



## **The time-limit for challenging mortgage enforcement proceedings in progress when a judgment of the Court of Justice was implemented in Spain is contrary to EU law**

*In those cases, in order to lodge an objection to enforcement, the parties concerned have a time-limit of one month, which started to run from the publication in the Spanish Official Journal of the new amending legislation adopted as a result of that judgment*

According to an EU directive,<sup>1</sup> Member States must ensure that unfair terms in a contract concluded with a consumer by a seller or supplier are not binding on the consumer, and that the contract will continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms. That directive also provides that Member States must ensure adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.

Following the delivery, of the judgment in *Aziz*<sup>2</sup> in 2013, Spanish law was modified, in particular, in relation to enforcement proceedings for mortgaged assets. Thus, for proceedings instituted after the entry into force of that law, an objection by the defendant, based on the unfairness of a contractual term, which is brought within an ordinary time-limit of 10 days from the date of notification of the act ordering the mortgage enforcement henceforth allows the suspension of the mortgage enforcement proceedings until the objection to enforcement has been adjudicated upon. A transitional provision in that law aims to take account of enforcement proceedings in progress at the date of entry into force of the law, that is to say, proceedings in which the 10-day period for objecting to enforcement had already started to run or had expired. In those cases, in order to lodge an objection to enforcement, the parties concerned had a time-limit of one month which began to run from the day following the publication of the law in the Spanish Official Journal.

The case in the main proceedings concerns a dispute between the Spanish bank BBVA (formerly Unnim Banc) and three consumers, who lodged an objection to mortgage enforcement proceedings instituted before the entry into force of the Spanish law. Those consumers argue before the Juzgado de Primera Instancia No 4 de Martorell (Court of First Instance No 4, Martorell, Spain), first, that the time-limit of one month is contrary to the directive. They claim that the time-limit is insufficient for the courts, called upon to review of their own motion the content of loan or as typed credit agreements accompanied by a mortgage guarantee in the process of being enforced and *a fortiori* for consumers, who have to raise the possible unfairness of the terms in those contracts. Second, the consumers submit that in so far as the one-month time-limit began to run from notification effected by means of the publication of the law in the Spanish Official Journal and not by way of a notice served on the defendants individually, access by consumers to justice was made very difficult, even if they had the benefit of legal assistance. The national court asks the Court of Justice whether the directive precludes the one-month time-limit laid down for by Spanish law.

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

<sup>2</sup>Case: [C-415/11 Aziz](#). See also Press Release [No 30/13](#). In that judgment, the Court declared that the Spanish legislation relating to mortgage enforcement was contrary to EU law. The existence of an unfair term in the mortgage loan agreement was not included among the grounds for which a debtor could challenge mortgage enforcement proceedings. The existence of such a term could be relied on only in other proceedings which did not have the effect of suspending the mortgage enforcement proceedings.

By today's judgment, the Court of Justice declares that **the directive precludes the Spanish transitional provision.**

The Court states, first of all, that a time-limit of one month within which to bring an objection to enforcement appears, in principle, to be sufficient to prepare and bring an effective action and thus is reasonable and proportionate, having regard to the rights and interests concerned. Therefore, the duration of such a time-limit does not undermine the principle of effectiveness.

However, the Court emphasises that the mechanism chosen by the legislature to start the time-limit running, namely publication of the law in the Spanish Official Journal, infringes the principle of effectiveness. On the date on which the enforcement proceedings against them were instituted, **the consumers were informed individually by a notice sent to them personally of their right to oppose enforcement within 10 days from the date of that notification.** The Court holds that **consumers could not reasonably take advantage of a further opportunity to object to enforcement since they were not notified of it through the same procedural means used to convey the initial information.** By providing that the time-limit begins to run in the present case **without the consumers concerned being personally informed** of the possibility to raise a new ground of objection in enforcement proceedings which were already in progress before the entry into force of that law, the transitional provision at issue is not such as to guarantee full enjoyment of that period and, therefore, the effective exercise of the new right recognised by the Spanish legislative amendment. **The Court observes** that taking into account the progress, the special features and complexity of the proceedings and the applicable legislation, **there is a significant risk that the time-limit will expire without the consumers in question being able effectively and usefully to exercise their rights through legal action because they are unaware of or do not appreciate the exact extent of those rights.**

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**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 European Union 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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