

Operative part of the judgment

1. A contract concerning a voyage by freighter, such as that at issue in the main proceedings in Case C-585/08, is a contract of transport which, for an inclusive price, provides for a combination of travel and accommodation within the meaning of Article 15(3) 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.
2. In order to determine whether a trader whose activity is presented on its website or on that of an intermediary can be considered to be 'directing' its activity to the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of Regulation No 44/2001, it should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with them.

The following matters, the list of which is not exhaustive, are capable of constituting evidence from which it may be concluded that the trader's activity is directed to the Member State of the consumer's domicile, namely the international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States. It is for the national courts to ascertain whether such evidence exists.

On the other hand, the mere accessibility of the trader's or the intermediary's website in the Member State in which the consumer is domiciled is insufficient. The same is true of mention of an email address and of other contact details, or of use of a language or a currency which are the language and/or currency generally used in the Member State in which the trader is established.

⁽¹⁾ OJ C 44, 21.2.2009
OJ C 153, 4.7.2009

Judgment of the Court (Second Chamber) of 16 December 2010 — European Commission v French Republic

(Case C-89/09) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Freedom of establishment — Article 43 EC — Public health — Operation of bio-medical analysis laboratories — National legislation under which no more than 25 % of own capital may be held by shareholders who are not professional biologists — Prohibition on holding shares in more than two companies operating jointly one or more biomedical analysis laboratories — Objective of ensuring the professional independence of biologists — Objective of maintaining diversity of supply in the biomedical field — Consistency — Proportionality)

(2011/C 55/07)

Language of the case: French

Parties

Applicant: European Commission (represented by: G. Rozet and E. Traversa, Agents)

Defendant: French Republic (represented by: G. de Bergues and B. Messmer, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 43 EC — Rules concerning the operation of bio-medical analysis laboratories — National legislation under which no more than 25 % of a company's capital may be held by shareholders not engaged in the relevant professional activity — Prohibition on holding shares in more than two companies operating jointly one or more biomedical analysis laboratories — Restrictions on freedom of establishment which may be justified by the objective of protection of public health and are proportionate

Operative part of the judgment

The Court:

1. Declares that, by prohibiting biologists from holding shares in more than two companies formed in order to operate jointly one or more biomedical analysis laboratories, the French Republic has failed to fulfil its obligations under Article 43 EC;
2. Dismisses the action as to the remainder.
3. Orders the French Republic and the European Commission to bear their own costs.

⁽¹⁾ OJ C 113, 16.05.2009.