

Request for a preliminary ruling from the Tribunalul Specializat Cluj (Romania) lodged on 30 July 2018 — AU v Reliantco Investments LTD, Reliantco Investments LTD Limassol Sucursala București

(Case C-500/18)

(2018/C 381/14)

Language of the case: Romanian

Referring court

Tribunalul Specializat Cluj

Parties to the main proceedings

Applicant: AU

Defendants: Reliantco Investments LTD, Reliantco Investments LTD Limassol Sucursala București

Questions referred

1. When interpreting the concept of ‘retail client’ in Article 4(1).12 of Directive 2004/39/[EC], ⁽¹⁾ can or must the national court use the same interpretive criteria as those which define the concept of ‘consumer’ within the meaning of Article 2 (b) of Directive 93/13/EEC? ⁽²⁾
2. If the answer to the first question is in the negative, under what conditions may a ‘retail client’ within the meaning of Directive 2004/[39/EC] claim consumer status in a dispute such as that in the main proceedings?
3. In particular, do the facts that a ‘retail client’, within the meaning of Directive 2004/[39/EC], carries out a high volume of transactions within a relatively short period of time and that he invests very large sums of money in financial instruments such as those defined in Article 4[(1)].17 of Directive 2004/39/[EC], constitute relevant criteria for the purpose of assessing whether a ‘retail client’ has consumer status under that directive?
4. When attempting to establish its own jurisdiction, since it has the obligation to determine the impact of Article 17(1)(c) or Article 7(2) of Regulation (EU) No 1215/2012, ⁽³⁾ whichever is applicable, can and/or must the national court take into consideration the legal basis relied on by the applicant (namely non-contractual liability alone) as a remedy for the conclusion of terms alleged to be unfair within the meaning of Directive 93/13/EEC, for which the substantive law applicable has been established pursuant to Regulation (EC) No 864/2007 (Rome II), ⁽⁴⁾ or does the possible consumer status of the applicant make the substantive legal basis of his request irrelevant?

⁽¹⁾ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1).

⁽²⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

⁽³⁾ 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).

⁽⁴⁾ 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).