



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-585/08 and C-144/09
Peter Pammer v Reederei Karl Schlüter GmbH & Co. KG and
Hotel Alpenhof GesmbH v Oliver Heller

The Court explains the rules of jurisdiction in European Union law that are applicable to consumer contracts, in relation to services offered on the internet

Mere use of a website by the trader does not in itself trigger application of the rules of jurisdiction for the protection of consumers in other Member States

The European Union regulation¹ on jurisdiction in civil and commercial matters provides that actions against a person domiciled in a Member State must, as a general rule, be brought in the courts of that State. It also provides that cases resulting from a contractual relationship may be decided by the courts for the place of performance of the contractual obligation. In the case of consumer contracts, however, rules protecting the consumer apply. If the trader 'directs its activities' to the Member State in which the consumer is domiciled, the consumer can bring proceedings before the courts of the Member State of his domicile and he can be sued only in that Member State. Both of the present cases concern whether a trader 'directs its activities' within the meaning of the regulation when it uses a website to communicate with consumers.

Case C-585/08

Peter Pammer, who resides in Austria, wished to travel by freighter from Trieste (Italy) to the Far East. He therefore booked a voyage with the German company Reederei Karl Schlüter, through a German travel agency specialising in the sale on the internet of voyages by freighter. Mr Pammer refused to embark on the ground that the conditions on the vessel did not, in his view, correspond to the description which he had received from the agency and he sought reimbursement of the sum that he had paid for the voyage. Since Reederei Karl Schlüter reimbursed only a part of that sum, Mr Pammer brought proceedings in the Austrian courts, before which that German company raised a plea that they lacked jurisdiction on the ground that it did not pursue any professional or commercial activity in Austria.

Case C-144/09

Oliver Heller, a German resident, reserved a number of rooms, for a period of a week, in Hotel Alpenhof, which is in Austria. The reservation was made by email, the hotel's website which Mr Heller had consulted indicating an address for that purpose. Mr Heller found fault with the hotel's services and left without paying his bill. The hotel then brought an action before the Austrian courts for payment of the bill. Mr Heller raised a plea of lack of jurisdiction, submitting that, as a consumer resident in Germany, he could be sued only in the German courts.

The Oberster Gerichtshof (Supreme Court, Austria), before which these two cases are pending, has asked the Court of Justice whether the fact that a company established in a Member State offers its services on the internet means that they 'are directed' to other Member States too. If that were so, consumers domiciled in those other States who have recourse to the services could also benefit, in the event of a dispute with the trader, from the more favourable rules of jurisdiction laid down by the regulation.

¹ 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).

In its judgment delivered today, the Court states that **mere use of a website by a trader in order to engage in trade does not in itself mean that its activity is 'directed to' other Member States**, which would trigger application of the protective rules of jurisdiction in the regulation. The Court holds that, in order for those rules to be applicable in relation to consumers from other Member States, **the trader must have manifested its intention to establish commercial relations with such consumers**.

In this context, the Court considers what evidence can demonstrate that the trader was envisaging doing business with consumers domiciled in other Member States. Such evidence includes clear expressions of the trader's intention to solicit the custom of those consumers, for example when it offers its services or its goods in several Member States designated by name or when it pays a search engine operator for an internet referencing service in order to facilitate access to its site by consumers domiciled in those various Member States.

Nevertheless, other less patent items of evidence, possibly in combination with one another, are also capable of demonstrating the existence of an activity 'directed to' the Member State of the consumer's domicile. These include: the international nature of the activity at issue, such as certain tourist activities; mention of telephone numbers with the international code; use of a top-level domain name other than that of the Member State in which the trader is established, for example '.de', or use of neutral top-level domain names such as '.com.' or '.eu'; the description of itineraries from one or more other Member States to the place where the service is provided; and mention of an international clientele composed of customers domiciled in various Member States, in particular by presentation of accounts written by such customers. Likewise, if the website permits consumers to use a language or a currency other than that generally used in the trader's Member State, this can also constitute evidence demonstrating cross-border activity of the trader.

On the other hand, mention on a website of the trader's email address or geographical address, or of its telephone number without an international code, does not constitute such evidence as that information does not indicate whether the trader is directing its activity to one or more Member States.

The Court concludes that, having regard to such evidence, the Austrian court must determine whether it is apparent from the traders' websites and overall activity that they were envisaging doing business with Austrian consumers (Case C-585/08) or German consumers (Case C-144/09) in the sense that they were minded to conclude contracts with them.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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