Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

14 February 2019*

(Reference for a preliminary ruling — Articles 56 and 63 TFEU — Freedom to provide services — Free movement of capital — National legislation providing that credit agreements featuring international elements concluded with a non-authorised lender are invalid — Regulation (EU) No 1215/2012 — Article 17(1) — Credit agreement concluded by a natural person with a view to the provision of tourist accommodation services — Concept of 'consumer' — Article 24, point 1 — Exclusive jurisdiction in matters relating to rights *in rem* in immovable property — Action for invalidity of a credit agreement and seeking the removal from the land register of the entry of a security interest)

In Case C-630/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Općinski sud u Rijeci — Stalna služba u Rabu (Municipal Court of Rijeka, Permanent Division, Island of Rab, Croatia), made by decision of 6 November 2017, received at the Court on 9 November 2017, in the proceedings

Anica Milivojević

v

Raiffeisenbank St. Stefan-Jagerberg-Wolfsberg eGen,

THE COURT (Second Chamber),

composed of K. Lenaerts, President of the Court, acting as President of the Second Chamber, A. Prechal, C. Toader (Rapporteur), A. Rosas and M. Ilešič, Judges,

Advocate General: E. Tanchev,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedure and further to the hearing on 5 September 2018,

after considering the observations submitted on behalf of:

– Raiffeisenbank St. Stefan-Jagerberg-Wolfsberg eGen, by D. Malnar, M. Mlinac, P.G. Baučić, P. Novak, M. Sabolek, E. Garankić and A. Đureta, odvjetnici, and T. Borić, profesor,

– the Croatian Government, by T. Galli, acting as Agent,

– the European Commission, by M. Heller, L. Malferrari and M. Mataija, acting as Agents,

* Language of the case: Croatian.

after hearing the Opinion of the Advocate General at the sitting on 14 November 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 56 TFEU and 63 TFEU, Article 4(1), Article 17, Article 24, point 1 and Article 25 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 Ms Anica Milivojević, domiciled in Croatia, and Raiffeisenbank St. Stefan-Jagerberg-Wolfsberg eGen ('Raiffeisenbank'), a company incorporated under Austrian law, concerning an action brought by Ms Milivojević, for a declaration of invalidity of a credit agreement concluded with Raiffeisenbank and of a notarised deed related to the creation of a mortgage taken out to guarantee the debt arising out of that contract and the removal of that security from the land register.

Legal context

European Union law

3 Recitals 6, 15 and 18 of Regulation No 1215/2012 state:

'(6) In order to attain the objective of free circulation of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a legal instrument of the Union which is binding and directly applicable.

…

(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. …

…

(18) 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.'

4 Article 4(1) of that regulation provides:

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

5 Article 8(4) of that regulation is worded as follows:

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

…

(4) in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights *in rem* in immovable property, in the court of the Member State in which the property is situated.'

6 Under Article 17(1) of that regulation:

'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 ...'

7 Article 18(1) and (2) of Regulation No 1215/2012 provides as follows:

'1. 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.

2. 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.'

8 In accordance with the provisions of 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.'

9 Under the first paragraph of Article 24, point 1, of the regulation:

'The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

(1) in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.'

10 Under Article 25(1) and (4) of the regulation:

'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. …

…

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.'

11 Governing the application *ratione temporis* of Regulation No 1215/2012, Article 66(1) thereof provides:

'This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015.'

Croatian law

Law of obligations

12 Article 322 of the Zakon o obveznim odnosima (Law of obligations), in the version applicable to the main proceedings (*Narodne novine*, br. 78/2015) ('the Law of obligations') provides:

'(1) Any agreement contrary to the Constitution of the Republic of Croatia, the mandatory rules of law or morality shall be null and void, unless the purpose of the rule infringed refers to another legal consequence or as otherwise provided by law in specific cases.

(2) If only one of the parties to a given contract is prohibited from concluding that contract, the contract is nonetheless valid, unless the law stipulates otherwise in specific cases, and the party which has infringed a statutory prohibition shall be bound to bear the consequences thereof.'

13 Under Article 323(1) of that law:

'When a contract is null and void, each contracting party shall be bound to give restitution to the other party of everything it has received by virtue of the null and void contract and, if that is not possible or if the nature of that which was executed precludes restitution, an appropriate pecuniary indemnity must be provided, which is to be fixed as a function of the price in place on the date on which the judicial decision is rendered, unless the law stipulates otherwise.'

Law on consumer credit

14 The Zakon o potrošačkom kreditiranju (Law on consumer credit, *Narodne novine*, br. 75/2009; 'Law on consumer credit') entered into force on 1 January 2010. Article 29(1) of that Law states that, subject to certain exceptions, it does not apply to credit agreements concluded before its entry into force.

15 That Law was amended by the Zakon o izmjeni i dopunama Zakona o potrošačkom kreditiranju (Law amending and supplementing the Law on consumer credit, *Narodne novine*, br. 102/2015; 'the Law on consumer credit, as amended').

16 Article 19j of the Law on consumer credit, as amended, entitled 'Nullity of contracts and effects of invalidity', reads as follows:

'(1) Where the credit agreement was concluded by a creditor or credit intermediary who does not hold the authorisation required for the provision of consumer credit services or to act as a credit intermediary to consumers, the contract shall be null and void.

(2) Where what was received must be returned in accordance with paragraph 1 of this article, the consumer shall pay interest on the amount received, with effect from the day on which the decision declaring the invalidity becomes final.'

17 In accordance with Article 19 of the Law on consumer credit, as amended, entitled 'Jurisdiction':

'(1) In the context of disputes relating to a credit agreement, the action brought by a consumer against the other party to the contract may be brought before either the courts of the State in which the other party to the contract has its registered office or, irrespective of the registered office of the other party, before the courts for the place where the consumer is domiciled.

(2) 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.

…'

Law on the invalidity of credit agreements featuring international elements

18 Article 1, entitled 'Subject matter of the law', of the Zakon o ništetnosti ugovora o kreditu s međunarodnim obilježjima sklopljenih u Republici Hrvatske s neovlaštenim vjerovnikom (Law on the invalidity of credit agreements featuring international elements concluded in the Republic of Croatia with an non-authorised lender, *Narodne novine*, br. 72/2017; 'the Law on the invalidity of credit agreements featuring international elements') provides:

'(1) This law shall apply to credit agreements featuring international elements which have been concluded in the Republic of Croatia between debtors and non-authorised lenders …

(2) The present law shall also apply to other legal acts established in the Republic of Croatia between debtors and non-authorised lenders that are consequential upon a credit contract featuring international elements referred to in the first paragraph of the present article or which are based on such a contract.'

19 Under Article 2 of that Law, entitled 'Definitions':

'For the purpose of the present law, the term:

– "debtor" shall refer to any physical or moral person to whom a credit has been granted by virtue of a credit contract featuring international elements, or any person who acts in the interest of a person to whom such a credit has been granted as a co-debtor, debtor creditor, co-debtor creditor, or guarantor;

– "non-authorised lender" shall refer to any moral person who has agreed to provide a credit to a debtor pursuant to a credit contract featuring international elements, and whose statutory seat is situated outside of the Republic of Croatia at the date of the contract featuring international elements and who proposes or supplies credit services in the Republic of Croatia, even though such a lender does not satisfy the conditions required by regulation for the supply of such services, and more precisely, it does not have the authorisations and/or approval of the competent authorities of the Republic of Croatia;

– "credit agreement featuring international elements" means any credit agreement, loan agreement or other agreement by which an non-authorised lender grants the debtor a certain sum of money and by which the debtor undertakes to pay the agreed interest and to reimburse the amount used within the time limit and in the manner agreed.'

20 Under the heading 'Invalidity of credit agreements', Article 3 of that Law provides:

'(1) Credit contracts featuring international elements which have been concluded in the Republic of Croatia between debtors and non-authorised lenders shall be null and void.

(2) By way of derogation from paragraph 1 of this article, invalidity cannot be claimed where a contract has been performed in full.'

21 Article 4 of that Law, entitled 'Invalidity of other legal acts', provides:

'Any notarised act of a notary established on the basis of, or having a link with, an invalid contract within the meaning of Article 3 of the present law shall be null and void.

…'

22 Article 7 of the Law on the cancellation of credit agreements featuring international elements, governing the 'Effects of invalidity', provides:

'Each contracting party shall be bound to give restitution to the other party of everything it has received by virtue of the invalid contract and, if that is not possible or if the nature of that which was executed precludes restitution, an appropriate pecuniary indemnity must be provided, which shall be fixed as a function of the price in place on the date on which the judicial decision is rendered.'

23 Article 8 of that Law lays down the rules of jurisdiction as follows:

'(1) In the framework of litigation concerning credit contracts featuring international elements, in the sense of the present law, an action initiated by the debtor against an non-authorised lender can be brought either before the courts of the State on the territory of which the non-authorised lender has its seat (whatever the seat of the non-authorised lender) or before the courts of the place where the debtor has his domicile or his seat.

(2) The action instituted against the debtor by the non-authorised lender, in the sense of paragraph 1 of the present article, can only be brought before the courts of the State on the territory on which the debtor has his domicile or seat. The law applicable to null and void contracts in the sense of the present law is, exclusively, the law of Croatia and the court seised of an action concerning the invalidity of such a contract will apply the present law to such an action, without examining if there exist presumptions for the application of the law of the place of the conclusion of the contract by virtue of other legislative instruments.'

24 Article 10 of that law is drafted in the following terms:

'(1) Credit contracts featuring international elements, in the sense of the present law, which have been concluded in the Republic of Croatia, before the entry into force of the present law, between debtors and non-authorised lenders, shall be null and void from the date of their conclusion, resulting in the effects indicated in Article 7 of this law.

(2) Other legal acts established in the Republic of Croatia, before the entry into force of the present law, between debtors and non-authorised lenders, which follow from a credit contract featuring international elements referred to in paragraph 1 of Article 1 of this law which are founded on such a contract, shall be null and void from the date of their establishment, entailing the effects set out in Article 7 of this law.'

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

25 On 23 April 2015, Ms Milivojević brought a claim before the referring court, the Općinski sud u Rijeci — Stalna služba u Rabu (Municipal Court of Rijeka, Permanent Division, Island of Rab, Croatia) against Raffeisenbank for a declaration of invalidity of the credit agreement concluded by the parties on 5 January 2007, in the amount of EUR 47 000 ('the agreement at issue') as well as of the notarised act relating to the creation of a mortgage taken out as a guarantee for the debt arising from that agreement and the removal from the land register of that security.

26 In support of her action, Ms Milivojević has relied on the provisions of Article 322(1) of the Law on obligations, under which a contract contrary to the Constitution of the Republic of Croatia, mandatory rules of law or morality, is null and void.

27 Although it is common ground in the main proceedings that Raiffeisenbank was a 'non-authorised lender' within the meaning of Article 2 of the Law on the invalidity of contracts featuring international elements, that is to say a lender established in another Member State has not been duly authorised by Hrvatska narodna banka (Croatian National Bank) to grant credit in Croatia, the referring court observes that the parties disagree on certain factual circumstances relating, in particular, to the place of the conclusion of the agreement at issue. While Raiffeisenbank submits that that agreement was concluded in Austria, Ms Milivojević claims that it was concluded in Croatia.

28 As is apparent from the order for reference, Ms Milivojević claimed to have concluded the agreement at issue via an intermediary to whom she paid a commission, with a view to extending and renovating her house, to create apartments to be let. It also appears from that order that it cannot be ruled out that part of the loan was used for private purposes. Ms Milivojević stated, furthermore, that she intended to repay the loan using the profits from that activity.

29 It is also apparent from the documents before the Court that the agreement at issue contained a clause conferring jurisdiction on either the Austrian courts or the courts of the debtor's domicile.

30 The oral procedure was closed on 3 January 2017.

31 However, following the entry into force on 14 July 2017 of the Law on the invalidity of credit agreements featuring international elements, by order of 10 August 2017, the oral procedure was reopened.

32 The referring court considers that if the agreement at issue was concluded in Croatia, it could now be invalid on the basis of the provisions of that legislation, having regard to its retroactive application.

33 Accordingly, that court is doubtful, firstly, as to the compatibility of the Law on the invalidity of credit agreements featuring international elements with Articles 56 and 63 TFEU, in so far as that legislation is liable to prejudice the freedom of Raiffeisenbank to provide financial services. That court doubts whether the objectives put forward by the Croatian Government in support of the retroactive application of that law could justify such a prejudice.

34 The referring court also observes that the Law on consumer credit, as interpreted by the Vrhovni sud (Supreme Court, Croatia), cannot justify a finding of invalidity of credit agreements concluded before the entry into force of that law, as amended, namely 30 September 2015.

35 In that regard, the referring court states that following a meeting between the President of the Civil Chamber of the Vrhovni sud (Supreme Court) and the Presidents of the Civil Chambers of the Županijski sudovi (County Courts, Croatia) held on 11 and 12 April 2016, the Vrhovni sud (Supreme Court) decided, by a document dated 12 April 2016, that:

'3.1. (jurisdiction)

In the context of disputes relating to the invalidity of credit agreements concluded between Croatian natural person applicants (consumers) and foreign legal entities (banks) in which the question of jurisdiction is settled after 1 July 2013, the competent Croatian court shall always be that which is determined by the provisions of Article 16 of Regulation [(EC) No 44/2001 of the Council of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1)] and Article 17 of Regulation [No 1215/2012].

3.2. (Invalidity of the agreement)

Although foreign institutions which did not hold the authorisation required to provide such services in the Republic of Croatia were precluded from concluding such agreements, those agreements are not null and void, since that consequence was not provided for by the Law on banks or by the Law on credit institutions before 30 September 2015, the date on which that consequence was enacted [following the entry into force of the Law on consumer credit, as amended].'

36 Secondly, the referring court has doubts as to various aspects connected with its international jurisdiction to hear the main proceedings, in the light of Regulation No 1215/2012. In that regard, that court states that it can, under the provisions of the Croatian Code of Civil Procedure, check its competence at that stage of the proceedings before it.

37 That court has doubts as to the compatibility of Article 8 of the Law on the invalidity of credit agreements featuring international elements with the rules of jurisdiction laid down in Regulation No 1215/2012. It is also unsure as to whether, having regard to the case-law of the Court, in particular in the judgments of 3 July 1997, *Benincasa* (C-269/95, EU:C:1997:337), and of 20 January 2005, *Gruber* (C-464/01, EU:C:2005:32), the agreement at issue could be classified as a 'consumer contract' and whether the dispute in the main proceedings falls within the rules of exclusive jurisdiction for actions *in rem*, under Article 24, point 1, of that regulation.

38 In those circumstances, the Općinski sud u Rijeci — Stalna služba u Rabu (Municipal Court of Rijeka, Permanent Division, Island of Rab) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Articles 56 and 63 [TFEU] be interpreted as precluding the provisions of the Law on invalidity of credit agreements featuring international elements concluded in the Republic of Croatia with an non-authorised lender, in particular the provisions of Article 10 of that law, which provides for the invalidity of credit agreements and other legal acts that are consequential upon the credit agreement concluded between a debtor (within the meaning of Article 1 and the first indent of Article 2 of that law) and an non-authorised lender (within the meaning of the second indent of Article 2 of that law) or are based on such an agreement, even if they were concluded before the entry into force of that law, that invalidity taking effect from the moment the contract was entered into, with the result that each of the contracting parties is obliged to return to the other party everything received by it on the basis of the void contract and, when that is impossible or when the nature of the action taken is incompatible with restoration, adequate pecuniary compensation must be paid, based on the prices in force on the date of delivery of the judicial decision?

(2) Must [Regulation No 1215/2012], in particular Articles 4(1) and 25 thereof, be interpreted as precluding the provisions of Article 8(1) and (2) of the Law on invalidity of credit agreements featuring international elements concluded in the Republic of Croatia with an non-authorised lender, in which it is laid down that, in disputes relating to credit agreements featuring international elements within the meaning of that law, the debtor may sue an non-authorised lender either before the courts of the State in which the latter has its registered office or, irrespective of where the non-authorised lender has its registered office, before the courts of the place where the debtor is domiciled or has his registered office, whereas an non-authorised lender, within the meaning of that law, may commence proceedings against the debtor only in the courts of the State in which the latter is domiciled or has his registered office?

(3) Is it a consumer contract within the meaning of Article 17(1) of Regulation No 1215/2012 and of the legal *acquis* of the European Union if the recipient of the loan is a natural person who has concluded a credit agreement in order to invest in holiday apartments with the aim of carrying on the business of offering tourists private board and lodging in his property?

(4) Must Article 24(1) of Regulation No 1215/2012 be interpreted as meaning that jurisdiction is enjoyed by the courts of the Republic of Croatia to hear and determine proceedings seeking a declaration of invalidity of a credit agreement and of the corresponding memoranda of guarantee, together with cancellation of the registration of a mortgage in the Land Registry, when, in order to guarantee performance of the obligations under the credit agreement, that mortgage was secured upon immovable property of the debtor situated within the Republic of Croatia?'

Consideration of the questions referred

The jurisdiction of the Court to answer the first question

39 The Croatian Government submits that the Court does not have jurisdiction to examine the first question in so far as the agreement at issue was concluded on 5 January 2007, namely before the accession of the Republic of Croatia to the European Union on 1 July 2013. The Court has no jurisdiction to reply to a question on the interpretation of EU law referred by a court of a Member State where the factual circumstances to which EU law applies occurred before the accession of that Member State to the European Union. At the hearing, that government also claimed that the agreement was terminated during 2012.

40 In that regard, it should be noted, in the first place, that the referring court entertains doubts, in the context of the first question, as to the compatibility with Articles 56 and 63 TFEU of the Law on invalidity of credit agreements featuring international elements, adopted after the accession of the Republic of Croatia to the European Union. By reason of its retroactive effect, that legislation is applicable to the main proceedings and affects credit agreements concluded before the accession and other legal acts consequent upon such agreements.

41 In the second place, while it is true that the credit agreement at issue was concluded prior to that accession and although it was allegedly terminated before it, a fact which is not stated in the request for a preliminary ruling, it is apparent, however, from that request that some of the effects connected with that agreement and the legal acts consequent upon it, in particular the registration of the mortgage of which Ms Milivojević seeks the annulment, continue to make themselves felt.

42 As follows from Article 2 of the Act concerning the conditions of access of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community (OJ 2012 L 112, p. 21), the provisions of the original Treaties, in particular Articles 56 TFEU and 63 TFEU, are binding on

the Republic of Croatia from the date of its accession, with the result that they apply to the future effects of situations arising prior to its accession (see, by analogy, judgment of 29 January 2002, *Pokrzeptowicz-Meyer*, C-162/00, EU:C:2002:57, paragraph 50).

43 It follows from the foregoing that the arguments put forward by the Croatian Government to contest the jurisdiction of the Court to hear the first question must be rejected, since, although the agreement at issue which forms the subject matter of the main proceedings was concluded before the accession of the Republic of Croatia to the European Union, the fact remains that that question relates, in the present case, to a question of interpretation of EU law the answer to which is capable of calling into question the compatibility with EU law of national legislation adopted by that Member State after that date, which also has legal effects on that agreement after that accession.

Admissibility of the first to third questions

44 Raiffeisenbank and the Croatian Government contend that the first question is hypothetical in nature since it asserts that it has not been established that the Law on the invalidity of credit agreements featuring international elements is applicable to the main proceedings.

45 The Croatian Government has also alleged that the second and third questions are inadmissible, taking the view that the provisions of law to which the referring court refers in its questions, namely Article 4(1) and Article 17(1) of Regulation No 1215/2012, could no longer be relied upon once Raiffeisenbank has appeared before that court. With regard to Article 25 of that regulation, that government claims that it is not apparent from the request for a preliminary ruling that the parties concluded an agreement conferring jurisdiction.

46 As regards the first question, it is appropriate to note that although, at the current stage of the proceedings before it, the referring court has not yet settled the factual question of the determination of the place in which the agreement at issue was concluded, a question essential to the application of the Law on the invalidity of credit agreements featuring international elements, in accordance with Article 3 of that law, that fact does not restrict its power to assess at what stage of those proceedings it is necessary, for the requirements of those proceedings, for it to request a preliminary ruling from the Court (see, to that effect, judgments of 22 June 2010, *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 41, and of 4 June 2015, *Kernkraftwerke Lippe-Ems*, C-5/14, EU:C:2015:354, paragraph 31), the choice of the most opportune moment to do so being in its exclusive competence (see, to that effect, judgment of 15 March 2012, *Sibilio*, C-157/11, not published, EU:C:2012:148, paragraph 31).

47 As regards the second and third questions, it should be recalled that, according to the settled case-law of the Court, in the context of the cooperation between the Court and national courts provided for in Article 267 TFEU, 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. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (judgment of 6 March 2018, *SEGRO and Horváth*, C-52/16 and C-113/16, EU:C:2018:157, paragraph 42 and the case-law cited).

48 It is also settled case-law that 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, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance (judgment of 14 June 2017, *Online Games and Others*, C-685/15, EU:C:2017:452, paragraph 42 and the case-law cited). The Court may refuse to rule on a question referred by a national court only 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, 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 and to understand the reasons for the referring court's view that it needs answers to those questions in order to rule in the dispute before it (see, to that effect, judgment of 8 September 2016, *Politanò*, C-225/15, EU:C:2016:645, paragraph 22 and the case-law cited). However, contrary to the Croatian Government's submissions, it does not appear that the issue raised in the second and third questions is hypothetical.

49 In those circumstances, it must be held that the first to third questions are admissible.

The first question

50 By its first question, the referring court asks, in essence, whether Article 56 TFEU and Article 63 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which has the effect, inter alia, that credit agreements and legal acts based on such agreements concluded in that Member State between debtors and creditors established in another Member State, who do not hold a licence issued by the competent authorities of the first Member State to operate in that State, are null and void from the date on which they were concluded, even if they were concluded before the entry into force of that legislation.

The relevant freedom of movement

51 Since the question referred for a preliminary ruling concerns both Article 56 TFEU and Article 63 TFEU, it is necessary to establish, as a preliminary point, whether, and if so, to what extent, national legislation such as that at issue in the main proceedings is liable to affect the exercise of the freedom to provide services and/or the free movement of capital.

52 In the present case, it is apparent from the order for reference that the Law on the invalidity of credit agreements featuring international elements concerns financial services provided by credit institutions whose registered office is established outside Croatian territory and which do not hold licences and/or approvals from the competent Croatian authorities provided for to that end by national law.

53 In that regard, the Court has already held that such operations of a grant of credit on a commercial basis relate, in principle, both to the freedom to provide services within the meaning of Articles 56 TFEU et seq. and to the free movement of capital within the meaning of Articles 63 TFEU et seq. (judgment of 22 November 2018, *Vorarlberger Landes- und Hypothekenbank*, C-625/17, EU:C:2018:939, paragraph 23 and the case-law cited).

54 Where a national measure relates to both the freedom to provide services and the free movement of capital, it is necessary to consider to what extent the exercise of those fundamental freedoms is affected and whether, in the circumstances of the main proceedings, one of them prevails over the other. The Court will, in principle, examine the measure in dispute in relation to only one of those two freedoms if it appears, in the circumstances of the case, that one of them is entirely secondary in relation to the other and may be considered together with it (judgment of 12 July 2012, *SC Volksbank România*, C-602/10, EU:C:2012:443, paragraph 70 and the case-law cited).

55 In so far as, in the main proceedings, the Law on the invalidity of credit agreements featuring international elements provides for the invalidity of any agreement concluded in Croatia by an non-authorised lender whose registered office is outside that Member State, such a legal regime affects the access to financial services on the Croatian market of economic operators established in other Member States which do not satisfy the conditions required by that legislation and particularly affects the freedom to provide services. Since the restrictive effects of those rules on the free movement of capital are merely an inevitable consequence of the restriction imposed on the provision

of services (judgment of 3 October 2006, *Fidium Finanz*, C-452/04, EU:C:2006:631, paragraph 48 and the case-law cited), it is not necessary to examine the compatibility of that decision in the light of Articles 63 TFEU et seq.

56 In consequence, the question referred must be examined only in the light of Article 56 TFEU et seq. relating to the freedom to provide services, in the light of the premiss that the agreement at issue was concluded in Croatia, a factual aspect which it is, however, for the referring court to verify.

Article 56 TFEU

57 In that regard, it is clear from the settled case-law of the Court that the freedom to provide services under Article 56 TFEU requires not only the elimination of all discrimination on grounds of nationality against providers of services established in other Member States, but also the abolition of any restriction — even if it applies without distinction to national providers of services and to those from other Member States — which is liable to prohibit, impede or render less attractive the activities of a provider of services established in another Member State where he lawfully provides similar services (judgment of 18 July 2013, *Citroën Belux*, C-265/12, EU:C:2013:498, paragraph 35 and case-law cited).

58 It also follows from the case-law of the Court that the business of a credit institution, consisting of granting credit, constitutes a service within the meaning of Article 56 TFEU (judgment of 12 July 2012, *SC Volksbank România*, C-602/10, EU:C:2012:443, paragraph 72 and the case-law cited).

59 It is apparent from the request for a preliminary ruling that, in the Croatian legal order, the invalidity of credit agreements concluded with a non-authorised lender is laid down by both the Law on consumer credit, as amended, and the Law on the invalidity of credit agreements featuring international elements. However, the scope of those two laws is not identical, that of the latter being more extensive in so far as, as is clear from Article 1(1) thereof, it applies to all credit agreements, including those concluded for business purposes. By contrast, the Law on consumer credit, as amended, applies only to agreements concluded by consumers.

60 As is also apparent from the order for reference, from 1 July 2013, the date of accession of the Republic of Croatia to the European Union, to 30 September 2015, the date of entry into force of the Law on consumer credit, as amended, that invalidity is effective only in respect of credit agreements concluded by non-authorised lenders with their registered office outside the Republic of Croatia, by virtue of the retroactive application of the Law on the invalidity of credit agreements featuring international elements.

61 Indeed, it follows from the interpretation of the Law on consumer credit, as amended, provided by the Vrhovni sud (Supreme Court), that the rule that consumer credit agreements concluded with an non-authorised lender are invalid does not apply, on the basis of that law, retroactively to situations arising prior to its entry into force, that is to say before 30 September 2015.

62 Consequently, to the extent that the Law on the invalidity of credit agreements featuring international elements establishes a derogation for certain financial services based on the fact that the service provider has its registered office in a Member State other than that in which the service is provided, it must be concluded that the Croatian law directly discriminated against creditors established outside the Republic of Croatia until 30 September 2015, the date from which the invalidity of the credit agreements concluded with an non-authorised lender was extended to agreements with creditors established in that Member State.

63 From that date, since the invalidity regime was applicable without distinction to all creditors, the Law on the invalidity of credit agreements featuring international elements constitutes, for that period, a restriction on the exercise of the freedom to provide services.

64 Indeed, as is apparent from the case-law of the Court, the concept of restriction covers measures taken by a Member State which, although applicable without distinction, affect access to the market for economic operators from other Member States (judgment of 12 July 2012, *SC Volksbank România*, C-602/10, EU:C:2012:443 paragraph 75 and the case-law cited). In the present case, the Law on the invalidity of credit agreements featuring international elements makes access to the Croatian financial services market for creditors based outside Croatia subject to their obtaining an authorisation issued by the Croatian Central Bank and thus makes the access to that market less attractive, so that it undermines the freedom guaranteed by Article 56 TFEU.

65 It is therefore necessary to examine, in the first place, whether the objectives which formed the basis of the adoption of that law can justify a derogation from Article 52 TFEU and, in the second place, whether that law is justified by overriding reasons of public interest provided, if that is the case, that it is suitable for securing the attainment of the objectives which it pursues and does not go beyond what is necessary in order to attain it see, to that effect, judgment of 18 July 2013, *Citroën Belux*, C-265/12, EU:C:2013:498, paragraph 37 and the case-law cited).

66 With regard, first of all, to the period between the date of accession of the Republic of Croatia to the European Union and 30 September 2015, it follows from the case-law of the Court that, to the extent that the restrictive legislation at issue in the main proceedings is directly discriminatory, it is justified only by reasons of public order, public security or public health, provided for in Article 52 TFEU, to which Article 62 TFEU refers (see, to that effect, inter alia, judgments of 9 September 2010, *Engelmann*, C-64/08, EU:C:2010:506, paragraph 34; of 22 October 2014, *Blanco and Fabretti*, C-344/13 and C-367/13, EU:C:2014:2311, paragraph 38; and of 28 January 2016, *Laezza*, C-375/14, EU:C:2016:60, paragraph 26),

67 Recourse to such justification presupposes the existence of a genuine, sufficiently serious threat affecting one of the fundamental interests of society (judgment of 21 January 2010, *Commission* v *Germany*, C-546/07, EU:C:2010:25, paragraph 49 and the case-law cited).

68 As is clear from the written observations and oral argument presented by the Croatian Government, the Law on the invalidity of credit agreements featuring international elements was adopted to protect a large number of Croatian citizens who had concluded agreements with lenders operating without having been duly authorised by the Croatian Central Bank. In that regard, the Croatian Government stated that, over the period between 2000 and 2010, approximately 3 000 credit agreements were concluded by non-authorised creditors, in a total amount of approximately EUR 360 million. That legislation was adopted as a last resort, after several legislative acts, adopted before it, had tried in vain to remedy the consequences of such agreements, which justifies its retroactive application. That legislation thus seeks to maintain public order, the reputation and proper functioning of the financial sector, protection of the weaker party and, in particular, consumers' rights.

69 In the light of the objectives pursued by the national legislation at issue in the main proceedings, it must be noted that, although the Croatian Government relies upon the concept of public order, it does not put forward any convincing argument which could be based on that concept which, as has already been pointed out in paragraph 67 of this judgment, presupposes the existence of a genuine, sufficiently serious threat affecting one of the fundamental interests of society, since economic considerations are not, furthermore, capable of justifying a derogation from Article 52 TFEU (see, by analogy, judgment of 21 January 2010, *Commission* v *Germany*, C-546/07, EU:C:2010:25, paragraph 51).

70 Next, it is necessary to examine to what extent the restrictions which the regime of invalidity at issue entails are capable of being justified by overriding reasons in the public interest within the meaning of the case-law cited in paragraph 64 of this judgment, for the period from 30 September 2015.

71 In that regard, it should be noted that the overriding reasons of general interest relied on by the Republic of Croatia, include ones already accepted in the case-law of the Court, namely professional rules intended to protect recipients of services (judgment of 25 July 1991, *Collectieve Antennevoorziening Gouda*, C-288/89, EU:C:1991:323, paragraph 14), the good reputation of the financial sector (judgment of 10 May 1995, *Alpine Investments*, C-384/93, EU:C:1995:126, paragraph 44) and consumer protection (judgment of 18 July 2013, *Citroën Belux*, C-265/12, EU:C:2013:498, paragraph 38).

72 Nonetheless, it must also be recalled that the reasons which may be relied on by a Member State by way of justification must be accompanied by appropriate evidence or by an analysis of the appropriateness and proportionality of the restrictive measure adopted by that State and precise evidence enabling its arguments to be substantiated. Thus, if a Member State wishes to rely on an objective that is capable of justifying an obstacle to the free movement of capital arising from a national restrictive measure, it is under a duty to supply the court called upon to rule on that question with all the evidence capable of enabling that court to be satisfied that that measure does indeed fulfil the requirements arising from the principle of proportionality (see, by analogy, judgment of 6 March 2018, *SEGRO and Horváth*, C-52/16 and C-113/16, EU:C:2018:157, paragraph 85).

73 In the absence of such evidence, it must be held that the Law on the invalidity of credit agreements featuring international elements clearly goes beyond what is necessary to achieve the objectives it seeks to pursue, since, through a general, automatic and retroactive rule, it provides for the invalidity of all credit agreements featuring international elements concluded with non-authorised lenders, with the exception of those which have been performed in full.

74 Furthermore, it should be noted, as does the European Commission, that other measures less prejudicial to the freedom to provide services, could have been adopted in order to permit a check of the legality of the credit agreements and the protection of the weaker party, namely, in particular, rules enabling the competent authorities to intervene, on the basis of a notification or on their own initiative, in the event of unfair commercial practices or infringement of consumers' rights.

75 In the light of all the foregoing considerations, the answer to the first question is that Article 56 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which has the effect, inter alia, that credit agreements and legal acts based on those agreements concluded in that Member State between debtors and creditors established in another Member State who do not hold an authorisation, issued by the competent authorities of the first Member State, to operate in that State, are invalid from the date on which they were concluded, even if they were concluded before the entry into force of that legislation.

The second question

76 By its second question, the referring court asks, in essence, whether Article 4(1) and Article 25 of Regulation No 1215/2012 preclude legislation of a Member State, such as that at issue in the main proceedings, which, in the context of disputes concerning credit agreements featuring international elements falling within the scope of that regulation, allows debtors to bring an action against non-authorised lenders either before the courts of the State on the territory of which those lenders have their registered office, or before the courts of the place where the debtors have their domicile or registered office and restricts jurisdiction to hear actions brought by those creditors against their debtors only to courts of the State on the territory of which those debtors have their domicile, whether the debtors are consumers or professionals.

77 As a preliminary point, it should be noted that Regulation No 1215/2012 applies to actions brought after 10 January 2015. Since the action at issue in the main proceedings was brought on 23 April 2015 and concerned, having regard to the legal relationship between the parties to the main proceedings, the basis and conditions for its exercise, civil and commercial matters within the meaning of Article 1(1) of that regulation, its provisions apply in the present case.

78 As is apparent from the order for reference, Article 8(1) and (2) of the Law on the invalidity of credit agreements featuring international elements gives the debtor the right to choose between the courts of the State in which the non-authorised lender has its registered office and those of his own domicile, while the creditor must apply to the courts of the debtor's domicile.

79 Under Article 1(1) of the Law on the invalidity of credit agreements featuring international elements, that law applies to such agreements concluded in Croatia between debtors and non-authorised lenders, without taking account of the status of the debtor, whether he is a consumer or a professional.

80 In so far as Article 8(1) and (2) of that law also applies to disputes between professionals, it must be noted that it departs from the general rule of jurisdiction laid down in Article 4(1) of Regulation No 1215/2012, that is to say, the defendant's domicile, in that it extends the scope of more protective jurisdictional rules, laid down as an exception in Article 18(1) of that regulation in favour only of consumers, to all debtors.

81 It is appropriate to recall that, in the scheme of Regulation No 1215/2012, the jurisdiction of the courts of the Member State within the territory of which the defendant is domiciled is the general principle. It is only by way of derogation from that principle that that regulation provides for an exhaustive list of cases in which the defendant may or must be sued before the courts of another Member State (see, to that effect, judgment of 25 January 2018, *Schrems*, C-498/16, EU:C:2018:37, paragraph 27). Accordingly, the fact that a Member State provides in its national legislation for rules of jurisdiction which derogate from that general principle, which are not provided for in another provision of that regulation, runs counter to the system instituted by that regulation and, more particularly, by Article 4 thereof.

82 Article 25 of Regulation No 1215/2012 recognises, under certain conditions, the legitimacy of agreements on jurisdiction concluded by the parties to determine the court of a Member State having jurisdiction to hear disputes arising or which may arise in connection with a particular legal relationship. In that regard, it should be observed that it follows from Articles 17 to 19 of Regulation No 1215/2012 that jurisdiction to hear a dispute concerning a consumer contract is determined, in principle, by the same rules, and, in accordance with Article 25(4) of that regulation, a jurisdiction clause can apply to such a contract only to the extent that it is not contrary to the provisions of Article 19 of that regulation.

83 It appears from the wording of Article 8 of the Law on the invalidity of credit agreements featuring international elements, which is, however, a matter for the referring court to ascertain, that the rules of jurisdiction which it introduces apply, notwithstanding the fact that agreements on jurisdiction which meet the requirements laid down by Article 25 of Regulation No 1215/2012 would have been made freely.

84 In the light of those considerations, the answer to the second question is that Article 4(1) and Article 25 of Regulation No 1215/2012 preclude legislation of a Member State, such as that at issue in the main proceedings, which, in the context of disputes concerning credit agreements featuring international elements which fall within the scope of that regulation, allows debtors to bring an action against non-authorised lenders either before the courts of the State in which they have their registered office or before the courts of the place where the debtors have their domicile or head office and

restricts jurisdiction to hear actions brought by creditors against their debtors only to courts of the State on the territory of which those debtors have their domicile, whether they are consumers or professionals.

The third question

85 By its third question, the referring court asks, in essence, whether Article 17(1) of Regulation No 1215/2012 must be interpreted as meaning that a debtor who has entered into a credit agreement in order to have renovation work carried out in an immovable property which is his domicile with the intention, in particular, of providing tourist accommodation services can be regarded as a 'consumer' within the meaning of that provision.

86 It is appropriate, first of all, to recall that, in accordance with the settled case-law of the Court, the concepts used in Regulation No 1215/2012, in particular those which appear in Article 17(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, judgment of 25 January 2018, *Schrems*, C-498/16, EU:C:2018:37, paragraph 28).

87 The notion of a 'consumer' for the purposes of Articles 17 and 18 of Regulation No 1215/2012 must be strictly construed, reference being made to the position of the person concerned in a particular contract, having regard to the nature and objective of that contract and not to the subjective situation of the person concerned, since the same person may be regarded as a consumer in relation to certain transactions and as an economic operator in relation to others (see, to that effect, judgment of 25 January 2018, *Schrems*, C-498/16, EU:C:2018:37, paragraph 29 and the case-law cited).

88 In consequence, 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. Such protection is, however, unwarranted in the case of contracts for the purpose of a trade or professional activity (judgment of 25 January 2018, *Schrems*, C-498/16, EU:C:2018:37, paragraph 30 and the case-law cited).

89 That specific protection is also unwarranted in the case of contracts for the purpose of trade or professional activity, even if that activity is only planned 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 July 1997, *Benincasa*, C-269/95, EU:C:1997:337, paragraph 17).

90 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 one of the relevant goods or services (see, to that effect, judgment of 25 January 2018, *Schrems*, C-498/16, EU:C:2018:37, paragraph 31 and the case-law cited).

91 As regards, more particularly, a person who concludes a contract for a dual purpose, partly for use in his professional activity and partly for private matters, the Court has held that he could rely on those provisions only if the link between the contract and the trade or profession of the person concerned was so slight as to be marginal and, therefore, had only a negligible role in the context of the transaction in respect of which the contract was concluded, considered in its entirety (see, to that effect, judgment of 25 January 2018, *Schrems*, C-498/16, EU:C:2018:37, paragraph 32 and the case-law cited).

92 It is in the light of those principles that it is for the referring court to determine whether, in the case before it, Ms Milivojević can be described as a 'consumer', within the meaning of Article 17(1) of Regulation No 1215/2012. For that purpose, the national court should take into consideration not only the content, nature and purpose of the contract, but also the objective circumstances in which it was concluded (judgment of 20 January 2005, *Gruber*, C-464/01, EU:C:2005:32, paragraph 47).

93 In that regard, the referring court can take into consideration the fact that Ms Milivojević states that she concluded the credit agreement at issue for renovation of her house, in order, inter alia, to create flats for rent, without, however, excluding the fact that part of the sum borrowed was used for private purposes. In those circumstances, it follows from the case-law cited in paragraph 91 above that Ms Milivojević can be considered to have concluded the agreement at issue as a consumer only if the link between that contract and the professional activity in the form of tourist accommodation services is so marginal and negligible that it appears clearly that that contract was concluded essentially for private purposes.

94 Having regard to those considerations, the answer to the third question is that Article 17(1) of Regulation No 1215/2012 must be interpreted as meaning that a debtor who has entered into a credit agreement in order to have renovation work carried out in an immovable property which is his domicile with the intention, in particular, of providing tourist accommodation services cannot be regarded as a 'consumer' within the meaning of that provision, unless, in the light of the context of the transaction, regarded as a whole, for which the contract has been concluded, that contract has such a tenuous link to that professional activity that it appears clear that the contract is essentially for private purposes, which is a matter for the referring court to ascertain.

The fourth question

95 By its fourth question, the referring court asks, in essence, whether the first subparagraph of point 1 of Article 24 of Regulation No 1215/2012 must be interpreted as meaning that an action 'relating to rights *in rem* in immovable property' within the meaning of that provision, constitutes an action for a declaration of the invalidity of a credit agreement and of the notarised deed relating to the creation of a mortgage taken out as a guarantee for the debt arising out of that agreement and for the removal from the land register of the mortgage on a building.

96 It follows from the wording of the first subparagraph of point 1 of Article 24 of Regulation No 1215/2012 that the courts of the Member State in which the property is situated have exclusive jurisdiction to hear and determine actions in matters relating to rights *in rem* in immovable property, without taking account of the domicile of the parties.

97 As follows from the settled case-law of the Court, an independent definition must be given in EU law to the phrase 'in proceedings which have as their object rights *in rem* in immovable property', in order to ensure its uniform application in all the Member States (see, to that effect, judgments of 3 April 2014, *Weber*, C-438/12, EU:C:2014:212, paragraph 40, and of 17 December 2015, *Komu and Others*, C-605/14, EU:C:2015:833, paragraph 23).

98 The Court has also held that the provisions of the first subparagraph of point 1 of Article 24 of Regulation No 1215/2012 must not be given a wider interpretation than is required by their objective. Those provisions have the effect of depriving the parties of the choice of forum which would otherwise be theirs and, in certain cases, of resulting in their being brought before a court which is not that of the domicile of any of them (see, to that effect, judgment of 16 November 2016, *Schmidt*, C-417/15, EU:C:2016:881, paragraph 28).

99 Furthermore, the Court has stated that the exclusive jurisdiction of the courts of the Contracting State in which the property is situated does not encompass all actions concerning rights *in rem* in immovable property, but only those which both come within the scope of that regulation and are actions which seek to determine the extent, content, ownership or possession of immovable property or the existence of other rights *in rem* therein and to provide the holders of those rights with protection for the powers which attach to their interest (judgment of 16 November 2016, *Schmidt*, C-417/15, EU:C:2016:881, paragraph 30 and the case-law cited).

100 It is important to note that, according to the settled case-law of the Court, the difference between a right *in rem* and a right *in personam* lies in the fact that the former, existing in corporeal property, has effect *erga omnes*, whereas the latter can be claimed only against the debtor (judgment of 16 November 2016, *Schmidt*, C-417/15, EU:C:2016:881, paragraph 31 and the case-law cited).

101 In the present case, with regard to the claims seeking a declaration of the invalidity of the agreement at issue and of the notarised deed related to the creation of a mortgage, it is clear that they are based on a right *in personam* which can be claimed only against the defendant. Therefore, those claims do not fall within the scope of the exclusive jurisdiction rule contained in Article 24, point 1, of Regulation No 1215/2012.

102 However, with regard to the request for removal from the land register of the registration of a mortgage, it must be noted that the mortgage, once duly constituted in accordance with the procedural and substantive rules laid down by the relevant national legislation, is a right *in rem* which has effects *erga omnes*.

103 Such an application, seeking the enforcement of powers arising from a right *in rem*, falls under the exclusive jurisdiction of the courts of the Member State in which the property is situated, pursuant to the first subparagraph of point 1 of Article 24 of Regulation No 1215/2012 (judgment of 16 November 2016, *Schmidt*, C-417/15, EU:C:2016:881, paragraph 41).

104 It should be added that, in the light of that exclusive jurisdiction of the court of the Member State in which the immovable property is situated to the request for removal from the land register for the registration of mortgages, that court also has a non-exclusive jurisdiction based on related actions, pursuant to Article 8(4) of Regulation No 1215/2012, to hear claims seeking annulment of the credit agreement and the notarised deed related to the creation of that mortgage, to the extent that these claims are brought against the same defendant and are capable, as is apparent from the material in the file available to the Court, of being joined.

105 In the light of those considerations the answer to the fourth question is that the first subparagraph of point 1 of Article 24 of Regulation No 1215/2012 must be interpreted as meaning that an action 'relating to rights *in rem* in immovable property' within the meaning of that provision, constitutes an action for the removal from the land register of the mortgage on a building, but that an action for a declaration of the invalidity of a credit agreement and of the notarised deed relating to the creation of a mortgage taken out as a guarantee for the debt arising out of that agreement does not fall within that concept.

Costs

106 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 (Second Chamber) hereby rules:

1. **Article 56 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which has the effect, inter alia, that credit agreements and legal acts based on those agreements concluded in that Member State between debtors and creditors established in another Member State who do not hold an authorisation, issued by the competent authorities of the first Member State, to operate in that State, are invalid from the date on which they were concluded, even if they were concluded before the entry into force of that legislation.**

2. **Article 4(1) and Article 25 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 preclude legislation of a Member State, such as that at issue in the main proceedings, which, in the context of disputes concerning credit agreements featuring international elements which fall within the scope of that regulation, allows debtors to bring an action against non-authorised lenders either before the courts of the State in which they have their registered office or before the courts of the place where the debtors have their domicile or head office and restricts jurisdiction to hear actions brought by creditors against their debtors only to courts of the State on the territory of which those debtors have their domicile, whether they are consumers or professionals.**

3. **Article 17(1) of Regulation No 1215/2012 must be interpreted as meaning that a debtor who has entered into a credit agreement in order to have renovation work carried out in an immovable property which is his domicile with the intention, in particular, of providing tourist accommodation services cannot be regarded as a 'consumer' within the meaning of that provision, unless, in the light of the context of the transaction, regarded as a whole, for which the contract has been concluded, that contract has such a tenuous link to that professional activity that it appears clear that the contract is essentially for private purposes, which is a matter for the referring court to ascertain.**

4. **The first subparagraph of point 1 of Article 24 of Regulation No 1215/2012 must be interpreted as meaning that an action 'relating to rights *in rem* in immovable property' within the meaning of that provision, constitutes an action for the removal from the land register of the mortgage on a building, but that an action for a declaration of the invalidity of a credit agreement and of the notarised deed relating to the creation of a mortgage taken out as a guarantee for the debt arising out of that agreement does not fall within that concept.**

[Signatures]