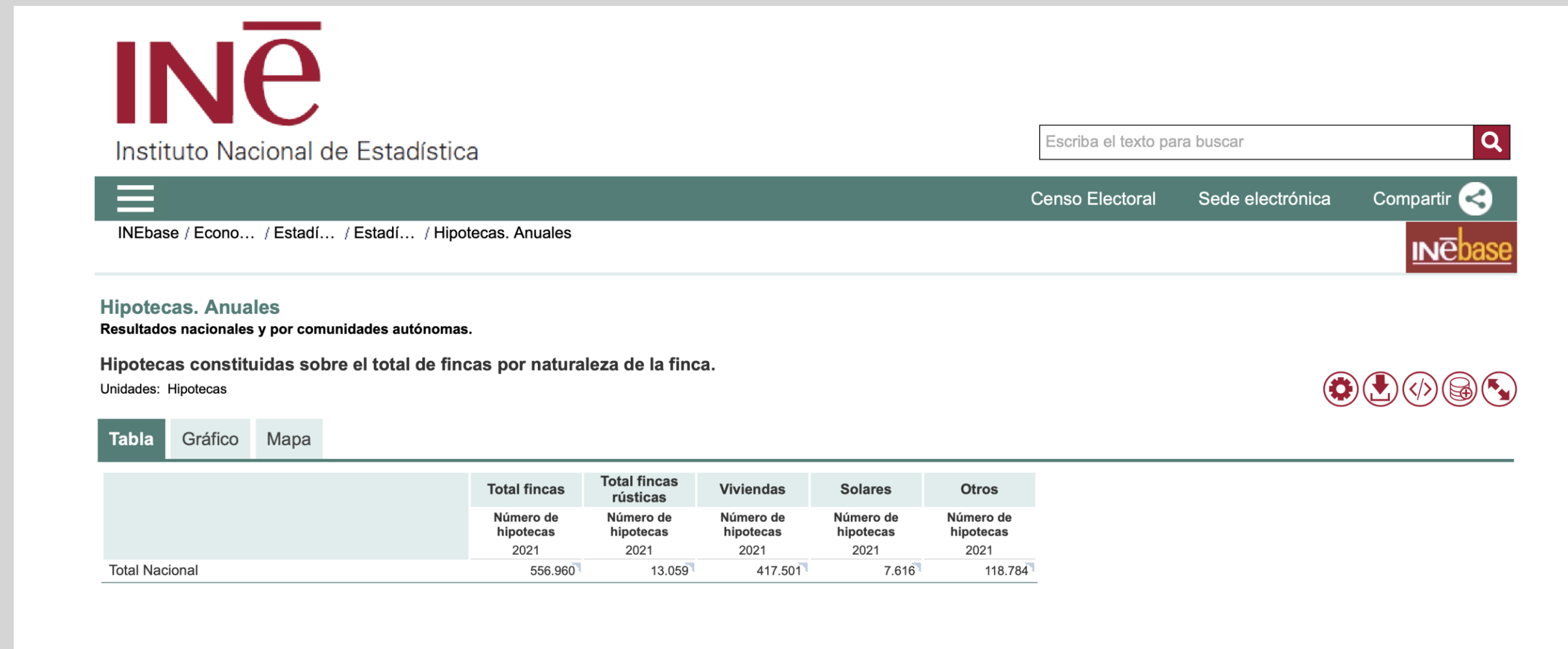


# Mortgage Loans and Floor Clauses



their house, and 25% rent. As of 2021, more

the variable rate of interest could not fall

# The Case

- ▶ Collective action by a consumer association against several credit Banks:
  - Unfairness of 'floor clauses' contained in the general conditions of mortgage loan agreements concluded with consumers
- ▶ Grounds of the lawsuit:
  - Due to the gap, or imbalance, or lack of proportion between "floor clauses" and "ceiling clauses" of the interest rate, those terms are unfair
  - Pursuant to Spanish law: article 82 of Real Decreto Legislativo 1/2007, which is transposing Directive 13/93, art. 3

# Judgments

## ► Commercial Court (First Instance):

- Floor clauses are unfair, and should be considered null and void in all contracts with consumers
- On the grounds of the imbalance between “floor clauses” and “ceiling clauses”
- According to article 82 of Real Decreto Legislativo 1/2007. Directive 13/93 is cited twice and one ECJ Judgment [C-484/08, AUSBANK]

## ► Court of Appeal Judgment:

- The previous Judgment is reversed. The case is dismissed
- The floor limit is part of the price of the loan, not a term of the contract. No price control
- According to Spanish Law. No quotation or citation of EU Law (nor Directive, nor ECJ)

# Spanish Supreme Court, 9th May, 2013. Ref. 485/2012

- ▶ The Court would reject the lawsuit on its own grounds. Floor clauses are the main subject matter of the contract. The quality/price ratio of the goods or services supplied can not be controlled
- ▶ But, the Court is required to ensure the effectiveness of the protection intended to be given by the provisions of the Directive
  - Obligation to examine the possible unfairness of a contractual term, of its own motion [Pannon, C-243/08 ]
  - Requirements of effective judicial protection of the rights [Article 47 of the Charter of Fundamental Rights]. As a general rule, inform the parties of that fact and to invite each of them to set out their views on that matter, with the opportunity to challenge the views of the other party [Banif, C-472/11]

# Spanish Supreme Court ex officio

- ▶ New (ex officio) ground for the claim (art 4):
  - Floors clauses are grammatically intelligible for consumers and are drafted in plain, intelligible language
  - The requirement of transparency it is not satisfied: adequacy of the information given to consumers as to the legal and financial consequences of the application of the terms relating, in particular, to the main subject-matter of the contract
- ▶ The Court finds for the claimants: Floor clauses are void because of their lack of transparency
  - Legal certainty, the Court limited the effects of its judgment to after the date of its publication

# Aftermath

- ▶ Myriads of claims relating consumer protection and unfair terms in contracts
  - Transparency, laid down in Article 4(2) of Directive 93/13, must be construed as involving not only formal but also substantive compliance
  - Creation of new, specialised Civil Courts in June 2017: 713.129 cases since
- ▶ Too far?
  - Motion of the Banks to annul the Judgment, rejected
  - JUDGMENT OF ECJ [Cases C-154/15, C-307/15 and C-308/15]: Article 6(1) must be interpreted as precluding national case-law that temporally limits the restitutory effects
- ▶ Wake-up call to all Spanish Judges about the relevance of Eu Law and Case-Law in any civil case. Equilibrium or balance between ex officio powers and adversarial system