Another CJEU ruling on remuneration for use of capital and consumer rights

* **The CJEU has ruled today that a national court cannot condition the exercise of a consumer’s rights on the consumer’s declaration that he or she does not want to be bound by an unfair condition.**
* **A consumer’s claim for reimbursement of the benefits they have provided under an invalid loan agreement cannot be reduced by the equivalent of the capital interest that the bank would have been entitled to if the loan agreement had been valid.**

**[Warsaw, 7 December 2023] On the list of cases of the Court of Justice of the European Union, the motion in the next Polish case no. TSUE C-140/22 for issuance of a judgement under the preliminary mode in connection with the question posed by the District Court for Warsaw-Śródmieście has been heard today. The court asked the CJEU to resolve questions that arose in connection with the Resolution of the Supreme Court of 7 May 2021 (file number: III CZP 6/21). By way of justification for this Resolution, the Supreme Court pointed out that the effects of invalidity of a contract would run from the moment the customer made a statement that they did not agree to uphold the unfair condition, they were aware of the consequences of the invalidity of the agreement and agreed to the invalidity of the agreement.**

**Therefore, the District Court for Warsaw-Śródmieście asked the CJEU to resolve four issues:**

* **whether the agreement becomes permanently ineffective (invalid) retroactively only after the consumer declares that they do not agree to uphold the unfair condition,**
* **whether, as a consequence, the statute of limitations for the bank’s claim begins only from the date on which the consumer has made such a statement,**
* **whether the consumer can demand payment of statutory interest for the delay only from the date on which they have made the above-mentioned statement, even if they had previously called the entrepreneur for payment,**
* **whether the consumer’s claim for reimbursement of the benefits they have provided under an invalid loan agreement (loan instalments, fees, commissions and insurance premiums) should be reduced by the equivalent of the capital interest that the bank would have been entitled to if the loan agreement had been valid while the bank can claim reimbursement of the benefit it has provided under the same invalid loan agreement (loan principal) in full.**

**Consumer statement vs exercise of consumer rights**

**In its judgement, the CJEU stressed that prohibited provisions did not bind the consumer from the beginning, by operation of law. If a national court determines the unfair nature of a contractual condition, it is obligated to refrain from applying it and an exception to this obligation is provided only if the consumer, having been informed by this court, does not intend to invoke the unfair and non-binding nature of the condition, thus expressing voluntary and informed consent to the condition in question.**

**The consumer’s statement is therefore not an acquiescence to being subject to the protection of Directive 93/13 due to the trader’s use of prohibited contract terms but is an acquiescence to the application of an exception to this protection by treating an unfair contractual term as binding on the consumer at the consumer’s express request. If, after the court has received the relevant explanations, the consumer does not object to declaring the agreement invalid as a result of the unfair terms contained in it, the court should treat such an agreement as if it were invalid from the beginning. Thus, the CJEU once again held that a court should remove an unfair contractual term acting ex officio and that the exercise of the consumer’s rights is not dependent on the consumer making a statement that they want to exercise them.**

While the CJEU did not explicitly address the questions regarding the running of the statute of limitations and default interest, indicating that it was up to the national courts to interpret them, this interpretation should be done to the fullest extent possible in light of the content and purpose of Directive 93/13. **Thus, neither the running of the statute of limitations on claims nor the date from which the consumer can demand payment of interest for delay is dependent on the consumer making such a statement.**

**Reduction of the consumer’s claim by capital interest**

The fourth of the preliminary questions in fact coincides with the issue resolved in the judgement of 15 June 2023 in Case C-520/21 Bank M. in which the CJEU ruled that the provisions of Directive 93/13/EEC precluded such an interpretation of national legislation that would allow entrepreneurs to demand payment of remuneration for the use of the object of the benefit transferred to the consumer under an agreement that has been declared invalid as a result of the elimination of prohibited contractual provisions form its wording.

In the current judgement, the Court cited the aforementioned 15 June judgement and ruled that the provisions of Directive 93/13/EEC must be interpreted to preclude an interpretation of national law according to which a consumer’s claim for reimbursement of the benefits they have provided under an invalid loan agreement should be reduced by the equivalent of the capital interest to which the bank would have been entitled had the loan agreement been valid.

**The CJEU’s next major ruling is coming on 14 December 2023**

On 14 December, another important decision will be made for banks and CHF-denominated loan customers. In Case C-28/22, the CJEU will answer five preliminary questions from the Warsaw District Court in connection with the Resolution of the Supreme Court of 7 May 2021 on the statute of limitations period for bank claims. The Court will then decide the question of the start of the running of the **limitation period for the bank:** whether it runs fromthe consumer’s filing of claims against the entrepreneur or from the consumer’s filing of a statement of the consequences of not being able to continue the agreement or from the verification in court proceedings of the consumer’s knowledge of the consequences or the issuance by the court of a final judgement resolving the dispute. **In addition, the Court will address the question of whether an entrepreneur should verify itself that the consumer knows the consequences of making a claim, and** the question ofapplication of the right of retention which results in the entrepreneur not having to pay interest from the time of the retention statement - whether its application is contrary to the principle of effectiveness of Directive 93/13.

**Consumer Support:**

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[Consumer Ombudsmen](https://uokik.gov.pl/pomoc.php) – in your town or district

[Financial Ombudsman](https://rf.gov.pl/jak-pomaga-rzecznik-finansowy/porady/) – when a complaint has been rejected by a financial institution