Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

4 December 2025*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EC) No 593/2008 – Article 3(1) and (2) – Choice of the applicable law – Article 6 – Scope – Contract concluded between a professional and a consumer residing in another Member State – Activity of the professional directed to the Member State in which the consumer has his or her habitual residence after the date of conclusion of the contract containing a choice-of-law clause)

In Case C-279/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 8 April 2024, received at the Court on 22 April 2024, in the proceedings

AY

v

Liechtensteinische Landesbank (Österreich) AG,

THE COURT (Fourth Chamber),

composed of I. Jarukaitis, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Fourth Chamber, M. Condinanzi, N. Jääskinen (Rapporteur) and R. Frendo, Judges,

Advocate General: R. Norkus,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– AY, by G. Seirer and H. Weichselbraun, Rechtsanwälte,

– Liechtensteinische Landesbank (Österreich) AG, by M. Oppitz, Rechtsanwalt,

– the Czech Government, by A. Pagáčová, M. Smolek and J. Vláčil, acting as Agents,

– the European Commission, by P. Kienapfel and W. Wils, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 22 May 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6 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) and of Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

2 The request has been made in proceedings between AY, a consumer residing in Italy, and Liechtensteinische Landesbank (Österreich) AG, a bank having its registered office in Austria ('the bank'), concerning the losses suffered by AY following the purchase of certain financial products through the bank.

Legal context

European Union law

Regulation No 593/2008

3 Recitals 6, 11, 16 and 23 of Regulation No 593/2008 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.

…

(11) The parties' freedom to choose the applicable law should be one of the cornerstones of the system of conflict-of-law rules in matters of contractual obligations.

…

(16) To contribute to the general objective of this Regulation, legal certainty in the European judicial area, the conflict-of-law rules should be highly foreseeable. …

…

(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.'

4 Article 3 of that regulation, headed ‘Freedom of choice’, provides, in paragraphs 1 and 2 thereof:

‘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.’

5 Article 6 of that regulation, entitled ‘Consumer contracts’, provides, in paragraphs 1 and 4 thereof:

‘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;

…

(d) rights and obligations which constitute a financial instrument … in so far as these activities do not constitute provision of a financial service;

…’

Directive 93/13

6 Article 3(1) of Directive 93/13 provides:

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

Austrian law

7 Paragraph 879(3) of the Allgemeines Bürgerliches Gesetzbuch (Civil Code) provides:

'A contractual term which is included in general terms and conditions or standard contracts, and does not specify any of the main obligations of either party, shall be void if, when all the circumstances of the case are taken into account, it places one party at a significant disadvantage.'

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

8 In 2013, AY, who resides in Italy, entered into a contract to open a current account and a securities deposit account with the bank.

9 To that end, AY initially visited an agency of the bank in Austria. He then sent an application to open an account from Italy, together with the 'customer profile' documents previously requested by the bank. In accordance with the 'General terms and conditions for banking transactions' provided by the bank, and of which AY was aware, all legal relationships between the parties to the contract are governed by Austrian law.

10 It is apparent from the order for reference that, when that contract was signed, AY opted for an 'execution only' relationship. Subsequently, and although his customer profile was updated several times, he always expressly chose 'execution only' transactions for each of the transactions he carried out through the bank.

11 In September 2015 and June 2016, AY acquired exchange-traded notes ('ETNs') though the bank. He resold them in July 2016, making a profit.

12 In October 2016, AY took part in an event organised in Padua (Italy) by an Italian investment company ('the Padua event'), during which the managing director of that company presented a fund whose portfolio also included ETNs. An employee of the bank also took part in that event in order to introduce the bank to the investors in attendance.

13 Between October 2017 and February 2018, AY, acting on his own initiative, purchased, through the bank, ETNs and shares in the fund which had been presented at the Padua event. However, he subsequently considered that he had suffered a financial loss as a result of those purchases.

14 AY brought legal proceedings seeking compensation for damage in the amount of EUR 140 217.10, together with interest, expenses and ancillary costs, on the ground that the bank had failed to fulfil its obligation to provide advice and information.

15 After the lower courts dismissed his claim, AY lodged an appeal on a point of law with the Oberster Gerichtshof (Supreme Court, Austria), the referring court.

16 In support of his appeal, AY submits that, since one of the bank's employees presented the bank at the Padua event, it must be held that, from the date of that event, the bank directed its activity to the Italian market, within the meaning of Article 6(1)(b) of Regulation No 593/2008. In those circumstances, AY submits that the law which is applicable to financial transactions carried out after that event is the law of the Member State in which he has his habitual residence, namely that of the Italian Republic.

17 He adds that the exception in Article 6(4)(a) of Regulation No 593/2008 is not applicable in the present case, since the bank had a website on which he could, as an Italian consumer, complete all the formalities relating to the management of his accounts and benefit from advice and analysis. He also claims that the relevant Austrian legal provisions were less favourable to him than those under Italian law.

18 Furthermore, he submits that the choice-of-law clause contained in the bank's general terms and conditions should be disapplied on grounds of unfairness since he was not informed that he could rely, as a consumer, on the protection afforded to him by the mandatory provisions of the country of his habitual residence, in accordance with Article 6(2) of Regulation No 593/2008.

19 In that context, the referring court asks, in the first place, whether, although the bank and AY had chosen Austrian law to govern their legal relationship at the time when that relationship was established, it is nevertheless possible, under Article 6(1) of Regulation No 593/2008, to apply Italian law to the disputed transactions for the purchase of financial products. It considers that, from 2016 onwards, the bank 'directed' its business to Italy, which is the State of AY's habitual residence. However, Article 6(1) of Regulation No 593/2008 provides, in essence, that a contract is governed by the law of the country in which the consumer concerned has his or her habitual residence when the contracting professional directs his or her activity to that country, subject to a number of other conditions which it considers to have been met in the present case.

20 In the second place, if that first question is answered in the affirmative, the referring court asks whether the exception in Article 6(4)(a) of Regulation No 593/2008 is applicable in the present case. Under that exception, Article 6(1) and (2), under which a consumer may benefit from the application of the law of the country in which he or she habitually resides or, at the very least, from the protection provided for by some of the provisions of that law, is not applicable to 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 or she habitually resides.

21 In the third place, on the assumption that Article 6(1) of Regulation No 593/2008 is applicable but Article 6(4)(a) of that regulation is not, the referring court asks, in essence, whether a choice-of-law clause included in a contract before the conditions for the application of Article 6 of that regulation are met must be regarded, once those conditions have been met, as unfair within the meaning of Article 3(1) of Directive 93/13 where that clause does not inform the consumer concerned of the rights that may be conferred on him or her by the application of Article 6(2) of that regulation.

22 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must the legal consequences of orders for the acquisition of financial products placed by a consumer domiciled in State A (here Italy) on the basis of an ongoing business relationship with a bank domiciled in State B (here Austria) be assessed in accordance with the law resulting from Article 6 of Regulation [No 593/2008] if the conditions for the application of Article 6 of [that regulation] were met when the individual orders were placed but not when the business relationship was entered into and the parties had at that time chosen the law of State B for the entire business relationship in accordance with Article 3 of [Regulation No 593/2008]?

(2) If question 1 is answered in the affirmative:

Is the exception in Article 6(4)(a) of [Regulation No 593/2008] applicable where a bank opens accounts for a consumer domiciled in another Member State on the basis of a contract and subsequently acquires financial products for the consumer on the basis of the consumer’s orders that are attributed to the accounts, where the consumer may (also) place the orders by means of remote communication?

(3) If question 1 is answered in the affirmative and question 2 is answered in the negative: Must a choice of law made before the conditions for the application of Article 6 of [Regulation No 593/2008] were met be regarded as unfair within the meaning of Article 3(1) of [Directive 93/13] after those conditions were met if [the clause designating the applicable law] does not [draw the consumer’s attention] to the legal consequences of Article 6(2) of [Regulation No 593/2008]?’

Consideration of the questions referred

The first question

23 By its first question, the referring court asks, in essence, whether Article 6(1) of Regulation No 593/2008 must be interpreted as applying to a contract concluded between a consumer and a bank, where the conditions set out in that provision were not met on the date on which that contract was concluded, but are subsequently met.

24 In that regard, in accordance with the general rule set out in Article 3 of Regulation No 593/2008, the contract is governed by the law chosen by the parties.

25 Article 6 of Regulation No 593/2008, entitled ‘Consumer contracts’, provides, in paragraph 1 thereof, 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 conditions set out in that provision are met, namely that the professional pursues his or her commercial or professional activities in the country where the consumer has his or her habitual residence, or that, by any means, he or she directs such activities to that country or to several countries including that country, and that the contract falls within the scope of such activities. Article 6(2) of that regulation provides, nevertheless, that the parties may, in accordance with Article 3 of that regulation, choose the law applicable to a contract which fulfils the requirements of Article 6(1),

provided that that 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.

26 It is only if the contract in question does not fulfil the requirements set out in Article 6(1)(a) or (b) of Regulation No 593/2008 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 (see, to that effect, judgment of 14 September 2023, *Club La Costa and Others*, C-821/21, EU:C:2023:672, paragraph 83).

27 In that regard, it is apparent from the case-law that the application of Regulation No 593/2008 depends on the date on which the contract concerned was concluded (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).

28 It follows that the conditions set out in Article 6(1)(a) or (b) of Regulation No 593/2008 must be verified by taking that date as the point of reference.

29 In the present case, it is apparent from the order for reference that, on the date on which the contract concerned was concluded, the bank was not pursuing its commercial or professional activities in the country where the consumer had his or her habitual residence, and was not directing such activities to that country, with the result that the conditions set out in Article 6(1)(a) or (b) of Regulation No 593/2008 were not met.

30 However, it is apparent from the file submitted to the Court of Justice that the referring court referred the first question on the premiss that, after the conclusion of the contract concerned, the bank directed its commercial or professional activities to the country where the consumer had his or her habitual residence, with the result that the condition set out in Article 6(1)(b) of Regulation No 593/2008 was met after the contract concluded between that consumer and the bank was signed.

31 In that context, it should be noted that, according to settled case-law, when interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgments of 17 November 1983, *Merck*, 292/82, EU:C:1983:335, paragraph 12, and of 8 May 2025, *Pielatak*, C-410/23, EU:C:2025:325, paragraph 54 and the case-law cited).

32 As regards the literal interpretation of Article 6(1) of Regulation No 593/2008, as is apparent from paragraph 25 above and as the Advocate General observed in point 48 of his Opinion, the wording of that provision does not make express provision for the possibility of changing the law applicable to a consumer contract if the conditions set out in that provision were not met at the date of conclusion of that contract, but are subsequently met during the course of the business relationship.

33 As regards the contextual and teleological interpretation, it should be recalled, first, that that regulation, as is apparent from recitals 6 and 16 thereof, seeks, inter alia, to ensure legal certainty in the European judicial area through highly foreseeable conflict-of-law rules (see, to that effect, judgment of 18 October 2016, *Nikiforidis*, C-135/15, EU:C:2016:774, paragraphs 36 and 46).

34 Second, Article 6 of Regulation No 593/2008 is part of Chapter II of that regulation, entitled 'Uniform rules', as is Article 3 of that regulation, paragraph 1 of which provides that a contract is to be governed by the law chosen by the parties and paragraph 2 of which states that a change in the law applicable to a contract, as determined by the agreement of the parties at the time of conclusion of that contract, may result only from the agreement of those parties. Recital 11 of that regulation states that the parties' freedom to choose the applicable law should be one of the cornerstones of the system of conflict-of-law rules in matters of contractual obligations.

35 Moreover, the Court has emphasised that, in order to give full effect to the principle of the freedom of contract of the parties to a contract, it must be ensured that the choice freely made by those parties as regards the law applicable to their contractual relationship is respected (see, to that effect, judgment of 17 October 2013, *Unamar*, C-184/12, EU:C:2013:663, paragraph 49).

36 Third, it is true that recital 23 of Regulation No 593/2008 states that, 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.

37 However, it follows from the case-law that an interpretation whereby it would be possible to derogate from the conflict-of-law rules laid down by that 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 (judgment of 14 September 2023, *Diamond Resorts Europe and Others*, C-632/21, EU:C:2023:671, paragraph 75).

38 Therefore, an interpretation from which it follows that the fulfilment, after the date of conclusion of the contract concerned, of the conditions set out in Article 6(1) of Regulation No 593/2008 has the effect of altering the law applicable to that contract, undermines the choice made by the parties in accordance with Article 3(1) of that regulation.

39 In the light of all of the foregoing, the possibility of changing the law applicable to a consumer contract when the conditions set out in Article 6(1) of Regulation No 593/2008 were not met at the date of conclusion of that contract, but are subsequently met during the course of the commercial relationship, is excluded by the wording of that provision, the scheme and objectives pursued by that provision corroborating such an interpretation.

40 Furthermore, it is true, as the referring court has pointed out, that, examining the scope *ratione temporis* of Regulation No 593/2008, the Court of Justice has held that it cannot be ruled out that an initial contract, concluded before the entry into force of that regulation, may be replaced by a new contract in the event of an amendment to that initial contract, agreed between the contracting parties, of such magnitude that it gives rise not to the mere updating or amendment of the contract but to the creation of a new legal relationship between the contracting parties capable of leading to the application of the conflict-of-law rules laid down by that regulation (see, to that effect, judgment of 18 October 2016, *Nikiforidis*, C-135/15, EU:C:2016:774, paragraphs 37 and 38).

41 However, in the present case and in the light of the information provided by the referring court, it cannot be considered that the financial transactions carried out after the Padua event are capable of forming part of a legal relationship other than that set out in the contract on which AY's ongoing business relationship with the bank is based.

42 In the light of all of the foregoing considerations, the answer to the first question is that Article 6(1) of Regulation No 593/2008 must be interpreted as not applying to a contract concluded between a consumer and a bank where the conditions set out in that provision were not met on the date on which that contract was concluded, but are subsequently met.

The second and third questions

43 It is apparent from the order for reference that the second and third questions are raised only in the event that the first question is answered in the affirmative. In view of the answer given to the first question, there is no need to answer the other questions.

Costs

44 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 (Fourth Chamber) hereby rules:

Article 6(1) 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 applying to a contract concluded between a consumer and a bank where the conditions set out in that provision were not met on the date on which that contract was concluded, but are subsequently met.

[Signatures]