remedy the effects thereof, without it being necessary for that possibility to be provided for by a rule of national law specifically applicable to personal loan agreements.

2. **Article 3(1) of Directive 93/13**

   must be interpreted as meaning that, for the purpose of assessing whether an acceleration clause contained in a loan agreement is unfair, it is for the national court to ascertain whether the means enabling the consumer to avoid the accelerated repayment of the loan or to remedy the effects thereof are adequate and effective, by taking into consideration, in particular, whether the period afforded to the consumer to make the requested payment of the sums that are overdue on the loan is sufficient in practical terms. In that regard, the existence of provisions in national legislation providing, in the context of similar contractual relations, for such a period for the benefit of the borrower is a particularly relevant factor.

[Signatures]