



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-28/18
Verein für Konsumenteninformation v Deutsche Bahn AG

Advocate General Szpunar: Deutsche Bahn cannot require customers wishing to purchase travel tickets online by direct debit to be resident in Germany

Such a requirement is not compatible with the provisions of EU law prohibiting companies from specifying the Member State in which the customer's payment account is to be located

Verein für Konsumenteninformation, an Austrian consumer protection association, has brought an action before the Austrian Courts against Deutsche Bahn, a German railway company, which also offers Austrian customers the opportunity to book train journeys on the internet. The Austrian association asserts that the German company's online payment system, which accepts payments by credit card, instant bank transfer or under the Single Euro Payments Area (SEPA) direct debit scheme¹, is not compatible with the SEPA Regulation² prohibiting payees from specifying the Member State in which the payer's account is to be located. In this regard, the association claims that, as customers generally have a payment account with a bank established in the Member State of their own residence, the limitation by Deutsche Bahn of the availability of SEPA direct debit transactions to customers residing in Germany amounts to discrimination prohibited by the SEPA Regulation inasmuch as such a practice implicitly requires that customers wishing to initiate such transactions also have their payment account in Germany.

The Oberster Gerichtshof (Supreme Court, Austria), which hears the matter on appeal, has asked the Court of Justice if the contested payment practice of Deutsche Bahn is actually at odds with the SEPA Regulation.

In today's Opinion, Advocate General Maciej Szpunar sets out that, although, by imposing a residence condition, Deutsche Bahn does not formally require customers wishing to use the direct debit scheme to have their payment account in any particular Member State, customers generally have a payment account with a bank established in the Member State where they reside. The Advocate General therefore takes the view that **requiring a customer to be resident in a certain Member State is equivalent to specifying in which Member State a payment account must be located.**

In these circumstances, the Advocate General finds that **the contested payment practice of Deutsche Bahn is contrary to the SEPA Regulation.**

In this context, the Advocate General refutes the arguments of Deutsche Bahn that the SEPA Regulation should be read in the light of the Geo-Blocking Regulation³ (despite this latter regulation not being applicable to the case at hand) providing that, where authentication requirements are not fulfilled, which Deutsche Bahn alleges to be the case in the present case as

¹ Direct debit means a national or cross-border payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the payer's consent (8).

² Regulation No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ 2012 L 94, p. 22), as amended by Regulation (EU) No 248/2014 of the European Parliament and of the Council of 26 February 2014 (OJ 2014 L 84, p. 1).

³ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ 2018 L 601, p. 1).

well, discrimination based on residence is allowed for payment transactions. The Advocate General considers that this provision of the Geo-Blocking Regulation applies only in connection with that regulation, whose subject matter considerably differs from that of the SEPA Regulation, which, moreover, does not contain any cross-reference to the Geo-Blocking Regulation.

Moreover, the Advocate General is of the opinion that, in the absence of any provision in the SEPA Regulation allowing a justification for discrimination based on the location of the payer's account in cases of direct debit payment, the unequal treatment applied by Deutsche Bahn cannot be justified.

Finally, the Advocate General makes it clear that, under the SEPA Regulation, **a company is not required to offer its customers the possibility of paying by direct debit. However, once it has decided to provide customers with such a possibility, it has to offer that service in a non-discriminatory manner.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 Opinion is published on the CURIA website on the day of delivery.

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