



For a consumer to be able to sue a foreign trader before the national courts, it is not necessary that the contract at issue was concluded at a distance

The fact that the consumer travelled to the trader's Member State to sign the contract does not therefore prevent the courts of the consumer's Member State from having jurisdiction

EU law¹ aims to protect the consumer, as the weaker party to the contract, in cross-border disputes by facilitating his access to the courts, in particular by geographical proximity of the court which has jurisdiction. The consumer may thus sue in his national courts a trader with whom he has concluded a contract, even if the trader is domiciled in another Member State, on two conditions: first, the trader must pursue commercial or professional activities in the Member State in which the consumer resides or, by any means (for example, via the internet), direct such activities to that Member State² and, secondly, the contract at issue must fall within the scope of such activities.

The Oberster Gerichtshof (Supreme Court, Austria) asks the Court of Justice whether, for it to be possible to sue in the national courts, the contract between the consumer and the trader must also be concluded at a distance.

The Oberster Gerichtshof, as court of final appeal, is hearing an action brought before the Austrian courts by Ms Mühlleitner, who resides in Austria, against Autohaus Yusufi, a firm based in Hamburg (Germany) which specialises in selling cars. By that action Ms Mühlleitner seeks rescission of the contract for the sale of the vehicle she bought from Autohaus Yusufi for her private use. Ms Mühlleitner came across the offer from Autohaus Yusufi by searching on the internet. However, to sign the contract of purchase and take delivery of the vehicle, she went to Hamburg. On her return to Austria she discovered that the vehicle was defective. Since Mr A. Yusufi and Mr W. Yusufi refused to repair the vehicle, Ms Mühlleitner brought proceedings in the Austrian courts, whose international jurisdiction they dispute. The Oberster Gerichtshof considers that their commercial activities were indeed directed³ to Austria, because their website was accessible there, and that there were contacts at a distance (telephone, emails) between the parties to the contract. It is uncertain, however, as to whether the jurisdiction of the Austrian courts presupposes that the contract was concluded at a distance.

By its judgment of today, the Court of Justice answers that the consumer's possibility of bringing proceedings before the courts of his Member State against a trader domiciled in another Member State is not subject to the condition that the contract was concluded at a distance.

While the European legislation required until 2002⁴ that the consumer should have taken in the Member State of his domicile the steps necessary for the conclusion of the contract⁵, the current

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, known as the 'Brussels I Regulation').

² Or to several States including that Member State.

³ For this condition, see the judgment of the Court in Joined Cases [C-585/08 and C-144/09](#) *Pammer and Hotel Alpenhof*,

7 December 2010; see also Press Release No [118/10](#).

⁴ Regulation No 44/2001, cited in footnote 1, entered into force on 1 March 2002.

legislation⁶ no longer contains such a condition. By that amendment the European Union legislature intended to ensure better protection for consumers.

The essential condition to which the application of that rule is subject is that relating to a commercial or professional activity directed to the State of the consumer's domicile. In that respect, both the establishment of contact at a distance and the reservation of goods or services at a distance, or a fortiori the conclusion of a consumer contract at a distance, are indications that the contract is connected with such an activity.

If, therefore, (i) the trader domiciled in another Member State pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State⁷ and (ii) the contract at issue falls within the scope of such activities, the consumer may bring proceedings before the courts of his own Member State against the trader, even if the contract was not concluded at a distance because it was signed in the Member State of the trader.

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.

Press contact: Christopher Fretwell 📞 (+352) 4303 3355

⁵ See the Brussels 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 on the accession of new Member States to that Convention.

⁶ See footnote 1.

⁷ Or to several States including that Member State.