

Other party to the proceedings: European Commission (represented by: V. Bottka, R. Sauer, Agents, and A. Böhlke, Rechtsanwalt)

Defendant: Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)

Re:

Appeal brought against the judgment of the General Court (Eighth Chamber) of 24 March 2011 in Case T-375/06 *Viega GmbH & Co. KG v Commission*, by which the General Court dismissed the applicant's action seeking the annulment of Commission Decision C(2006) 4180 final of 20 September 2006 relating to a proceeding under Article 81 of the Treaty establishing the European Community and Article 53 of the EEA Agreement concerning a cartel in the copper and copper alloy fittings sector or, in the alternative, the reduction of the fine imposed on the applicant — Infringement of the right to be heard before a court, of the principle of proportionality and of the obligation to state reasons — Infringement of the principles of the investigation procedure — Infringement of Article 81(1) EC and Article 23(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1)

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders *Viega GmbH & Co. KG* to pay the costs.

⁽¹⁾ OJ C 238, 13.8.2011.

Judgment of the Court (First Chamber) of 14 March 2013
(request for a preliminary ruling from the Juzgado de lo Mercantil No 3 de Barcelona — Spain) — Mohamed Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)

(Case C-415/11) ⁽¹⁾

(Directive 93/13/EEC — Consumer contracts — Mortgage loan agreement — Mortgage enforcement proceedings — Powers of the court hearing the declaratory proceedings — Unfair terms — Assessment criteria)

(2013/C 141/07)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 3 de Barcelona

Parties to the main proceedings

Applicant: Mohamed Aziz

Re:

Request for a preliminary ruling — Juzgado de lo Mercantil — Interpretation of points 1(a) and (q) of the Annex to Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — Terms with the object or effect of requiring a consumer in breach of his obligations to pay a disproportionately high amount in compensation — Mortgage loan agreement — Provisions of national procedural law relating to the procedure for enforcement in respect of mortgaged or pledged property restricting the grounds of objection which can be raised by the consumer subject to enforcement.

Operative part of the judgment

1. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which, while not providing in mortgage enforcement proceedings for grounds of objection based on the unfairness of a contractual term on which the right to seek enforcement is based, does not allow the court before which declaratory proceedings have been brought, which does have jurisdiction to assess whether such a term is unfair, to grant interim relief, including, in particular, the staying of those enforcement proceedings, where the grant of such relief is necessary to guarantee the full effectiveness of its final decision.
2. Article 3(1) of Directive 93/13 must be interpreted as meaning that:
 - the concept of 'significant imbalance' to the detriment of the consumer must be assessed in the light of an analysis of the rules of national law applicable in the absence of any agreement between the parties, in order to determine whether, and if so to what extent, the contract places the consumer in a less favourable legal situation than that provided for by the national law in force. To that end, an assessment of the legal situation of that consumer having regard to the means at his disposal, under national law, to prevent continued use of unfair terms, should also be carried out;
 - in order to assess whether the imbalance arises 'contrary to the requirement of good faith', it must be determined whether the seller or supplier, dealing fairly and equitably with the consumer, could reasonably assume that the consumer would have agreed to the term concerned in individual contract negotiations.

Article 3(3) of Directive 93/13 must be interpreted as meaning that the annex to which that provision refers contains only an indicative and non-exhaustive list of terms which may be regarded as unfair.

⁽¹⁾ OJ C 331, 12.11.2011.