



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

2 May 2019*

(Reference for a preliminary ruling — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Lugano II Convention — Article 15 — Contract concluded by a consumer — Relationship with Directive 2008/48/EC — Consumer credit agreements — Articles 2 and 3 — Concepts of ‘consumer’ and of ‘transactions covered by the directive’ — Maximum amount of credit — Irrelevant for the purposes of Article 15 of the Lugano II Convention)

In Case C-694/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, Luxembourg), made by decision of 7 December 2017, received at the Court on 11 December 2017, in the proceedings

Pillar Securitisation Sàrl

v

Hildur Arnadottir,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, F. Biltgen, J. Malenovský, C.G. Fernlund (Rapporteur) and L.S. Rossi, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Pillar Securitisation Sàrl, by A. Moro, avocat,
- Ms Arnadottir, by M. Mailliet, avocat,
- the Luxembourg Government, by D. Holderer, acting as Agent,
- the Portuguese Government, by L. Inez Fernandes, M. Figueiredo and P. Lacerda, acting as Agents,
- the Swiss Government, by M. Schöll, acting as Agent,

* Language of the case: French.

– the European Commission, by M. Heller and M. Wilderspin, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 22 January 2019,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, 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’).
- 2 The request has been made in proceedings between Pillar Securitisation Sàrl and Ms Hildur Arnadóttir for the repayment of a loan.

Legal context

The Lugano II Convention

- 3 In Title II, under the heading ‘Jurisdiction’ and Section 4 thereof, under the heading ‘Jurisdiction over consumer contracts’, Article 15 of the Lugano II Convention states:

‘1. 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.

...

3. This section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.’

- 4 Article 16(2) of the Lugano II Convention reads as follows:

‘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.’

- 5 Article 17 of the Lugano II Convention 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.’
- 6 Recital 4 of Decision 2009/430 states:

‘In the light of the parallelism between [the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial matters (OJ 1972 L 299, p. 32), as consolidated (OJ 1998 C 27, p. 1), and the 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)] on jurisdiction and on recognition and enforcement of judgments in civil and commercial matters, the rules of the Lugano Convention should be aligned with the rules of [Council] Regulation (EC) No 44/2001 [of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1)] in order to achieve the same level of circulation of judgments between the EU Member States and the EFTA States concerned.’

Regulations No 44/2001 and (EU) No 1215/2012

- 7 The Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters was replaced by Regulation No 44/2001, then by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1), which repealed Regulation No 44/2001.

Directive 2008/48/EC

- 8 Recital 10 of 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 (OJ 2008 L 133, p. 66) states:

‘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 [EU] 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. ...’

- 9 Under the heading ‘Scope’, Article 2 of that directive 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;

...'

10 Article 3(a) of Directive 2008/48 defines the concept of 'consumer' as follows:

'... a natural person who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession'.

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

11 In March 2005, Ms Arnadottir, who is a resident of Iceland, obtained a loan of ISK 193 621 074 (Icelandic króna), the equivalent of more than EUR 1 000 000, from Kaupthing Bank Luxembourg (KBL). That loan was to be reimbursed by a single transfer by 1 March 2010 at the latest.

12 The purpose of the loan was to enable Ms Arnadottir to acquire shares in the Icelandic company Bakkavör Group hf in which she was an employee.

13 A guarantee for the repayment of the loan was given by the Bakkavör Group, repayment which, according to the referring court, would have taken place at the earliest in 2009. The guarantee was signed by two directors of that company, one of whom was Ms Arnadottir herself.

14 Subsequently, KBL was divided into two entities. One of those entities, Pillar Securitisation, claimed repayment of the loan obtained by Ms Arnadottir.

15 Since Ms Arnadottir was still in default of repayment of that loan, in 2011 Pillar Securitisation brought an action before the Luxembourg courts pursuant to a term of the loan agreement that conferred jurisdiction to those courts.

16 However, the Tribunal d'arrondissement de Luxembourg (District Court, Luxembourg, Luxembourg) held that it lacked jurisdiction to hear the case on the ground that Ms Arnadottir should be regarded as a 'consumer' within the meaning of Article 15 of the Lugano II Convention. It considered that the clause that granted jurisdiction to the Luxembourg courts should be struck out on the ground that it did not satisfy the conditions for derogation provided for by Article 17 of the Lugano II Convention.

17 On appeal, the Cour d'appel (Court of Appeal, Luxembourg) upheld the lack of jurisdiction of the Luxembourg courts to hear Pillar Securitisation's claim in a judgment of 27 April 2016.

18 Pillar Securitisation then brought an appeal on a point of law on the ground that the Cour d'appel (Court of Appeal) had disregarded Article 15 of the Lugano II Convention. In particular, it submits, first, that the Cour d'appel (Court of Appeal) erred in finding that Ms Arnadottir had acted for non-commercial purposes. Second, it claimed that that court had misinterpreted Article 15 of the Lugano II Convention in finding that a loan for more than EUR 1 000 000, such as that at issue in the main proceedings, could have been taken out by a 'consumer' within the meaning of Article 15.

19 Pillar Securitisation submits that, in order to determine whether a loan agreement is a contract concluded by a consumer within the meaning of Article 15 of the Lugano II Convention, it must be determined whether that agreement is a 'consumer credit agreement' within the meaning of Directive 2008/48. It claims that this is apparent from Professor Fausto Pocar's Explanatory Report on the convention (OJ 2009 C 319, p. 1). Thus, that directive applies only to credit agreements involving a total amount of credit of more than EUR 200 and less than EUR 75 000, unless the national law transposing that directive provides for a higher ceiling. Given that Luxembourg law does not provide for such a higher ceiling, the loan agreement in the main proceedings does not fall within the scope of the directive and, accordingly, Article 15 of the Lugano II Convention does not apply.

- 20 The Cour de cassation (Court of Cassation, Luxembourg) considers that the outcome to the dispute lies in determining how the concept of ‘consumer’ must be interpreted within the meaning of Article 15 of the Lugano II Convention and of Article 3 of Directive 2008/48. It asks, more particularly, whether the definition of the scope of the consumer credit directive is relevant to the definition of a ‘consumer’ within the meaning of Article 15 of the Lugano II Convention.
- 21 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and to refer the following question to the Court of Justice 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 [being outside his trade or profession]?’

Consideration of the question referred

- 22 By its question, the referring court asks, in essence, whether Article 15 of the Lugano II Convention must be interpreted as meaning that, for the purposes of ascertaining whether a credit agreement is a credit agreement concluded by a ‘consumer’ within the meaning of Article 15, it must be determined whether the agreement falls within the scope of Directive 2008/48 in the sense that the total cost of credit in question does not exceed the ceiling set out in Article 2(2)(c) of that directive and whether it is relevant, in that regard, that the national law transposing that directive does not provide for a higher ceiling.
- 23 If a credit agreement, such as that at issue in the main proceedings, is a contract concluded by a ‘consumer’ within the meaning of Article 15 of the Lugano II Convention, it follows, under Article 16 of the Lugano II Convention, that the courts of the State bound by that convention in which that consumer is domiciled, in the present case the Icelandic courts, have jurisdiction. By contrast, if the contract at issue is not a consumer contract covered by Article 15 of that convention, the courts elected in the clause conferring jurisdiction stipulated in that contract, in the present case the Luxembourg courts, have jurisdiction.
- 24 It should be noted, as a preliminary matter, that Pillar Securitisation claims that Ms Arnadottir acted for professional purposes and is not covered by the definition of a ‘consumer’. However, the referring court has not referred any question to the Court on the purpose of the credit agreement concluded by a person such as Ms Arnadottir. On the contrary, as is clear from the wording of the question that it did refer, the referring court asks its question to the Court on the assumption that the contract at issue was concluded for a purpose that can be regarded as being outside Ms Arnadottir’s profession. In addition, in any event, the order for reference does not contain sufficient information in order for the Court to be capable, where relevant, of providing useful indications in that regard.
- 25 Accordingly, it is not necessary, in the present case, to assess the purpose of a credit agreement concluded by a person such as Ms Arnadottir.
- 26 By contrast, it must be examined whether the fact that a credit agreement exceeds the ceiling of EUR 75 000 set out in Article 2(2)(c) of Directive 2008/48 where national law does not provide for a ceiling higher than that amount precludes the application of Article 15 of the Lugano II Convention.

- 27 As regards the interpretation of the Lugano II Convention, it must, first of all, be noted that that convention is drafted in terms almost identical to the corresponding articles in Regulations Nos 44/2001 and 1215/2012 and a converging interpretation of those provisions that are equivalent must be ensured (see, to that effect, judgment of 20 December 2017, *Schlömp*, C-467/16, EU:C:2017:993, paragraphs 46 and 47).
- 28 Article 15 of the Lugano II Convention concerns contracts concluded by a person, the consumer, for a purpose that can be regarded as being outside that person's trade or profession. Those contracts are specified in Article 15(1)(a) to (c). As the Court has held, as regards the equivalent provision in Regulation No 44/2001 as reproduced in Regulation No 1215/2012, apart from certain transport contracts excluded from the scope of the rules on jurisdiction with regard to consumers by Article 15(3) of that convention, Article 15(1)(c) thereof covers all contracts, whatever their purpose, if they have been concluded by a consumer with a professional and fall within the latter's commercial or professional activities (see, to that effect, judgment of 14 May 2009, *Ilsinger*, C-180/06, EU:C:2009:303, paragraph 50).
- 29 As far as concerns Directive 2008/48, Article 3 thereof defines the 'consumer' as a natural person who, in transactions covered by that directive, is acting for purposes that are outside his trade, business or profession.
- 30 The relevant transactions, whilst not defined, are referred to in Article 2 of Directive 2008/48 under the heading 'Scope', Article 2(1) of which provides that that directive is to apply to credit agreements, but, under Article 2(2)(c) of that directive is not to extend to those agreements involving a total amount of credit less than EUR 200 or more than EUR 75 000.
- 31 Next, as the Advocate General also stated, in essence, in point 31 of his Opinion, it is clear from Article 15 of the Lugano II Convention and from Article 3 of Directive 2008/48 that the concept of a 'consumer' is defined in broadly identical terms in both instruments, namely as referring to a person who has concluded a contract or acted for purposes 'outside his trade, business or profession'.
- 32 However, the transactions referred to in Directive 2008/48 concern credit agreements concluded by a consumer, but only those the total amount of credit of which is neither below the threshold of EUR 200 nor above the ceiling of EUR 75 000 whereas, as regards consumer contracts covered by the Lugano II Convention, no provision is made for such a threshold and ceiling.
- 33 It must therefore be determined whether the consumer credit agreements that fall within the scope of Article 15 of the Lugano II Convention are limited to those agreements falling within the scope of Directive 2008/48 and therefore do not cover agreements involving a total amount of credit less than EUR 200 or more than EUR 75 000.
- 34 In that regard, the Court has previously held that, in order to ensure compliance with the objectives pursued by the EU legislature in the sphere 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 (judgments of 5 December 2013, *Vapenik*, C-508/12, EU:C:2013:790, paragraph 25, and of 25 January 2018, *Schrems*, C-498/16, EU:C:2018:37, paragraph 28).
- 35 However, that need to ensure consistency between different instruments of EU law cannot, in any event, lead to the provisions of a regulation on jurisdiction being interpreted in a manner that is unconnected to the scheme and objectives pursued by that regulation (see, to that effect, judgment of 16 January 2014, *Kainz*, C-45/13, EU:C:2014:7, paragraph 20).
- 36 Account must therefore be taken, lastly, of the purposes of the instruments in question, in the present case those of the Lugano II Convention and those of Directive 2008/48, in determining whether the consumer credit agreements falling within the scope of Article 15 of the Lugano II Convention

include only those agreements falling within the scope of Directive 2008/48 and do therefore not include contracts such as the contract at issue in the main proceedings that involves a total amount of credit above the ceiling of EUR 75 000.

- 37 In that regard, the fact remains that the Lugano II Convention and Directive 2008/48 pursue different aims.
- 38 As regards the objective of Directive 2008/48, as is clear from recitals 7 and 9 thereof, it consists in providing, as regards consumer credit, full and mandatory harmonisation in a number of key areas, which is regarded as necessary in order to ensure that all consumers in the European Union enjoy a high and equivalent level of protection of their interests and to facilitate the emergence of a well-functioning internal market in consumer credit (judgment of 27 March 2014, *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraph 42).
- 39 The Court has indeed held that that objective seeks to ensure the effective protection of consumers against the irresponsible granting of credit agreements that are beyond their financial capacities and that may bankrupt them (judgment of 27 March 2014, *LCL Le Crédit Lyonnais*, C-565/12, EU:C:2014:190, paragraph 43).
- 40 To that effect, Directive 2008/48 aims to harmonise certain aspects of the substantive law on consumer credit agreements, inter alia, information duties for the benefit of a consumer who is also a borrower. It thus imposes, inter alia, pre-contractual information duties on the lender.
- 41 In pursuing the twofold objective of that directive aiming both to protect consumers and to facilitate the emergence of a well-functioning internal market in consumer credit, the EU legislature identified those consumer credit agreements subject to harmonisation by that directive by limiting consumer credit agreements to those for which the total amount of credit is neither below the threshold of EUR 200 nor above the ceiling of EUR 75 000.
- 42 As to the purpose of the Lugano II Convention, that convention does not seek to harmonise the substantive law on consumer contracts, but to provide, as Regulation No 44/2001, then Regulation No 1215/2012, rules that determine which court has jurisdiction to hear a case in civil and commercial matters, in particular, in respect of a contract between a trader or professional and a person acting outside his trade or profession, in order to protect the latter in such a case. In pursuing that objective, the convention does not provide for a scope limited to any particular amounts and covers all types of contracts except for those stipulated in Article 15(3) thereof.
- 43 Having regard to the distinct purposes of Directive 2008/48 and of the Lugano II Convention, the fact that a credit agreement, such as that at issue in the main proceedings, does not fall within the scope of Directive 2008/48 on the ground that the total amount of credit is above the ceiling of EUR 75 000 set out in Article 2(2)(c) of that directive has no bearing on determining the scope of Article 15 of the Lugano II Convention.
- 44 Furthermore, as the Advocate General also stated in point 48 of his Opinion, if the thresholds relating to the total amount of credit of Directive 2008/48 were to limit the scope of Article 15 of the Lugano II Convention, this would lead to a situation in which persons who had concluded a credit agreement the amount of which was less than EUR 200 could not rely on the protection laid down in Article 15. Such a situation would not be consistent with the objectives of the Lugano II Convention, since there is no substantive difference regarding the presumed weakness of a person who has concluded a credit agreement for EUR 100 and another who has concluded such an agreement for EUR 200.
- 45 Similarly, as regards the maximum ceiling of EUR 75 000, a consumer who has concluded a credit agreement for more than that ceiling is not any less deserving of the protection set out in Article 15 of the Lugano II Convention.

- 46 It follows that the fact that the ceiling provided by national law does not exceed that set out in Directive 2008/48 is also irrelevant in determining whether a credit agreement falls within the scope of Article 15 of the Lugano II Convention.
- 47 It is in the light of those considerations that Professor Pocar's Explanatory Report, referred to in paragraph 19 above, which Pillar Securitisation has cited, must be read. In paragraph 81, that report states that Article 15 of the Lugano II Convention considerably widens the range of consumer contracts, compared with the previous provisions that it replaced. The report adds that the broad concept of consumer contracts extends the scope of the protection offered and encompasses all the contracts regulated as consumer contracts by EU directives, including consumer credit agreements in so far as such agreements are regulated by Directive 2008/48. In that context, the reference to that directive must be read as an example and cannot be read as implying that, as regards credit agreements concluded by a consumer, only those covered by Directive 2008/48 that do not exceed the maximum provided in that directive, fall within the scope of Article 15 of the Lugano II Convention.
- 48 The answer to the question referred is therefore that Article 15 of the Lugano II Convention must be interpreted as meaning that, for the purposes of ascertaining whether a credit agreement is a credit agreement concluded by a 'consumer' within the meaning of Article 15, it must not be determined whether the agreement falls within the scope of Directive 2008/48 in the sense that the total cost of credit in question does not exceed the ceiling set out in Article 2(2)(c) of that directive, and that it is irrelevant, in that regard, that the national law transposing that directive does not provide for a higher ceiling.

Costs

- 49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Third Chamber) hereby rules:

Article 15 of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, which was approved on behalf of the Community by Council Decision 2009/430/EC of 27 November 2008, must be interpreted as meaning that, for the purposes of ascertaining whether a credit agreement is a credit agreement concluded by a 'consumer' within the meaning of Article 15, it must not be determined whether the agreement falls within the scope of 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, in the sense that the total cost of credit in question does not exceed the ceiling set out in Article 2(2)(c) of that directive, and that it is irrelevant, in that regard, that the national law transposing that directive does not provide for a higher ceiling.

[Signatures]