

**Parties to the main proceedings**

*Applicant:* Bankia, S.A.

*Defendants:* Alfonso Antonio Lau Mendoza, Verónica Yuliana Rodríguez Ramírez

**Questions referred**

- 1) Is case-law incompatible with Articles 6 and 7 of Directive 93/13/EEC <sup>(1)</sup> on unfair terms in consumer contracts when it (STS (Sentencia del Tribunal Supremo: judgment of the Supreme Court) of 18 February 2016) holds that, despite the unfairness of the early repayment term and even though the application for enforcement is based on that term, mortgage enforcement proceedings are not to be closed because their continuation is more favourable to the consumer, given that, in the event of any enforcement of a judgment given in declaratory proceedings brought under Article 1124 CC (Código Civil: Civil Code), a consumer would not enjoy the procedural privileges applicable in mortgage enforcement proceedings, and when that case-law does not take into account the settled case-law of the TS (Tribunal Supremo: Supreme Court) to the effect that Article 1124 CC (laid down for contracts creating reciprocal obligations) is not applicable to loan agreements, because such an agreement is a real, unilateral contract which does not become valid until the money is handed over and which, therefore, creates obligations for the borrower alone and not for the lender (creditor), so that, if that case-law of the TS were to be applied in declaratory proceedings, a consumer could obtain a ruling dismissing the claim for termination and compensation and it could no longer be argued that continuation of the mortgage enforcement proceedings was more favourable to him?
- 2) If the application of Article 1124 CC to loan agreements or in the case of all credit agreements should be accepted, is case-law like that referred to incompatible with Articles 6 and 7 of Directive 93/13/EEC on unfair terms in consumer contracts when that case-law does not take into account, for the purpose of assessing whether it is more favourable to the consumer for the mortgage enforcement proceedings to continue or more detrimental to hold declaratory proceedings under Article 1124 CC, the fact that, in declaratory proceedings, the claim for termination of the agreement and the claim for compensation may be dismissed if the court applies the stipulation in Article 1124 CC that 'the court shall order the termination requested, unless there are justified grounds allowing it to fix a period', bearing in mind that, precisely in the context of long-term (20 or 30 years) loans and mortgages for the purchase of dwellings, it is relatively likely that the courts will apply that ground for dismissal, particularly where the non-performance of the payment obligation has not been very serious?
- 3) If it were to be accepted that it is more favourable to the consumer to continue enforcement of the mortgage with the effects of early repayment, is case-law like that referred to incompatible with Articles 6 and 7 of Directive 93/13/EEC on unfair terms in consumer contracts when that case-law applies on a supplementary basis a statutory provision (Article 693(2) LEC (Ley de Enjuiciamiento Civil: Law on Civil Procedure), even though the contract is capable of continuing to exist without the early repayment term, and when that case-law gives effects to Article 693(2) LEC, even though the essential condition stipulated therein has not been met: that there should be in the contract a valid and effective agreement regarding early repayment, and the early repayment term has in fact been declared unfair, void and ineffective?

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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).

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**Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 13 April 2017 — Cobra SpA v Ministero dello Sviluppo Economico**

(Case C-192/17)

(2017/C 231/09)

*Language of the case: Italian*

**Referring court**

Consiglio di Stato

**Parties to the main proceedings**

*Appellant:* Cobra SpA

*Respondent:* Ministero dello Sviluppo Economico

**Questions referred**

1. Should Directive 1999/5/EC <sup>(1)</sup> be interpreted as meaning that a manufacturer who makes use of the procedure provided for in the second paragraph of Annex III, and when there are harmonised standards defining the essential radio test suites to be carried out, must consult a notified body and thus ensure that the CE marking (certifying compliance with the essential requirements set out in that directive) is accompanied by the identification number of that notified body?
2. If the answer to Question 1 is in the affirmative, in the event that a manufacturer, having made use of the procedure referred to in the second paragraph of Annex III, and when there are harmonised standards defining the essential radio test suites to be carried out, has nonetheless voluntarily consulted a notified body, asking it to confirm the list of tests mentioned above, must that manufacturer ensure that the CE marking certifying compliance with the essential requirements set out in Directive 1999/5/EC is accompanied by the identification number of that notified body?
3. If the answer to Question 2 is in the affirmative, in the event that a manufacturer, having made use of the procedure referred to in the second paragraph of Annex III, and when there are harmonised standards defining the essential radio test suites to be carried out, has nonetheless subsequently voluntarily consulted a notified body, asking it to confirm the list of tests mentioned above, and has voluntarily ensured that the product is accompanied by the identification number of the body consulted, must that manufacturer also quote that body's identification number on both the product and its packaging?

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<sup>(1)</sup> Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ 1999 L 91, p. 10).

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**Request for a preliminary ruling from the Amtsgericht Hannover (Germany) lodged on 13 April 2017 — Kathrin Meyer v TUIfly GmbH**

(Case C-196/17)

(2017/C 231/10)

*Language of the case: German*

**Referring court**

Amtsgericht Hannover

**Parties to the main proceedings**

*Applicant:* Kathrin Meyer

*Defendant:* TUIfly GmbH

**Questions referred**

1. Is the absence on sick leave of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? <sup>(1)</sup> In the event that the first question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?
2. In the event that the first question is answered in the negative: is the spontaneous absence, due to unauthorised work stoppage under employment law or collective agreements ('wildcat strike'), of a significant part of an operating air carrier's staff for flight operation an extraordinary circumstance under Article 5(3) of Regulation (EC) No 261/2004? In the event that the second question is answered in the affirmative: how high must the rate of absence be to constitute such an extraordinary circumstance?