

Questions referred

1. Whether, under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts,⁽¹⁾ in particular Articles 6(1) and 7(1) of the directive, the following ruling is compliant with EU law in order to ensure protection for consumers and users and compliance with the relevant case-law: the ruling by the Supreme Court in judgments 44 to 49 of 23 January 2019, which establishes the unambiguous criterion that a term in a consumer mortgage loan agreement that has not been negotiated and that stipulates that all the costs of arranging the mortgage are to be borne by the borrower is unfair, and which apportions the various expenses that are involved in the unfair term found to be void between the bank that imposed the term and the borrower, in order to limit repayments of amounts wrongly paid under national legislation.

And whether, under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, in particular Articles 6(1) and 7(1) of the directive, in order to ensure protection for consumers and users and compliance with the relevant case-law, it is compliant with EU law for the Supreme Court to adopt an inclusive interpretation of a term that is void for unfairness if the term can be severed and its effects abolished without affecting the continued existence of the mortgage loan agreement.

2. Also, whether, as regards Article 394 of the Ley de Enjuiciamiento Civil,⁽²⁾ which establishes the principle that the costs of proceedings are to be borne by the unsuccessful party, it can be held that where an unfair expenses clause is declared void but the effects of voiding the term are limited to apportioning the expenses in question, it is contrary to the EU legal principles of effectiveness and the non-binding nature of unfair terms to conclude that a claim has been upheld in part, and whether such a conclusion could be interpreted as producing an inverse deterrent effect, which thus fails to protect the legitimate interests of consumers and users.

⁽¹⁾ OJ 1993 L 95, p. 29.

⁽²⁾ Law on Civil Procedure.

Request for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción de Ceuta (Spain) lodged on 27 March 2019 — LG, PK v Banco Bilbao Vizcaya Argentaria, S.A.

(Case C-259/19)

(2019/C 246/07)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia e Instrucción de Ceuta

Parties to the main proceedings

Applicants: LG, PK

Defendant: Banco Bilbao Vizcaya Argentaria, S.A.

Questions referred

Whether, under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts,⁽¹⁾ in particular Articles 6(1) and 7(1) of the directive, the following ruling is compliant with EU law in order to ensure protection for consumers and users and compliance with the relevant case-law: the ruling by the Supreme Court in judgments 44 to 49 of 23 January 2019, which establishes the unambiguous criterion that a term in a consumer mortgage loan agreement that has not been negotiated and that stipulates that all the costs of arranging the mortgage are to be borne by the borrower is unfair, and which apportions the various expenses that are involved in the unfair term found to be void between the bank that imposed the term and the borrower, in order to limit repayments of amounts wrongly paid under national legislation.

And whether, under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, in particular Articles 6(1) and 7(1) of the directive, in order to ensure protection for consumers and users and compliance with the relevant case-law, it is compliant with EU law for the Supreme Court to adopt an inclusive interpretation of a term that is void for unfairness if the term can be severed and its effects abolished without affecting the continued existence of the mortgage loan agreement.

(¹) OJ 1993 L 95, p. 29.

**Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 5 April 2019 —
DenizBank AG v Verein für Konsumenteninformation**

(Case C-287/19)

(2019/C 246/08)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Defendant and appellant in the appeal on a point of law: DenizBank AG

Applicant and defendant in the appeal on a point of law: Verein für Konsumenteninformation

Questions referred

1. Is point (6)(a) of Article 52 in conjunction with Article 54(1) of Directive 2015/2366/EU (¹) (Payment Services Directive), pursuant to which the payment service user will be deemed to have accepted proposed changes in the conditions unless the payment service user notifies the payment service provider before the date of their proposed date of entry into force that they are not accepted, to be interpreted as meaning that tacit consent can also be agreed with the consumer for any conceivable contractual conditions without any restriction?
2.
 - a) Is point (14) of Article 4 of the Payment Services Directive to be interpreted as meaning that the NFC function of a personalised multifunctional bank card by means of which low value payments are debited from the associated customer account constitutes a payment instrument?
 - b) If Question 2.a) is answered in the affirmative:

Is Article 63(1)(b) of the Payment Services Directive regarding the derogations for low value payments and electronic money to be interpreted as meaning that a contactless low value payment using the NFC function of a personalised multifunctional bank card to be regarded as anonymous use of the payment instrument within the meaning of the derogation?