

By virtue of the judgment issued on February 5, 2015, the Court of Justice of the European Union established the compatibility of the Directive 93/13/CEE with national law, in this case, Spanish Act 1/2013 which set forth measures to strengthen protection of mortgages debtors if certain circumstances are met.

The judgment under discussion was based on a foreclosure proceedings and the preliminary ruling on the interpretation of Article 6 of the aforementioned European Directive on unfair terms in contracts entered by and between consumers, which shall be excluded if declared void as abusive.

The aforementioned Spanish Act 1/2013 provides that in the event that late-payment interest is three times higher than the legal interest of money, then, such amount of interest is to be recalculated. When considering this, the national court looked at whether the clause was unfair and what should be the consequences of unfairness of such clauses would be, i.e., whether to revoke the clause on interest or instruct the enforcer to recalculate and moderate such interest pursuant to the Spanish regulation.

Likewise, it also raised the possible limitation to consumer protection which the restraint clause can cause, as well as the possibility that the clause could contravene Article 6 of the EU directive.

The European Court concluded that the result of the unfairness nature of a clause in a contract entered by and between a consumer and a professional entity requires the national court to declare null and void the unfair clause. It further stated that it shall not be possible to reduce the amount of the interest, because if the Court had that power, the deterrent effect that such a rule produces for professional entities would disappear, meaning the Directive would be contrary to the national act which entitles the national judge to integrate a contract including a clause declared void as unfair clause.

Under such premise, the decision considered that the Act 1/2013 does not violate this rule. Its scope is different, as it includes any loan agreement – not only those entered by and between professional entities and consumers. As the maximum limit of interest on late payments is equal to three times the legal interest rate, it does not prejudice the assessment of the unfair nature of a term, so as long as the Act 1/2013 does not prevent the national Court from stating the unfair nature of the clause. The EU Directive does not preclude the application of such national disposition.

In this sense, even if the clause contains an interest rate within the limits established by the Spanish Law, the Court may consider that clause abusive and may exclude its enforcement, and vice versa. Even if the interest rate is higher than the rate established by law, the Court shall only be entitled to moderate the clause if such clause does not qualify as abusive, or, it may also be excluded if it is classified as unfair, so that rule does not prejudice the assessment by the judge of the unfairness of the clause and does not prevent him from excluding that clause.

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