

— Order the European Commission to pay the costs of the first-instance proceedings and of the appeal.

Grounds of appeal and main arguments

1. First ground of appeal: Infringement of EU law on account of misapplication of the principle of proportionality

The appellant submits, first, that the judgment of the General Court infringes EU law because that Court erroneously interpreted Decision 2011/278/EU⁽¹⁾ as exhaustive and in addition also erroneously regarded that decision as proportionate. It maintains that an allocation on the basis of hardship would also be possible under Decision 2011/278/EU as the present case is a case of *force majeure*. Furthermore, it takes the view that, in assessing the legality of Decision 2011/278/EU, the General Court balanced the legal interests against each other erroneously by according environmental protection a higher rank than the appellant's existence.

2. Second ground of appeal: Infringement of EU law on account of infringement of the appellant's fundamental rights

The appellant submits that the judgment is also erroneous in so far as the General Court's decision infringes the appellant's fundamental rights, in particular Article 15(1) and Article 16 of the Charter of Fundamental Rights of the European Union which protect the right to pursue an occupation and the right to property. It maintains that the General Court erroneously assumes that the essence of those fundamental rights is not affected. The appellant takes the view that this is not, however, the case. It submits that without the allocation on the ground of hardship it will not be able to continue its activities as a producer of lignite wax or continue to use its lignite wax extraction installation.

3. Third ground of appeal: Infringement of EU law on account of infringement of the principle of subsidiarity

The appellant submits, thirdly, that the judgment of the General Court infringes EU law because that Court erroneously assumes that the Federal Republic of Germany does not have any competence to adopt a provision in respect of hardship cases (Paragraph 9(5) of the TEHG). The appellant maintains that in doing so, the General Court, however, overlooks the fact that the European Commission has the competence to establish the allocation rules only in so far as it actually exercises its competence. It takes the view that atypical cases, such as its own, are just not covered by the Commission's rules. The appellant submits that in that respect the legislative competence remains with the Member States.

4. Fourth ground of appeal: Infringement of procedural law on account of an insufficient or contradictory statement of reasons

The appellant submits that the General Court's arguments in respect of the consequences of a provision in respect of hardship cases, the shifting effect to be expected due to an allocation on the ground of hardship and the reason for the specific risk of the appellant's becoming insolvent are insufficient and contradictory and that the General Court thus infringes fundamental procedural law.

⁽¹⁾ OJ 2013 L 240, p. 27.

⁽²⁾ Gesetz über den Handel mit Berechtigungen zur Emission von Treibhausgasen (Treibhausgas-Emissionshandelsgesetz — TEHG) (Law on the trade in greenhouse gas emission rights (Law on Greenhouse Gas Emissions Trading, the TEHG)).

⁽³⁾ Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1).

**Request for a preliminary ruling from the Juzgado Mercantil No 3 de Barcelona (Spain) lodged on
9 December 2014 — Ismael Fernández Oliva v Caixabank, S.A.**

(Case C-568/14)

(2015/C 046/40)

Language of the case: Spanish

Referring court

Juzgado Mercantil No 3 de Barcelona

Parties to the main proceedings

Applicant: Ismael Fernández Oliva

Defendant: Caixabank, S.A.

Questions referred

- 1) Does Article 43 of the Spanish Law on Civil Procedure, which precludes the court proposing to the parties a possible stay of civil proceedings when another court or tribunal has referred a question to the Court of Justice for a preliminary ruling, not constitute a clear limitation of Article 7 of Directive 93/13/EEC ⁽¹⁾ with regard to the Member States' duty to ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers?
- 2) Does Article 721.2 of the LEC, which precludes the court adopting or proposing of its own motion the adoption of precautionary measures in individual actions in which it is claimed that a general condition is void because unfair, not constitute a clear limitation of Article 7 of Directive 93/13/EEC with regard to the Member States' duty to ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers?
- 3) Ought not any precautionary measures that might be adopted, either of the court's own motion or at the request of one or other of the parties, in proceedings in which an individual action is brought, to have effect until final judgment shall have been given either in the individual action or in a collective action that could interfere with the bringing of individual actions, in order to ensure the adequate and effective means provided for in Article 7 of the Directive?

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

**Request for a preliminary ruling from the Juzgado Mercantil No 3 de Barcelona (Spain) lodged on
9 December 2014 — Jordi Carne Hidalgo and Anna Aracil Gracia v Catalunya Banc, S.A.**

(Case C-569/14)

(2015/C 046/41)

Language of the case: Spanish

Referring court

Juzgado Mercantil No 3 de Barcelona

Parties to the main proceedings

Applicants: Jordi Carne Hidalgo and Anna Aracil Gracia

Defendant: Catalunya Banc, S.A.

Questions referred

- 1) Does Article 43 of the Spanish Law on Civil Procedure, which precludes the court proposing to the parties a possible stay of civil proceedings when another court or tribunal has referred a question to the Court of Justice for a preliminary ruling, not constitute a clear limitation of Article 7 of Directive 93/13/EEC ⁽¹⁾ with regard to the Member States' duty to ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers?
- 2) Does Article 721.2 of the LEC, which precludes the court adopting or proposing of its own motion the adoption of precautionary measures in individual actions in which it is claimed that a general condition is void because unfair, not constitute a clear limitation of Article 7 of Directive 93/13/EEC with regard to the Member States' duty to ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers?