



Court of Justice of the European Union

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Judgment in Joined Cases C-482/13 Unicaja Banco, SA v José Hidalgo Rueda and Others, C-484/13 Caixabank SA v Manuel María Rueda Ledesma and Others, C-485/13 Caixabank SA v José Labella Crespo and Others and C-487/13 Caixabank SA v Alberto Galán Luna and Others

Press and Information

Spanish legislation according to which the national court is required to recalculate default interest whose rate is more than three times greater than the statutory rate is compatible with EU law

However, it must be possible for the Spanish court to consider the clause imposing such interest to be unfair and accordingly to be able to exclude its application

The purpose of Directive 93/13/EEC¹ is to approximate the laws, regulations and administrative provisions of the Member States as regards unfair terms contained in contracts concluded between a seller or supplier and a consumer.

The Spanish legislation on consumer protection was amended following the judgment of the Court of Justice in Aziz.² Thereafter, when, in the context of enforcement proceedings, the court deems one or more terms to be unfair, it may direct that enforcement is unavailable or order enforcement without applying the terms considered unfair.

Spanish law also establishes that, as regards loans or credits for the purchase of a habitual dwelling and secured by mortgages charged on that dwelling, default interest may not be more than three times the statutory rate of interest and may accrue only on the outstanding principal.

Unicaja Banco and Caixabank have requested that several mortgage enforcement proceedings be initiated for the enforcement of several mortgages for amounts of between €47 000 and €249 000. The mortgage loans were subject to default interest rates of 18% and 25%. In addition, all the loan contracts contained a clause authorising the lender, if the borrower failed to meet his payment obligations, to bring forward the maturity date initially agreed and require payment of all the outstanding capital debt, together with the interest, default interest, commission, expenses and costs agreed.

Unicaja Banco and Caixabank brought their enforcement proceedings before the Juzgado de Primera Instancia e Instrucción No 2 de Marchena (Court of First Instance and Preliminary Investigations, Marchena, Spain), applying the default interest rates provided. The Spanish court raised the question of the unfairness of the clauses relating to the default interest rates and the application of those rates to the capital whose early repayment is triggered by the delay in payment. Nevertheless, it had doubts about the consequences of the unfairness of those clauses, since, under Spanish law, it would have to recalculate the default interest rate which is more than three times greater than the statutory rate, so that a default interest rate which did not exceed that threshold applied. Accordingly, it asked the Court of Justice whether the directive on unfair terms in consumer contracts precludes the Spanish law.

In today's judgment, the Court has declared that the directive does not preclude the Spanish law provided that its application (i) is without prejudice to the assessment by the national

¹ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

² Case [C-415/11](#) see also Press Release No. [30/13](#). In that judgment, the Court found that the Directive on unfair terms precluded the Spanish legislation, which did not allow the court with jurisdiction to declare that a term is unfair to stay the enforcement proceedings where that was necessary to guarantee the full effectiveness of its final decision.

court of the unfairness of the term and (ii) does not prevent that court removing the clause if it were to find the latter to be unfair within the meaning of the directive.

In that regard, the Court notes that the **obligation to respect the threshold corresponding to the default interest rate is without prejudice to the assessment, by the court, of the unfairness of a term setting that default interest.** In fact, the Court notes that the national court may assess the possible unfairness of a term relating to default interest at a rate *less* than that provided by Spanish law. A default interest rate less than three times the statutory rate is not necessarily to be considered to be fair within the meaning of the directive. Likewise, when the default interest rate laid down in a term is *higher* than that provided by Spanish law and must be subject to a limitation, that must not preclude the national court from drawing all the inferences of possible unfairness of the clause in the light of the directive and, if necessary, annulling it.

That being said, **the Court notes in addition that, in those cases**, subject to the checks made by the Juzgado de Primera Instancia e Instrucción No 2, Marchena, **the annulment of the contractual clauses does not appear to have adverse consequences for the consumer**, inasmuch as the amounts for which the mortgage enforcement proceedings have been brought will necessarily be lower in the absence of an increase resulting from default interest laid down by those clauses.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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