Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

17 October 2013 *

(Regulation (EC) No 44/2001 — Article 15(1)(c) — Jurisdiction over consumer contracts — Whether jurisdiction limited to distance contracts — Causal link between the commercial or professional activity directed to the Member State of the consumer's domicile via an Internet site and the conclusion of the contract)

In Case C-218/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Saarbrücken (Germany), made by decision of 27 April 2012, received at the Court on 10 May 2012, in the proceedings

Lokman Emrek

v

Vlado Sabranovic,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 25 April 2013,

after considering the observations submitted on behalf of:

— Mr Emrek, by M. Kurt, Rechtsanwalt,

— Mr Sabranovic, by M. Mauer, Rechtsanwältin,

— the Belgian Government, by T. Materne and J.C. Halleux, acting as Agents,

— the French Government, by B. Beaupère-Manokha, acting as Agent,

— the Luxembourg Government, by P. Frantzen and C. Schiltz, acting as Agents,

— the European Commission, by A.-M. Rouchaud-Joët and M. Wilderspin, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 18 July 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 15(1)(c) 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 Emrek and Mr Sabranovic concerning claims under a warranty following the conclusion of a contract for the sale of a second-hand motor vehicle.

Legal context

3 Recital 11 in the preamble to Regulation No 44/2001 states: '[t]he 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.'

4 According to recital 13 in the preamble to that regulation, 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.

5 Article 2(1) of Regulation No 44/2001 lays down the principle that persons domiciled in a Member State, whatever their nationality, are to be sued in the courts of that Member State.

6 In matters relating to a contract, Article 5(1)(a) of Regulation No 44/2001 provides that the courts having jurisdiction are the courts for the place of performance of the obligation in question.

7 Article 15(1) of that regulation is worded as follows:

'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:

…

(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.'

8 Article 16(1) and (2) of Regulation No 44/2001 provides as follows:

'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.'

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

9 The order for reference states that at the material time in the main proceedings, Mr Emrek, who is domiciled in Saarbrücken (Germany) was looking for a second-hand motor vehicle.

10 Mr Sabranovic operates a business selling second-hand motor vehicles under the name Vlado Automobiles Import-Export in Spicheren (France), a town close to the German border. At the material time, he had an Internet site which contained the contact details for his business, including French telephone numbers and a German mobile telephone number, together with the respective international codes.

11 Having learned from acquaintances, and not from the Internet site, of Mr Sabranovic's business and the possibility to purchase a motor vehicle, Mr Emrek went to the business premises of that undertaking in Spicheren.

12 Thus, on 13 September 2010, Mr Emrek, as a consumer, concluded a written contract for the sale of a second-hand motor vehicle with Mr Sabranovic at his premises.

13 By an action brought subsequently before the Amstgericht Saarbrücken (Local Court, Saarbrücken) (Germany), Mr Emrek made claims against Mr Sabranovic under the warranty. He took the view that, by virtue of Article 15(1)(c) of Regulation No 44/2001, that court had jurisdiction to hear such an action. It followed from the set-up of Mr Sabranonic's website that his commercial activity is also directed to Germany.

14 That court held that Mr Emrek's claim was inadmissible and dismissed it holding that, in the proceedings before it, Article 15(1)(c) of Regulation No 44/2001 did not apply as Mr Sabranovic had not directed his commercial activity to Germany within the meaning of that provision.

15 Mr Emrek appealed against that decision before the referring court, arguing that Article 15(1)(c) of Regulation No 44/2001 does not require the establishment of a causal link between the commercial activity directed to the consumer's Member State and the conclusion of the contract. Neither does that provision require the contract to be concluded at a distance.

16 The Landgericht Saarbrücken (Regional Court, Saarbrücken) takes the view that, in the case in the main proceedings, it is established that Mr Sabranovic's commercial activity was directed to Germany. In particular, the mention of the French international dialing code and a German mobile telephone number gives the impression that this trader also seeks to canvass clients established outside France, in particular clients in the border area in Germany.

17 According to the Landgericht Saarbrücken, even if the application of Article 15(1)(c) of Regulation No 44/2001 were to be regarded as not requiring the conclusion of a distance contract it is necessary, in order to avoid an extension of the scope of that provision, that, at the very least, the trader's Internet site should form the basis of the actual conclusion of the contract with the consumer. Thus, it takes the view that that provision should not be applicable where a consumer 'fortuitously' concludes a contract with a 'trader'.

18 In those circumstances, the Landgericht Saarbrücken decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. In cases in which a trader’s Internet site is directed to the Member State of the consumer, does Article 15(1)(c) of Regulation [No 44/2001] require, as a further unwritten condition, that the consumer was induced to enter into the contract by the website operated by the trader and, consequently, that the Internet site has a causal link with the conclusion of the contract?

2. If there must be a causal link between the activity directed to the Member State of the consumer and the conclusion of the contract, does Article 15(1)(c) of Regulation No 44/2001 also require that the contract was concluded as a distance contract?’

The questions referred for a preliminary ruling

19 As a preliminary point, it must be stated that, in its judgment in Case C-190/11 *Mühlleitner* [2012] ECR, the Court has already answered the second question referred by the national court in the present case, holding that Article 15(1)(c) of Regulation No 44/2001 must be interpreted as meaning that it does not require the contract between the consumer and the trader to be concluded at a distance.

20 Therefore, it is appropriate to examine only the first question, by which that court asks essentially whether Article 15(1)(c) of Regulation No 44/2001 must be interpreted as meaning that it requires the existence of a causal link between the means used to direct the commercial or professional activity to the Member State in which the consumer is domiciled, namely an Internet site, and the conclusion of the contract with that consumer.

21 In that connection, it must be observed, in the first place, that, under Article 15(1)(c) of Regulation No 44/2001, its application is not expressly subject to the existence of such a causal link.

22 It is clear from the wording of that provision that it applies where two specific conditions are satisfied. It is necessary, first, that the trader 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, secondly, that the contract at issue falls within the scope of such activities.

23 The Court has already held that the essential condition to which the application of Article 15(1)(c) of Regulation No 44/2001 is subject is that relating to a commercial or professional activity directed to the State of the consumer’s domicile (*Mühlleitner*, paragraph 44) and, in the present case, the referring court considers that that condition is satisfied.

24 In the second place, as regards the teleological interpretation of Article 15(1)(c) of Regulation No 44/2001, it must be observed that the addition of the unwritten condition concerning the existence of a causal link such as that mentioned in paragraph 20 of the present judgment would be contrary to the objective pursued by that provision, that is the aim of protecting consumers, who are regarded as the weaker parties to contracts concluded between them and a trader.

25 As the European Commission submits and the Advocate General observes in point 25 of his Opinion, it must be held that the requirement of prior consultation of the Internet site by the consumer could give rise to problems of proof, in particular in cases where the contract was not concluded at a distance through that site, as in the main proceedings. In such a situation, difficulties related to proof of the existence of a causal link between the means used to direct the activity, that is an Internet site, and the conclusion of a contract, would tend to dissuade consumers from bringing actions before the national courts under Articles 15 and 16 of Regulation No 44/2001 and would weaken the protection of consumers which those provisions seek to achieve.

26 However, as the Advocate General also stated in point 26 of his Opinion, although the causal link is not an unwritten condition to which the application of Article 15(1)(c) is subject, the fact remains that it may constitute strong evidence which may be taken into consideration by the national court when determining whether the activity is in fact directed to the Member State in which the consumer is domiciled.

27 In that connection, it must be recalled that, in paragraph 93 and the operative part of its judgment in Joined Cases C-585/08 and C-144/09 *Pammer and Hotel Alpenhof* [2010] ECR I-12527, the Court identified a non-exhaustive list of factors capable of constituting evidence which national courts may use to determine whether the essential condition of commercial activity directed to the Member State of the consumer's domicile is fulfilled.

28 Furthermore, in *Mülleitner*, although it held that the application of Article 15(1)(c) is not subject to the conclusion of a consumer contract at a distance, in paragraph 44 of that judgment, the Court added to the non-exhaustive list other factors concerning, in particular, the 'establishment of contact at a distance' and the 'conclusion of a consumer contract at a distance', which are of such a nature as to establish that the contract relates to an activity directed to the Member State of the consumer's domicile.

29 To avoid an extension of the scope of Article 15(1)(c) of Regulation No 44/2001, it must be held that the causal link which is the subject matter of the first question must be regarded as constituting evidence of 'directed activity' in the same way as the establishment of contact at a distance, which gives rise to the consumer being contractually bound at a distance.

30 Furthermore, as the Advocate General observed in points 33 to 38 of his Opinion, the fact that a trader, as in the main proceedings, is established in one Member State close to the border of another Member State, in an urban area extending on both sides of the border, and that he uses a telephone number allocated by the other Member State, by making it available to potential clients domiciled in that other State to save them the cost of an international call, may also constitute evidence that his activity is 'directed to' that other Member State.

31 In any event, it is for the referring court to make an overall assessment of the circumstances in which the consumer contract at issue in the main proceedings was concluded in order to decide whether or not, depending on the existence or absence of evidence mentioned on the non-exhaustive list as established by the Court in the relevant case-law mentioned in paragraphs 27 and 28 of this judgment, Article 15(1)(c) is applicable.

32 Having regard to the foregoing considerations, the answer to the first question is that Article 15(1)(c) of Regulation No 44/2001 must be interpreted as meaning that it does not require the existence of a causal link between the means employed to direct the commercial or professional activity to the Member State of the consumer's domicile, namely an internet site, and the conclusion of the contract with that consumer. However, the existence of such a causal link constitutes evidence of the connection between the contract and such activity.

Costs

33 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:

Article 15(1)(c) 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 that it does not require the existence of a causal link between the means employed to direct the commercial or professional activity to the Member State of the consumer's domicile, namely an internet site, and the conclusion of the contract with that consumer. However, the existence of such a causal link constitutes evidence of the connection between the contract and such activity.

[Signatures]