COURT OF JUSTICE
OF THE EUROPEAN UNION

Judgment of the Court in Case C-900/24 | SVB

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Consumer protection: EU law precludes a national rule or practice whereby a contract containing an unfair term is maintained in force where price increases resulting from that term have not been challenged by the customer within a period of three years

In November 2012, the civil law company Glarner concluded with SVB, an energy supply undertaking, a contract for the supply of district heating containing a price adjustment clause in respect of the consumption charge. On that basis, the consumption charge was adjusted annually between 2015 and 2020. From 1 May 2019, SVB unilaterally changed that adjustment clause in reliance on a provision of the German legislation on the supply of district heating.

In July 2019, Glarner which, under German law, can be treated as a 'consumer' within the meaning of the Directive on unfair terms in consumer contracts, [1] challenged those adjustments, including the unilateral change, before the German courts and sought reimbursement of sums wrongly paid. In that context, the Higher Regional Court, Berlin (Germany) found that the price adjustment clause in respect of the consumption charge was unfair and, on that ground, void. That court stated that, in accordance with the settled case-law of the Federal Court of Justice (Germany), a customer may not rely on the invalidity of price increases if he or she has not challenged them within a period of three years from receipt of the annual statements in which the price increase was applied for the first time.

The Higher Regional Court, Berlin, then referred the matter to the Court of Justice in order to determine whether that judicial practice and the underlying national rule are compatible with that directive. The German court is also uncertain as to whether the national rule or practice which enables or requires an energy supplier to make unilateral changes to an unfair adjustment clause is compatible with that directive.

The Court points out that, after the removal of the unfair terms, the contract must, in principle, continue to bind the parties. In that context, and in order to avoid the cancellation of the contract as a whole, which would be unfavourable for the consumer, the national court may replace the unfair terms with provisions of domestic law in order to fill the gap left in the contract as a consequence of that removal.

In the present case, the three-year rule effectively maintains the effects of the unfair term to the detriment of the consumer for the period which precedes the three years in respect of which a challenge may be brought. In addition, the national case-law appears to be based on national provisions of a general nature which do not make it possible to address the consequences resulting from an unfair term being declared void. Furthermore, that case-law does not allow the consumer either to object to the three-year rule being applied, or to request that the contract be annulled in its entirety. Consequently, such a practice and the underlying legislation are not compatible with the directive.

The Court finds that enabling or requiring an energy supplier to make unilateral changes to a price adjustment clause which has been declared void due to its unfair nature, as provided for under German law, does not appear to reflect a mandatory regulatory provision. If it did reflect such a provision, the clause in question would not be subject to the directive. Moreover, being so enabled or required is not compatible with the directive, under which the national court is required to disapply an unfair contractual term without being empowered to revise its content.

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 of the European Union about the interpretation of EU law or the validity of an EU act.

The General Court has jurisdiction to deal with requests for a preliminary ruling coming exclusively within the following areas (1) the common system of value added tax (VAT), (2) excise duties, (3) the Customs Code, (4) the tariff classification of goods under the Combined Nomenclature, (5) compensation and assistance to passengers in the event of denied boarding or delay or cancellation of transport services, or (6) the system for greenhouse gas emission allowance trading. The Court of Justice has jurisdiction to deal with all other requests for a preliminary ruling.

Neither the Court of Justice nor the General Court decides the national dispute itself. It is for the national court or tribunal to resolve the case in accordance with the ruling by the Court of Justice or by the General Court, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice. The presentation of the facts and the legal context refers to the relevant period and is based on the case file.

The full text and, as the case may be, an abstract of the judgment is published on the CURIA website on the day of delivery.

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[1] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.