

Judgment of the Court (First Chamber) of 3 October 2019 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Verein für Konsumenteninformation v TVP Treuhand- und Verwaltungsgesellschaft für Publikumsfonds mbH & Co KG

(Case C-272/18) ⁽¹⁾

(Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in civil matters — Law applicable to contractual obligations — Exclusion of company law from the scope of the Rome Convention and of Regulation (EC) No 593/2008 (Rome I) — Trust agreement concluded between a professional and a consumer for the management of shares in a limited partnership)

(2019/C 413/14)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Verein für Konsumenteninformation

Defendant: TVP Treuhand- und Verwaltungsgesellschaft für Publikumsfonds mbH & Co KG

Operative part of the judgment

1. Article 1(2)(e) of the Convention on the law applicable to contractual relations, opened for signature in Rome on 19 June 1980, and Article 1(2)(f) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) must be interpreted as not excluding from the scope of that convention or of that regulation contractual obligations, such as those at issue in the main proceedings, which are based on a trust agreement for the purposes of administering shares in a limited partnership.
2. Article 5(4)(b) of the Convention on the law applicable to contractual relations and Article 6(4)(a) of Regulation No 593/2008 must be interpreted as meaning that a trust agreement pursuant to which the services owed to a consumer must be provided in the country of the consumer's habitual residence at a distance, from another country, do not fall within the scope of the exclusion in those provisions.
3. Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a term in a trust agreement concluded between a professional and a consumer for the management of shares in a limited partnership, such as those at issue in the main proceedings, which has not been individually negotiated and according to which the applicable law is the law of the Member State of the partnership's seat, is unfair, within the meaning of that provision, where it leads the consumer into error by giving him the impression that only the law of that Member State applies to the contract, without informing him that under Article 5(2) of the Convention on the law applicable to contractual relations and Article 6(2) of Regulation No 593/2008 he also enjoys the protection of the mandatory provisions of the national law that would be applicable in the absence of that term.

⁽¹⁾ OJ C 221, 25.6.2018.
