



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Joint Cases C-154/15 Francisco Gutiérrez Naranjo v Cajasur Banco S.A.U., C-307/15 Ana María Palacios Martínez v Banco Bilbao Vizcaya Argentaria SA and C-308/15 Banco Popular Español SA v Emilio Irlés López and Teresa Torres Andreu

According to Advocate General Mengozzi, the temporal limit on the effects of the invalidity of 'floor' clauses included in mortgage loan agreements in Spain is compatible with EU law

This limit is justified by the macroeconomic issues associated with the scale on which those clauses are used

In Spain, many individuals have initiated judicial proceedings against financial institutions seeking a declaration that the 'floor' clauses inserted in mortgage loan agreements concluded with consumers are unfair and that, consequently, they are not binding on the consumers. The clauses in question provide that, even if the interest rate falls below a certain threshold (or 'floor') defined in the agreement, the consumer must continue to pay minimum interest equivalent to that threshold, without being able to benefit from a lower rate.

By judgment of 9 May 2013, the Tribunal Supremo (Supreme Court, Spain) held the 'floor' clauses to be unfair, given that the consumers had not been informed properly about the economic and legal burden which the contract would place upon them. Nevertheless, the Tribunal Supremo decided to limit the temporal effects of the declaration of invalidity of those clauses, so that they would have effect only for the future, as from the date of delivery of the abovementioned judgment.

Some of the consumers affected by the application of those clauses are asking for repayment of the sums they claim have been unduly paid to the financial institutions from the date on which their loan agreements were concluded. The matter having been brought before them, the Juzgado de lo Mercantil nº 1 Granada (Commercial Court No 1, Granada, Spain) and the Audiencia Provincial de Alicante (Provincial High Court, Alicante, Spain) ask the Court of Justice whether the limitation of the effects of the declaration of invalidity from the date of delivery of the judgment of the Tribunal Supremo is compatible with the Directive on unfair terms¹, given that, according to that directive, such clauses are not binding on consumers.

In his Opinion, Advocate General Paolo Mengozzi takes the view that the directive does not seek to harmonise the penalties applicable in the event that a term is found to be unfair and, therefore, does not require Member States to provide for the retroactive invalidity of such a term.

Similarly, the Advocate General notes that the directive does not define the circumstances in which a domestic court may decide to limit the effects of decisions in which a term is found to be unfair. Therefore, it is for the internal legal order of the Member States to define those circumstances, subject to compliance with the EU law principles of equivalence and effectiveness.

With regard to the principle of equivalence², the Advocate General notes that the Tribunal Supremo does not limit the temporal effects of its decisions only in disputes involving EU law. On the contrary, it is common ground that that court has already made use of such an option in purely internal disputes.

¹ Council Directive 93/13/EEC of 5 April 1993, on unfair terms in consumer contracts (OJ 1993 L 95, p. 2).

² The principle of equivalence requires that a national procedural rule be applied without distinction, whether the infringement alleged is of EU law or national law, where the purpose and cause of action are similar.

With regard to the principle of effectiveness³, the Advocate General takes the view that, given that they constitute penalties having a deterrent effect on sellers or suppliers, the prohibition of 'floor' clauses as from 9 May 2013 and the obligation to repay the amounts unduly received from that date contribute to achieving the objectives pursued by the directive.

Moreover, the Advocate General recognises that, when ruling on the temporal effects of its decision, a national supreme court may balance consumer protection with macroeconomic issues associated with the scale on which 'floor' clauses are used. In that context, the Advocate General takes the view that, exceptionally, a temporal limit on the effects of the invalidity of an unfair term may be justified without upsetting the balance in the relationship between consumers and sellers or suppliers.

In those circumstances, the Advocate General suggests that the Court should hold that **the temporal limit on the effects of the invalidity of 'floor' clauses** included in mortgage loan agreements in Spain **is compatible with the directive**.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 Opinion is published on the CURIA website on the day of delivery.

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³ The principle of effectiveness requires that a national procedural rule does not render the application of EU law impossible or excessively difficult.