

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Order of the Court (Seventh Chamber) of 2 June 2021 (request for a preliminary ruling from the Juzgado Contencioso-Administrativo No 24 de Madrid — Spain) — Sindicato Único de Sanidad e Higiene (SUSH) de la Comunidad de Madrid, Sindicato de Sanidad de Madrid de la Confederación General del Trabajo (CGT) v Consejería de Sanidad de la Comunidad de Madrid

(Case C-103/19) ⁽¹⁾

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 5(1) — Successive fixed-term employment contracts in the public health sector — Concept of ‘objective reasons’ — Concept of ‘equivalent legal measures to prevent abuse’ — Substitution of the status of occasional regulated staff for that of interim regulated staff — Permanent need for temporary regulated staff)

(2021/C 357/02)

Language of the case: Spanish

Referring court

Juzgado Contencioso-Administrativo No 24 de Madrid

Parties to the main proceedings

Applicants: Sindicato Único de Sanidad e Higiene (SUSH) de la Comunidad de Madrid, Sindicato de Sanidad de Madrid de la Confederación General del Trabajo (CGT)

Defendant: Consejería de Sanidad de la Comunidad de Madrid

Operative part of the order

1. Clause 5 of the Framework Agreement on fixed-term work concluded on 18 March 1999, which is included in the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that it is for the national court to assess, in accordance with all the applicable rules of national law, whether national measures providing for the reclassification of a category of temporary staff by replacing the status of occasional regulated staff with that of interim regulated staff, and the possible establishment of those staff following selection procedures designed to fill definitively the posts occupied temporarily by them, constitute adequate measures to prevent and, where appropriate, to penalise abuses resulting from the use of successive fixed-term employment contracts or relationships or equivalent legal measures, within the meaning of that provision. If this is not the case, it is for that court to ascertain whether there are other effective measures in the applicable national legislation to prevent and penalise such abuses.

2. Clause 5 of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as not precluding national legislation which reserves to staff members having the status of occasional regulated workers the possibility of obtaining the substitution of that status for that of interim regulated staff, where that substitution constitutes an appropriate measure to prevent and, where appropriate, penalise abuses resulting from the use of successive fixed-term employment contracts or relationships or an equivalent legal measure, within the meaning of that provision, provided that there are other effective measures in the national legal system to prevent and penalise such abuses in respect of fixed-term workers who do not fall within the category of occasional regulated staff, which it is for the national court to verify.

(¹) OJ C 319, 23.9.2019.

Order of the Court (Seventh Chamber) of 1 June 2021 (request for a preliminary ruling from the Juzgado de Primera Instancia No 7 de Orense — Spain) — UP v Banco Santander SA, formerly Banco Pastor SAU

(Case C-268/19) (¹)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Consumer protection — Directive 93/13/EEC — Mortgage loan agreement — Unfair terms — Term limiting the variability of the interest rate (so-called ‘floor’ clause) — Novation agreement — No binding character)

(2021/C 357/03)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia No 7 de Orense

Parties to the main proceedings

Applicant: UP

Defendant: Banco Santander SA, formerly Banco Pastor SAU

Operative part of the order

1. Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as not precluding a term of a contract concluded between a seller or supplier and a consumer, which is capable of being found to be unfair by a court, from being the subject of a novation agreement between that seller or supplier and that consumer, provided that, at the time of conclusion of that novation agreement, the consumer was aware of the non-binding nature of that term and of the consequences arising therefrom, so that his or her adherence to that novation agreement is the result of free and informed consent, which it is for the referring court to verify.
2. Articles 3(1) and 4(2) of Directive 93/13 must be interpreted as meaning that the requirement of transparency incumbent on a seller or supplier under those provisions implies that, when concluding a novation agreement between a seller or supplier and a consumer, the terms of which have not been individually negotiated, which is intended to amend a potentially unfair term of an earlier contract concluded between those same parties, that seller or supplier must provide the consumer with the relevant information enabling him or her to understand the legal consequences for him or her and, in particular, the fact that the original term could possibly have been unfair, which it is for the referring court to verify.

(¹) OJ C 238, 15.7.2019.