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Provisional text

JUDGMENT OF THE COURT (Third Chamber)

25 January 2018 (\*)

(Reference for a preliminary ruling — Area of freedom, security and justice — Regulation (EC) No 44/2001 — Articles 15 and 16 — Jurisdiction in respect of consumer contracts — Definition of ‘consumer’ — Assignment between consumers of claims against the same trader or professional)

In Case C-498/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 20 July 2016, received at the Court on 19 September 2016, in the proceedings

**Maximilian Schrems**

v

**Facebook Ireland Limited,**

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský, M. Safjan (Rapporteur), D. Šváby and M. Vilaras, Judges,

Advocate General: M. Bobek,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 19 July 2017,

after considering the observations submitted on behalf of:

– Mr Schrems, by W. Proksch and H. Hofmann, Rechtsanwälte,

- Facebook Ireland Limited, by N. Pitkowitz, M. Foerster and K. Struckmann, Rechtsanwälte,
- the Austrian Government, by G. Eberhard and G. Kunnert, acting as Agents,
- the German Government, by T. Henze, R. Kanitz and M. Hellmann, acting as Agents,
- the Portuguese Government, by M. Figueiredo, L. Inez Fernandes and S. Duarte Afonso, acting as Agents,
- the European Commission, by M. Wilderspin and M. Heller, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 November 2017,

gives the following

### **Judgment**

1 The present request for a preliminary ruling concerns the interpretation of Articles 15 and 16 of 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).

2 The request has been made in proceedings between Mr Maximilian Schrems, who is domiciled in Austria, and Facebook Ireland Limited, which has its registered office in Ireland, concerning applications seeking declarations and an injunction, disclosure, production of accounts and payment in the amount of EUR 4 000 in respect of private Facebook accounts of both Mr Schrems and seven other persons who assigned to him their claims relating to those accounts.

### **Legal context**

#### **Regulation No 44/2001**

3 Recitals 8, 11 and 13 of Regulation No 44/2001 state:

‘(8) There must be a link between proceedings to which this Regulation applies and the territory of the Member States bound by this Regulation. Accordingly common rules on jurisdiction should, in principle, apply when the defendant is domiciled in one of those Member States.

...

(11) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant’s domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject matter of the litigation or the autonomy of the parties warrants a different linking 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.

...

(13) In relation to insurance, consumer contracts and employment, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for.’

4 Article 2 of that regulation provides:

- ‘1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.
2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.’

5 Section 4 of Chapter II of Regulation No 44/2001, entitled ‘Jurisdiction over consumer contracts’, comprises Articles 15 to 17 of that regulation.

6 Article 15 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 4 and point 5 of Article 5, if:

- (a) it is a contract for the sale of goods on instalment credit terms; or
- (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (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.

3. This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.’

7 Article 16 of the regulation provides:

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

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

3. This Article shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.’

8 Article 17 of Regulation No 44/2001 states:

‘The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen; or
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.’

### **Regulation (EU) No 1215/2012**

9 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) repealed Regulation No 44/2001. However, according to Article 66(1) of Regulation No 1215/2012, that regulation is to apply only to legal proceedings instituted on or after 10 January 2015.

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

10 Mr Schrems has been a user of the social network Facebook since 2008. Initially, he used that social network only for personal purposes under a false name. Since 2010, he has been using a Facebook account solely for his private activities such as exchanging photos, chatting, and posting with approximately 250 Friends. In that account he writes his name using the Cyrillic alphabet in order to prevent any searches under his name. In addition, since 2011, he has opened a Facebook page registered and established by him, in order to report to internet users on his legal proceedings against Facebook Ireland, his lectures, his participation in panel debates and his media appearances, as well as to call for the donation of funds and to publicise his books.

11 From August 2011, Mr Schrems lodged before the Irish Data Protection Commissioner 23 complaints against Facebook Ireland, one of which gave rise to a reference for a preliminary ruling before the Court (judgment of 6 October 2015, *Schrems*, C-362/14, EU:C:2015:650).

12 Mr Schrems has published two books on his legal proceedings against alleged infringements of data protection, has given lectures, some of which were remunerated, in particular with professionals, has registered a number of internet websites such as blogs, online petitions as well as crowdfunding sites to finance legal proceedings against the defendant in the main proceedings. Furthermore, he has founded an association which seeks to uphold the fundamental right to data protection, has received various prizes and has had assigned to him, by more than 25 000 people worldwide, claims to be brought in the present case.

13 The association founded by Mr Schrems and seeking to enforce data protection is a non-profit organisation, the purpose of which is to seek to uphold the fundamental right to data protection, to provide the required associated work on communication and the media and on policy clarification. Its objective is to provide financial support for test cases of public interest brought against undertakings which potentially endanger that fundamental right. The necessary costs are also funded and the corresponding donations gathered, administered and distributed.

14 Mr Schrems claims, in essence, that the defendant has committed numerous infringements of data protection provisions, inter alia provisions of the Datenschutzgesetz 2000 (Austrian Law of 2000 on data protection), of the Irish Data Protection Act 1988, or of Directive 95/46/EC of the

European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

15 Mr Schrems brought an action before the Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna, Austria), seeking, first, comprehensive declarations of the status of the defendant in the main proceedings as a mere service provider and of its duty to comply with instructions or of its status as an employer, where the processing of data is carried out for its own purposes, the invalidity of contract terms relating to conditions of use, second, an injunction prohibiting the use of his data for its own purposes or for those of third parties, third, disclosure concerning the use of his data and, fourth, the production of accounts and damages in respect of the variation of contract terms, harm suffered and unjustified enrichment.

16 Mr Schrems claims to have *locus standi* on the basis of both his own rights and similar rights which seven other contractual partners of the defendant in the main proceedings, who are, according to the applicant, also consumers and residing in Austria, Germany or in India, have assigned to the applicant for the purposes of his action against Facebook Ireland.

17 According to Mr Schrems, the Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna) has international jurisdiction as the forum of a consumer under Article 16(1) of Regulation No 44/2001.

18 Facebook Ireland raises, inter alia, an objection that the action is inadmissible because international jurisdiction is lacking.

19 The Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna) dismissed the action brought by Mr Schrems on the ground that, since he is also using Facebook for professional purposes, he could not rely on jurisdiction over consumer contracts. According to that court, the jurisdiction *ratione personae* of the assignors of claims is not transferable to the assignee.

20 Mr Schrems brought an appeal against the order at first instance before the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria). That court amended that order in part. It upheld the claims related to the contract concluded between the applicant in the main proceedings in his own name and the defendant in the main proceedings. By contrast, it dismissed the appeal in so far as it concerned the assigned claims on the ground that the forum of a consumer can be invoked only by an applicant relying on his own claims. Consequently, it ruled, Mr Schrems could not successfully rely on the second part of Article 16(1) of Regulation No 44/2001 when seeking to enforce assigned claims. However, as to the remainder, that court rejected Facebook Ireland's procedural objections.

21 Both parties brought an appeal on a point of law ('Revision') against that judgment before the Oberster Gerichtshof (Supreme Court, Austria).

22 That court states that, if the applicant in the main proceedings were a 'consumer', the action should be brought in Vienna. The same would apply to any proceedings brought in relation to the rights of a consumer resident in Vienna. According to the referring court, there is no significant additional burden on the defendant in the main proceedings if it were to be required in the course of these proceedings also to defend itself against additional assigned claims.

23 The referring court nevertheless takes the view that, having regard to the case-law of the Court of Justice, the question of interpretation, namely the extent to which a consumer to whom

other consumers assign their claims for joint enforcement can rely on the jurisdiction over consumer contracts relevant to him, cannot be answered with the requisite degree of certainty.

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

‘(1) Is Article 15 of Regulation ... No 44/2001 ... to be interpreted as meaning that a “consumer” within the meaning of that provision loses that status if, after the comparatively long use of a private Facebook account, he publishes books in connection with the enforcement of his claims, on occasion also delivers lectures for remuneration, operates websites, collects donations for the enforcement of his claims and has assigned to him the claims of numerous consumers on the assurance that he will remit to them any proceeds awarded, after the deduction of legal costs?

(2) Is Article 16 of Regulation ... No 44/2001 to be interpreted as meaning that a consumer in a Member State can also invoke at the same time as his own claims arising from a consumer supply at the claimant’s place of jurisdiction the claims of others consumers on the same subject who are domiciled

- (a) in the same Member State,
- (b) in another Member State, or
- (c) in a non-member State,

if the claims assigned to him arise from consumer supplies involving the same defendant in the same legal context and if the assignment is not part of a professional or trade activity of the applicant, but rather serves to ensure the joint enforcement of claims?’

### **Consideration of the questions referred**

#### **The first question**

25 By its first question, the referring court asks, in essence, whether Article 15 of Regulation No 44/2001 must be interpreted as meaning that the activities of publishing books, lecturing, operating websites, fundraising and being assigned the claims of numerous consumers for the purpose of their enforcement do not entail the loss of a private Facebook account user’s status as a ‘consumer’ within the meaning of that article.

26 At the outset, it should be recalled that, in so far as Regulation No 44/2001 replaces the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), as amended by the successive conventions relating to the accession of new Member States to that convention, the interpretation provided by the Court in respect of the provisions of that convention is valid also for those of the regulation whenever the provisions of those instruments may be regarded as ‘equivalent’ (judgment of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 21 and the case-law cited), which is the case here.

27 Within the scheme of Regulation No 44/2001, the jurisdiction of the courts of the Member State in which the defendant is domiciled constitutes the general principle enshrined in Article 2(1) of that regulation. It is only by way of derogation from that principle that that provision provides for an exhaustive list of cases in which the defendant may or must be sued before the courts of another Member State. As a consequence, the rules of jurisdiction which derogate from that general

principle are to be strictly interpreted, in the sense that they cannot give rise to an interpretation going beyond the cases expressly envisaged by that regulation (see, to that effect, judgment of 20 January 2005, *Gruber*, C-464/01, EU:C:2005:32, paragraph 32).

28 Although the concepts used by Regulation No 44/2001, in particular those which appear in Article 15(1) of that regulation, must be interpreted independently, by reference principally to the general scheme and objectives of that regulation, in order to ensure that it is applied uniformly in all Member States (judgment of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 22 and the case-law cited), account must, in order to ensure compliance with the objectives pursued by the legislature of the European Union in the sphere of consumer contracts, and the consistency of EU law, also be taken of the definition of ‘consumer’ in other rules of EU law (judgment of 5 December 2013, *Vapenik*, C-508/12, EU:C:2013:790, paragraph 25).

29 In that respect, the Court has stated that the notion of a ‘consumer’ for the purposes of Articles 15 and 16 of Regulation No 44/2001 must be strictly construed, reference being made to the position of the person concerned in a particular contract, having regard to the nature and objective of that contract and not to the subjective situation of the person concerned, since the same person may be regarded as a consumer in relation to certain transactions and as an economic operator in relation to others (see, to that effect, judgments of 3 July 1997, *Benincasa*, C-269/95, EU:C:1997:337, paragraph 16, and of 20 January 2005, *Gruber*, C-464/01, EU:C:2005:32, paragraph 36).

30 From this the Court has inferred that only contracts concluded outside and independently of any trade or professional activity or purpose, solely for the purpose of satisfying an individual’s own needs in terms of private consumption, are covered by the special rules laid down by the regulation to protect the consumer as the party deemed to be the weaker party. Such protection is, however, unwarranted in the case of contracts for the purpose of a trade or professional activity (see, to that effect, judgment of 20 January 2005, *Gruber*, C-464/01, EU:C:2005:32, paragraph 36).

31 It follows that the special rules of jurisdiction in Articles 15 to 17 of Regulation No 44/2001 apply, in principle, only where the contract has been concluded between the parties for the purpose of a use of the relevant goods or services that is other than a trade or professional use (see, to that effect, judgment of 20 January 2005, *Gruber*, C-464/01, EU:C:2005:32, paragraph 37).

32 As regards, more particularly, a person who concludes a contract for a purpose which is partly concerned with his trade or profession and is therefore only partly outside it, the Court has held that he could rely on those provisions only if the link between the contract and the trade or profession of the person concerned was so slight as to be marginal and, therefore, had only a negligible role in the context of the supply in respect of which the contract was concluded, considered in its entirety (see, to that effect, judgment of 20 January 2005, *Gruber*, C-464/01, EU:C:2005:32, paragraph 39).

33 It is in the light of those principles that it is appropriate to examine whether circumstances such as those at issue in the main proceedings do not entail the loss of a Facebook account user’s status as a ‘consumer’ within the meaning of Article 15 of Regulation No 44/2001.

34 In that regard, it is clear from, inter alia, the order for reference that, between 2008 and 2010, Mr Schrems initially used a Facebook account which he had opened exclusively for private purposes whereas, from 2011, he has also used a Facebook page.

35 According to the applicant in the main proceedings, there are two separate contracts, that is to say, one for the Facebook page and the other for the Facebook account. By contrast, according to

Facebook Ireland, the Facebook account and the Facebook page form part of the same single contractual relationship.

36 Although it is for the referring court to establish whether Mr Schrems and Facebook Ireland are, in fact, bound by one or several contracts and to draw the appropriate inferences regarding the status of ‘consumer’, it should be noted that even a potential contractual link between the Facebook account and the Facebook page would not call into question an assessment of such status on the basis of the principles set out in paragraphs 29 to 32 of the present judgment.

37 Within the framework of that assessment, in accordance with the requirement, referred to in paragraph 29 above, to construe strictly the notion of ‘consumer’ within the meaning of Article 15 of Regulation No 44/2001, it is necessary, in particular, to take into account, as far as concerns services of a digital social network which are intended to be used over a long period of time, subsequent changes in the use which is made of those services.

38 This interpretation implies, in particular, that a user of such services may, in bringing an action, rely on his status as a consumer only if the predominately non-professional use of those services, for which the applicant initially concluded a contract, has not subsequently become predominately professional.

39 On the other hand, given that the notion of a ‘consumer’ is defined by contrast to that of an ‘economic operator’ (see, to that effect, judgments of 3 July 1997, *Benincasa*, C-269/95, EU:C:1997:337, paragraph 16, and of 20 January 2005, *Gruber*, C-464/01, EU:C:2005:32, paragraph 36) and that it is distinct from the knowledge and information that the person concerned actually possesses (judgment of 3 September 2015, *Costea*, C-110/14, EU:C:2015:538, paragraph 21), neither the expertise which that person may acquire in the field covered by those services nor his assurances given for the purposes of representing the rights and interests of the users of those services can deprive him of the status of a ‘consumer’ within the meaning of Article 15 of Regulation No 44/2001.

40 Indeed, an interpretation of the notion of ‘consumer’ which excluded such activities would have the effect of preventing an effective defence of the rights that consumers enjoy in relation to their contractual partners who are traders or professionals, including those rights which relate to the protection of their personal data. Such an interpretation would disregard the objective set out in Article 169(1) TFEU of promoting the right of consumers to organise themselves in order to safeguard their interests.

41 In the light of all of the foregoing considerations, the answer to the first question is that Article 15 of Regulation No 44/2001 must be interpreted as meaning that the activities of publishing books, lecturing, operating websites, fundraising and being assigned the claims of numerous consumers for the purpose of their enforcement do not entail the loss of a private Facebook account user’s status as a ‘consumer’ within the meaning of that article.

### **The second question**

42 By its second question, the referring court asks, in essence, whether Article 16(1) of Regulation No 44/2001 must be interpreted as meaning that it does not apply to the proceedings brought by a consumer for the purpose of asserting, in the courts of the place where he is domiciled, not only his own claims, but also claims assigned by other consumers domiciled in the same Member State, in other Member States or in non-member countries.



43 In that respect, it should be recalled, first of all, that the rules on jurisdiction laid down in Section 4 of Chapter II of Regulation No 44/2001 constitute a derogation both from the general rule of jurisdiction laid down in Article 2(1) of that regulation, which confers jurisdiction upon the courts of the Member State in which the defendant is domiciled, and from the rule of special jurisdiction for contracts, set out in Article 5(1) of that regulation, under which jurisdiction lies with the courts for the place of performance of the obligation in question. Thus, those rules must necessarily be interpreted strictly (see judgment of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 28 and the case-law cited).

44 Next, the Court has already held that, since the special system established in Article 15 et seq. of Regulation No 44/2001 is inspired by the concern to protect the consumer as the party deemed to be economically weaker and less experienced in legal matters than the other party to the contract, the consumer is protected only in so far as he is, in his personal capacity, the plaintiff or defendant in proceedings. Consequently, an applicant who is not himself a party to the consumer contract in question cannot enjoy the benefit of the jurisdiction relating to consumer contracts (see, to that effect, judgment of 19 January 1993, *Shearson Lehman Hutton*, C-89/91, EU:C:1993:15, paragraphs 18, 23 and 24). The same considerations must also apply to a consumer to whom the claims of other consumers have been assigned.

45 The rules on jurisdiction laid down, as regards consumer contracts, in Article 16(1) of the 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 trader or professional concerned (judgment of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 32).

46 The condition that a contract must have been concluded between the consumer and the trader or professional concerned makes it possible to ensure that the attribution of jurisdiction is predictable, which is one of the objectives of Regulation No 44/2001, as is apparent from recital 11 thereof.

47 Finally, contrary to what had been advanced in the present proceedings by Mr Schrems and by the Austrian and German Governments, the fact that a consumer to whom claims have been assigned is, in any event, able to bring proceedings before the courts of the place of his domicile on the basis of claims pursuant to rights vested in him personally under a contract concluded with the defendant, similar to those which have been assigned to him, is not such as to bring those assigned claims also within the jurisdiction of that court.

48 As the Court has held in a different context, the assignment of claims cannot, in itself, have an impact on the determination of the court having jurisdiction (judgments of 18 July 2013, *ÖFAB*, C-147/12, EU:C:2013:490, paragraph 58, and of 21 May 2015, *CDC Hydrogen Peroxide*, C-352/13, EU:C:2015:335, paragraph 35). It follows that the jurisdiction of courts other than those expressly referred to by Regulation No 44/2001 cannot be established through the concentration of several claims in the person of a single applicant. Therefore, as the Advocate General noted, in essence, in point 98 of his Opinion, an assignment of claims such as that at issue in the main proceedings cannot provide the basis for a new specific forum for a consumer to whom those claims have been assigned.

49 In the light of all of the foregoing considerations, the answer to the second question is that Article 16(1) of Regulation No 44/2001 must be interpreted as meaning that it does not apply to the proceedings brought by a consumer for the purpose of asserting, in the courts of the place where he

is domiciled, not only his own claims, but also claims assigned by other consumers domiciled in the same Member State, in other Member States or in non-member countries.

### **Costs**

50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

- 1. Article 15 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the activities of publishing books, lecturing, operating websites, fundraising and being assigned the claims of numerous consumers for the purpose of their enforcement do not entail the loss of a private Facebook account user's status as a 'consumer' within the meaning of that article.**
- 2. Article 16(1) of Regulation No 44/2001 must be interpreted as meaning that it does not apply to the proceedings brought by a consumer for the purpose of asserting, in the courts of the place where he is domiciled, not only his own claims, but also claims assigned by other consumers domiciled in the same Member State, in other Member States or in non-member countries.**

[Signatures]

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\* Language of the case: German.