



## Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

14 September 2023\*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction and recognition and enforcement of judgments in civil and commercial matters – Regulation (EU) No 1215/2012 – Special jurisdiction – Jurisdiction over consumer contracts – Article 18(1) – Concept of ‘other party to a contract’ – Article 63 – Domicile of a legal person – Regulation (EC) No 593/2008 – Law applicable to contractual obligations – Choice of applicable law – Article 3 – Freedom of choice – Article 6 – Consumer contracts – Limits – Contract concluded with a consumer concerning timeshare rights in tourist accommodation by a means of a points scheme)

In Case C-821/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de Primera Instancia no 2 de Fuengirola (Court of First Instance No 2, Fuengirola, Spain), made by decision of 3 December 2021, received at the Court on 24 December 2021, in the proceedings

NM

v

**Club La Costa (UK) plc, sucursal en España,**

**CLC Resort Management Ltd,**

**Midmark 2 Ltd,**

**CLC Resort Development Ltd,**

**European Resorts & Hotels 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,

\* Language of the case: Spanish.

having regard to the written procedure,

after considering the observations submitted on behalf of:

- NM, by P. Maciá García, abogada,
- Midmark 2 Ltd, by M.-D. Gómez Dabic and J.M. Macías Castaño, abogados,
- Club La Costa (UK) plc, sucursal en España, by J. Martínez-Echevarría Maldonado, abogado,
- the Spanish Government, by A. Ballesteros Panizo, acting as Agent,
- the European Commission, by F. Castilla Contreras, S. Noë 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 18(1) and Article 63(2) 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) ('the Brussels Ia Regulation') and of Article 3 and Article 6(1) and (3) 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 NM, on the one hand, and Club La Costa (UK) plc, sucursal en España, CLC Resort Management Ltd, Midmark 2 Ltd, CLC Resort Development Ltd and European Resorts & Hotels SL, on the other, concerning an application for a declaration that a timeshare contract was void and for an order for payment of a sum by way of restitution.

## Legal context

### *European Union law*

#### *The Brussels Ia Regulation*

3 Recitals 15, 21 and 34 of the Brussels Ia Regulation state:

‘(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant’s domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

...

(21) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in different Member States. ...

...

(34) Continuity between the [Convention on jurisdiction and the enforcement of judgments in civil and commercial matters dated 27 September 1968 (OJ 1978 L 304, p. 36), as amended by the successive conventions on the accession of new Member States to that convention], [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)] and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation by the Court of Justice of the European Union of [that] Convention and of the Regulations replacing it.’

4 Point 5 of Article 7 of the Brussels Ia Regulation is worded as follows:

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

...

(5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated’.

5 Article 17 of that regulation provides:

‘1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7, if:

...

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

2. Where a consumer enters into a contract with a party who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

...'

6 Article 18(1) of that same regulation provides:

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

7 Article 19 of the Brussels Ia Regulation reads:

'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.'

8 Point 1 of Article 24 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'.

9 Article 25(1) of the Brussels Ia Regulation states:

'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. ...’

10 Article 63 of that regulation is worded as follows:

‘1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:

- (a) statutory seat;
- (b) central administration; or
- (c) principal place of business.

2. For the purposes of Ireland, Cyprus and the United Kingdom, “statutory seat” means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.

...’

#### *The Rome I Regulation*

11 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 [Regulation No 44/2001] 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].’

- 12 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.’
- 13 Article 2 of that regulation, entitled ‘Universal application’, provides:  
‘Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.’
- 14 Article 3 of that same 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.’
- 15 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;

...

2. Where the contract is not covered by paragraph 1 or where the elements of the contract would be covered by more than one of points (a) to (h) of paragraph 1, the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence.

3. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply.

4. Where the law applicable cannot be determined pursuant to paragraphs 1 or 2, the contract shall be governed by the law of the country with which it is most closely connected.'

16 Article 6 of that regulation provides:

'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];

...’

17 Article 9 of the Rome I 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.’

18 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.’

19 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 93/13/EEC*

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

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

2. A term shall always be regarded as not individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.



The fact that certain aspects of a term or one specific term have been individually negotiated shall not exclude the application of this Article to the rest of a contract if an overall assessment of the contract indicates that it is nevertheless a pre-formulated standard contract.

Where any seller or supplier claims that a standard term has been individually negotiated, the burden of proof in this respect shall be incumbent on him.

3. The Annex shall contain an indicative and non-exhaustive list of the terms which may be regarded as unfair.’

### *Spanish law*

- 21 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) is applicable to the dispute in the main proceedings.

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

- 22 On 6 October 2018, NM, a British consumer resident in the United Kingdom, concluded, through the branch in Spain of Club La Costa (UK), established in the United Kingdom (‘Club La Costa’), a timeshare contract in respect of tourist accommodation (‘the contract at issue’), which, the referring court states, does not concern either a right *in rem* in immovable property or a tenancy right.
- 23 NM sued that company and other companies belonging to the same group, with which he was also contractually linked, but which were not parties to that contract.
- 24 All the defendant companies in the main proceedings are established in the United Kingdom, with the exception of European Resorts & Hotels, which is established in Spain. Furthermore, the referring court states that Club La Costa directs its commercial activity not only to Spain, but also to other countries, in particular the United Kingdom.
- 25 The contract at issue contains a clause stipulating, *inter alia*, that it falls within the exclusive jurisdiction of the Courts of England and Wales and that the law of England and Wales is applicable.
- 26 The referring court considers that the interpretation of EU law is relevant for the purposes of determining, in the context of the dispute before it, which concerns the validity or nullity of the contract at issue, whether the Spanish courts have jurisdiction to hear that dispute and, if so, the law in the light of which the validity or nullity of that contract should be assessed.
- 27 As regards contracts such as the contract at issue, the Spanish courts adopt differing approaches.
- 28 The referring court considers, first, that the exclusive jurisdiction provided for in point 1 of Article 24 of the Brussels Ia Regulation cannot be applied, since the specific configuration of the subject matter of the contract at issue precludes the creation of a right *in rem* in immovable property or the existence of a tenancy of immovable property and, second, that that contract must be classified as a ‘consumer contract’ for the purposes of Article 17(1) of that regulation.

That court thus inferred from the foregoing that it is possible to apply the rule of jurisdiction laid down in Article 18(1) of that regulation, allowing the consumer to bring proceedings not only in the courts for the place where he or she is domiciled but also in the courts of the Member State in which ‘the other party to a contract’ is domiciled.

- 29 In that regard, there are also differing interpretations in Spanish case-law not only as regards the concept of ‘other party to a contract’, but also as regards the determination of the place of his or her domicile, in accordance with Article 62 of the Brussels Ia Regulation, which refers to the internal law of the court seised, or, if the ‘other party to a contract’ is a legal person, in accordance with Article 63 of that regulation, which defines domicile as the place where that person’s statutory seat, central administration or principal place of business is situated. More specifically, as regards the United Kingdom, ‘statutory seat’ is to be understood as meaning the registered office or, failing that, the place of incorporation (place where legal personality is acquired) or, again failing that, the place under the law of which the formation (constitution) took place.
- 30 According to one line of case-law, notwithstanding the choice of jurisdiction which the consumer may exercise under Article 18(1) of the Brussels Ia Regulation, it is impossible to confer on the consumer the power to extend that choice by bringing an action against a non-contracting party before a forum which suits him or her. Consequently, the international jurisdiction of the Spanish courts should be excluded where the consumer is not domiciled in Spain and all the defendant legal persons are domiciled in the United Kingdom. The same applies where certain companies are domiciled in Spain but are not parties to the contract in question or where those proceedings concern companies domiciled in Spain which have concluded contracts ancillary to the one claimed to be void.
- 31 Conversely, according to a second line of case-law, the question of who ‘the other party to a contract’ is and how to determine his or her domicile, is disregarded. According to that line of case-law, Article 63(2) of the Brussels Ia Regulation creates a presumption of fact, so that it is for ‘the other party to a contract’ to show that his or her establishment corresponds to his or her statutory seat, given that, otherwise, if it is ascertained that the group of companies to which ‘the other party to a contract’ belongs carries out activities in Spain, the international jurisdiction of the Spanish courts is justified.
- 32 According to the referring court, such an interpretation is contrary not only to the wording of Article 18(1) of the Brussels Ia Regulation, but also to the purpose or scheme of that provision, which indeed allows the consumer not to apply the general forum of the defendant’s domicile, without, however, going so far as to enable him or her to configure the defendant’s domicile in such a way that the concept of domicile can be circumvented when that domicile is the same as that of the applicant.
- 33 As regards the applicable law, the referring court notes that, in accordance with the general provisions of the Rome I Regulation, namely Article 3(1) thereof, contracts are governed by the law chosen by the parties or, in the absence of choice, by the law determined in accordance with the various criteria set out Article 4(1) and (3) of that regulation, supplemented, where appropriate, by that provided for in Article 4(4), which refers to the law of the country with which the contract is most closely connected. In addition to those general provisions, that regulation contains specific provisions, in particular those applicable to consumer contracts.

- 34 According to the referring court, Article 6 of the Rome I Regulation establishes the following rules: the parties may choose the law applicable to the contract in question, provided that such a choice does not result in depriving the consumer concerned of the protection afforded to him or her by the mandatory provisions of the law which would have been applicable in the absence of choice, that is to say, of the law of the country in which the consumer has his or her habitual residence, provided that the other party to the contract fulfils certain requirements relating to the manner in which his or her activities are pursued. If that is not the case, the general criteria set out in Articles 3 and 4 of that regulation apply.
- 35 The referring court considers that it cannot be held that a clause in a contract providing for the application of the law of England and Wales is intended to circumvent any rule of protection of the regime that would be applicable in the absence of that clause, that regime also being governed by the law of England and Wales.
- 36 However, certain national courts consider that such an applicable law clause is void, since it is a pre-drafted term in general terms and conditions the wording of which indicates that it has been imposed by the professional who drafted the term and does not result from an agreement freely entered into between the parties. However, neither the provisions of Article 3(1) of the Rome I Regulation nor the case-law of the Court of Justice preclude the existence of more or less standardised terms in the general terms and conditions of contracts.
- 37 In addition, those national courts consider that, given that the objective of Article 6(1) of the Rome I Regulation is to protect consumers and not the other parties to a contract, those other parties cannot rely on the application of that provision if the consumer fails to do so and that Article 6(3) of that regulation, which refers to the general rules laid down in Articles 3 and 4 of that regulation, should then be applied.
- 38 According to the referring court, such an interpretation fails to have regard to the Court's case-law according to which the legal concepts provided for by EU law are autonomous concepts which must be interpreted in accordance with the principles specific to that law.
- 39 In those circumstances the Juzgado de Primera Instancia no 2 de Fuengirola (Court of First Instance No 2, Fuengirola, Spain) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) In the case of consumer contracts to which Article 18(1) of the Brussels [Ia] Regulation is applicable, is it compatible with that regulation to interpret the term “the other party to a contract” used in that provision as encompassing only a person who signed the contract, such that it cannot include natural or legal persons other than those who actually signed the contract?
- (2) If the term “the other party to a contract” is interpreted as encompassing only a person who actually signed the contract, in situations in which both the consumer and “the other party to a contract” are domiciled outside Spain, is it compatible with Article 18(1) of the Brussels [Ia] Regulation to conclude that the international jurisdiction of the Spanish courts cannot be determined by the fact that the group of undertakings to which “the other party to a contract” belongs includes companies that are domiciled in Spain but did not sign the contract or signed different contracts other than that in respect of which a declaration of nullity is sought?

- (3) If “the other party to a contract”, as referred to in Article 18(1) of the Brussels [Ia] Regulation, provides evidence that its domicile is established in the United Kingdom in accordance with Article 63(2) of the regulation, is it compatible with that provision to conclude that a domicile so established delimits the option that can be exercised under Article 18(1)? And, in addition to that, is it compatible with [Article 63(2)] to conclude that it does not simply establish a mere “presumption of fact”, or that that presumption is overturned if “the other party to a contract” carries on business outside the jurisdiction of its domicile, or that the onus is on “the other party to a contract” to demonstrate that its domicile, as determined in accordance with the provision cited, is the same as the place where it carries on its business?

In relation to [the Rome I Regulation]:

- (4) In the case of consumer contracts to which the Rome I Regulation is applicable, is it compatible with Article 3 of that regulation to conclude that clauses determining the applicable law, which are included in the “general conditions” of the contract signed by the parties or which are included in a separate document which is expressly referred to in the contract and is shown to have been provided to the consumer, are valid and applicable?
- (5) In the case of consumer contracts to which the Rome I Regulation is applicable, is it compatible with Article 6(1) of that regulation to conclude that it can be relied on by a consumer and by the other party to a contract?
- (6) In the case of consumer contracts to which the Rome I Regulation is applicable, is it compatible with Article 6(1) of that regulation to conclude that, if the conditions laid down therein are satisfied, the law indicated in that provision will in all cases be applied in preference to that indicated in Article 6(3), even though the latter may be more favourable to the consumer in the particular case?’

## **Consideration of the questions referred**

### ***The first and second questions***

- 40 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 18(1) of the Brussels Ia Regulation must be interpreted as meaning that the expression ‘other party to a contract’ in that provision is to be understood as referring only to the natural or legal person who is a party to the contract in question or whether it also encompasses other persons, not parties to that contract, but who are connected with that person.
- 41 As a preliminary point, it must be noted that, in so far as, in accordance with recital 34 of the Brussels Ia Regulation, that regulation repeals and replaces Regulation No 44/2001 – which itself replaced the Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters, as amended by successive conventions on the accession of new Member States to that convention – the Court’s interpretation of the provisions of the latter legal instruments also applies to the Brussels Ia regulation whenever those provisions may be regarded as ‘equivalent’ (judgment of 20 May 2021, *CNP*, C-913/19, EU:C:2021:399, paragraph 30 and the case-law cited).

- 42 It should also be borne in mind that the rules of jurisdiction over consumer contracts, set out in Articles 17 to 19 of the Brussels Ia Regulation, allow the consumer to choose to bring proceedings either in the courts for the place where the consumer is domiciled or in the courts of the Member State in which the other party to the contract is domiciled (see, to that effect, judgment of 26 March 2020, *Primera Air Scandinavia*, C-215/18, EU:C:2020:235, paragraph 54).
- 43 The function of those rules is to ensure adequate protection for the consumer as the party deemed to be economically weaker and less experienced in legal matters than the other, commercial, party to the contract, so that the consumer is not discouraged from suing by being compelled to bring his or her action before the courts in the Contracting State in which the other party to the contract is domiciled (see, to that effect, judgment of 20 January 2005, *Gruber*, C-464/01, EU:C:2005:32, paragraph 34 and the case-law cited).
- 44 In that regard, Article 17 of the Brussels Ia Regulation makes the application of those rules subject to the condition that the contract has been concluded by the consumer for a purpose regarded as being outside his or her professional activity, with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and that the contract falls within the scope of those activities.
- 45 In so far as the same rules constitute a derogation both from the general rule of jurisdiction laid down in Article 4(1) of that regulation, conferring jurisdiction on the courts of the Member State in which the defendant is domiciled, and from the rule of special jurisdiction in matters relating to a contract, set out in Article 7(1) of that regulation, they must necessarily be interpreted restrictively and cannot go beyond the cases expressly envisaged by those rules (see, to that effect, judgments of 8 May 2019, *Kerr*, C-25/18, EU:C:2019:376, paragraph 22, and of 26 March 2020, *Primera Air Scandinavia*, C-215/18, EU:C:2020:235, paragraph 55 and the case-law cited).
- 46 Second, the concepts used in the Brussels Ia Regulation, in particular those which appear in Article 18(1) of that 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 (judgment of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 22).
- 47 In the present case, the referring court's question concerns whether the conditions referred to in paragraph 44 above may be regarded as being satisfied with regard to a person who, although he or she is not a party to the contract concluded by the consumer concerned, is connected to that consumer in some other way.
- 48 In that regard, it is decisive for the application of the rules of jurisdiction over consumer contracts, set out in Articles 17 to 19 of the Brussels Ia Regulation, that the parties to the dispute are also the parties to the contract in question (see, to that effect, judgment of 26 March 2020, *Primera Air Scandinavia*, C-215/18, EU:C:2020:235, paragraph 58).
- 49 Articles 17 to 19 expressly refer to the 'contract concluded by ... the consumer', to the 'party' with whom a 'consumer enters into a contract', to 'the other party to a contract' entered into by a consumer, or also to the agreements as to the court having jurisdiction entered into 'by the consumer and the other party to the contract' (see, to that effect, judgment of 26 March 2020, *Primera Air Scandinavia*, C-215/18, EU:C:2020:235, paragraph 59).

- 50 Those references argue strongly in favour of an interpretation to the effect that, for the application of Articles 17 to 19, a consumer's action must be brought against the other party to the contract entered into by that consumer (see, to that effect, judgment of 26 March 2020, *Primera Air Scandinavia*, C-215/18, EU:C:2020:235, paragraph 60).
- 51 Thus, the Court has held that the rules on jurisdiction laid down, as regards consumer contracts, in Article 18(1) of the Brussels Ia Regulation apply, in accordance with the wording of that provision, only to an action brought by a consumer against the other party to the contract, which necessarily implies that a contract has been concluded by the consumer with the professional concerned (see, to that effect, judgment of 26 March 2020, *Primera Air Scandinavia*, C-215/18, EU:C:2020:235, paragraph 61 and the case-law cited).
- 52 An interpretation according to which the rules of jurisdiction over consumer contracts, laid down in Articles 17 to 19 of the Brussels Ia Regulation, apply also in a situation in which there is no contract between the consumer and the professional is not consistent with the objective, set out in recital 15 of that regulation, of ensuring a high degree of predictability as regards the attribution of jurisdiction (see to that effect, judgment of 26 March 2020, *Primera Air Scandinavia*, C-215/18, EU:C:2020:235, paragraph 62).
- 53 The possibility for the consumer to sue the professional before the court for the place where the consumer is domiciled is counterbalanced by the requirement that a contract must have been concluded between them, this being the source of that predictability for the defendant (see to that effect, judgment of 26 March 2020, *Primera Air Scandinavia*, C-215/18, EU:C:2020:235, paragraph 63).
- 54 In addition, even though the Court has already held that the concept of 'other party to a contract', laid down in Article 18(1) of the Brussels Ia Regulation, must be interpreted as meaning that it also covers the contracting partner of the operator with which the consumer concluded that contract and which has its registered office in the Member State in which the consumer is domiciled (judgment of 14 November 2013, *Maletic*, C-478/12, EU:C:2013:735, paragraph 32), that interpretation was, however, based on specific circumstances, in which the consumer was from the outset contractually linked, inseparably, to two contracting partners (judgment of 26 March 2020, *Primera Air Scandinavia*, C-215/18, EU:C:2020:235, paragraph 64 and the case-law cited).
- 55 In the present case, it is apparent from the order for reference that the contract at issue, the invalidity of which is sought by the applicant in the main proceedings, was concluded with a single company, namely Club La Costa, the other defendant companies in the main proceedings being parties to other contracts concluded with that applicant, with the result that they cannot fall within the concept of 'other party to a contract' within the meaning of Article 18(1) of the Brussels Ia Regulation.
- 56 As regards the referring court's question concerning the effect of the 'other party to a contract' belonging to a group of companies on the existence of jurisdiction under the provisions of the Brussels Ia Regulation relating to jurisdiction over consumer contracts, it should be noted that, with the exception of Article 17(2) of that regulation, which provides for an alternative connecting factor where the other party to the contract with the consumer is not domiciled in a Member State but has a branch, agency or other establishment in a Member State, Articles 17 to 19 of that regulation contain nothing to suggest that there is a connecting factor based on membership of a group of companies.

- 57 Furthermore, an interpretation of Articles 17 to 19 enabling account to be taken of the fact that a consumer's contracting partner belongs to a group of companies, by allowing that consumer to bring an action before the courts of the Member State in which each company belonging to that group is domiciled, would clearly run counter to the objectives of predictability of the rules of jurisdiction laid down by the Brussels Ia Regulation and would, therefore, be incompatible with the principle of legal certainty.
- 58 In the light of all the foregoing considerations, the answer to the first and second questions is that Article 18(1) of the Brussels Ia Regulation must be interpreted as meaning that the expression 'other party to a contract', in that provision, must be understood as referring only to the natural or legal person who is a party to the contract in question and not to other persons, not parties to that contract, even if they are connected with that person.

### *The third question*

- 59 By its third question, the referring court asks, in essence, whether Article 63(1) and (2) of the Brussels Ia Regulation must be interpreted as meaning that the determination, in accordance with that provision, of the domicile of 'the other party to a contract', within the meaning of Article 18(1) of that regulation, limits the choice that may be made by the consumer under that Article 18(1). Furthermore, it raises the question of the burden of proof for the purposes of determining that domicile.
- 60 As a preliminary point, it should be noted that, unlike the domicile of natural persons, in respect of which Article 62 of the Brussels Ia Regulation expressly states that it must be determined in the light of the national law of the court seised, the domicile of companies and legal persons is determined, in the absence of such a clarification, according to an autonomous interpretation of EU law.
- 61 It is apparent from recital 15 of that regulation that, as regards legal persons, the domicile must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.
- 62 Thus, Article 63(1)(a) to (c) of that regulation sets out three criteria for locating the domicile of companies or other legal persons, namely the place where they have their statutory seat, central administration or principal place of business.
- 63 Since Article 63 does not establish any hierarchy between those three criteria, it is for the consumer to choose between them in order to determine which court has jurisdiction in accordance with Article 18(1) of the Brussels Ia Regulation.
- 64 On account of the objective pursued by the rules of jurisdiction over consumer contracts laid down by that regulation, as recalled in paragraph 43 above, which is to ensure adequate protection for the consumer as the party deemed to be economically weaker and less experienced in legal matters, the determination of the place of domicile of companies and legal persons pursuant to Article 63 of that regulation cannot be regarded as constituting a limitation of the two fora offered to the consumer in accordance with Article 18(1) of that regulation.
- 65 Furthermore, as regards the definition of 'statutory seat' referred to in Article 63(1)(a) of the Brussels Ia Regulation, paragraph 2 of that article provides clarification concerning that definition, namely that, for Ireland, Cyprus and the United Kingdom, 'statutory seat' is to be

understood as meaning the registered office or, failing that, the place of incorporation (place where legal personality is acquired) or, again failing that, the place under the law of which the formation (incorporation) of the company took place.

- 66 Having regard to the fact that Article 63 of the Brussels Ia Regulation is intended to provide an autonomous definition of the place where companies and legal persons are domiciled, in order to increase the transparency of the common rules and to ensure their uniform application in all the Member States, it cannot be accepted that the details set out in Article 63(2) are merely presumptions of fact which may be rebutted by evidence to the contrary, since otherwise the objective of predictability of the rules on jurisdiction laid down by that regulation would be undermined.
- 67 In the light of the foregoing, the answer to the third question is that Article 63(1) and (2) of the Brussels Ia Regulation must be interpreted as meaning that the determination, in accordance with that provision, of the domicile of the ‘other party to a contract’, within the meaning of Article 18(1) of that regulation, does not constitute a limitation of the choice which the consumer may make under that Article 18(1). In that regard, the clarifications provided in Article 63(2) concerning the concept of ‘statutory seat’ constitute autonomous definitions.

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

- 68 By its fourth question, the referring court asks, in essence, whether Article 3 of the Rome I Regulation must be interpreted as precluding a choice-of-law clause in the general terms and conditions of a contract or in a separate document to which that contract refers and which has been provided to the consumer.
- 69 In that regard, it should be recalled that 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.
- 70 In that regard, in accordance with the general rule set out in Article 3 of the Rome I Regulation, a contract is to be governed by the law chosen by the parties. Paragraph 1 of that article requires, however, that that choice be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case.
- 71 As regards choice-of-law clauses, the consumer enjoys special protection, established by Directive 93/13 and based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his or her bargaining power and his or her level of knowledge, which leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of those terms (see, to that effect, judgment of 23 April 2015, *Van Hove*, C-96/14, EU:C:2015:262, paragraph 26 and the case-law cited).
- 72 In that context, the Court has already held that a choice-of-law clause in a seller or supplier’s general terms and conditions which has not been individually negotiated, according to which the law of the Member State in which the seller or supplier concerned is established is applicable to the contract in question, is unfair, within the meaning of Article 3(1) of Directive 93/13, where it leads the consumer concerned into error by giving him or her the impression that only that law applies to that contract, without informing him or her that, under Article 6(2) of the Rome I Regulation, he or she also enjoys the protection afforded by the mandatory provisions of the law



that would be applicable in the absence of that clause (see, to that effect, judgment of 28 July 2016, *Verein für Konsumenteninformation*, C-191/15, EU:C:2016:612, paragraph 71), namely those of the law of the country in which he or she has his or her habitual residence.

- 73 In that regard, Article 6(2) of the Rome I Regulation provides that, in a contract concluded by a consumer with a professional, the parties may choose the law applicable to that contract; it specifies, however, that that choice may not have the result of depriving the consumer 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) 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).
- 74 Consequently, a choice-of-law clause which has not been individually negotiated is valid only in so far as it does not lead the consumer concerned into error by giving him or her the impression that only that law thereby determined applies to the contract concerned, without informing him or her that he or she also enjoys, under Article 6(2) of the Rome I Regulation, the protection afforded to him or her by the mandatory provisions of the law which would be applicable in the absence of that clause, namely those of the law of the country in which he or she has his or her habitual residence.
- 75 In the present case, it is apparent from the documents before the Court that the contract at issue stipulates, by means of a pre-drafted term, that the law of England and Wales is applicable, which therefore appears to coincide with the law of the country where the applicant in the main proceedings has its habitual residence, which is also the law of England and Wales.
- 76 In the light of the foregoing, the answer to the fourth question is that Article 3 of the Rome I Regulation must be interpreted as not precluding a choice-of-law clause in the general terms and conditions of a contract or in a separate document to which that contract refers and which has been provided to the consumer, provided that that clause informs the consumer that he or she enjoys in any event, under Article 6(2) of that regulation, 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.

### ***The fifth and sixth questions***

- 77 By its fifth and sixth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 6(1) of the Rome I Regulation must be interpreted as meaning that, in the event that a choice-of-law clause governing a consumer contract is declared invalid, first, both parties to that contract, including the professional, may rely on that provision to determine the law applicable to that contract and, second, the law thus determined applies even if the law referred to in Article 6(3), namely the law applicable to that contract in accordance with Articles 3 and 4 of that regulation, may be more favourable to the consumer.
- 78 In that regard, it should be noted that Article 6 of the Rome I Regulation is not only specific, but also exhaustive, so that 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).

- 79 As is apparent from recital 23 of the Rome I Regulation, it is important to protect the parties to a contract regarded as weaker by conflict-of-laws rules which are more favourable to their interests than the general rules.
- 80 Furthermore, and having regard to the fact that the rules laid down in Article 6 of that regulation are intended to protect the consumer, the issue of which of the two parties to the contract in question relies on them is irrelevant, with the result that those rules may also be relied on by the professional.
- 81 Thus, Article 6(1) of the Rome I Regulation provides that a contract concluded by a consumer with a professional is to be governed by the law of the country where the consumer has his or her habitual residence, provided that the requirements set out in that provision are fulfilled.
- 82 Furthermore, Article 6(2) of the Rome I Regulation expressly provides that the parties may, in accordance with Article 3 of that regulation, choose the law applicable to such a contract, provided that such choice does not result in depriving the consumer 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) of that regulation.
- 83 It is only if the contract in question does not fulfil the requirements set out in Article 6(1)(a) or (b) of the Rome I Regulation that Article 6(3) of that regulation states that the law applicable to that contract is to be determined in accordance with Articles 3 and 4 of that regulation, in which case the court seised may, inter alia, determine that law taking into account the country with which the contract is most closely connected.
- 84 It follows that, where a consumer contract fulfils those requirements and in the absence of a valid choice of law made by the parties as to the law applicable to that contract, that law must be determined in accordance with Article 6(1) of the Rome I Regulation.
- 85 On account of the specific and exhaustive nature of the rules for determining the applicable law set out in Article 6, no other law can be accepted, even though that other law, determined in particular on the basis of the connecting factors laid down in Article 4 of that regulation, would be more favourable to the consumer.
- 86 An interpretation to the contrary, 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 a consumer contract, 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).
- 87 By designating the law of the country where the consumer has his or her habitual residence as being applicable, the EU legislature considered that that law offers adequate protection to the consumer, although that designation must not necessarily lead to the application, in all cases, of the law most favourable to the consumer (see, by analogy, judgment of 12 September 2013, *Schlecker*, C-64/12, EU:C:2013:551, paragraph 34).

- 88 In the light of the foregoing, the answer to the fifth and sixth questions is that Article 6(1) of the Rome I Regulation must be interpreted as meaning that, where a consumer contract fulfils the requirements set out in that provision and in the absence of a valid choice of law applicable to that contract, that law must be determined in accordance with that provision, which may be relied on by both parties to that contract, including the professional, notwithstanding the fact that the law applicable to the contract in accordance with Articles 3 and 4 of that regulation may be more favourable to the consumer.

### **Costs**

- 89 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. Article 18(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters**

**must be interpreted as meaning that the expression ‘other party to a contract’, in that provision, must be understood as referring only to the natural or legal person who is a party to the contract in question and not to other persons, not parties to that contract, even if they are connected with that person.**

- 2. Article 63(1) and (2) of Regulation No 1215/2012**

**must be interpreted as meaning that the determination, in accordance with that provision, of the domicile of the ‘other party to a contract’, within the meaning of Article 18(1) of that regulation, does not constitute a limitation of the choice which the consumer may make under that Article 18(1). In that regard, the clarifications provided in Article 63(2) concerning the concept of ‘statutory seat’ constitute autonomous definitions.**

- 3. Article 3 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)**

**must be interpreted as not precluding a choice-of-law clause in the general terms and conditions of a contract or in a separate document to which that contract refers and which has been provided to the consumer, provided that that clause informs the consumer that he or she enjoys, in any event, under Article 6(2) of that regulation, 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.**

- 4. Article 6(1) of Regulation No 593/2008**

**must be interpreted as meaning that where a consumer contract fulfils the requirements set out in that provision and in the absence of a valid choice of law applicable to that contract, that law must be determined in accordance with that provision, which may be**

**relied on by both parties to that contract, including the professional, notwithstanding the fact that the law applicable to the contract in accordance with Articles 3 and 4 of that regulation may be more favourable to the consumer.**

[Signatures]