

**Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 20 December 2022 —  
M.S.G. and Others v Banco Santander, S.A.**

**(Case C-775/22, Banco Santander)**

(2023/C 173/16)

*Language of the case: Spanish*

**Referring court**

Tribunal Supremo

**Parties to the main proceedings**

*Appellants:* M.S.G. and Others

*Respondent:* Banco Santander, S.A.

**Question referred**

Must the provisions of Article 34(1)(a) and (b), in relation to those of Article 53(1) and (3), Article 60(2), first subparagraph, points (b) and (c), and Article 64(4)(b), of Directive 2014/59/EU<sup>(1)</sup> be interpreted as meaning that, following the conversion into shares — and the subsequent transfer of those shares, without effective consideration — of subordinated obligations (tier 2 capital instruments) issued by a credit institution that is the subject of a resolution procedure and which were not accrued when that resolution procedure was adopted, persons who purchased those subordinated obligations before the start of such a resolution procedure are precluded from bringing, against that institution or against its successor entity, an action for a declaration of nullity in respect of the subscription contract for those subordinated obligations, seeking the reimbursement of the price paid to subscribe for the subordinated obligations, plus the interest accrued from the date of conclusion of the contract?

<sup>(1)</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190).

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**Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 22 December 2022 —  
M.C.S. v Banco Santander, S.A.**

**(Case C-779/22, Banco Santander)**

(2023/C 173/17)

*Language of the case: Spanish*

**Referring court**

Tribunal Supremo

**Parties to the main proceedings**

*Appellant:* M.C.S.

*Respondent:* Banco Santander, S.A.

**Question referred**

Must the provisions of Article 34(1)(a) and (b), read together with those of Article 53(1) and (3) and Article 60(2), first subparagraph, points (b) and (c), of Directive 2014/59/EU of the European Parliament and of the Council, of 15 May 2014, <sup>(1)</sup> be interpreted as meaning that the possible claim or right that arises from a judgment against the successor entity to Banco Popular Español, S.A., as a consequence of the nullity of the purchase of a capital instrument (preference shares) which was ultimately converted into ordinary shares before the measures for the resolution of Banco Popular were adopted (7 June 2017), could be considered a liability affected by the write-down provision of Article 53(3) of Directive 2014/59, in as much as it relates to ‘unaccrued’ obligations or claims, such that it would be discharged and would not be enforceable against Banco Santander, as the successor entity to Banco Popular, where the claim from which that obligation arises was brought after the procedure for the resolution of the bank had been concluded?

Or, conversely, must those provisions be interpreted as meaning that the abovementioned claim or right constitutes an ‘accrued’ obligation (Article 53(3) of the Directive) or ‘liability already accrued’ at the time of the resolution of the bank (Article 60(2)(b)) — and, as such, excluded from the effects of the discharge or cancellation of those obligations or claims, even if the ordinary shares had been written off and cancelled — and, consequently, [that the abovementioned claim or right] is enforceable against Banco Santander, as the successor to Banco Popular, even where the claim from which that judgment ordering payment of compensation arises was brought after the procedure for the resolution of the bank had been concluded?

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<sup>(1)</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190).

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**Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 23 December 2022 —  
FSC v Banco Santander, S.A.**

**(Case C-794/22, Banco Santander)**

(2023/C 173/18)

*Language of the case: Spanish*

**Referring court**

Tribunal Supremo

**Parties to the main proceedings**

*Appellant:* FSC

*Respondent:* Banco Santander, S.A.

**Question referred**

Must Article 34(1)(a) and (b), read together with Article 53(1) and (3) as well as Article 60(2), first subparagraph, points (b) and (c), of Directive 2014/59/EU <sup>(1)</sup> be interpreted as meaning that the possible claim or right that arises from a judgment ordering payment of compensation given against the successor entity to Banco Popular Español, S.A. following an action for damages arising from the marketing of a financial product (subordinated bonds necessarily convertible into shares in the same bank) not included among the additional capital instruments to which the resolution measures for Banco Popular refer, which were ultimately converted into ordinary shares in the bank before the bank resolution measures were adopted (7 June 2017), could be considered a liability affected by the write-down or cancellation provision of Article 53(3) of Directive 2014/59/EU, as an ‘unaccrued’ obligation or claim, such that it would be discharged and would not be enforceable against Banco Santander, as the successor entity to Banco Popular, where the claim from which that judgment ordering payment of compensation arises was brought after the procedure for the resolution of the bank had been concluded?