



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

2 April 2020*

(Reference for a preliminary ruling — Freedom of establishment — Freedom to provide services — Markets in financial instruments — Directive 2004/39/EC — Meanings of ‘retail client’ and ‘consumer’ — Conditions for relying on the status of consumer — Determining jurisdiction to hear the request)

In Case C-500/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Specializat Cluj (Specialist Court, Cluj, Romania), made by decision of 2 May 2018, received at the Court on 30 July 2018, in the proceedings

AU

v

Reliantco Investments LTD,

Reliantco Investments LTD Limassol Sucursala București,

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, S. Rodin (Rapporteur), D. Šváby, K. Jürimäe and N. Piçarra, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having considered the observations submitted on behalf of:

- AU, by V. Berea and A.I. Rusan, avocats,
- Reliantco Investments LTD and Reliantco Investments LTD Limassol Sucursala București, by C. Stoica, L. Radu and D. Aragea, avocats,
- the Romanian Government, initially by C.-R. Canțăr, E. Gane, A. Wellman and O.-C. Ichim, and subsequently by the latter three, acting as Agents,
- the Czech Government, by M. Smolek and J. Vlácil, acting as Agents,

* Language of the case: Romanian.

- the Portuguese Government, by L. Inez Fernandes, P. Lacerda, P. Barros da Costa and L. Medeiros, acting as Agents,
- the European Commission, by T. Scharf, N. Ruiz García, L. Nicolae and M. Heller, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1), and Article 7(2) and Article 17(1)(c) of 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).
- 2 The request has been made in proceedings between AU, on the one hand, and Reliantco Investments LTD and Reliantco Investments LTD Limassol Sucursala București, on the other, concerning limit orders speculating on a fall in the price of petrol, placed by AU on an online platform owned by the defendants in the main proceedings, following which AU lost a certain sum of money.

Legal context

EU law

Directive 93/13/EEC

- 3 Article 2 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) provides:

‘For the purposes of this directive:

...

- (b) “consumer” means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession;
 - (c) “seller or supplier” means any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned.’
- 4 Article 3(1) of that directive provides:

‘A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the consumer.’

Directive 2004/39

5 Recital 31 of Directive 2004/39 states:

‘One of the objectives of this Directive is to protect investors. Measures to protect investors should be adapted to the particularities of each category of investors (retail, professional and counterparties).’

6 Article 4(1) of that directive provides the following:

‘For the purposes of this directive:

...

(10) “client” means any natural or legal person to whom an investment firm provides investment or ancillary services;

(11) “Professional client” means a client meeting the criteria laid down in Annex II;

(12) “Retail client” means a client who is not a professional client;

...

(17) “Financial instruments” means those instruments specified in Section C of Annex I;

...’

7 Under Article 19 of Directive 2004/39:

‘...

2. All information, including marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.

3. Appropriate information shall be provided in a comprehensible form to clients or potential clients about:

- the investment firm and its services,
- financial instruments and proposed investment strategies; this should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies,
- execution venues, and
- costs and associated charges

so that they are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. This information may be provided in a standardised format.

...

5. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 4, ask the client or potential client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the investment firm to assess whether the investment service or product envisaged is appropriate for the client.

In case the investment firm considers, on the basis of the information received under the previous subparagraph, that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. This warning may be provided in a standardised format.

In cases where the client or potential client elects not to provide the information referred to under the first subparagraph, or where he provides insufficient information regarding his knowledge and experience, the investment firm shall warn the client or potential client that such a decision will not allow the firm to determine whether the service or product envisaged is appropriate for him. This warning may be provided in a standardised format.

...'

- 8 Section C, point 9, of Annex I to that directive refers to 'Financial contracts for differences'.
- 9 Annex II of that directive states that a 'professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs.' In particular, according to that Annex, 'entities which are required to be authorised or regulated to operate in the financial markets' are considered to be professional clients.

Regulation (EC) No 864/2007

- 10 Article 2(1) of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 40) provides:

'For the purposes of this Regulation, damage shall cover any consequence arising out of tort/delict, unjust enrichment, *negotiorum gestio* or *culpa in contrahendo*.'

- 11 Article 12(1) of that regulation provides the following:

'The law applicable to a non-contractual obligation arising out of dealings prior to the conclusion of a contract, regardless of whether the contract was actually concluded or not, shall be the law that applies to the contract or that would have been applicable to it had it been entered into.'

Regulation No 1215/2012

- 12 Recital 18 of Regulation No 1215/2012 states:

'In relation to insurance, consumer contracts and employment, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for.'

- 13 Article 7 of that regulation provides:

'A person domiciled in a Member State may be sued in another Member State:

- (1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

...

- (2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

...'

- 14 Article 17(1) of Regulation No 1215/2012, which appears in Chapter II, Section 4, of that regulation, is worded as follows:

'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 Article 6 and point 5 of Article 7, if:

...

- (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.'

- 15 Article 18(1) of Regulation No 1215/2012 provides:

'A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled.'

- 16 Under Article 19 of that regulation:

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

- (1) which is entered into after the dispute has arisen;
- (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 Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.'

- 17 Article 25 of that Regulation provides:

'1. If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:

- (a) in writing or evidenced in writing;
- (b) in a form which accords with practices which the parties have established between themselves, or

- (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

...

4. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 15, 19 or 23, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 24.

...'

Romanian law

18 Article 1254 of the codul civil (Civil Code) provides:

'1. A contract which is rendered null and void or which is cancelled is deemed never to have been concluded.

2. The cancellation of the contract shall, in accordance with the conditions laid down by law, result in the annulment of successive acts concluded on the basis of that contract.

3. Where the contract is cancelled, each party shall reimburse the other in kind or equivalent for services received, in accordance with the provisions of Articles 1639 to 1647, even if those services were rendered successively or were continuous.'

19 Article 1269 of the Civil Code states:

'1. If, after the interpretation rules have been applied, the contract remains unclear, it shall be interpreted in favour of the party making the commitment.

2. Clauses of pre-formulated standard contracts shall be interpreted against the party who proposed them.'

20 Article 2(1) of the Legea nr. 193/2000 privind clauzele abuzive din contractele încheiate între profesioniști și consumatori (Law No 193/2000 on unfair terms in contracts concluded between traders and consumers), transposing Directive 93/13 into Romanian law, provides:

'A "consumer" means any natural person or group of natural persons forming an association who, on the basis of a contract falling within the scope of the present law, acts for purposes which are outside their commercial, industrial or manufacturing, trade or professional activities.'

21 Article 4(2) and (3) of the that law provides:

'2. A contract term shall be regarded as not having been directly negotiated with the consumer if it has been drafted without the consumer having had the opportunity to influence the nature of that term, as in the case of pre-formulated standard contracts or general terms and conditions of sale used by commercial operators on the market for the goods or service concerned.

3. The fact that certain aspects of the contractual terms, or one of the terms, have been negotiated directly with the consumer shall not exclude the application of Law No 193/2000 to the rest of the contract if an overall assessment indicates that the contract is nevertheless one which was pre-formulated unilaterally by the trader. Where a trader asserts that a standard term has been negotiated directly with the consumer, the trader shall bear the burden of proof in that regard.’

- 22 Article 4(1) of Legea nr. 297/2004 privind piața de capital (Law No 297/2004 on capital markets) is worded as follows:

‘Financial investment services are provided through natural persons acting as agents for those services. Those persons exercise their activity exclusively on behalf of the broker which employs them and they may not provide financial investment services on their own behalf.’

- 23 Article 4(1) of Ordonanța Guvernului nr. 85/2004 privind protecția consumatorilor la încheierea și executarea contractelor la distanță privind servicii financiare (Government Order No 85/2004 on the protection of consumers when concluding and performing distance contracts relating to financial services) provides:

‘Before the conclusion of a distance contract or at the time the offer is made, the supplier shall provide the consumer, in good time, with correct and complete information on the following matters pertaining to its identification concerning at least:

...

- (c) the name of the broker, the capacity in which the broker acts in relation to the consumer, the registered address or, as appropriate, the home address and contact details of the broker, the telephone/fax number, email address, commercial register in which the broker is registered and the broker’s unique registration number, when the consumer has dealings with a broker;

...’

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

- 24 On 15 November 2016, AU opened a trading account on the online platform UFX, owned by Reliantco Investments, with a view to trading in financial instruments such as financial contracts for differences (‘CFDs’).
- 25 When he created his account on the online UFX platform, AU used a domain name of a trading company and had exchanges with Reliantco Investments as director of development for that company.
- 26 On 11 January 2017, AU concluded a contract with Relianco Investments, relating to the profits emanating from the trade in financial instruments, indicating that he had read, understood and accepted the terms and conditions of the offer. Under that contract, any dispute arising out of the contract as concluded or in connection with it must be brought before the Cypriot courts, and that contract and all the trade relations between the parties are governed by Cypriot law.
- 27 On 13 January 2017, AU placed a number of limit orders on the online UFX platform by which he speculated on a fall in the price of petrol and claimed that, following those transactions, he had lost the entire sum being held in the frozen trading account, that is, 1 919 720 US dollars (USD) (around EUR 1 804 345).

- 28 On 26 April 2017, AU brought an action before the referring court against the defendants in the main proceedings. He claims that he was a victim of a manipulation which resulted in the loss of the sum mentioned in the preceding paragraph and, in those circumstances, he is seeking an order that the defendants be held liable in tort for non-compliance with the provisions relating to consumer protection. Furthermore, in that action, he sought the annulment, first, of certain contractual clauses which he claimed were unfair and, second, of certain orders which he placed on the UFX platform, in addition to an order that the parties be restored to their original situation.
- 29 AU submits that, under Article 17(1)(c) of Regulation No 1215/2012, read in conjunction with Articles 18 and 19 of that regulation, the Romanian courts have jurisdiction to hear that action, given that he is a consumer who is resident in Romania.
- 30 The defendants in the main proceedings raise the plea that the Romanian courts lack general jurisdiction to hear the present case. They argue that, in accordance with Article 25(1) of Regulation No 1215/2012 and the clause conferring jurisdiction referred to in paragraph 26 above, AU's action comes under the jurisdiction of the Cypriot courts. They submit that the Eparhiako Dikastirio Lemesou (Regional Court, Limassol, Cyprus), where AU brought an action for an interim order to seize goods located in Cyprus and belonging to the defendants, declared that it had jurisdiction to hear that application.
- 31 In addition, they argue that the action brought by AU is based on *culpa in contrahendo*, which is a non-contractual obligation coming under Regulation No 864/2007.
- 32 The defendants in the main proceedings also take issue with AU's classification as a consumer, arguing that he is a natural person operating for profit, given that he undertook specific actions of a business or profession, and made, during the performance of the contract at issue, a profit of USD 644 413.53 (around EUR 605 680) from 197 transactions carried out between November 2016 and 13 January 2017, only six of which are contested.
- 33 The referring court, in the context of assessing its jurisdiction to rule on the substance of the dispute, states that AU based his action on civil liability in tort, that is to say non-contractual liability, to which, in principle, Regulation No 864/2007 applies, whilst relying on his status as a consumer, so that legal jurisdiction may then be determined on the basis of the provisions of Article 17(1)(c) of Regulation No 1215/2012.
- 34 However, it expresses doubts as to AU's argument in reply to the contentions of the defendants in the main proceedings that the notion of 'retail client' in Article 4(1) point 12 of Directive 2004/39 and that of 'consumer' within the meaning of Article 2(b) of Directive 93/13 overlap. In that court's opinion, it follows from the interpretation of those provisions that if a 'consumer' may only be a natural person who is not acting in the course of his or her business, a 'retail client' may be both a natural person and a legal person or an entity other than those referred to in Annex II to Directive 2004/39.
- 35 The national court also refers to the judgment of 3 July 1997, *Benincasa* (C-269/95, EU:C:1997:337), in which the Court held that only contracts concluded outside and independently of any trade or professional activity or purpose, solely for the purpose of satisfying an individual's own needs in terms of private consumption, are covered by the special rules to protect the consumer. Such protection is, however, unwarranted in the case of contracts for the purpose of a trade or professional activity.
- 36 In addition, it states that Chapter II, Section 4, of Regulation No 1215/2012, governing jurisdiction over consumer contracts, applies as a general rule to actions brought by a consumer on the basis of a contract, whereas the action brought by AU is based solely on civil liability in tort which precludes the existence of a contractual relationship.

- 37 In those circumstances, the Tribunalul Specializat Cluj (Specialist Court, Cluj, Romania) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) When interpreting the concept of “retail client” in Article 4(1) point 12 of Directive 2004/39, can or must the national court use the same interpretive criteria as those which define the concept of “consumer” within the meaning of Article 2(b) of Directive 93/13?
 - (2) If the answer to the first question is in the negative, under what conditions may a “retail client” within the meaning of Directive 2004/39 claim consumer status in a dispute such as that in the main proceedings?
 - (3) In particular, do the facts that a “retail client”, within the meaning of Directive 2004/39, carries out a high volume of transactions within a relatively short period of time and that he invests very large sums of money in financial instruments such as those defined in Article 4(1) point 17 of Directive 2004/39, constitute relevant criteria for the purpose of assessing whether a “retail client” has consumer status under that directive?
 - (4) When attempting to establish its own jurisdiction, since it has the obligation to determine the impact of Article 17(1)(c) or Article 7(2) of Regulation No 1215/2012, whichever is applicable, can and/or must the national court take into consideration the legal basis relied on by the applicant (namely non-contractual liability alone) as a remedy for the conclusion of terms alleged to be unfair within the meaning of Directive 93/13, for which the substantive law applicable has been established pursuant to Regulation No 864/2007, or does the possible consumer status of the applicant make the substantive legal basis of his request irrelevant?’

Consideration of the questions referred

Admissibility

- 38 The Romanian Government has doubts whether the reference for a preliminary ruling is admissible. It states that the referring court should have provided more details on AU’s action and set out the legal arguments on which it is based. In addition, it states that the questions referred do not take into consideration the jurisdiction clause in the contract concluded between AU and Reliantco Investments. As a result of those deficiencies, the request for a preliminary ruling does not contain all the information necessary to provide relevant replies to the questions referred.
- 39 In that regard, it must be borne in mind that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 26).
- 40 In addition, the questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance (judgment of 24 October 2019, *État belge*, C-35/19, EU:C:2019:894, paragraph 29).

- 41 However, 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, 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, it may reject the request for a preliminary ruling as inadmissible (judgment of 17 October 2019, *Comida paralela 12*, C-579/18, EU:C:2019:875, paragraph 20).
- 42 Furthermore, in view of the spirit of judicial cooperation which governs relations between national courts and the Court of Justice in the context of preliminary-ruling proceedings, the fact that the referring court did not make certain initial findings does not necessarily mean that the request for a preliminary ruling is inadmissible if, in spite of those deficiencies, the Court, in the light of the information contained in the case file, considers that it is in a position to provide a useful answer to the referring court (judgment of 17 October 2019, *Comida paralela 12*, C-579/18, EU:C:2019:875, paragraph 21).
- 43 In the present case, since the referring court defined, in accordance with the case-law cited in paragraphs 41 and 42 above, the legislative and factual context making it possible for the Court to reply to the questions referred to it, and since it is not for the Court to determine the accuracy of that context, it must be held that the present request for a preliminary ruling is admissible.

Questions 1 to 3

- 44 By its first to third questions, which should be examined together, the referring court asks in essence whether Article 17(1) of Regulation No 1215/2012 must be interpreted as meaning that a natural person who, under a contract such as a CFD concluded with a financial company, carries out financial transactions through that company may be classified as a ‘consumer’ for the purposes of that provision and whether it is appropriate, for the purposes of that classification, to take into consideration factors such as the fact that that person carried out a high volume of transactions within a relatively short period or that he or she invested significant sums in those transactions, or that that person is a ‘retail client’ within the meaning of Article 4(1) point 12 of Directive 2004/39.
- 45 In accordance with the case-law of the Court, Article 17(1) of Regulation No 1215/2012 applies if three conditions are met: first, a party to a contract is a consumer who is acting in a context which can be regarded as being outside his or her trade or profession; second, the contract between such a consumer and a professional has actually been concluded; and, third, such a contract falls within one of the categories referred to in Article 17(1)(a) to (c). All of those conditions must be fulfilled, with the result that, if one of those three conditions is not met, jurisdiction cannot be determined under the rules relating to consumer contracts (judgment of 3 October 2019, *Petruchová*, C-208/18, EU:C:2019:825, paragraph 39 and the case-law cited).
- 46 As is apparent from the order for reference, the first to third questions referred to the Court in this case concern the first of those three conditions, namely the status of a party to a contract as a ‘consumer’.
- 47 In that regard, it should be noted that the concept of ‘consumer’, within the meaning of Articles 17 and 18 of Regulation No 1215/2012, must be interpreted restrictively, by referring to the position of that person in a given contract, in relation to the nature and purpose of the contract, and not to the subjective situation of that person, a single person who can be regarded as a consumer in the context of some transactions and as an economic operator in the context of other transactions (judgment of 3 October 2019, *Petruchová*, C-208/18, EU:C:2019:825, paragraph 41 and the case-law cited).

- 48 The Court deduced from that that only contracts concluded outside and independently of any trade or professional activity or purpose, solely for the purpose of satisfying an individual's own needs in terms of private consumption, are covered by the special rules laid down by the regulation to protect the consumer as the party deemed to be the weaker party (judgment of 3 October 2019, *Petruchová*, C-208/18, EU:C:2019:825, paragraph 42 and the case-law cited).
- 49 That specific protection is unwarranted in the case of contracts for the purpose of a trade or professional activity, even if that activity is planned only for the future, since the fact that an activity is in the nature of a future activity does not divest it in any way of its trade or professional character (judgment of 3 October 2019, *Petruchová*, C-208/18, EU:C:2019:825, paragraph 43 and the case-law cited).
- 50 It follows that the special rules of jurisdiction in Articles 17 to 19 of Regulation No 1215/2012 apply, in principle, only where the contract is concluded between the parties for the purpose of a use other than a trade or professional use of the relevant goods or services (judgment of 3 October 2019, *Petruchová*, C-208/18, EU:C:2019:825, paragraph 44 and the case-law cited).
- 51 With regard to contracts such as CFDs concluded between a natural person and a financial company, the Court has held that such financial instruments fall within the scope of Articles 17 to 19 of Regulation No 1215/2012.(judgment of 3 October 2019, *Petruchová*, C-208/18, EU:C:2019:825, paragraph 49).
- 52 Moreover, it should be observed that Article 17(1) of that regulation does not require the consumer to behave in a particular way in the context of a contract concluded for use outside his or her professional activity (see, to that effect, judgment of 3 October 2019, *Petruchová*, C-208/18, EU:C:2019:825, paragraph 58).
- 53 The Court concluded from that that factors such as the value of transactions carried out under contracts such as CFDs, the extent of the risks of financial loss associated with the conclusion of such contracts, any knowledge or expertise that person has in the field of financial instruments or his or her active conduct in the context of such transactions are, as such, in principle irrelevant (see, to that effect, judgment of 3 October 2019, *Petruchová*, C-208/18, EU:C:2019:825, paragraph 59).
- 54 The same is true of a situation in which the consumer carried out a high volume of transactions within a relatively short period or invested significant sums in those transactions.
- 55 As regards the relevance, for the purposes of classifying a person as a 'consumer' under Article 17(1) of Regulation No 1215/2012, of the fact that that person is a 'retail client', within the meaning of Article 4(1) point 12 of Directive 2004/39, it should be recalled that the fact that a person is classified as a 'retail client', within the meaning of the latter provision, is, as such, in principle irrelevant for the purposes of classifying him or her as a 'consumer' within the meaning of the former provision (see, to that effect, judgment of 3 October 2019, *Petruchová*, C-208/18, EU:C:2019:825, paragraph 77).
- 56 In those circumstances, the issue whether the notion of 'retail client', within the meaning of Article 4(1) point 12 of Directive 2004/39, must be interpreted in the light of the same criteria as those which are relevant for the interpretation of the notion of 'consumer', referred to in Article 2(b) of Directive 93/13, is also irrelevant.
- 57 In view of the above considerations, the answer to the first to third questions is that Article 17(1) of Regulation No 1215/2012 must be interpreted as meaning that a natural person who, under a contract such as a CFD concluded with a financial company, carries out financial transactions through that company may be classified as a 'consumer' for the purposes of that provision, if the conclusion of that contract does not fall within the scope of that person's professional activity, which it is for the national court to verify. For the purposes of that classification, first, factors such as the fact that that person

carried out a high volume of transactions within a relatively short period or that he or she invested significant sums in those transactions are, as such, in principle irrelevant, and secondly, the fact that that same person is a ‘retail client’ within the meaning of Article 4(1) point 12 of Directive 2004/39 is, as such, in principle irrelevant.

The fourth question

- 58 By its fourth question, the referring court asks in essence whether Regulation No 1215/2012 must be interpreted as meaning that, for the purposes of determining the courts having jurisdiction, an action in tort brought by a consumer against the other contracting party comes under Chapter II, Section 4, of that regulation.
- 59 As a preliminary point, it should be recalled that it is settled case-law that, since Regulation No 1215/2012 repeals and replaces 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), which itself replaced 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 amended by successive conventions on the accession of new Member States to that convention, the Court’s interpretation of the provisions of the latter legal instruments also applies to Regulation No 1215/2012 whenever those provisions may be regarded as ‘equivalent’ (judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 23).
- 60 Thus, it should be pointed out that Article 15 of Regulation No 44/2001, which corresponds to Article 17 of Regulation No 1215/2012, applies only in so far as the action at issue concerns a contract concluded between a consumer and a seller or supplier. By virtue of the actual wording of both the introductory paragraph of Article 15(1) of Regulation No 44/2001 and Article 15(1)(c), that article requires a ‘contract’ to have been ‘concluded’ by a consumer with a person who pursues commercial or professional activities. That finding is also supported by the heading of Section 4 of Chapter II of that regulation, in which Article 15 appears, which refers to ‘jurisdiction over consumer contracts’ (judgment of 14 May 2009, *Ilsinger*, C-180/06, EU:C:2009:303, paragraphs 52 and 53).
- 61 In addition, in the analysis of the first paragraph of Article 13 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters which also corresponds to Article 17 of Regulation No 1215/2012, the Court held that it is not possible to accept an interpretation of that convention which would have the result that certain claims under a contract concluded by a consumer fall within the jurisdiction rules of Articles 13 to 15 of that Convention, whereas other actions that are linked so closely to that contract as to be indissociable are subject to other rules (judgment of 11 July 2002, *Gabriel*, C-96/00, EU:C:2002:436, paragraph 56).
- 62 The need to avoid, as far as possible, creating a situation in which a number of courts have jurisdiction in respect of one and the same contract applies a fortiori in the case of a contract between a consumer and a seller or supplier (see, to that effect, judgment of 11 July 2002, *Gabriel*, C-96/00, EU:C:2002:436, paragraph 57).
- 63 In view of the fact that a multiplicity of courts having jurisdiction risks placing at a particular disadvantage a party deemed to be weak, such as a consumer, it is in the interest of the proper administration of justice that the latter should be able to bring before one and the same court all of the difficulties that are likely to arise from a contract which the consumer has allegedly been induced to conclude by reason of the professional’s use of forms of wording liable to mislead the other contracting party (see, to that effect, judgment of 11 July 2002, *Gabriel*, C-96/00, EU:C:2002:436, paragraph 58).

- 64 It follows that, in order to apply Chapter II, Section 4, of Regulation No 1215/2012 to a consumer's action against a seller or supplier, even though the other conditions laid down in Article 17(1) of that regulation are satisfied, a contract must actually be concluded between the two parties and that action must be indissociably linked to that contract.
- 65 In the present case, as regards, in the first place, the relationship between AU and Reliantco Investments Limassol Sucursala București, the subsidiary of Reliantco Investments, it must be observed that it does not appear from the file before the Court that those two parties concluded a contract.
- 66 Therefore, in view of what was stated in paragraph 60 above, where an action is brought in circumstances in which those parties did not conclude a contract, it does not come under Chapter II, Section 4, of Regulation No 1215/2012.
- 67 In the second place, as regards the applicability of that section to AU's action in so far as it was brought against Reliantco Investments with which AU concluded a contract, it must be observed that it is apparent from the file before the Court that that action is based, inter alia, on national provisions on consumer protection, that is to say, the requirement for the supplier to inform, to advise and to warn consumers about the services provided and the risks to which they are exposed before concluding the contract.
- 68 It follows therefore, subject to those matters which it is for the referring court to verify, that that action is intended to establish the liability of the supplier for failure to comply with pre-contractual obligations vis-à-vis the other, consumer, party.
- 69 Such an action must be regarded as being indissociably linked to the contract concluded between the consumer and the seller or supplier, so that Chapter II, Section 4, of Regulation No 1215/2012 applies to that action.
- 70 That conclusion is not called into question by the fact that the action brought by AU seeks to establish the liability of the supplier, inter alia, for *culpa in contrahendo* referred to in Article 2(1) of Regulation No 864/2007, applicable to non-contractual obligations.
- 71 On the contrary, it should be noted that Article 12(1) of Regulation No 864/2007 provides that the law applicable to a non-contractual obligation arising out of dealings prior to the conclusion of a contract, regardless of whether the contract was actually concluded or not, must be the law which applies to the contract or which would have applied to that contract had it been entered into.
- 72 Thus, the conclusion in paragraph 69 above further reinforces the necessary consistency between the interpretation of Regulation No 1215/2012 and that of Regulation No 864/2007 (see, to that effect, judgment of 21 January 2016, *ERGO Insurance and Gjensidige Baltic*, C-359/14 and C-475/14, EU:C:2016:40, paragraph 43) in so far as both the law applicable to a non-contractual obligation arising out of dealings prior to the conclusion of a contract and the court having jurisdiction to hear an action concerning such an obligation are determined by taking into consideration the proposed contract the conclusion of which is envisaged.
- 73 In the light of the foregoing, the answer to the fourth question is that Regulation No 1215/2012 must be interpreted as meaning that, for the purposes of determining the courts having jurisdiction, an action in tort brought by a consumer comes under Chapter II, Section 4, of that regulation if it is indissociably linked to a contract actually concluded between that consumer and the seller or supplier, which is a matter for the national court to verify.

Costs

- ⁷⁴ 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 (Fourth Chamber) hereby rules:

1. **Article 17(1) of 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 must be interpreted as meaning that a natural person who, under a contract such as a financial contract for differences concluded with a finance company, carries out transactions through that company may be classified as a ‘consumer’ within the meaning of that provision if the conclusion of that contract does not fall within the scope of that person’s professional activity, which it is for the national court to ascertain. For the purposes of that classification, first, factors such as the fact that that person carried out a high volume of transactions within a relatively short period or that he or she invested significant sums in those transactions are, as such, in principle irrelevant, and secondly, the fact that that same person is a ‘retail client’ within the meaning of Article 4(1) point 12 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC is, as such, in principle irrelevant.**
2. **Regulation No 1215/2012 must be interpreted as meaning that, for the purposes of determining the courts having jurisdiction, an action in tort brought by a consumer comes under Chapter II, Section 4, of that regulation if it is indissociably linked to a contract actually concluded between that consumer and the seller or supplier, which is a matter for the national court to verify.**

[Signatures]