

Defendants: Tugdual Carluer, Yann Latouche, Dominique Legeard, Thierry Leleu, Dimitri Pinschhof, Brigitte Plunian, Rozenn Marechal

Questions referred

1. Is Regulation (EC) No 1107/2009 ⁽¹⁾ compatible with the precautionary principle when it provides no specific definition of an active substance, leaving it to the applicant to determine what it designates as the active substance in its product and granting it scope to focus its whole application dossier on a single substance, while its end product placed on the market is made up of several substances?
2. Is the precautionary principle observed and impartiality of the authorisation to place products on the market maintained when the tests, analyses and evaluations necessary for compilation of the dossier are conducted by the applicants alone, who may be biased in their presentation, without any independent counter-analysis?
3. Is the precautionary principle observed and impartiality of the authorisation to place products on the market maintained without publication of the application reports on the pretext of protecting industrial secrecy?
4. Is Regulation (EC) No 1107/2009 compatible with the precautionary principle when it takes no account of there being multiple active substances or of their cumulative use, in particular when it makes no provision for any comprehensive specific analysis at European level of cumulation of active substances within a single product?
5. Is Regulation (EC) No 1107/2009 compatible with the precautionary principle when, in Chapters III and IV, it exempts from toxicity tests (genotoxicity, carcinogenicity assessment, assessment of endocrine disruptors, etc.) pesticide products in the commercial formulations in which they are placed on the market and in which consumers and the environment are exposed to them, requiring only summary testing, which is always performed by the applicant itself?

⁽¹⁾ Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1).

Request for a preliminary ruling from the Juzgado de Primera Instancia de Barcelona (Spain) lodged on 16 February 2018 — Marc Gómez del Moral Guasch v Bankia S.A.

(Case C-125/18)

(2018/C 152/22)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia de Barcelona

Parties to the main proceedings

Applicant: Marc Gómez del Moral Guasch

Defendant: Bankia S.A.

Questions referred

1. Must the index concerned, the IRPH ⁽¹⁾ Cajas, be the object of judicial protection, in the sense that it must be ascertained whether it is intelligible to the consumer, without this being precluded by the fact that it is governed by regulatory or administrative provisions, this not being a case provided for in Article 1(2) of Directive 93/13 ⁽²⁾ because it is not a mandatory provision, but instead such variable ordinary and remunerative interest is included in the contract by the seller or supplier when he so chooses?
2. 2.1 Under Article 4(2) of Directive 93/13, which has not been transposed into Spanish law, is it contrary to Directive 93/13, and to Article 8 thereof, for a Spanish court to rely upon and apply Article 4(2) of that act when that provision has not been transposed into Spanish law at the wish of the legislature, which sought a full level of protection in relation to all the terms that a seller or supplier may insert into a consumer contract, including those which relate to the main subject-matter of the contract, even if those terms were drafted in plain, intelligible language?

- 2.2 At all events, must information of promotional material be provided about all or some of the following facts or data, for the purpose of the understanding of an essential term, specifically the IRPH:
- (i) An explanation of how the reference rate was configured, that is to say, stating that that index includes charges and other costs on top of the nominal interest rate, that it is a simple, unweighted average, that the seller or supplier had to know and notify the fact that he must apply a negative differential and that the data provided is not public, compared with the other usual index, the Euribor?
 - (ii) An explanation of past and possible future fluctuations in the IRPH, notifying and publishing graphs that explain clearly and intelligibly to the consumer the fluctuations in that specific rate in relation to the Euribor, the usual rate on loans secured by a mortgage?
- 2.3 And, if the Court of Justice concludes that it is for the referring court to examine whether contractual terms are unfair and to draw the necessary inferences in accordance with its national law, the Court is asked whether failure to provide information about all those consequences does not make the term unintelligible, inasmuch as it is not clear to an average consumer (Article 4(2) of Directive 93/13), or whether that failure to provide information amounts to unfair conduct by the seller or supplier and, therefore, the consumer would not have agreed to the use of the IRPH as the reference rate for his loan if he had been properly informed?
3. If the IRPH term is declared null and void, failing agreement or if that would be more detrimental to the consumer, which of the two following consequences would be compatible with Articles 6(1) and 7(1) of Directive 93/13?
- 3.1 The contract is adjusted by applying the usual replacement index, the Euribor, it being a contract essentially linked to a profitable rate of interest for the benefit of the bank [which is classified as] a seller or supplier.
 - 3.2 The interest rate ceases to be applied, and the sole obligation for the borrower or debtor is to repay the loan capital in the instalments stipulated.

⁽¹⁾ Índice de Referencia de Préstamos Hipotecarios (Mortgage Loan Reference Index)

⁽²⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. OJ L 95, 21.4.1993, p. 29.

**Request for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on
16 February 2018 — A-PACK CZ, s r.o. v Odvolací finanční ředitelství**

(Case C-127/18)

(2018/C 152/23)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Appellant (applicant at first instance): A-PACK CZ, s.r.o.

Other party (defendant at first instance): Odvolací finanční ředitelství

Questions referred

1. Can Article 90(2) of Council Directive 2006/112/EC ⁽¹⁾ of 28 November 2006 on the common system of value added tax be interpreted, having regard to the principle of fiscal neutrality and the principle of proportionality, in such a way that it allows Member States by way of derogation to lay down conditions which for certain cases exclude a reduction of the taxable amount in the event of total or partial non-payment of the price?