



Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 22 January 2019¹

Case C-694/17

Pillar Securitisation Sàrl
v
Hildur Arnadóttir

(Request for a preliminary ruling from
the Cour de cassation (Court of Cassation, Luxembourg))

(Reference for a preliminary ruling — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Lugano II Convention — Directive 2008/48/EC — Credit agreement — Concepts of ‘consumer’ and ‘a purpose outside his trade or profession’)

I. Introduction

1. This request for a preliminary ruling concerns the relationship between the definitions of the term ‘consumer’ in two different legal instruments, which fall within the interpretive jurisdiction of the Court of Justice.

2. More specifically, in this case the Cour de cassation (Court of Cassation, Luxembourg) asks the Court whether a person who has entered into a loan agreement that, in accordance with Article 2(2)(c) of Directive 2008/48/EC,² does not lie within the scope of that directive on the ground that the total amount of credit granted under that contract exceeds EUR 75 000, should automatically be considered not to be a consumer within the meaning of Article 15 of the Convention on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters.³

3. By that question, the referring court wishes to ascertain whether a concept enshrined in Directive 2008/48, which harmonises certain substantive rules relating to consumer credit agreements, has a decisive influence on the interpretation of a rule of jurisdiction laid down by the legislature to protect consumers in their cross-border disputes with professionals. Thus, this case will enable the Court to develop its recent case-law, crystallised in the judgments in *Vapenik*⁴ and in *Kainz*,⁵ relating to the objective of attaining consistency between the concepts of private international law within the EU legal system.

¹ Original language: French.

² Directive of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66, and corrigenda OJ 2009, L 207, p. 14, OJ 2010 L 199, p. 40, and OJ 2011 L 234, p. 46).

³ Convention signed on 30 October 2007 (OJ 2009 L 147, p. 5), the conclusion of which was approved on behalf of the Community by Council Decision 2009/430/EC of 27 November 2008 (OJ 2009 L 147, p. 1) (‘the Lugano II Convention’).

⁴ Judgment of 5 December 2013 (C-508/12, EU:C:2013:790).

⁵ Judgment of 16 January 2014 (C-45/13, EU:C:2014:7).

II. Legal framework

A. *The Lugano II Convention*

4. Title II of the Lugano II Convention, entitled 'Jurisdiction', contains, in Section 4, entitled 'Jurisdiction over consumer contracts', Article 15(1), which provides:

'In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Articles 4 and 5(5), if:

- (a) it is a contract for the sale of goods on instalment credit terms; or
- (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the State bound by this Convention of the consumer's domicile or, by any means, directs such activities to that State or to several States including that State, and the contract falls within the scope of such activities.'

5. Under Article 16(2) of that convention:

'Proceedings may be brought against a consumer by the other party to the contract only in the courts of the State bound by this Convention in which the consumer is domiciled.'

6. Article 23 of the Lugano II Convention allows the parties to confer, by means of an agreement, jurisdiction to hear disputes which have arisen or may arise in connection with a particular legal relationship, on a court or courts of a State bound by that convention. However, with regard to proceedings relating to consumer contracts, referred to in Section 4 of that convention, Article 17 thereof provides:

'The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen; or
2. which allows the consumer to bring proceedings in courts other than those indicated in this Section; or
3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same State bound by this Convention, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State.'

B. *Directive 2008/48*

7. According to recital 10 of Directive 2008/48:

'The definitions contained in this Directive determine the scope of harmonisation. The obligation on Member States to implement the provisions of this Directive should therefore be limited to its scope as determined by those definitions. However, this Directive should be without prejudice to the application by Member States, in accordance with Community law, of the provisions of this Directive

to areas not covered by its scope. A Member State could thereby maintain or introduce national legislation corresponding to the provisions of this Directive or certain of its provisions on credit agreements outside the scope of this Directive, for instance on credit agreements involving amounts less than EUR 200 or more than EUR 75 000. ...'

8. Article 2 of that directive, entitled 'Scope', provides:

'1. This Directive shall apply to credit agreements.

2. This Directive shall not apply to the following:

...

(c) credit agreements involving a total amount of credit less than EUR 200 or more than EUR 75 000;

...'

9. Article 3(a) of Directive 2008/48 defines the concept of 'consumer' as 'a natural person who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession'.

III. Facts of the dispute in the main proceedings

10. The defendant in the main proceedings, Ms Hildur Arnadottir, resident in Iceland, took out a loan in March 2005 amounting to more than one million euros with the company Kaupthing Bank Luxembourg. The purpose of that loan was to enable the defendant in the main proceedings to acquire shares in the Icelandic company Bakkavör Group hf, of which she was one of the directors. The loan was repayable in a single instalment no later than 1 March 2010.

11. Payment of the loan was secured by a guarantee from Bakkavör Group, signed by the defendant in the main proceedings and another director of that company.

12. Kaupthing Bank Luxembourg was subsequently split into two entities. One of them, the applicant in the main proceedings, the company Pillar Securitisation Sàrl, sought repayment of the loan taken out by the defendant in the main proceedings before the Luxembourg courts under the clause in the loan agreement conferring jurisdiction on those courts.

13. At first instance, the Tribunal d'arrondissement de Luxembourg (District Court, Luxembourg) declared that it had no jurisdiction to hear the case on the grounds that the defendant in the main proceedings was to be regarded as a consumer within the meaning of Article 15 of the Lugano II Convention. Consequently, according to that court, the jurisdictional clause designating the Luxembourg courts was to be disregarded because it did not comply with the derogating provisions referred to in Article 17 of the Lugano II Convention.

14. On appeal, the Cour d'appel (Court of Appeal, Luxembourg) confirmed that the Luxembourg courts lacked jurisdiction to rule on the application.

15. The applicant in the main proceedings lodged an appeal in cassation, in which it set out three separate grounds of appeal on a point of law.

16. It is apparent from the order for reference that the referring court considers that the first ground of appeal is unfounded and that the second and third grounds of appeal have not yet been the subject of a final decision of that court.

17. By its second ground of appeal, alleging infringement of Article 15 of the Lugano II Convention, the applicant in the main proceedings criticises the Cour d'appel (Court of Appeal) for holding that the investment made by the defendant in the main proceedings under the loan agreement had been made for non-professional purposes.

18. By its third ground of appeal, also alleging infringement of that provision, the applicant in the main proceedings complains that the Cour d'appel (Court of Appeal) failed to take account of the fact that the loan agreement concluded by the defendant is not covered by Directive 2008/48, which excludes from its scope credit agreements involving a total amount exceeding EUR 75 000. Consequently, according to the applicant in the main proceedings, even though the concept of 'consumer' within the meaning of Article 15 of the Lugano II Convention is an autonomous concept, a loan agreement involving a total amount exceeding EUR 75 000 cannot be regarded as a consumer contract for the purposes of applying that provision.

19. In the light of those grounds of appeal, the Cour de cassation (Court of Cassation) asks whether the scope of Directive 2008/48 has any bearing on the definition of the concept of 'consumer' within the meaning of Article 15 of the Lugano II Convention.

IV. The question referred for a preliminary ruling and the procedure before the Court

20. It was in those circumstances that the Cour de cassation du Luxembourg (Court of Cassation, Luxembourg) decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'In the context of a credit agreement which, by reason of the total amount of the loan, does not come within the scope of Directive [2008/48], can a person be regarded as a "consumer" within the meaning of Article 15 of the [Lugano II Convention] in the absence of any national legislation applying the provisions of that directive to areas which do not come within its scope, on the ground that the contract was concluded for a purpose that can be regarded as a purpose other than that person's professional activity?'

21. The request for a preliminary ruling was received at the Registry of the Court of Justice on 11 December 2017.

22. The parties to the main proceedings, the Luxembourg, Portuguese and Swiss Governments and the European Commission submitted written observations to the Court.

V. Assessment

A. Preliminary observation

23. By its question, the referring court seeks to ascertain whether, in the absence of national legislation implementing the provisions of Directive 2008/48 to areas not falling within its scope, an individual who has concluded, for private purposes, a credit agreement that, because of its total amount, does not fall within the scope of that directive, may still be regarded as a consumer within the meaning of Article 15 of the Lugano II Convention.

24. In its request for a preliminary ruling, the referring court states that it is the second and third grounds of the appeal brought by the applicant in the main proceedings that have led it to refer a question to the Court on the interpretation of Article 15 of the Lugano II Convention. However, the second ground of appeal does not relate to the consistency between that convention and Directive 2008/48. It would appear that, by that ground of appeal, the applicant in the main proceedings is contesting the finding that the defendant in the main proceedings acted for private purposes when she concluded the agreement in question.

25. Similarly, the Commission, in its written observations, states that it has doubts with regard to that finding of the referring court. The Luxembourg Government, without calling that finding into question, merely makes abstract comments concerning the nature and purpose of consumer contracts.

26. However, it seems to me that the second ground of appeal and the Commission's considerations refer to the premiss on which the referring court relies. The Court is not being asked whether, apart from the total amount of the credit, other facts of the case in the main proceedings can plead in favour of the argument that the defendant in the main proceedings should not be considered to be a consumer.

27. In any event, the request for a preliminary ruling contains no information allowing the Court to analyse this question in depth of its own motion. All the information made available to the Court originates from the applicant in the main proceedings, which denies that the Luxembourg courts lack jurisdiction to rule on its application. Therefore, irrespective of any doubts that may be harboured in that regard, given the division of competences between the Court and the national courts, I shall not examine whether the defendant in the main proceedings acted for private purposes when concluding the credit agreement. Consequently, I shall limit this Opinion to an analysis of the legal issues reflected in the question referred, as formulated by the referring court.

B. The positions of the parties

28. Only the applicant in the main proceedings considers that Article 15 of the Lugano II Convention precludes regarding as a consumer a borrower who has concluded a credit agreement that, because of its amount, does not fall within the scope of Directive 2008/48. In the first place, the applicant in the main proceedings maintains, on the basis of the Explanatory Report to the Lugano II Convention prepared by Professor Fausto Pocar,⁶ that Article 15 of that convention must be interpreted in the light of EU legislation and, in particular, of Directive 2008/48.⁷ In the second place, the applicant in the main proceedings considers, in essence, that by excluding credit agreements involving an amount of more than EUR 75 000 from the scope of that directive, the legislature considered that persons concluding credit agreements for amounts in excess of that sum did not need special protection. The benefit of rules of jurisdiction such as Article 15 of the Lugano II Convention should not be extended to persons for whom special protection is not justified.

29. In contrast, the defendant in the main proceedings, the Portuguese and Swiss Governments and the Commission consider that the interpretation of Article 15 of the Lugano II Convention does not depend on Directive 2008/48. They consider, in essence, that the concept of 'consumer' in that provision must be given an interpretation that is autonomous and, therefore, free from the limits relating to the total amount of the credit, specified in Article 2(2)(c) of Directive 2008/48.

⁶ OJ 2009 C 319, p. 1, 'the Pocar Report'.

⁷ See paragraph 81 of the Pocar Report.

C. Analysis

30. The question, as formulated by the referring court, refers to the concept of ‘consumer’ within the meaning of the Lugano II Convention and Directive 2008/48. However, the real legal issue raised by this case does not directly concern the definitions of the concept of ‘consumer’ in the Lugano II Convention and in Directive 2008/48, but those of the concepts of ‘contract’ and ‘transaction’ in Article 15 of the Convention and in Article 3 of that directive.

31. As a matter of fact, in the context of those two legal acts, the core of the definition of the concept of ‘consumer’ is largely the same.

32. Under Article 3(a) of Directive 2008/48, ‘consumer’ means any natural person who, in transactions covered by that Directive, is acting ‘for purposes which are outside his trade, business or profession’.

33. Similarly, under Article 15 of the Lugano II Convention, a consumer is a person who has concluded a contract ‘for a purpose which can be regarded as being outside his trade or profession’.

34. Thus, at least in the context of the present case, the main difference between the aforementioned provision of Directive 2008/48 and that of the Lugano II Convention concerns the fact that a consumer is in a ‘contract concluded by [him]’ and in ‘transactions covered by [Directive 2008/48]’.

35. Although Directive 2008/48 does not define the concept of ‘transaction’, it nevertheless specifies, in paragraph 2 of Article 2, entitled ‘Scope’, the contracts to which it does not apply. In particular, it is apparent from Article 2(2)(c) of that directive that it does not apply to credit agreements involving a total amount of less than EUR 200 or more than EUR 75 000.

36. In contrast, the second part of Article 15(1) of the Lugano II Convention specifies to which contracts concluded by a consumer within the meaning set out above, the provisions of Title II, Section 4, of that convention apply. However, the Lugano II Convention does not limit the scope of the provisions of that section to contracts for an amount below or above a certain value.

37. I therefore consider, to conclude this part of my analysis, that the concept of ‘contract’ within the meaning of Article 15 of the Lugano II Convention and that of ‘transaction’ within the meaning of Directive 2008/48 are unrelated when it comes to the total amount of the credit granted to a borrower. Moreover, the concept of ‘transaction’ within the meaning of Article 3(a) of Directive 2008/48, read in conjunction with Article 2(2)(c) thereof, determines the scope of that directive and is not intended to be applied outside the framework thereof. Consequently, the concept of ‘consumer’ in the Lugano II Convention and in Directive 2008/48, which define a consumer by referring to a ‘contract’ and to a ‘transaction’ respectively, also seem to me to be unrelated, at least in so far as concerns the total amount of credit granted under a particular contract.

38. I shall now compare, in the light of the arguments put forward by the parties, the interpretation offered above with, first, the case-law of the Court and the idea of consistency of the concepts of EU law stated therein and, second, the explanations in the Pocar Report, relating to Article 15 of the Lugano II Convention. Finally, third, having regard to the wording of the question referred, I shall examine the possible impact of the legislative choice concerning the transposition of Directive 2008/48 into national law on the reply to be given to that question.

1. *The consistency of concepts in EU law*

39. I am aware of the argument raised by certain parties that the Court found, in the judgment in *Vapenik*,⁸ that, in order to ensure compliance with the objectives pursued by the EU legislature in the area of consumer contracts and the consistency of EU law, account must be taken, in particular, of the definition of ‘consumer’ in other rules of EU law.

40. It is clear to me that the main message of that passage in the judgment in *Vapenik*⁹ concerns not only the interpretation of the concept of ‘consumer’, but all concepts of EU law. However, the idea that it is necessary to interpret the concept of ‘contract’ within the meaning of Article 15 of the Lugano II Convention in the light of the concept of ‘transaction’, within the meaning of Article 3(a) of Directive 2008/48, read in conjunction with Article 2(2)(c) thereof, does not convince me.

41. It is true that the Lugano II Convention does not bind only the Member States of the European Union. However, although the territorial scope of the Lugano II Convention is wider than that of Regulation (EC) No 44/2001¹⁰ and that of its successor, Regulation (EU) No 1215/2012,¹¹ the relevance of the main message in the judgment in *Vapenik*¹² in the context of the present case is that that convention and those regulations have the same purpose, the same system and the same rules of jurisdiction.¹³ Moreover, the courts called upon to apply and interpret the Lugano II Convention are required to ensure a convergent interpretation of the equivalent provisions of those instruments.¹⁴ Consequently, first, the Lugano II Convention must be examined in the context of a constant interplay between the Brussels regime and the Lugano regime.¹⁵ Second, like the provisions of those regulations, the concepts in Article 15 of the Lugano II Convention must be interpreted autonomously, by reference principally to the system and objectives of that convention, in order to ensure the uniform application of the Lugano II Convention in all the States that are bound by it.¹⁶

42. However, I do not think it is possible to draw from the judgment in *Vapenik*¹⁷ lessons that support a negative answer to the question referred in the present case.

43. In the first place, in that judgment, the Court interpreted the provisions of Regulation (EC) No 805/2004,¹⁸ which is part of the legal framework through which the Union seeks to develop judicial cooperation in civil matters with cross-border implications. Thus, the Court held, having regard to the *supplementary nature* of the rules laid down by Regulation No 805/2004 as compared with those in Regulation No 44/2001, that the provisions of the latter are especially relevant.¹⁹ Next, still in the context of the consistency of legal instruments of EU law, the Court cited²⁰ Directive

8 Judgment of 5 December 2013 (C-508/12, EU:C:2013:790, paragraph 25).

9 Judgment of 5 December 2013 (C-508/12, EU:C:2013:790, paragraph 25).

10 Council Regulation of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (OJ 2001 L 12, p. 1).

11 Regulation of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (OJ 2012 L 351, p. 1).

12 Judgment of 5 December 2013 (C-508/12, EU:C:2013:790, paragraph 25).

13 See, to that effect, Opinion 1/03 (New Lugano Convention) of 7 February 2006 (EU:C:2006:81, paragraph 152).

14 See Protocol 2 on the uniform interpretation of the Convention and on the Standing Committee (OJ 2007 L 339, p. 27). See also the judgment of 20 December 2017, *Schlömp* (C-467/16, EU:C:2017:993, paragraph 47).

15 See my Opinion in *Schlömp* (C-467/16, EU:C:2017:768, point 23).

16 See the judgment of 28 January 2015, *Kolassa* (C-375/13, EU:C:2015:37, paragraph 22), and my Opinion in that case (C-375/13, EU:C:2014:2135, point 33).

17 Judgment of 5 December 2013 (C-508/12, EU:C:2013:790).

18 Regulation of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ 2004 L 143, p. 15).

19 Judgment of 5 December 2013, *Vapenik* (C-508/12, EU:C:2013:790, paragraph 25). As regards the supplementary nature of Regulation No 805/2004, see also recital 20 of that regulation, according to which application for certification as a European Enforcement Order for uncontested claims should be optional for the creditor, who may instead choose the system of recognition and enforcement under Regulation No 44/2001 or other EU instruments.

20 Judgment of 5 December 2013, *Vapenik* (C-508/12, EU:C:2013:790, paragraphs 26 and 29).

93/13/EEC²¹ and Regulation (EC) No 593/2008.²² The choice of those two legal instruments of EU law in the context outlined in the judgment in *Vapenik*²³ seems obvious to me. Regulation No 593/2008 establishes rules of conflict that, in turn, are *supplementary* to the rules of international jurisdiction in Regulation 44/2001,²⁴ whereas Directive 93/13, even though it harmonises, as does Directive 2008/48, provisions of substantive law, applies, in principle, to all consumer contracts and therefore *establishes a universal standard*²⁵ of consumer protection within the European Union.²⁶

44. Thus, in the light of the judgment in *Vapenik*,²⁷ the choice of legal instruments of EU law taken into account for the interpretation of another act is not random. It is symptomatic that, even though the case that gave rise to that judgment concerned the payment of the sum due under a loan agreement, the Court made no reference to Directive 2008/48. In that vein, in the circumstances of the present case, I do not think that Directive 2008/48 can have a decisive impact on the interpretation of Article 15 of the Lugano II Convention.

45. In the second place, in the judgment in *Vapenik*,²⁸ the Court drew from the three abovementioned legal instruments of EU law a single lesson of fairly general scope, according to which the objective of consumer protection laid down by the provisions of EU law, which aims to restore equal treatment between the parties to contracts concluded between a consumer and a professional, excludes the application of those provisions to persons for whom that protection is not justified.²⁹ However, the idea that, owing to a contractual term such as the total amount of credit, the party to the contract is not to be regarded as a consumer within the meaning of a directive, cannot be regarded as such a lesson of general scope, comparable to that referred to in the judgment in *Vapenik*.³⁰

21 Council Directive of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

22 Regulation of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations ('Rome I') (OJ 2008 L 177, p. 6).

23 Judgment of 5 December 2013 (C-508/12, EU:C:2013:790).

24 In that regard, I note that the Court followed similar reasoning in the judgments of 26 May 1982, *Ivenel* (133/81, EU:C:1982:199, paragraph 15), and of 8 March 1988, *Arcado* (9/87, EU:C:1988:127, paragraph 15). In those judgments, the Court referred to the provisions of the Convention on the law applicable to contractual obligations, signed in Rome on 19 June 1980 (OJ 1980 C 282, p. 1), when interpreting one of the provisions of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36). For another illustration of that reasoning, see the judgment of 14 November 2002, *Baten* (C-271/00, EU:C:2002:656, paragraph 43), in which the Court interpreted the provisions of that convention in the light of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971(II), p. 416), which established rules for coordinating national Social Security legislations.

25 As regards the role of Directive 93/13 in the EU legal system, see my recent Opinion in *Abanca Corporación Bancaria and Bankia* (C-70/17 and C-179/17, EU:C:2018:724, points 52 to 55).

26 In that vein, see the judgment of 10 September 2015, *Holterman Ferho Exploitatie and Others* (C-47/14, EU:C:2015:574, paragraphs 41 and 42), in which the Court interpreted the notion of 'employee' within the meaning of Article 18 of Regulation No 44/2001 in the light of the interpretations of that notion in the context of Article 45 TFEU and a number of EU legislative acts. Thus, on the basis of those interpretations, the Court reconstructed the universal definition, or at least the definition of general scope of the notion of 'employee' in EU law.

27 Judgment of 5 December 2013 (C-508/12, EU:C:2013:790).

28 Judgment of 5 December 2013 (C-508/12, EU:C:2013:790, paragraphs 26 to 31).

29 That interpretation is supported by the judgment of 25 January 2018, *Schrems* (C-498/16, EU:C:2018:37, paragraph 28), in which the Court confirmed the judgment in *Vapenik* according to which it is necessary to take also into account the concept of 'consumer' in other rules of EU law. However, apart from a rather general reference to Article 169(1) TFEU, the judgment in *Schrems* contains no references to other provisions of EU law. More specifically, after referring to Article 169(1) TFEU, the Court stated that an interpretation of the concept of 'consumer' that excludes certain activities would prevent an effective defence of the rights that consumers enjoy in relation to their contractual partners and that such an interpretation would disregard the objective, set out in that article of the Treaty, of promoting their right to organise themselves in order to safeguard their interests. It may even be argued that, in spite of the reference to the judgment in *Vapenik* in the judgment in *Schrems* (paragraph 28), it was not a coordinated interpretation of the term 'consumer' but a systemic interpretation to ensure the effectiveness of EU law and of its objectives of consumer protection.

30 Judgment of 5 December 2013 (C-508/12, EU:C:2013:790).

46. Finally, in the third place, even in the context of regulations that, as stated in their recitals, explicitly seek consistency,³¹ namely Regulations Nos 864/2007 and 44/2001, the Court stated, in the judgment in *Kainz*,³² which post-dates the judgment in *Vapenik*,³³ that ‘the objective of consistency cannot, in any event, lead to the provisions of Regulation No 44/2001 being interpreted in a manner which is unconnected to the scheme and objectives pursued by that regulation.’

47. Indeed, the objectives of Directive 2008/48 and the Lugano II Convention differ considerably. Directive 2008/48 seeks to harmonise certain aspects of the rules governing consumer credit agreements, inter alia, the conditions relating to consumer/borrower information, while the Lugano II Convention seeks to lay down the rules for determining the court having jurisdiction to rule on a dispute in civil and commercial matters. As regards that convention, the provisions of Title II, Section 4 thereof were inspired by the concern to protect the consumer as the contracting party deemed to be economically weaker and less experienced in legal matters than the other party.

48. The parallel considered by the national court in the question referred, namely that the thresholds for the total amount of credit in Directive 2008/48 define the scope of Article 15 of the Lugano II Convention, would lead to a situation in which persons who have entered into a credit agreement for an amount lower than EUR 200 would not be regarded as ‘consumers’ and could not rely on that provision of the Lugano II Convention. However, it seems to me that such a situation would not be consistent with the objectives of the Lugano II Convention. It is clear that there is no significant difference, as regards the perceived weakness, between a person who has concluded a loan agreement for EUR 100 and a person who has concluded an agreement for EUR 200.

49. To sum up, it is possible to take other legal instruments of EU law as a basis for the interpretation of the provisions of the Lugano II Convention, or of the provisions of EU private international law in general. Those instruments may therefore provide guidelines for the interpretation to be given to concepts contained in those provisions.

50. However, in the context of such an interpretation based on other legal instruments of EU law, care must be taken not to draw undue conclusions. Thus, first, those legal instruments must be carefully selected on the basis of their relationship with the act interpreted and their role in the system of EU law. Second, although general lessons may be drawn from such sources of inspiration, those lessons may not, however, concern minor details by which the EU legislature determines the scope of legal instruments having a specific and limited scope. Finally, third, a consistent interpretation of the concepts in acts of EU private international law cannot lead to the provisions of those acts being interpreted in a manner that is unconnected with the scheme of the acts and the objectives they pursue.

51. Accordingly, in the light of those three considerations, the parallel envisaged by the question referred with regard to the concepts of the Lugano II Convention and of Directive 2008/48 cannot be accepted.

31 According to recital 7 of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 of the law applicable to non-contractual obligations (‘Rome II’) (OJ 2007 L 199, p. 40), the substantive scope and the provisions of that regulation should be consistent with Regulation No 44/2001 and the instruments dealing with the law applicable to contractual obligations.

32 Judgment of 16 January 2014 (C-45/13, EU:C:2014:7, paragraph 20).

33 Judgment of 5 December 2013 (C-508/12, EU:C:2013:790).

2. *The Pocar Report*

52. As several parties state in their written observations, it is apparent from paragraph 81 of the Pocar Report that the broad interpretation of the concept of ‘consumer contracts’ in the context of Article 15 of the Lugano II Convention includes all contracts governed by EU directives as consumer contracts, including contracts whereby a creditor grants or undertakes to grant to a consumer credit in the form of a deferred payment, a loan or other similar financial accommodation, in so far as they are covered by Directive 87/102/EEC,³⁴ which, it should be remembered, was repealed and replaced by Directive 2008/48.³⁵

53. However, the conclusion that the applicant in the main proceedings draws from that passage in the Pocar Report, according to which the question referred should be answered in the negative, does not seem to correspond to the intention of the author of that report.

54. Like the Commission, I consider that, in order to understand paragraph 81 of the Pocar Report, it is necessary to focus on the role of Article 15 of the Lugano II Convention in the scheme of rules of jurisdiction established by that convention.

55. Under the predecessor of the Lugano II Convention, that is, the first Lugano Convention,³⁶ the provisions of Title II, Section 4 thereof were applicable, pursuant to Article 13 of that convention, to limited categories of contracts. Article 15 of the Lugano II Convention significantly expanded the range of contracts covered by the provisions of that section.

56. Indeed, as is apparent from paragraph 81 of the Pocar Report, although point 3 of the first paragraph of Article 13 of the Lugano Convention refers to ‘any other contract for the supply of goods or a contract for the supply of services’, Article 15(1)(c) of the Lugano II Convention refers to ‘all other cases’, without limiting the subject matter of a specific contract. To illustrate the recast of the scope of the provisions of Title II, Section 4, of the Lugano Convention, the Pocar Report refers to several EU directives. However, those references cannot be understood to mean that the scope of those directives, on the one hand, and that of the Lugano Convention on the other, were coordinated down to the smallest detail. Nonetheless, those references serve as an illustration for contracts that, in view of their subject matter, are covered by the provisions of Title II, Section 4, of the Lugano II Convention.

57. Therefore, the Pocar Report does not support the conclusion that a contract that, given its objective, usually falls within the scope of Directive 2008/48 but which, because of the total amount of credit, is excluded from that scope, is not automatically covered by the provisions of Title II, Section 4, of the Lugano II Convention.

³⁴ Council Directive of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48).

³⁵ I note in that regard that the parties give different interpretations to paragraph 81 of the Pocar Report. The applicant in the main proceedings considers that Article 15 of the Lugano II Convention should be interpreted in the light of Directive 2008/48. The Swiss Government, for its part, interprets paragraph 81 of the Pocar Report as meaning that all contracts covered by Directive 2008/48 also fall within the concept of ‘consumer contracts’ covered by the Lugano II Convention. However, it cannot be concluded, conversely, that contracts are automatically excluded from the scope of the consumer protection provisions of the Lugano II Convention solely on the ground that they are not covered by the aforementioned directive or its successor instruments, that is to say, Directive 2008/48. However, the Commission rather supports the interpretation of paragraph 81 of that report presented in points 55 and 56 of this Opinion.

³⁶ Convention on jurisdiction and the enforcement of judgments in civil and commercial matters signed in Lugano on 16 September 1988 (OJ 1988 L 319, p. 9, ‘the Lugano Convention’).

3. The impact of legislative choice with regard to the transposition of Directive 2008/48 on the answer to be given to the question referred for a preliminary ruling

58. The wording of the question referred urges the Court to determine whether the reply to that question depends on whether or not the national legislature chooses to apply provisions transposing Directive 2008/48 to spheres that do not fall within the scope of that directive. That power of the Member States is expressly recognised in recital 10 of Directive 2008/48, according to which ‘a Member State could ... maintain or introduce national legislation corresponding to the provisions of this Directive or certain of its provisions on credit agreements outside the scope of this Directive, for instance on credit agreements involving amounts less than EUR 200 or more than EUR 75 000.’

59. However, in the light of the above considerations, and particularly in view of the fact that the concepts in Article 15 of the Lugano II Convention must be interpreted autonomously, the only possible conclusion is that the choice of the national legislature with regard to the scope of the provisions adopted when Directive 2008/48 was transposed is irrelevant in the context of the legal issue raised by the question referred.

60. Furthermore, as the Swiss Government points out, account should be taken of the fact that some States bound by the Lugano II Convention do not apply Directive 2008/48. Thus, irrespective of the interpretation given to the question referred, it may be that, in some circumstances, the law of the State concerned does not contain any transposition of Directive 2008/48.

61. Following the above analysis, I consider that a person who has entered into a credit agreement for private purposes does not lose his status as a consumer within the meaning of Article 15(1) of the Lugano II Convention, where the contract in question does not fall within the scope of Directive 2008/48 owing to the total amount of the credit. Moreover, in the light of the case-law of the Court, the thresholds for the total amount of credit, provided for in Article 2(2)(c) of that directive are not transposable to Article 15(1) of the Lugano II Convention.³⁷ That consideration is not called into question by the explanations given in the Pocar Report.³⁸ Finally, a court that intends to apply Article 15 of the Lugano II Convention is not bound by detailed provisions of substantive law, adopted when Directive 2008/48 was transposed. The parallel envisaged in the context of the question referred is not necessary.³⁹

VI. Conclusion

62. In the light of all the foregoing considerations, I propose that the Court should reply to the question referred for a preliminary ruling by the Cour de cassation (Court of Cassation, Luxembourg) as follows:

Article 15 of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, the conclusion of which was approved on behalf of the Community by Council Decision 2009/430/EC of 27 November 2008, is to be interpreted as meaning that a person who has entered into a credit agreement for private purposes does not lose his status as a consumer within the meaning of that article where the contract in question, because of the total amount of credit, is not covered by Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.

³⁷ See points 58 to 60 of this Opinion.

³⁸ See point 57 of this Opinion.

³⁹ See points 49 to 51 of this Opinion.