

C/2024/4928

19.8.2024

Judgment of the Court (Fourth Chamber) of 4 July 2024 (request for a preliminary ruling from the Tribunal Supremo – Spain) – Caixabank SA, successor in law to Bankia SA and Banco Mare Nostrum SA and Others v Asociación de Usuarios de Bancos, Cajas de Ahorro y Seguros de España (Adicae) and Others

(Case C-450/22, ⁽¹⁾ Caixabank and Others (Review of transparency in collective actions))

(Reference for a preliminary ruling – Unfair terms in consumer contracts – Directive 93/13/EEC – Mortgage loan agreements – Clauses limiting the variation of the interest rates – ‘Floor’ clauses – Collective action seeking an order to cease and desist from using those clauses and reimbursement of the payments made in that respect, involving a significant number of sellers or suppliers and consumers – Plain and intelligible nature of those clauses – Concept of the ‘average consumer who is reasonably well informed and reasonably observant and circumspect’)

(C/2024/4928)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicants: Caixabank SA, successor in law to Bankia SA and Banco Mare Nostrum SA, Caixa Ontinyent SA, Banco Santander SA, successor in law to Banco Popular Español SA and Banco Pastor SA, Targobank SA, Credifimo SAU, Caja Rural de Teruel SCC, Caja Rural de Navarra SCC, Cajasiete Caja Rural SCC, Caja Rural de Jaén, Barcelona y Madrid SCC, Caja Laboral Popular SCC (Kutxa), Caja Rural de Asturias SCC, Arquia Bank SA, formerly Caja de Arquitectos SCC, Nueva Caja Rural de Aragón SCC, Caja Rural de Granada SCC, Caja Rural del Sur SCC, Caja Rural de Albacete, Ciudad Real and Cuenca SCC (Globalcaja), Caja Rural Central SCC, Caja Rural de Extremadura SCC, Caja Rural de Zamora SCC, Unicaja Banco SA, successor in law to Liberbank SA and Banco Castilla la Mancha SA, Banco Sabadell SA, Banca March SA, Ibercaja Banco SA, Banca Pueyo SA

Defendants: Asociación de Usuarios de Bancos, Cajas de Ahorro y Seguros de España (Adicae), M.A.G.G., M.R.E.M., A.B.C., Óptica Claravisión SL, A.T.M., F.A.C., A.P.O., P.S.C., J.V.M.B., successor in law to C.M.R.

Operative part of the judgment

1. Article 4(1) and Article 7(3) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as allowing a national court to review the transparency of a contractual term in the context of a collective action brought against a large number of sellers or suppliers operating in the same economic sector and concerning a very large number of contracts, provided that those contracts contain the same term or similar terms.
2. Article 4(2) and Article 7(3) of Directive 93/13 must be interpreted as allowing a national court, hearing a collective action brought against a large number of sellers or suppliers operating in the same economic sector and concerning a very large number of contracts, to review the transparency of a contractual term on the basis of the perception of the average consumer, who is reasonably well informed and reasonably observant and circumspect, where those contracts are aimed at specific categories of consumers and that term has been used for a very long period of time. However, if, during that period, the average consumer's overall perception of that term has changed as a result of the occurrence of an objective event or a matter of common knowledge, Directive 93/13 does not preclude the national court from carrying out that review by taking account of the change in that consumer's perception, with the relevant perception being that existing at the time a mortgage loan agreement is concluded.

⁽¹⁾ OJ C 408, 24.10.2022.