



## Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

14 September 2023\*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EC) No 593/2008 – Law applicable to contractual obligations – Scope – Timeshare contracts – Legal proceedings seeking a declaration that those contracts are void – United Kingdom nationals – Choice of applicable law – Article 3 – Freedom of choice – Article 4(1)(b) and (c) – Applicable law in the absence of a choice made by the parties – Article 6 – Consumer contracts – Limits)

In Case C-632/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de Primera Instancia e Instrucción no 2 de Granadilla de Abona (Court of First Instance and Preliminary Investigations No 2, Granadilla de Abona, Spain), made by decision of 13 October 2021, received at the Court on 14 October 2021, in the proceedings

**JF,**

**NS,**

v

**Diamond Resorts Europe Limited (Sucursal en España),**

**Diamond Resorts Spanish Sales SL,**

**Sunterra Tenerife Sales SL,**

THE COURT (Seventh Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, F. Biltgen (Rapporteur) and J. Passer, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

\* Language of the case: Spanish.

after considering the observations submitted on behalf of:

- JF and NS, by A. García Cami, procurador, and L. Mancera Molero, abogada,
- Diamond Resorts Europe Limited (Sucursal en España), Diamond Resorts Spanish Sales SL and Sunterra Tenerife Sales SL, by M.-D. Gómez Dabic and J.M. Macías Castaño, abogados,
- the Spanish Government, by A. Ballesteros Panizo, acting as Agent,
- the Czech Government, by L. Halajová, M. Smolek and J. Vláčil, acting as Agents,
- the European Commission, by I. Galindo Martín and W. Wils, acting as Agents,

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

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 4(3) and Article 5 of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1, ‘the Rome Convention’) and of Article 4(1)(b) and (c), Article 6(1) and Article 24 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6) (‘the Rome I Regulation’).
- 2 The request has been made in proceedings between JF and NS, on the one hand, and Diamond Resorts Europe Limited (Sucursal en España) (‘Diamond Resorts Europe’), Diamond Resorts Spanish Sales SL and Sunterra Tenerife Sales SL, on the other, concerning an application for a declaration that timeshare contracts concluded between the applicants in the main proceedings and Diamond Resorts Europe are void.

### **Legal context**

#### ***The first protocol***

- 3 Article 1 of the First protocol on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1989 L 48, p. 1) (‘the First Protocol’), which entered into force on 1 August 2004, provides:

‘The Court of Justice of the European Communities shall have jurisdiction to give rulings on the interpretation of:

(a) the [Rome Convention];

...’

4 Article 2 of that protocol provides:

‘Any of the courts referred to below may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning interpretation of the provisions contained in the instruments referred to in Article 1 if that court considers that a decision on the question is necessary to enable it to give judgment:

(a) ...

– in Spain:

el Tribunal Supremo [(Supreme Court)],

...

(b) the courts of the Contracting States when acting as appeal courts.’

### ***European Union law***

#### *The Rome I Regulation*

5 Recitals 6, 7, 23 and 27 of the Rome I Regulation state:

‘(6) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.

(7) The substantive scope and the provisions of this Regulation should be consistent with 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)] (Brussels I) and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations [(‘Rome II’) (OJ 2007 L 199, p. 40)].

...

(23) As regards contracts concluded with parties regarded as being weaker, those parties should be protected by conflict-of-law rules that are more favourable to their interests than the general rules.

...

(27) Various exceptions should be made to the general conflict-of-law rule for consumer contracts. Under one such exception, the general rule should not apply to contracts relating to rights *in rem* in immovable property or tenancies of such property unless the contract relates to the right to use immovable property on a timeshare basis within the meaning of Directive 94/47/EC of the European Parliament and of the Council of

26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis [(OJ 1994 L 280, p. 83)].’

- 6 Article 1 of the Rome I Regulation, entitled ‘Material scope’, provides, in paragraph 1 thereof: ‘This Regulation shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters.
- It shall not apply, in particular, to revenue, customs or administrative matters.’
- 7 Article 3 of that regulation, entitled ‘Freedom of choice’, provides:
- ‘1. A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract.
2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice made under this Article or of other provisions of this Regulation. Any change in the law to be applied that is made after the conclusion of the contract shall not prejudice its formal validity under Article 11 or adversely affect the rights of third parties.
3. Where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.
4. Where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties’ choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.
5. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 10, 11 and 13.’
- 8 Under Article 4 of the Rome I Regulation, entitled ‘Applicable law in the absence of choice’:
- ‘1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:
- ...
- (b) a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence;
- (c) a contract relating to a right *in rem* in immovable property or to a tenancy of immovable property shall be governed by the law of the country where the property is situated;

(d) notwithstanding point (c), a tenancy of immovable property concluded for temporary private use for a period of no more than six consecutive months shall be governed by the law of the country where the landlord has his habitual residence, provided that the tenant is a natural person and has his habitual residence in the same country;

...'

9 Article 6 of the Rome I Regulation, entitled 'Consumer contracts', lays down the following:

'1. Without prejudice to Articles 5 and 7, a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another person acting in the exercise of his trade or profession (the professional) shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:

(a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or

(b) by any means, directs such activities to that country or to several countries including that country,

and the contract falls within the scope of such activities.

2. Notwithstanding paragraph 1, the parties may choose the law applicable to a contract which fulfils the requirements of paragraph 1, in accordance with Article 3. Such a choice may not, however, have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1.

3. If the requirements in points (a) or (b) of paragraph 1 are not fulfilled, the law applicable to a contract between a consumer and a professional shall be determined pursuant to Articles 3 and 4.

4. Paragraphs 1 and 2 shall not apply to:

(a) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence;

...

(c) a contract relating to a right *in rem* in immovable property or a tenancy of immovable property other than a contract relating to the right to use immovable properties on a timeshare basis within the meaning of Directive [94/47];

...'

10 Article 9 of that regulation, entitled 'Overriding mandatory provisions' is worded as follows:

'1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.

3. Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application.'

11 Article 24 of that regulation, entitled 'Relationship with the Rome Convention', provides:

'1. This Regulation shall replace the Rome Convention in the Member States, except as regards the territories of the Member States which fall within the territorial scope of that Convention and to which this Regulation does not apply pursuant to Article 299 [EC].

2. In so far as this Regulation replaces the provisions of the Rome Convention, any reference to that Convention shall be understood as a reference to this Regulation.'

12 Article 28 of the Rome I Regulation, entitled 'Application in time', provides:

'This Regulation shall apply to contracts concluded as from 17 December 2009.'

#### *Directive 94/47*

13 The purpose of Directive 94/47 was to approximate the laws, regulations and administrative provisions of the Member States on the protection of purchasers in respect of certain aspects of contracts relating directly or indirectly to the purchase of the right to use one or more immovable properties on a timeshare basis.

#### *Directive 2008/122/EC*

14 Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (OJ 2009 L 33, p. 10) repealed and replaced Directive 94/47.

#### *The Brussels Ia Regulation*

15 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; 'the Brussels Ia Regulation'), repealed and replaced Regulation No 44/2001, which had replaced the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32).

16 Article 7(1) of the Brussels Ia Regulation provides:

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

- (1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
- (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

...

- in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided ...’.

17 Article 24(1) of that regulation provides:

‘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.

However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State’.

#### *The United Kingdom Withdrawal Agreement*

18 The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7), signed in Brussels and London on 24 January 2020, entered into force on 1 February 2020 (‘the Withdrawal Agreement’).

19 Article 66 of that agreement, entitled ‘Applicable law in contractual and non-contractual matters’, provides:

‘In the United Kingdom, the following acts shall apply as follows:

- (a) [the Rome I Regulation] shall apply in respect of contracts concluded before the end of the transition period;

...’

20 Article 126 of that agreement, entitled ‘Transition period’, provides:

‘There shall be a transition or implementation period, which shall start on the date of entry into force of this Agreement and end on 31 December 2020.’

### *Spanish law*

- 21 In accordance with Article 1(1) of Ley 42/1998 sobre derechos de aprovechamiento por turno de bienes inmuebles de uso turístico y normas tributarias (Law 42/1998 on timeshare and the tax regulations in that area) of 15 December 1998 (BOE No 300 of 16 December 1998, p. 42076), that law governs the creation, exercise, transfer and extinction of the right to use timeshare properties – which confers on its holder the right to enjoy, for a specific period of each year, on an exclusive basis, accommodation capable of being used independently, on account of the presence of a specific exit towards the public highway or to a common part of the building of which it is part, and which is permanently equipped with the appropriate furnishings for that purpose – as well as the right to provide additional services. The right of enjoyment does not include changes to the accommodation or to its furnishings. The timeshare right may be constituted as a right *in rem*.
- 22 Under the second additional provision of Law 42/1998, ‘all contracts concerning rights relating to the use of one or more immovable properties situated in Spain during a specified or specifiable period of the year are subject to the provisions of this Law, regardless of the place or the date on which such contracts were concluded’.
- 23 Under Article 1(1) of Ley 4/2012 de contratos de aprovechamiento por turno de bienes de uso turístico, de adquisición de productos vacacionales de larga duración, de reventa y de intercambio y normas tributarias (Law 4/2012 on timeshare, long-term holiday products, resale and exchange contracts and the tax regulations in that area), of 6 July 2012 (BOE No 162 of 7 July 2012, p. 49192), contracts for the marketing, sale and resale of timeshare rights and long-term holiday products and exchange contracts are to be governed by the provisions of that law where they are concluded between a trader and a consumer.
- 24 In accordance with Article 2 of Law 4/2012, ‘timeshare contract’ means a contract of a duration of more than one year under which a consumer, for consideration, acquires the right to use one or more units of accommodation for the purposes of an overnight stay, for more than one stay.

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

- 25 The applicants in the main proceedings are British consumers resident in the United Kingdom who concluded, on 14 April 2008 and 28 June 2010 respectively, two contracts with Diamond Resorts Europe, an English company operating as a branch in Spain of the Diamond Resorts group.
- 26 Both of those contracts provided for the grant of a certain number of points enabling the applicants in the main proceedings to enjoy, for a fixed period, a range of accommodation in various countries in Europe, in particular in Spain. Under those contracts, the applicants in the main proceedings were not allocated specific accommodation or a specific period each year, but rather a list of possible accommodation, the availability of which they had to request in advance in order to benefit from it at the desired time.
- 27 The applicants in the main proceedings request that those same contracts be declared invalid on the ground that they do not satisfy the requirements laid down in Laws 42/1998 and 4/2012, which require, *inter alia*, the right to use timeshare properties to be entered in the Spanish land registry, the accommodation allocated to consumers to be determined precisely and the duration of the



contracts to be specified. In that context, the applicants in the main proceedings submit that the rights acquired under the contracts at issue must be classified as ‘rights *in rem* to use timeshare properties’.

- 28 The applicants also brought proceedings against other companies belonging to the same group as Diamond Resorts Europe, but that were not parties to the contracts at issue in the main proceedings.
- 29 Diamond Resorts Europe contends that those contracts do not concern rights *in rem* but rights *in personam*. It considers that the contracts must be governed by English law, since the applicants in the main proceedings are United Kingdom nationals, they have their habitual residence in that country and the seat of the group of companies is also in the United Kingdom.
- 30 The referring court considers that the determination of the law applicable to the contracts at issue depends on the answer to the question of which provisions of the Rome Convention and the Rome I Regulation are applicable and that that answer has consequences for the validity of those contracts. In that regard, the Spanish legislation applicable at the time of their signature, namely Law 42/1998, regarded those contracts as constituting rights *in rem* in immovable property and made their validity subject to a number of formal requirements which the English law does not impose. However, the Spanish legislation in force, namely Law 4/2012, includes a Title II, which was interpreted as meaning that such contracts were considered to be association contracts and that, consequently, they were subject to the provisions of that title. Since there are fewer formal requirements laid down by Law 4/2012, those contracts would be valid in the light of that law.
- 31 According to the referring court, as regards the determination of the applicable law, there are various possible interpretations. On the one hand, where the relationship is between a consumer and a trader with a branch in Spain, the contract concerned was signed in Spain and the parties’ obligations relate to immovable property situated in Spain, Spanish law should be applied.
- 32 On the other hand, it would be possible to analyse such a situation from the point of view of freedom of choice, in accordance with Article 3(1) of the Rome I Regulation, given that a pre-drafted clause providing that the contract concerned is to be governed by English law must be regarded not as an agreement freely consented to relating to the application of that law, but as an element imposed by the party which inserted that clause into that contract in order to avoid the application of Spanish legislation, namely Law 42/1998.
- 33 According to Diamond Resorts Europe, in accordance with Article 5 of the Rome Convention and Article 6 of the Rome I Regulation, as regards relationships involving consumers, the general principle of the application of the law of the country where the consumer concerned has his or her habitual residence must prevail. Thus, English law would be applicable.
- 34 In that context, the referring court asks, first of all, whether the Rome I Regulation, which replaced the Rome Convention with more detailed provisions, may be applied to contracts concluded before the entry into force of that regulation or whether the earlier rules remain applicable.
- 35 Next, in view of the United Kingdom’s withdrawal from the European Union, the referring court considers that it is necessary to determine whether the provisions of EU law remain applicable to nationals of that State.

36 Lastly, the referring court raises the question of determining the nature of the contractual relationship between the parties, that is to say, whether the rights at issue are rights *in rem* or association-type rights *in personam*. It would even be conceivable to classify them as tenancy rights in immovable property, in which case Article 4 of the Rome I Regulation would give rise to two possibilities, namely the possibility of applying the law of the country in which the property concerned is situated or of applying the law of the country in which the consumer has his or her habitual residence, depending on whether the term of the tenancy is respectively greater than or less than six months.

37 In those circumstances the Juzgado de Primera Instancia e Instrucción nº 2 de Granadilla de Abona (Court of First Instance and Preliminary Investigations No 2, Granadilla de Abona, Spain) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Are the [Rome Convention] and the [Rome I Regulation] to be construed as applying to contracts in which both parties are United Kingdom nationals?

If the answer to the first question is in the affirmative:

(2) Is [the Rome I Regulation] to be construed as applying to contracts concluded before its entry into force, pursuant to Article 24 of that regulation? If the answer is no, must a club-points-based timeshare contract be treated as falling within the scope of Articles 4(3) or 5 of the [Rome Convention], including where the consumer has chosen the law of a State other than his or her State of habitual residence as the applicable law? Further, if the answer is that such contracts can come under either provision, which set of rules takes priority?

(3) Irrespective of the answers to the second question, is a club-points-based timeshare contract to be treated as a contract for the acquisition of rights *in rem* in immovable property or association-type rights *in personam*?

– If it is considered that rights *in rem* are acquired, for the purposes of determining the law applicable, which of Article 4[1](c) and [Article] 6(1) of [the Rome I Regulation] is applicable by way of priority, including in the event that the consumer chooses the law of a State other than that of his or her State of habitual residence as the applicable law?

– If it is considered that rights *in personam* are acquired, are those rights to be treated as a tenancy of immovable property, for the purposes of Article 4[1](c) [of that Regulation], or as a provision of services, for the purposes of [that] Article 4[1](b)? Further, and in any event, is Article 6(1) [of that Regulation] applicable by way of priority in so far as the contract is with a consumer and/or user, including where the consumer chooses the law of a State other than that of his or her State of habitual residence as the applicable law?

(4) In all of the above cases, is national legislation which states that ‘all contracts concerning rights relating to the use of one or more immovable properties situated in Spain during a specified or specifiable period of the year are subject to the provisions of this Law, regardless of the place or the date on which such contracts were concluded’ to be interpreted as being compatible with the provisions governing the applicable law laid down in the [Rome Convention] and in [the Rome I Regulation]?’

### **The jurisdiction of the Court**

- 38 As a preliminary point, it should be recalled that, in accordance with Article 1 of the First Protocol, the Court of Justice has jurisdiction to rule on the interpretation of the Rome Convention.
- 39 Article 2(a) of the First Protocol sets out an exhaustive list of the courts of the Contracting States which may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before them and concerning, inter alia, the interpretation of the provisions of that convention where they consider that a decision on the question is necessary to enable them to give judgment. Under Article 2(b), that power is also conferred on the courts of the Contracting States when acting as appeal courts.
- 40 Indeed, first, it must be stated that the Juzgado de Primera Instancia e Instrucción No 2 de Granadilla de Abona (Court of First Instance and Preliminary Investigations No 2, Granadilla de Abona) does not appear on that list, which, as regards the Kingdom of Spain, refers only to the ‘Tribunal Supremo’ (Supreme Court). Second, as a court of first instance, the referring court is also not called upon to act as an appeal court, within the meaning of Article 2(b) of that protocol, in the context of the dispute in the main proceedings.
- 41 It follows that the conditions laid down in Article 2 of the First Protocol are not satisfied and that the Court of Justice does not have jurisdiction to rule on the questions referred for a preliminary ruling in so far as they concern the interpretation of the Rome Convention.
- 42 However, the Court retains jurisdiction to give preliminary rulings on the interpretation of the provisions of the Rome I Regulation referred to in those questions, in respect of which there is no limitation concerning the courts authorised to make a reference to the Court of Justice.

### **The admissibility of the request for a preliminary ruling**

- 43 Although it has adopted a position on each of the questions referred for a preliminary ruling by the referring court, the Spanish Government submits, as a preliminary point, that the request for a preliminary ruling is inadmissible in its entirety, on the ground that it does not satisfy the conditions laid down in Article 267 TFEU and Article 94 of the Rules of Procedure of the Court of Justice, since the referring court has not indicated the terms of the contracts at issue in the main proceedings.
- 44 It should be borne in mind that, according to settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a 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 bound, in principle, to give a ruling (judgment of 13 January 2022, *Regione Puglia*, C-110/20, EU:C:2022:5, paragraph 23 and the case-law cited).

- 45 The Court may refuse to rule on a question referred by a national court for a preliminary ruling 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 (judgment of 13 January 2022, *Regione Puglia*, C-110/20, EU:C:2022:5, paragraph 24 and the case-law cited).
- 46 In the present case, even though the request for a preliminary ruling does not contain the precise terms of the contracts at issue in the main proceedings and does not provide a precise legal classification of the obligations at issue, the fact remains that the referring court has, first, indicated precisely the relationship between the provisions of EU law which it seeks to have interpreted and the dispute before it and, second, explained how the resolution of that dispute depends on the Court's answers to the questions referred.
- 47 In addition, in accordance with Article 94 of the Rules of Procedure, the reference for a preliminary ruling contains sufficient factual and legal material to enable not only the interested parties to submit observations pursuant to Article 23 of the Statute of the Court of Justice of the European Union, but also the Court to give a useful answer to the questions referred.
- 48 Accordingly, the plea of inadmissibility raised by the Spanish Government must be rejected in so far as it relates to the request for a preliminary ruling in its entirety and that request must be declared admissible.

## **Consideration of the questions referred**

### ***The first question***

- 49 By its first question, the referring court asks, in essence, whether the provisions of the Rome I Regulation are applicable to contracts where both parties are nationals of the same State, in this case the United Kingdom.
- 50 In that regard, it follows from the wording of Article 1 of the Rome I regulation that that regulation is to apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters.
- 51 Thus, the provisions of the Rome I regulation are applicable to any contractual relationship with a foreign element, without Article 1 of that regulation containing any specification or requirement as to a possible link between that foreign element and the nationality or place of domicile of the contracting parties concerned.
- 52 It follows from the foregoing that, although the two parties who concluded the contracts at issue in the main proceedings have the same nationality, those contracts are capable of falling within the scope of the Rome I Regulation, since they have one or more other foreign elements.
- 53 In the present case, it is apparent from the order for reference that those contracts, which were concluded between two United Kingdom nationals and a company incorporated under the law of England and Wales, were to be performed in various European countries, including, in particular, Spain.

- 54 Furthermore, it should be noted that the United Kingdom's withdrawal from the European Union has no bearing on the application of the provisions of the Rome I Regulation to the dispute in the main proceedings.
- 55 As regards the rules applicable during the transition period, laid down in Article 66(a) and Article 126 of the Withdrawal Agreement, they were drawn up with regard to the cases pending before the courts and institutions of the United Kingdom and as such do not affect the position of the Spanish court hearing the dispute in the main proceedings.
- 56 It follows from the foregoing that the provisions of the Rome I Regulation are applicable, in the context of a dispute before a court of a Member State, to contracts the two parties of which are United Kingdom nationals, to the extent that those contracts have a foreign element.

### *The second and third questions*

- 57 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, which provision of the Rome I Regulation must be applied in order to determine the law applicable to a club-points-based timeshare contract.
- 58 More specifically, that court wishes to know whether such a contract must be regarded as relating to the acquisition of rights *in rem* in immovable property, which would lead to the application of Article 4(1)(c) of the Rome I regulation, or as relating to the acquisition of rights *in personam*, in which case either Article 4(1)(c) or Article 4(1)(b) of that same regulation would be applicable in so far as that contract should be regarded as having as its object, respectively, a tenancy of immovable property or a provision of services.
- 59 In any event, that court is uncertain whether or not, in the case of a consumer contract, the provisions of Article 6(1) of the Rome I Regulation should, as a matter of priority, be applied and questions the effect of the free choice by the consumer concerned of an applicable law other than that of the country in which he or she has his or her habitual residence.
- 60 Before answering those questions, it is important to provide clarification as to the scope *ratione temporis* of the Rome I Regulation.
- 61 In that regard, it should be noted that, by virtue of Article 28 of the Rome I Regulation, the provisions of that regulation are intended to apply only to contractual relationships arising from mutual agreement of the contracting parties which has manifested itself on or after 17 December 2009. The EU legislature ruled out the Rome I Regulation having immediate application whereby the future effects of contracts concluded before 17 December 2009 would have been brought within its scope (see, to that effect, judgment of 18 October 2016, *Nikiforidis*, C-135/15, EU:C:2016:774, paragraphs 31 and 33).
- 62 It follows from the case-law that the application of the Rome I Regulation depends on the date of conclusion of the contract concerned (see, to that effect, judgment of 25 March 2021, *Obala i lučice*, C-307/19, EU:C:2021:236, paragraph 56 and the case-law cited).
- 63 Thus, the provisions of the Rome I Regulation apply exclusively to contracts concluded on or after 17 December 2009, and not to the future effects of contracts concluded before that date.

- 64 The first contract at issue in the main proceedings, which was signed on 14 April 2008, therefore does not fall within the temporal scope of the Rome I Regulation.
- 65 Consequently, the interpretation of the provisions of the Rome I Regulation that the Court will provide to the referring court in answer to the questions raised by that court will concern only the second contract at issue in the main proceedings, signed on 28 June 2010 ('the contract at issue').
- 66 As regards the question of determining the law applicable to a club-points-based timeshare contract, it should be recalled that it is apparent from recital 6 of the Rome I Regulation that the purpose of that regulation is to lay down conflict-of-law rules designating the same national law, irrespective of the country in which the action is brought, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments.
- 67 Thus, Chapter II of the Rome I Regulation lays down uniform rules which enshrine the principle that priority is to be given to the will of the parties, who are recognised, in Article 3 of that regulation, as having the freedom to choose the law applicable to the contract.
- 68 In that regard, that Article 3(1) requires that the choice of the applicable law be made expressly or be clearly demonstrated by the terms of the contract or the circumstances of the case.
- 69 In the absence of a choice of applicable law made by the parties, Article 4(1) of the Rome I Regulation lays down connecting criteria according to different types of contract, including those referred to by the referring court, namely contracts concerning a right *in rem* in immovable property or a tenancy of immovable property and contracts for the provision of services.
- 70 Indeed, in the present case, it is apparent from the documents before the Court that the contract at issue designates English law as being the law applicable to that contract and that the contract was concluded with a consumer.
- 71 In accordance with Article 6(2) of the Rome I Regulation, although in a contract concluded by a consumer with a professional, the parties may choose the law applicable to that contract, that choice may not, however, have the result of depriving the consumer of the protection afforded to him or her by the provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of Article 6(1) of that regulation which provides that such a contract is to be governed by the law of the country where the consumer has his or her habitual residence (see, to that effect, judgment of 10 February 2022, *ShareWood Switzerland*, C-595/20, EU:C:2022:86, paragraphs 15 and 16).
- 72 The contract at issue must also fulfil the requirements laid down in Article 6(1), namely that the contract has been concluded by the consumer for a purpose which can be regarded as being outside his or her trade or profession, that the professional pursues his or her commercial or professional activity in the country in which the consumer has his or her habitual residence or that, by any means, he or she directs such activity to that country or to several countries including that country, and that the contract falls within the scope of that activity.

- 73 In the present case, if the contract at issue fulfils the requirements laid down in Article 6(1) of the Rome I Regulation, which it is for the referring court to ascertain, the choice of applicable law by the parties cannot, in accordance with Article 6(2), have the result of depriving the consumer concerned of the protection afforded to him or her by the mandatory provisions of the law of the country in which he or she has his or her habitual residence.
- 74 That cannot be the case in the situation at issue in the main proceedings, since the applicable law chosen is that of the country where the consumers concerned have their habitual residence, namely English law.
- 75 An interpretation whereby it would be possible to derogate from the conflict-of-law rules laid down by the Rome I Regulation for determining the law applicable to consumer contracts, on the ground that another law would be more favourable to the consumer, would necessarily seriously undermine the general requirement of predictability of the applicable law and, therefore, the principle of legal certainty in contractual relationships involving consumers (see, by analogy, judgment of 12 September 2013, *Schlecker*, C-64/12, EU:C:2013:551, paragraph 35).
- 76 Moreover, as Article 6 of the Rome I Regulation is not only specific, but also exhaustive, the conflict-of-law rules laid down in that article cannot be amended or supplemented by other conflict-of-law rules laid down in that regulation, unless they are expressly referred to in that article (see, by analogy, judgment of 20 October 2022, *ROI Land Investments*, C-604/20, EU:C:2022:807, paragraphs 40 and 41).
- 77 It follows from the foregoing that the second and third questions should be answered as follows:
- Article 6(2) of the Rome I Regulation must be interpreted as meaning that, where a consumer contract fulfils the requirements laid down in Article 6(1) of that regulation, the parties to that contract may, in accordance with Article 3 of that same regulation, choose the law applicable to that contract, provided, however, that that choice does not result in depriving the consumer concerned of the protection afforded to him or her by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of Article 6(1), which provides that such a contract is to be governed by the law of the country where the consumer has his or her habitual residence;
  - in view of the mandatory and exhaustive nature of that same Article 6(2), it is not possible to derogate from that provision for the benefit of legislation allegedly more favourable to the consumer.

#### ***The fourth question***

- 78 By its fourth question, the referring court asks, in essence, whether EU law must be interpreted as precluding national legislation under which all timeshare contracts are subject to the provisions of that legislation, irrespective of the choice made by the parties as to the law applicable to the contract in question.
- 79 Like most of the parties who have submitted written observations in the main proceedings, it should be recalled that, under Article 9 of the Rome I Regulation, the provisions of that regulation may not restrict the application of the overriding mandatory provisions of the law of the court seised, which constitute mandatory provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic

organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law applicable to the contract under that regulation (see, to that effect, judgment of 17 October 2013, *Unamar*, C-184/12, EU:C:2013:663, paragraph 48).

- 80 However, and without even relying on that Article 9, the referring court merely cites, in its fourth question, an extract from the second additional provision of Law 42/1998, under which all timeshare contracts concerning rights relating to the use of a timeshare property situated in Spain are subject to the provisions of that law, without referring, however, to the content of Law 4/2012, which appears to lay down less restrictive provisions concerning such use and which, as is apparent from the order for reference, that court does not rule out as also being applicable.
- 81 Given that that decision does not contain either the precise content of the relevant provisions of the national legislation at issue or even the beginning of an explanation of the procedural aspects of the obligations imposed by that legislation or of the exceptional circumstances which would justify taking into account considerations of public interest which those provisions are intended to safeguard, the Court is not in a position to know the reasons which prompted the referring court to question the compatibility of that legislation with EU law.
- 82 In those circumstances, and having regard to the fact that the fourth question does not satisfy the requirements of Article 94 of the Rules of Procedure, it is impossible for the Court to provide the referring court with a useful answer to that question. Accordingly, that question must be declared inadmissible.

### Costs

- 83 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Seventh Chamber) hereby rules:

**1. The provisions of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) are applicable, in the context of a dispute before a court of a Member State, to contracts the two parties of which are United Kingdom nationals, to the extent that those contracts have a foreign element.**

**2. Article 6(2) of Regulation No 593/2008**

**must be interpreted as meaning that:**

- **where a consumer contract fulfils the requirements laid down in Article 6(1) of that regulation, the parties to that contract may, in accordance with Article 3 of that same regulation, choose the law applicable to that contract, provided, however, that that choice does not result in depriving the consumer concerned of the protection afforded to him or her by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of Article 6(1), which provides that such a contract is to be governed by the law of the country where the consumer has his or her habitual residence;**



- **in view of the mandatory and exhaustive nature of that same Article 6(2), it is not possible to derogate from that provision for the benefit of legislation allegedly more favourable to the consumer.**

[Signatures]