



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

14 March 2013*

(Regulation (EC) No 44/2001 — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Articles 5(1)(a) and 15(1) — Concepts of ‘matters relating to a contract’ and ‘contract concluded by a consumer’ — Promissory note — Aval — Guarantee provided for a credit contract)

In Case C-419/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Městský soud v Praze (Czech Republic), made by decision of 21 March 2011, received at the Court on 10 August 2011, in the proceedings

Česká spořitelna, a.s.

v

Gerald Feichter,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, M. Ilešič (Rapporteur), E. Levits, J.-J. Kasel and M. Safjan, Judges,

Advocate General: E. Sharpston,

Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 27 June 2012,

after considering the observations submitted on behalf of:

- Česká spořitelna, a.s., by M. Vojáček, advokát,
- the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
- the Swiss Government, by D. Klingele, acting as Agent,
- the European Commission, by M. Šimerdová and A.-M. Rouchaud-Joët, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 September 2012,

gives the following

* Language of the case: Czech.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 5(1)(a) and 15(1) 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).
- 2 The request was made in the course of proceedings between Česká spořitelna, a.s. ('Česká spořitelna'), whose registered office is established in the Czech Republic, and Mr Feichter, domiciled in Austria.

Legal context

Regulation No 44/2001

- 3 Article 2(1) of Regulation No 44/2001 provides:

'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

- 4 Article 3(1) of that regulation provides that '[p]ersons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter'.

- 5 Pursuant to Article 5(1)(a) of that regulation, which falls under Section 2 thereof, entitled 'Special jurisdiction':

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

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

- 6 Article 15(1) of that regulation, which falls within Section 4 thereof, entitled 'Jurisdiction over consumer contracts', 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 ... , 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 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.'

- 7 Pursuant to Article 16(2) of Regulation No 44/2001:

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

Czech law

- 8 According to Paragraph 75 of Law No 191/1950 on bills of exchange, promissory notes and cheques, a document which bears all the items of information required by that paragraph is a valid promissory note.
- 9 Under Paragraph 76(1) of Law No 191/1950, a document in which one of the items of information specified in Paragraph 75 of that law is wanting is not valid as a promissory note, except in the cases specified in the following subparagraphs. According to Paragraph 76(3) of that law, unless expressly indicated otherwise, the place where the promissory note is issued is deemed to be the place of payment and, at the same time, the place of the domicile of the maker of the note.
- 10 Pursuant to Paragraph 77(2) of Law No 191/1950, Paragraph 10 of that law also applies to the promissory note. Paragraph 10 provides that where a promissory note, which was incomplete when it was issued, has not been completed in the way agreed upon, the fact that that agreement was not honoured cannot be relied upon against the holder of the promissory note, unless that holder acquired the promissory note in bad faith or with gross negligence.

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

- 11 On 28 April 2004, the company Feichter – CZ s.r.o. ('the Feichter company'), with its registered office in Brno (Czech Republic), issued, also in Brno, a blank promissory note in favour of Česká spořitelna, which has its registered office in Prague (Czech Republic). The promissory note, signed on behalf of the Feichter company by its managing director, Mr Feichter, was issued in order to guarantee that company's obligations under an overdraft agreement, concluded between that company and Česká spořitelna on the same date. Mr Feichter, having his domicile in Austria, also signed, as an individual, the promissory note on its face, marking it 'per aval'.
- 12 The information on the promissory note relating to the amount of the note, the date payable and the place of payment was added by Česká spořitelna in accordance with an agreement on the right to complete the note, concluded on the same date. The promissory note thus completed contained an unconditional promise on the part of the Feichter company to pay the sum of CZK 5 000 000 on 27 May 2008, in Prague, to the order of Česká spořitelna.
- 13 The note, presented at the due date at the place of payment (Prague) was not paid. Consequently, Česká spořitelna brought proceedings for the making of a payment order before the Městský soud v Praze (Prague Municipal Court) in order to obtain, from Mr Feichter, payment of the sum of CZK 5 000 000 for which the note was made out, plus interest of 6% per year on that sum, from 28 May 2008 until payment, and commission on the note of CZK 16 666. During those proceedings, Mr Feichter argued that, given that he is resident in Austria, the Městský soud v Praze does not have jurisdiction to adjudicate on the case.
- 14 The referring court questions whether its jurisdiction must be determined under the rules relating to consumer contracts. In this respect, it raises the issue of whether the conditions in Article 15(1) of Regulation No 44/2001 are fulfilled, and in particular whether the claim under the promissory note at issue in the main proceedings, brought by the payee against the giver of the aval, can be regarded as a contractual claim for the purposes of that article. If so, the Austrian court would have jurisdiction to hear and determine the dispute in the main proceedings, given that, pursuant to Article 16(2) of that regulation, proceedings may be brought against a consumer only in the courts of the Member State in which the consumer is domiciled.
- 15 The referring court also questions whether it is possible, in the present case, to determine jurisdiction in accordance with Article 5(1)(a) of Regulation No 44/2001.

- 16 In this connection, it raises, first, the issue of whether the claims under the promissory note at issue in the main proceedings could be regarded as contractual claims for the purposes of Article 5(1)(a) of Regulation No 44/2001, despite the fact that, under Czech law, the promissory note is an abstract security which does not have the character of a contract, even though it gives material form to the content of a contract.
- 17 Secondly, it questions whether the present case concerns an obligation freely entered into, given that the exact place of payment was not specified either in the promissory note or in the agreement on the right to complete the note. Even if that latter agreement conferred on Česká spořitelna the right to complete the note as regards the missing information concerning the place of payment, it did not, however, provide for criteria from which it could be established specifically that Prague was the place of payment. The referring court points out that it cannot be excluded that completing the promissory note as regards the place of payment resulted in a breach of that agreement or that the agreement is void by reason of its vagueness, in which case it would be difficult to find that the obligation in the present case had been freely entered into.
- 18 In those circumstances, the Městský soud v Praze decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:
- (1) May the expression “matters concerning a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession” in Article 15(1) of [Regulation No 44/2001] be interpreted as extending also to claims under a promissory note issued in incomplete form brought by the payee against the giver of the aval for the maker of the note?
- (2) Whether the answer to the first question is affirmative or negative, may the expression “matters relating to a contract” in Article 5(1)(a) of [Regulation No 44/2001] be interpreted in such a way that, having regard exclusively to the content of the document as such, it extends also to claims under a promissory note issued in incomplete form brought by the payee against the giver of the aval for the maker of the note?’

On the questions referred

First question

Admissibility

- 19 Česká spořitelna submits that the first question is inadmissible, on the ground that it is purely hypothetical and irrelevant for the purposes of the outcome of the dispute in the main proceedings, since the conditions for the application of Article 15(1) of Regulation No 44/2001 are not met.
- 20 It is settled case-law that, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law. Similarly, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the judicial decision to be made, to determine, in the light of the particular circumstances of the case, both the need for and the relevance of the questions that it submits to the Court. Consequently, where the questions referred concern the interpretation of European Union law, the Court is in principle bound to give a ruling (see Case C-553/11 *Rintisch* [2012] ECR, paragraph 15 and the case-law cited).

- 21 Thus, the Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its subject-matter, where the problem is hypothetical, 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 (see, inter alia, Case C-618/10 *Banco Español de Crédito* [2012] ECR, paragraph 77, and *Rintisch*, paragraph 16).
- 22 This is not the case here. It is clear from the order for reference that the interpretation of Article 15(1) of Regulation No 44/2001 is necessary for the outcome of the dispute in the main proceedings, given that the plea of lack of jurisdiction raised by Mr Feichter is based on the argument that, since he signed the promissory note as a natural person, he has the status of a consumer within the meaning of that article and that jurisdiction must therefore be established in accordance with the provisions of that regulation governing jurisdiction so far as concerns consumer contracts.
- 23 In those circumstances, the first question referred for a preliminary ruling must be held to be admissible.

Substance

- 24 By its first question, the referring court asks, in essence, whether Article 15(1) of Regulation No 44/2001 applies for the purposes of determining the court having jurisdiction over judicial proceedings by which the payee of a promissory note, established in one Member State, brings claims under that note, which was incomplete at the date of its signature and was subsequently completed by the payee, against the giver of the aval, domiciled in another Member State.
- 25 First of all, it must be recalled that the concepts used in Regulation No 44/2001, in particular those which appear in Article 15(1) of the regulation, must be interpreted independently, by reference principally to the general scheme and objectives of the regulation, in order to ensure that it is applied uniformly in all the Member States (see, to that effect, Case C-27/02 *Engler* [2005] ECR I-481, paragraph 33; Joined Cases C-585/08 and C-144/09 *Pammer and Hotel Alpenhof* [2010] ECR I-12527, paragraph 55, and Case C-190/11 *Mühlleitner* [2012] ECR, paragraph 28).
- 26 Next, it must be observed that Article 15(1) of Regulation No 44/2001 constitutes a derogation both from the general rule of jurisdiction laid down in Article 2(1) of the regulation, which confers jurisdiction on the courts of the Member State in which the defendant is domiciled, and from the rule of special jurisdiction for contracts, set out in Article 5(1) of the regulation, under which jurisdiction lies with the courts of the place of performance of the obligation on which the claim is based (*Pammer and Hotel Alpenhof*, paragraph 53, and *Mühlleitner*, paragraph 26). Thus, Article 15(1) must necessarily be interpreted strictly (see, to that effect, *Mühlleitner*, paragraph 27).
- 27 Lastly, in so far as Regulation No 44/2001 replaces the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), as amended by the successive accession conventions for the new Member States ('the Brussels Convention'), in the relations between Member States, the interpretation provided by the Court in respect of the provisions of that convention is also valid for those of the regulation whenever the provisions of those instruments may be regarded as equivalent (see, in particular, Case C-133/11 *Folien Fischer and Fofitec* [2012] ECR, paragraph 31, and Case C-543/10 *Refcomp* [2013] ECR, paragraph 18).
- 28 In this connection, the Court has previously held that, in the system established by Regulation No 44/2001, Article 15(1) of the regulation, as is clear from recital 13 in the preamble to the regulation, occupies the same place and fulfils the same function of protecting the consumer as the

weaker party as does the first paragraph of Article 13 of the Brussels Convention (see, to that effect, Case C-180/06 *Ilsinger* [2009] ECR I-3961, paragraph 41; *Pammer and Hotel Alpenhof*, paragraph 57, and *Mühlleitner*, paragraph 29).

- 29 It is in the light of those considerations that the first question referred must be answered.
- 30 In order to answer that question, it must be stated that Article 15(1) of Regulation No 44/2001 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 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 15(1)(a) to (c). Those conditions must all be fulfilled, so that if one of the three conditions is not met, jurisdiction cannot be determined under the rules relating to consumer contracts.
- 31 As regards the first condition for the application of Article 15(1) of Regulation No 44/2001, even though the wording of that provision is not identical in every respect to that of the first paragraph of Article 13 of the Brussels Convention, those amendments concern the conditions for application which consumer contracts must fulfil (see, to that effect, *Pammer and Hotel Alpenhof*, paragraph 59) and not the definition of the concept of consumer, so that, in Regulation No 44/2001, that concept must have the same scope as in the Brussels Convention.
- 32 The Court has already held, as regards the first paragraph of Article 13 of the Brussels Convention, that it follows from the wording and role of that provision that it refers only to the private final consumer, not engaged in trade or professional activities (see, to that effect, Case C-89/91 *Shearson Lehman Hutton* [1993] ECR I-139, paragraphs 20 and 22; Case C-269/95 *Benincasa* [1997] ECR I-3767, paragraph 15; Case C-464/01 *Gruber* [2005] ECR I-439, paragraph 35, and *Engler*, paragraph 34).
- 33 It is also apparent from the Court's case-law that the special rules introduced by the provisions of the Brussels Convention on jurisdiction over consumer contracts serve to ensure adequate protection for the consumer, as the party deemed to be economically weaker and less experienced in legal matters than the other, commercial, party to the contract (see, inter alia, *Gruber*, paragraph 34, and *Engler*, paragraph 39). That role implies that the application of the rules of special jurisdiction laid down to that end by the Brussels Convention should not be extended to persons for whom that protection is not justified (see, to that effect, *Shearson Lehman Hutton*, paragraph 19).
- 34 The Court drew the conclusion from this 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 Convention to protect the consumer. Such protection is unwarranted in the case of contracts for the purpose of a trade or professional activity (see *Gruber*, paragraph 36, and, to that effect, *Benincasa*, paragraph 17).
- 35 It must be stated that, in circumstances such as those of the case in the main proceedings, the condition that there be a consumer within the meaning of Article 15(1) of Regulation No 44/2001 is not met.
- 36 It is common ground that the giver of the aval in the case in the main proceedings became the guarantor of the obligations of the company of which he is the managing director and in which he has a majority shareholding.
- 37 Accordingly, even if the obligation on the giver of the aval is of an abstract nature and is thus independent of the obligation on the maker of the note for which the giver of the aval became guarantor, the fact remains, as the Advocate General observed in point 33 of her Opinion, that the aval of a natural person, given on a promissory note issued in order to guarantee the obligations of a

commercial company, cannot be regarded as having been given outside and independently of any trade or professional activity or purpose while that individual has close professional links with that company, such as being its managing director or majority shareholder.

- 38 In any event, the mere fact that the giver of the aval is a natural person is not sufficient to establish that he is a consumer within the meaning of Article 15(1) of Regulation No 44/2001.
- 39 In those circumstances, it is not necessary to examine whether the other two conditions for the application of that article are met.
- 40 It follows from all the foregoing considerations that the answer to the first question is that Article 15(1) of Regulation No 44/2001 must be interpreted as meaning that a natural person with close professional links to a company, such as its managing director or majority shareholder, cannot be considered to be a consumer within the meaning of that provision when he gives an aval on a promissory note issued in order to guarantee the obligations of that company under a contract for the grant of credit. Therefore, that provision does not apply for the purposes of determining the court having jurisdiction over judicial proceedings by which the payee of a promissory note, established in one Member State, brings claims under that note, which was incomplete at the date of its signature and was subsequently completed by the payee, against the giver of the aval, domiciled in another Member State.

Second question

- 41 By its second question, the referring court asks, in essence, whether Article 5(1)(a) of Regulation No 44/2001 applies for the purposes of determining the court with jurisdiction over judicial proceedings by which the payee of a promissory note, established in one Member State, brings claims under that note, which was incomplete at the date of its signature and was subsequently completed by the payee, against the giver of the aval, domiciled in another Member State.
- 42 As a preliminary point, it must be observed that, in the context of that question, the referring court is seeking to ascertain, first, whether the legal relationship between the payee of a promissory note and the giver of an aval thereon falls within the concept of ‘matters relating to a contract’, within the meaning of Article 5(1)(a) of Regulation No 44/2001, and, secondly, the scope which must be given to the concept, set out in that provision, of ‘the place of performance of the obligation in question’, in the case of a promissory note, issued in incomplete form and subsequently completed.
- 43 It must be pointed out in this connection, as it was in paragraph 27 above, that, in so far as the wording of Article 5(1)(a) of Regulation No 44/2001 is identical to that of the first sentence of Article 5(1) of the Brussels Convention, the scope to be given to the first provision should be identical to that of the latter provision (see, to that effect, *Case C-533/07 Falco Privatstiftung and Rabitsch* [2009] ECR I-3327, paragraphs 48 and 56).
- 44 Consequently, in order to determine, under Article 5(1)(a) of Regulation No 44/2001, the court having jurisdiction, reference must still be made to the principles which result from the Court’s case-law relating to Article 5(1) of the Brussels Convention (see, to that effect, *Falco Privatstiftung and Rabitsch*, paragraph 57).
- 45 Concerning, in the first place, the interpretation of the concept of ‘matters relating to a contract’ within the meaning of Article 5(1)(a) of Regulation No 44/2001, it is important to note that that concept must be interpreted independently, regard being had to the general scheme and objectives of the regulation, in order to ensure that it is applied uniformly in all the Member States. That concept cannot therefore

be taken to refer to classification under the relevant national law of the legal relationship in question before the national court (see by analogy, inter alia, Case C-26/91 *Handte* [1992] ECR I-3967, paragraph 10, and Case C-265/02 *Frahuil* [2004] ECR I-1543, paragraph 22).

- 46 Although Article 5(1)(a) of Regulation No 44/2001 does not require the conclusion of a contract, it is nevertheless essential, for that provision to apply, to identify an obligation, since the jurisdiction of the national court under that provision is determined by the place of performance of the obligation in question. Thus, the concept of ‘matters relating to contract’ within the meaning of that provision is not to be understood as covering a situation in which there is no obligation freely assumed by one party towards another (see, by analogy, Case C-334/00 *Tacconi* [2002] ECR I-7357, paragraphs 22 and 23, and *Engler*, paragraph 50).
- 47 Consequently, the application of the rule of special jurisdiction provided for matters relating to a contract in Article 5(1)(a) of Regulation No 44/2001 presupposes the establishment of a legal obligation freely consented to by one person towards another and on which the claimant’s action is based (see, by analogy, *Engler*, paragraph 51).
- 48 As regards whether such an obligation exists in circumstances such as those at issue in the main proceedings, it must be noted, as it was by the Advocate General at point 45 of her Opinion, that, in the present case, the giver of the aval, by signing the promissory note on its face under the indication ‘per aval’, voluntarily consented to act as the guarantor of the obligations of the maker of that promissory note. His obligation to guarantee those obligations was thus, by his signature, freely accepted, for the purposes of that provision.
- 49 The fact that that signature was made on a blank promissory note is not such as to cast doubt on that finding. Account must be taken of the fact that the giver of the aval, by also signing the agreement on the right to complete the note, freely accepted the conditions concerning the manner in which that promissory note would be completed by the payee filling in the missing information, even though signature of that agreement did not, in itself, result in the aval coming into being.
- 50 It is important to point out in this regard that whether the promissory note was completed in breach of that agreement is not an issue pertaining to the interpretation of the concept of ‘matters relating to a contract’ within the meaning of Article 5(1)(a) of Regulation No 44/2001, but is, rather, linked to ascertaining whether the place of payment arising from the promissory note at issue was validly agreed on between the parties; that issue raised by the referring court therefore concerns the interpretation of the concept of ‘the place of performance of the obligation in question’ within the meaning of that provision, a concept which will be examined in paragraph 52 et seq. of this judgment.
- 51 It follows that the legal relationship between the payee of a promissory note, issued in incomplete form and subsequently completed, and the giver of an aval thereon falls within the concept of ‘matters relating to a contract’, within the meaning of Article 5(1)(a) of Regulation No 44/2001.
- 52 In the second place, it is necessary to clarify the meaning of the concept of ‘the place of performance of the obligation in question’ within the meaning of that provision.
- 53 In this connection, the referring court raises the issue, inter alia, of whether it must, in order to establish that place, take into account only the information on the promissory note or also the information contained in the agreement on the right to complete the note.
- 54 First, the concept of ‘obligation’ in Article 5(1)(a) of Regulation No 44/2001 refers to the obligation which arises under the contract and the non-performance of which is relied upon in support of the action (see by analogy, inter alia, Case 14/76 *De Bloos* [1976] ECR 1497, paragraph 13; Case 266/85 *Shenavai* [1987] ECR 239, paragraph 9, and Case C-256/00 *Besix* [2002] ECR I-1699, paragraph 44) and, second, the place of performance of that obligation is to be determined in accordance with the

law governing that obligation according to the conflict rules of the court before which the proceedings have been brought (see by analogy, *inter alia*, Case 12/76 *Industrie Tessili Italiana Como* [1976] ECR 1473, paragraph 13; Case C-440/97 *GIE Groupe Concorde and Others* [1999] ECR I-6307, paragraph 32, and *Besix*, paragraphs 33 and 36).

- 55 Moreover, having regard to the importance generally accorded by national contract law to the intention of the parties, if the parties to the contract are permitted by the applicable law, subject to the conditions it lays down, to specify the place of performance of an obligation, that agreement on the place of performance of the obligation is sufficient to found jurisdiction in that place for the purposes of Article 5(1)(a) of Regulation No 44/2001 (see, by analogy, Case 56/79 *Zelger* [1980] ECR 89, paragraph 5; Case C-106/95 *MSG* [1997] ECR I-911, paragraph 30, and *GIE Groupe Concorde and Others*, paragraph 28).
- 56 It must, however, be observed that, whilst the parties are free to agree on a place of performance for contractual obligations, they are nevertheless not entitled to designate, with the sole aim of specifying the courts having jurisdiction, a place of performance having no real connection with the reality of the contractual relationship at which the obligations arising under that relationship could not be performed in accordance with the terms of that relationship (see, to that effect, *MSG*, paragraph 31).
- 57 In the present case, having regard to the fact that the place of performance of the obligation at issue in the main proceedings is expressly indicated on the promissory note, the referring court is required, in so far as the applicable law permits that choice as to place of performance of the obligation, to take into account that place in order to determine the court having jurisdiction in accordance with Article 5(1)(a) of Regulation No 44/2001.
- 58 In those circumstances, the answer to the second question is that Article 5(1)(a) of Regulation No 44/2001 applies for the purposes of determining the court having jurisdiction over judicial proceedings by which the payee of a promissory note, established in one Member State, brings claims under that note, which was incomplete at the date of its signature and was subsequently completed by the payee, against the giver of the aval, domiciled in another Member State.

Costs

- 59 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 (First Chamber) hereby rules:

- 1. Article 15(1) 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 must be interpreted as meaning that a natural person with close professional links to a company, such as its managing director or majority shareholder, cannot be considered to be a consumer within the meaning of that provision when he gives an aval on a promissory note issued in order to guarantee the obligations of that company under a contract for the grant of credit.**

Therefore, that provision does not apply for the purposes of determining the court having jurisdiction over judicial proceedings by which the payee of a promissory note, established in one Member State, brings claims under that note, which was incomplete at the date of its signature and was subsequently completed by the payee, against the giver of the aval, domiciled in another Member State.

2. **Article 5(1)(a) of Regulation No 44/2001 applies for the purposes of determining the court having jurisdiction over judicial proceedings by which the payee of a promissory note, established in one Member State, brings claims under that note, which was incomplete at the date of its signature and was subsequently completed by the payee, against the giver of the aval, domiciled in another Member State.**

[Signatures]