

The Revised Lugano Convention

Consumer Contracts, Place of Jurisdiction and Applicable Law

FRANCE

Corinne PILLET / Thierry CLERC
IDAvocats
Paris - Rouen

c.pillet@idavocats.com
t.clerc@idavocats.com

www.idavocats.com

Société d'avocats

63, avenue de Villiers
75017 Paris
T : +33 (0) 1 43 12 37 12
F : +33 (0) 1 43 12 37 13
E : contact@idavocats.com

29, rue Raymond Aron
BP 525 76824 Mont Saint-Aignan Cedex
T : +33 (0) 2 35 59 11 34
F : +33 (0) 2 35 59 95 99
E : clerc@eurojuris.fr



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Application of the Lugano Convention in France

The consumer is defined as:

a person who enters into a contract for purposes other than their professional activity.

Example:

A doctor who buys a computer for his office is not considered a consumer as per the Lugano Convention, even if he is not an IT specialist.

The Convention provides protection for consumers who enter into contracts regarding the sale of goods on instalment credit terms, a loan repayable by instalments or any other credit transaction for financing the sale of such items.

These contracts may include:

Leasing contracts / Credit card contracts

When the consumer is domiciled on the territory of a State bound by the Convention, all other contracts entered into by the consumer are subject to the Convention

I Place of jurisdiction (Article 31)

Two types of measures may be applied for to the judge having jurisdiction based on the emergency of the case:

- Provisional measures
- Protective measures

Example Nr.1: Protection of a ship

The purpose of this emergency action was to protect a Russian ship in France against a Swiss creditor.

The French judge accepted the special jurisdiction conferred to him based on the emergency of the situation, and formally prohibited seizure of the ship as a precautionary measure.

Example Nr. 2: Provisional recovery

Article 2 of the Convention confers jurisdiction to the Swiss judge, Switzerland being the place of residence of the defendant who was facing a bankruptcy situation.

The French judge **accepted the special jurisdiction conferred to him** based on the emergency of the situation.

This jurisdiction is challenged before the Court of Appeal based on the following grounds:

- **No emergency**
- **No provisional or protective measure:** claiming for an order to pay is a final, not a provisional, measure.
- **The judge has to include a compulsory repayment guarantee** in case the provisional measure is cancelled.
- measures aiming to preserve a *de jure or de facto* situation in order to protect rights for which recognition is otherwise applied for to the judge having jurisdiction on the substance of the matter.

(ECJ 26/03/1992 - Decision in the Reichter case)

- The advance payment of amounts is not considered a provisional measure as per the Lugano Convention.

(ECJ 17/11/1998 – Decision in the Van Uden case)

(Court of Cassation, 13/04/1999)

Example Nr.3: Addition of a jurisdiction clause to an claim assignment contract

The NATIXIS bank in France signed a claim assignment contract with a French national domiciled in Switzerland.

The contract includes a clause conferring jurisdiction to the Courts in Paris.

The Supreme Court, based on Article 23 of the Convention, ruled that the Convention was applicable provided that a contracting party was domiciled on the territory of a State bound by the Convention.

(Court of Cassation, 30/01/2013)

II Applicable law in matters regarding consumer contracts

- 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)
- Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

- Article 6:

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:**

- Pursues his commercial or professional activities in the country where the consumer has his habitual residence, or
- By any means, directs such activities to that country or to several countries including that country,

- The parties may choose the law applicable to a contract.
- 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. (Law of the country where the consumer has his habitual residence)

III French Consumer Code

2 Examples :

- **Consumer protection against unfair terms (article L132-1)**

In contracts concluded between a business and a non-business or consumers, clauses which aim to create or result in the creation, to the detriment of the non-professional or the consumer, of a significant imbalance between the rights and obligations of the parties to the contract, **are unfair**.

Unfair terms are deemed to be null and void.

These provisions are public policy.

Notwithstanding any stipulation to the contrary, the provisions of article L. 132-1 apply where the Act governing the contract is that of a State not belonging to the European union, where the

consumer or the non-professional is domiciled in one of the Member states of the European union and where the contract was proposed, concluded or performed there.

- **Credit for land purchase**

All advertising originating, received or seen in France which, regardless of the medium used shall:

1. Indicate the identity of the lender and the nature and object of the loan ;

2. If it contains one or more elements expressed in figures, indicate the term of the proposed facility, the total cost, and the annual percentage rate applied to the loan, to the exclusion of any other rate.

All compulsory references shall be presented in a manner which is perfectly legible and understandable to the consumer.

Any publicity document or any information document submitted to the borrower must mention that the borrower has a **ten day cooling off period**, that the sale is subject to the loan being obtained and that if the latter is not obtained, the vendor must repay the borrower the sums paid.

The advertiser on whose behalf advertising which does not conform to the provisions will be punished by a fine of € 30,000.