

Operative part of the judgment

Articles 43 EC and 48 EC do not preclude legislation of a Member State which makes it possible for a parent company to form a single tax entity with its resident subsidiary, but which prevents the formation of such a single tax entity with a non-resident subsidiary, in that the profits of that non-resident subsidiary are not subject to the fiscal legislation of that Member State.

(¹) OJ C 272, 25.10.2008.

Judgment of the Court (Fourth Chamber) of 25 February 2010 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Car Trim GmbH v KeySafety Systems Srl

(Case C-381/08) (¹)

(Jurisdiction in civil and commercial matters — Regulation (EC) No 44/2001 — Article 5(1)(b) — Jurisdiction in matters relating to a contract — Determination of the place of performance of the obligation — Criteria for distinguishing between ‘sale of goods’ and ‘provision of services’)

(2010/C 100/05)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Car Trim GmbH

Defendant: KeySafety Systems Srl

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 5(1)(b) 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) — Contract for the supply of goods to be manufactured also including instructions from the customer with regard to the provision, fabrication and delivery of the components to be produced, including a guarantee of the quality of production, reliability of delivery and smooth administrative handling of the contract — Criteria for a distinction between sale of goods and supply of services — Determination of the place of performance of the obligation in the case of a sale involving the carriage of goods.

Operative part of the judgment

1. Article 5(1)(b) 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 where the purpose of contracts is the supply of goods to be manufactured or produced and, even though the purchaser has specified certain requirements with regard to the provision, fabrication and delivery of the components to be produced, the purchaser has not supplied the materials and the supplier is responsible for the quality of the goods and their compliance with the contract, those contracts must be classified as a ‘sale of goods’ within the meaning of the first indent of Article 5(1)(b) of that regulation.
2. The first indent of Article 5(1)(b) of Regulation No 44/2001 must be interpreted as meaning that, in the case of a sale involving carriage of goods, the place where, under the contract, the goods sold were delivered or should have been delivered must be determined on the basis of the provisions of that contract. Where it is impossible to determine the place of delivery on that basis, without reference to the substantive law applicable to the contract, that place is the place where the physical transfer of the goods took place, as a result of which the purchaser obtained, or should have obtained, actual power of disposal over those goods at the final destination of the sales transaction.

(¹) OJ C 301, 22.11.2008.

Judgment of the Court (Fourth Chamber) of 25 February 2010 (reference for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Brita GmbH v Hauptzollamt Hamburg-Hafen

(Case C-386/08) (¹)

(EC-Israel Association Agreement — Territorial scope — EC-PLO Association Agreement — Refusal to apply to products originating in the West Bank the preferential tariff arrangements granted for products originating in Israel — Doubts as to the origin of the products — Approved exporter — Subsequent verification of invoice declarations by the customs authorities of the importing State — Vienna Convention on the Law of Treaties — Principle of the relative effect of treaties)

(2010/C 100/06)

Language of the case: German

Referring court

Finanzgericht Hamburg