

EUROPEAN UNION / JUDGMENT

SR v FT SpA

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Provisional text

JUDGMENT OF THE COURT (Second Chamber)

3 September 2026 (*)

(Reference for a preliminary ruling – Competition – Agreements, decisions and concerted practices – Article 101(2) TFEU – Automatic nullity of agreements prohibited under Article 101 TFEU – Regulation (EC) No 1/2003 – Article 16(1) – European Commission decisions finding an infringement of Article 101 TFEU – Binding effect of those decisions on a national court or tribunal – Single and continuous infringement in the Euro Interest Rate Derivatives sector – Agreements and concerted practices having as their object the distortion of the normal course of pricing components in that sector – Dispute between a borrower and the funding bank concerning the validity of an interest rate referring to Euribor)

In Case C-60/25 [Livronsa], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte d'appello di Cagliari (Court of Appeal, Cagliari, Italy), made by decision of 24 January 2025, received at the Court on 28 January 2025, in the proceedings

SR

v

FT SpA,

other party to the proceedings:

Assoutenti APS,

THE COURT (Second Chamber),

composed of K. Jürimäe (Rapporteur), President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Second Chamber, F. Schalin, M. Gavalec and Z. Csehi, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- SR, by A. Sorgentone, avvocato,
- FT SpA, by M.M. Grassi, C. Pedersoli, I. Perego, A. Pinna Spada and G.M. Roberti, avvocati,
- Assoutenti APS, by A. Dal Bo, M.L. Ficola and A. Maffeo, avvocati,
- the European Commission, by P. Berghe and P. Tomassi, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 March 2026,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 101 TFEU and Article 16(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU] (OJ 2003 L 1, p. 1).

2 The request has been made in proceedings between SR and FT SpA, a banking institution, concerning the validity of a term of the mortgage loan agreement concluded between them which refers to Euribor (the Euro Interbank Offered Rate) for the purpose of determining the interest rate on that loan.

Legal context

European Union law

The FEU Treaty

3 Article 101 TFEU reads as follows:

‘1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market ...

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

...’

Regulation No 1/2003

4 Article 16 of Regulation No 1/2003, headed ‘Uniform application of Community competition law’, states in paragraph 1:

‘When national courts rule on agreements, decisions or practices under Article [101] or Article [102 TFEU] which are already the subject of a Commission decision, they cannot take decisions running counter to the decision adopted by the Commission. They must also avoid giving decisions which would conflict with a decision contemplated by the Commission in proceedings

it has initiated. To that effect, the national court may assess whether it is necessary to stay its proceedings. This obligation is without prejudice to the rights and obligations under Article [267 TFEU].’

The EIRD decisions

5 On 4 December 2013 and 7 December 2016, the European Commission adopted, respectively, Decisions C(2013) 8512 final and C(2016) 8530 final relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39914 – Euro Interest Rate Derivatives) (together, ‘the EIRD decisions’).

6 By the EIRD decisions, the Commission concluded that the undertakings concerned had committed a single and continuous infringement of Article 101 TFEU and Article 53 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3), during individual periods between 29 September 2005 and 30 May 2008, in the Euro Interest Rate Derivatives sector. That infringement, which covered the entire European Economic Area (EEA), consisted of agreements and/or concerted practices that had as their object the distortion of the normal course of pricing components in that sector, linked in particular to Euribor.

7 By judgment of 24 September 2019, HSBC Holdings and Others v Commission (T-105/17, EU:T:2019:675), the General Court annulled Article 2(b) of Decision C(2016) 8530 final, relating to the fine imposed on HSBC Holdings plc, HSBC Bank plc and HSBC Continental Europe, formerly HSBC France. However, it dismissed the action as to the remainder, that is to say in so far as the action sought the annulment of Article 1 of that decision relating to their participation in a single and continuous infringement with the object of distorting the normal course of pricing components in the Euro Interest Rate Derivatives sector. The Court of Justice upheld that dismissal in its judgment of 12 January 2023, HSBC Holdings and Others v Commission (C-883/19 P, EU:C:2023:11).

Italian law

The Civil Code

8 Article 1346 of the Codice civile (Civil Code) provides:

‘The subject matter of a contract must be possible, lawful, determined or determinable.’

9 Article 1418 of the Civil Code is worded as follows:

‘A contract shall be void if it is incompatible with a mandatory provision, unless the law provides otherwise. A contract shall be void where any of the requirements set out in Article 1325 is absent, where its cause is unlawful, where the motives are unlawful in the case referred to in Article 1345, or where there is no subject matter satisfying the requirements laid down in Article 1346. A contract shall also be void in the other cases provided for by law.’

Law No 287/90

10 Article 2 of legge n. 287 – Norme per la tutela della concorrenza e del mercato (Law No 287/90 adopting provisions for the protection of competition and the market) of 10 October 1990 (GURI No 240 of 13 October 1990, p. 3), headed ‘Agreements restricting the freedom of competition’, provides:

‘1. Agreements and/or concerted practices between undertakings, and decisions – even where such decisions are adopted pursuant to statutory or regulatory provisions – of consortia, associations of undertakings and other similar bodies, shall be regarded as restrictive agreements.

2. Agreements between undertakings shall be prohibited where their object or effect is to prevent, restrict or distort competition to an appreciable extent within the national market or a substantial part of it, including through conduct consisting in:

...

3. Moreover, prohibited agreements shall be void in all respects.’

The dispute in the main proceedings and the question referred for a preliminary ruling

11 On 15 December 2005, SR entered into a mortgage loan agreement with FT. That agreement provided for an initial interest rate of 3.60% for the first six-month period, followed by a variable rate comprising a fixed component of 1.50% and a variable component determined by reference to the six-month Euribor.

12 SR brought an action before the Tribunale di Oristano (District Court, Oristano, Italy) seeking, first, a recalculation of the amount payable by way of ordinary interest on that loan and, second, a declaration as to the claim existing in his favour. In support of those claims, he argued that certain contractual terms, in particular the term fixing the interest rate by reference to Euribor, were void on the grounds that they lacked precision and reliability.

13 That court dismissed those claims. It considered that the agreed rate of ordinary interest met predetermined criteria and was not subject to the discretion of the banking institution, with the result that the grounds relied on to argue that the agreement was void had to be dismissed.

14 SR brought an appeal before the Corte d’appello di Cagliari (Court of Appeal, Cagliari, Italy), which is the referring court, claiming, *inter alia*, that he had been unable correctly to assess the use of Euribor in the loan agreement due to its artificial manipulation, contrary to Article 101 TFEU, as found by the Commission in the EIRD decisions.

15 In the appeal proceedings, SR requested that the referring court refer a question to the Court of Justice for a preliminary ruling on the interpretation of Article 101 TFEU and the EIRD decisions.

16 In that regard, the referring court points out that there are divergent approaches in the case-law of the Corte suprema di cassazione (Supreme Court of Cassation, Italy) as regards the probative value of the EIRD decisions in disputes relating to loan agreements concluded during the infringement period found by the Commission and determining the interest rate by reference to Euribor.

17 Thus, according to a first line of case-law, Decision C(2013) 8512 final should be regarded as having enhanced probative value in support of an application for a declaration of the invalidity of a term determining the interest rate by reference to Euribor and for the recalculation of the interest payable during the manipulation period, regardless of whether the bank in question participated in the unlawful cartel. In accordance with that line of case-law, where the external index to which reference is made in a variable-rate loan agreement no longer constitutes a reliable reflection of the intention expressed by the parties when that agreement was concluded, because its substance has been altered as a result of unlawful acts committed by third parties, the subject matter of the contractual term fixing the interest rate is impossible to determine and the term itself must be regarded as void in part.

18 Conversely, according to a second line of case-law, the infringement found by the Commission is limited to the EIRDs market and cannot have any effect on the market for variable-rate loans applying the Euribor rate resulting from the unlawful cartel. Consequently, those loans cannot be regarded as resulting from the prohibited cartel and thus be declared void.

19 In that context, the referring court is uncertain as to the implications of the EIRD decisions for national courts. The fact that the Euribor rate, determined on the basis of manipulated data, could validly be used as a benchmark in other markets, including the market for variable-rate mortgage loans, might appear inconsistent with the scope of the infringement as determined by the Commission's decision adopted pursuant to Article 101(1) TFEU. On the other hand, limiting the nullity provided for in Article 101(2) TFEU solely to the anticompetitive agreement itself, while excluding agreements which refer to that rate, might deprive that provision of its deterrent effect.

20 In those circumstances, the Corte d'appello di Cagliari (Court of Appeal, Cagliari) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'In the light [of] Article 16(1) of [Regulation No 1/2003], is the evidence of manipulation of the Euribor [rate], as established in the [EIRD] decisions and in the judgment [of 12 January 2023, HSBC Holdings and Others v Commission (C-883/19 P, EU:C:2023:11)], to be regarded as having been definitively established also for national courts, and does the restriction of competition that was the subject of [those] Commission decisions and [that] Court judgment constitute a cartel prohibited by Article 101 [TFEU] solely on the market for [euro interest rate] derivatives, or on any market on which the manipulated Euribor [rate] was used?'

Admissibility

21 FT contends that the request for a preliminary ruling is inadmissible on two grounds.

22 In the first place, it contends that the request is based on a conflict in the case-law which is currently being considered by the Joint Chambers of the Corte suprema di cassazione (Supreme Court of Cassation). The question referred to the Court of Justice is therefore premature and hypothetical.

23 In that regard, it should be recalled that national courts have the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions involving the interpretation of provisions of EU law, or consideration of their validity, which are necessary for the resolution of the case before them and, in particular, that they are free to exercise that discretion at whatever stage of the proceedings they consider appropriate (judgment of 14 November 2018, *Memoria and Dall'Antonia*, C-342/17, EU:C:2018:906, paragraph 33 and the case-law cited).

24 Furthermore, questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraphs 59 and 61; of 7 September 1999, *Beck and Bergdorf*, C-355/97, EU:C:1999:391, paragraph 22; and of 11 December 2025, *Kuszycka*, C-767/24, EU:C:2025:962, paragraph 34).

25 In the present case, it is apparent from the information before the Court that the application for a declaration of invalidity at issue in the main proceedings was brought, at least initially, on the basis of the civil law provisions laid down in Articles 1346 and 1418 of the Civil Code. However, it should be pointed out that, first, the question referred for a preliminary ruling concerns the interpretation of Article 101 TFEU and Article 16(1) of Regulation No 1/2003 and, second, the success of the application for a declaration of invalidity depends on the interpretation of those provisions of EU law.

26 It is apparent from the request for a preliminary ruling that the question submitted by the referring court arises from the conflict in the case-law referred to in paragraphs 16 and 22 above, which concerns actions brought by consumers seeking, inter alia, a declaration that the terms governing the calculation of interest contained in loan agreements concluded with sellers or suppliers are void and, in so doing, to neutralise the effects of a cartel prohibited by Article 101 TFEU. That conflict in the case-law concerns, in particular, determination of the probative value of the EIRD decisions in disputes relating to loan agreements which refer to Euribor. The conclusions to be drawn from a Commission decision imposing penalties in respect of a cartel in the Euro Interest Rate Derivatives sector on the basis of Article 101(1) TFEU are therefore at the heart of the proceedings before the referring court.

27 Furthermore, the referring court refers to decisions of the Corte Suprema di Cassazione (Supreme Court of Cassation) according to which, first, the protection intended to prevent distortions of competition cannot be confined to actions for damages and, second, the automatic nullity provided for in Article 2(3) of Law No 287/90 also applies to any downstream contract giving effect to the prohibited cartel.

28 According to the position advanced by the applicant in the main proceedings, the loan agreement at issue in those proceedings is a downstream contract, within the meaning of that case-law of the Corte Suprema di Cassazione (Supreme Court of Cassation), giving effect to the cartel that is the subject of the EIRD decisions.

29 In those circumstances, it cannot be ruled out that the referring court may be required to apply the rules on competition in order to resolve the dispute before it and, for that purpose, may need an interpretation of the provisions referred to in the question referred for a preliminary ruling. In that regard, even if Article 16(1) of Regulation No 1/2003 does not apply where, in the context of a dispute between a consumer and a credit institution which has granted him or her a loan, a national court is seised of an application for a declaration, under the applicable national law, that a term of the loan agreement is void, it does not appear obvious that the interpretation sought bears no relation to the actual facts or purpose of the main action before the referring court.

30 In the second place, FT contends that the request for a preliminary ruling is inadmissible on the ground that the application for a declaration of invalidity of the term of that loan agreement which refers to Euribor in order to determine the interest rate payable was made for the first time at the appeal stage, which is not permitted under the applicable national rules.

31 In that regard, it should be borne in mind that, in the context of a preliminary ruling procedure referred to in Article 267 TFEU, it is not, in principle, for the Court, in view of the distribution of functions between itself and the national courts, to determine whether the order for reference was made in accordance with the rules of national law governing the organisation of the courts and their procedure (see, to that effect, judgments of 29 June 2010, E and F , C-550/09, EU:C:2010:382, paragraph 35, and of 21 December 2023, Krajowa Rada Sądownictwa (Continued holding of a judicial office) , C-718/21, EU:C:2023:1015, paragraph 42 and the case-law cited).

32 It follows from all the foregoing considerations that the request for a preliminary ruling is admissible.

Consideration of the question referred

33 By its single question, the referring court asks, in essence, whether Article 101(2) TFEU and Article 16(1) of Regulation No 1/2003 must be interpreted as meaning that the decision by which the Commission found the existence of a cartel prohibited by Article 101(1) TFEU and that an interest rate benchmark had been manipulated on a specific market, first, renders automatically void every contractual term referring to that interest rate, irrespective of the market concerned

and of the persons involved in that cartel and, second, must, at the very least, be taken into account by national courts and tribunals called upon to adjudicate on the validity of such a term.

34 In the first place, as regards the scope of the automatic nullity provided for in Article 101(2) TFEU, it follows from settled case-law that, once the conditions for the application of Article 101(1) TFEU are met and so long as the agreement concerned does not justify the grant of an exemption under Article 101(3) TFEU, the nullity referred to in Article 101(2) TFEU can be relied on by anyone, and the courts are bound by it. Since that nullity is absolute, it is capable of having a bearing on all the effects, either past or future, of the agreement concerned (see, to that effect, judgments of 13 July 2006, *Manfredi and Others* , C-295/04 to C-298/04, EU:C:2006:461, paragraph 57; of 11 September 2008, *CEPSA* , C-279/06, EU:C:2008:485, paragraph 74; and of 25 January 2024, *Em akaunt BG* , C-438/22, EU:C:2024:71, paragraph 58).

35 However, that automatic nullity applies only to those contractual provisions of the agreement at issue which are incompatible with Article 101(1) TFEU. It does not extend to contracts concluded on the basis of an agreement coming within Article 101(1) TFEU. The consequences of that nullity for all other parts of that agreement or for other obligations flowing from it are not a matter for EU law. It is for the national courts to determine, in accordance with the law of the Member State to which they belong, the extent and consequences, for the contractual relations as a whole, of any prohibition of certain terms under Article 101 TFEU (see, to that effect, judgments of 14 December 1983, *Société de vente de ciments et bétons de l'est* , 319/82, EU:C:1983:374, paragraphs 11 and 12; of 30 November 2006, *Brünsteiner and Autohaus Hilgert* , C-376/05 and C-377/05, EU:C:2006:753, paragraph 48, and of 20 April 2023, *Repsol Comercial de Productos Petrolíferos* , C-25/21, EU:C:2023:298, paragraph 71).

36 As the Advocate General pointed out, in essence, in point 20 of her Opinion, such an interpretation is consistent with the personal nature of the liability of undertakings for infringements of EU competition rules, which means, inter alia, that it is the undertaking which infringes those rules that must answer for the damage caused by that infringement (see, to that effect, judgments of 8 July 1999, *Commission v Anic Partecipazioni* , C-49/92 P, EU:C:1999:356, paragraph 78, and of 14 March 2019, *Skanska Industrial Solutions and Others* , C-724/17, EU:C:2019:204, paragraph 31).

37 Accordingly, the automatic nullity, under Article 101(2) TFEU, of an agreement which is contrary to Article 101(1) TFEU and has been the subject of a Commission decision cannot render void the provisions of a contract concluded by parties unconnected with the undertakings which participated in that agreement and concerning a product belonging to a different market from that identified as relevant by the Commission.

38 In the present case, it is common ground, first, that FT did not participate in the cartel covered by the EIRD decisions and in respect of which penalties were imposed and, second, that the contractual term at issue in the main proceedings does not come within the agreements and concerted practices declared incompatible with Article 101(1) TFEU under those decisions. Those decisions cannot, therefore, render that term automatically void under Article 101(2) TFEU.

39 In the second place, as regards the extent to which the referring court must take those decisions into account, as is apparent from paragraph 35 above, it is for national courts and tribunals alone to assess, in accordance with the national law of the Member State to which they belong, the consequences that an agreement prohibited under Article 101(1) TFEU may have for contractual relations involving third parties unconnected with that agreement.

40 It is true that, in accordance with settled case-law, when national courts rule on agreements which are the subject of a Commission decision taken pursuant to Article 101(1) TFEU, they cannot take decisions which run counter to that decision (see, to that effect, judgments of 14 December 2000, *Masterfoods and HB*, C-344/98, EU:C:2000:689, paragraph 52, and of 11 November 2021, *Stichting Cartel Compensation and Equilib Netherlands*, C-819/19, EU:C:2021:904, paragraph 56).

41 That case-law, which is now given legislative expression in Article 16(1) of Regulation No 1/2003 (see, to that effect, judgments of 6 November 2012, *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 50, and of 11 November 2021, *Stichting Cartel Compensation and Equilib Netherlands*, C-819/19, EU:C:2021:904, paragraph 57), is based on the coherent application of the competition rules and the general principle of legal certainty (see, to that effect, judgments of 28 February 1991, *Delimitis*, C-234/89, EU:C:1991:91, paragraph 47; of 14 December 2000, *Masterfoods and HB*, C-344/98, EU:C:2000:689, paragraph 51, and of 9 December 2020, *Groupe Canal + v Commission*, C-132/19 P, EU:C:2020:1007, paragraph 112).

42 It follows that, although Article 16(1) of Regulation No 1/2003 provides that, where a national court is called upon to rule on agreements, decisions or practices under Article 101 TFEU or Article 102 TFEU which are already the subject of, or are liable to be the subject of, a Commission decision, that court must refrain from adopting a decision that would run counter to that of the Commission, the Commission's decision is nevertheless binding on national courts only within the limits of the nature and the material, personal, temporal and territorial scope of the infringement established therein.

43 In the present case, it is apparent from the information before the Court that the contractual term at issue in the main proceedings, which merely refers to Euribor as the relevant benchmark in determining the variable interest rate applicable to a mortgage loan granted to a consumer, is not a constituent element of the infringements of Article 101(1) TFEU found in the EIRD decisions. Furthermore, it cannot be considered that the loan agreement, of which that term forms part, was concluded in order to implement or give effect to the anticompetitive agreements found and prohibited by the Commission in those decisions.

44 It follows that the manipulation of the Euribor rate found by the Commission in the EIRD decisions must be regarded as established in relation to the market for Euro Interest Rate Derivatives and the banks involved in the cartel in respect of which penalties were imposed. By contrast, as the Advocate General observed in points 32 and 33 of her Opinion, since the infringement at issue in those decisions was classified as a restriction of competition by object, the conduct found by the Commission to be contrary to Article 101(1) TFEU does not, in itself,

support the conclusion that it had any specific effects on the level of that rate. Furthermore, those decisions concern only the market for Euro Interest Rate Derivatives, which is distinct from the market to which the contract at issue in the main proceedings relates.

45 In such circumstances, it cannot be inferred from Article 16(1) of Regulation No 1/2003 that, in the light of the EIRD decisions, a court hearing an application for a declaration of invalidity of a term of a loan agreement, such as that at issue in the main proceedings, is required to find that term to be invalid on the basis of that provision.

46 In the light of the foregoing reasons, the answer to the question referred is that Article 101(2) TFEU and Article 16(1) of Regulation No 1/2003 must be interpreted as meaning that the decision by which the Commission found the existence of a cartel prohibited by Article 101(1) TFEU and that an interest rate benchmark had been manipulated on a specific market, first, does not render automatically void every term of a contract referring to that interest rate where that contract relates to a different market and the parties to that contract did not participate in the cartel and, second, must be taken into account by a national court or tribunal called upon to rule on the validity of such a term only within the limits of the nature and the material, personal, temporal and territorial scope of the infringement established in that decision, with the result that, where that term is not a constituent element of that infringement and the contract containing it was not concluded in order to implement or give effect to the anticompetitive conduct covered by that decision, which concerns a different market from that to which that contract relates, that decision cannot lead to the invalidity of such a term.

Costs

47 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 101(2) TFEU and Article 16(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU]

must be interpreted as meaning that the decision by which the European Commission found the existence of a cartel prohibited by Article 101(1) TFEU and that an interest rate benchmark had been manipulated on a specific market, first, does not render automatically void every term of a contract referring to that interest rate where that contract relates to a different market and the parties to that contract did not participate in the cartel and, second, must be taken into account by a national court or tribunal called upon to rule on the validity of such a term only within the limits of the nature and the material, personal, temporal and territorial scope of the infringement established in that decision, with the result that, where that term is not a constituent element of that infringement and the contract containing it was not concluded in order to implement or give effect to the anticompetitive conduct covered by that decision, which concerns a different market from that to which that contract relates, that decision cannot lead to

the invalidity of such a term.

[Signatures]

* Language of the case: Italian.

i The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

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Prepared on 29 October 2026 · Esheria