



**National legislation may provide for a time limit for an action for reimbursement based on an unfair term in a contract concluded between a seller or supplier and a consumer**

*That time limit must not be less favourable than that concerning similar domestic actions or render practically impossible or excessively difficult the exercise of rights conferred by EU law*

JB and KC concluded credit agreements for the grant of personal loans with Raiffeisen Bank and BRD Groupe Société Générale respectively. After those loans had been repaid in full, each of them brought an action before the Judecătoria Târgu Mureş (Court of First Instance, Târgu Mureş, Romania), seeking a declaration that a number of terms in those contracts were unfair as regards the payment of processing and monthly administration fees as well as the bank's power to alter interest rates.

Raiffeisen Bank and BRD Groupe Société Générale maintained that, when the actions were brought, since the loan agreements had come to an end on account of having been performed in full, JB and KC no longer had the status of consumer and were no longer entitled to bring proceedings.

The Judecătoria Târgu Mureş (Court of First Instance, Târgu Mureş) considered that full performance of a contract was not an obstacle to examining the unfair nature of its terms and found that those terms were unfair. That court therefore ordered the two banks to repay the sums paid by JB and KC under those terms, along with statutory interest. Raiffeisen Bank and BRD Groupe Société Générale appealed against that decision.

In that context, the Tribunalul Specializat Mureş (Specialised Court, Mureş, Romania) asked the Court of Justice whether the Directive 93/13 on unfair terms in consumer contracts<sup>1</sup> continues to apply after a contract has been performed in full and, where applicable, whether an action for reimbursement of sums received under contractual terms deemed unfair may be subject to a time limit of three year which starts to run from the time when the contract ended.

By today's judgment, the Court points out, first, that the obligation for a national court to exclude an unfair contract term imposing the payment of amounts that prove not to be due entails reimbursement of those amounts.

However, the Court notes that, in the absence of rules under EU law, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding rights of EU citizens. Those rules must not, however, be less favourable than those governing similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by the EU legal order (principle of effectiveness).

As regards the principle of effectiveness, the Court recalls that the system of protection implemented by the Directive on unfair terms in consumer contracts is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier. In that regard even if a three-year

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

time limit appears, in principle, sufficient in practical terms to allow a consumer to prepare and bring an effective action, in so far as it starts to run from the date when the contract has been performed in full, it could, however, have expired before a consumer has even been able to find out about the unfair nature of a term contained in that contract. That time limit is not therefore capable of providing a consumer with effective protection.

In those circumstances, limiting the protection conferred on a consumer solely to the period in which the contract in question was performed cannot be reconciled with the system of protection established by that directive. The principle of effectiveness precludes an action for reimbursement from being subject to a limitation period of three years, which starts to run from the date on which the contract in question ends, irrespective of whether the consumer was, or could reasonably have been, aware on that date of the unfairness of a term of that contract.

As regards the principle of equivalence, the Court notes that observance of 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 which have a similar purpose and cause of action. In that regard, it precludes an interpretation of national legislation whereby the limitation period applicable to a legal action for reimbursement of amounts unduly paid on the basis of an unfair term starts to run as from the date of the full performance of the contract, where that same period starts to run in the case of a similar domestic action as from the date of the judicial finding of the cause of the action.

The Court concludes that **the directive does not preclude a national rule which, while providing that an action seeking a finding of nullity 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. However, that time limit must neither be less favourable than that concerning similar domestic actions nor render practically impossible or excessively difficult the exercise of rights conferred by the EU legal order.**

**The directive in question, and the principles of equivalence and effectiveness preclude an interpretation of the national law, by the national courts, according to which the three-year limitation period of a legal action for reimbursement of sums paid on the basis of an unfair term starts to run as from the date of full performance of the contract, where it is assumed, without the need for checking, that, on that date, the consumer must or should have known of the unfair nature of the term in question where, for similar domestic legal actions, that same time limit starts to run as from the judicial finding of the cause of those actions.**

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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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