



Reports of Cases

Case C-191/15

Verein für Konsumenteninformation
v
Amazon EU Sàrl

(Request for a preliminary ruling from the Oberster Gerichtshof)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulations (EC) No 864/2007 and (EC) No 593/2008 — Consumer protection — Directive 93/13/EEC — Data protection — Directive 95/46/EC — Online sales contracts concluded with consumers resident in other Member States — Unfair terms — General terms and conditions containing a choice-of-law term applying the law of the Member State in which the company is established — Determination of the applicable law for assessing the unfairness of terms in those general terms and conditions in an action for an injunction — Determination of the law governing the processing of personal data of consumers)

Summary — Judgment of the Court (Third Chamber), 28 July 2016

1. *Judicial cooperation in civil matters — Law applicable to contractual obligations — Regulation No 593/2008 — Law applicable to non-contractual obligations — Regulation No 864/2007 — Action for an injunction directed against the use of allegedly unfair terms in online sales contracts concluded with consumers resident in Member States other than that of the seller or supplier — Applicable law*

(European Parliament and Council Regulations No 864/2007, Arts 1(3) and 6(1), and No 593/2008, Arts 1(3) and 6(2); European Parliament and Council Directive 2009/22; Council Directive 93/13, Art. 8)

2. *Consumer protection — Unfair terms in consumer contracts — Directive 93/13 — Unfair term within the meaning of Article 3 — Definition — Term in an online sales contract drafted in such a way as to lead the consumer into error as to the law applicable to the contract — Included — Assessment of unfair nature by the national court — Criteria*

(European Parliament and Council Regulation No 593/2008, Art. 6(2); Council Directive 93/13, Art. 3(1))

3. *Approximation of laws — Protection of individuals with regard to the processing of personal data — Directive 95/46 — Applicable national law — Processing carried out by an undertaking engaged in electronic commerce directing its activities to a Member State — Application of the law of the Member State concerned — Condition*

(European Parliament and Council Directive 95/46, Art. 4(1)(a))

1. Regulation No 593/2008 on the law applicable to contractual obligations (Rome I) and Regulation No 864/2007 on the law applicable to non-contractual obligations (Rome II) must be interpreted as meaning that, without prejudice to Article 1(3) of each of those regulations, the law applicable to an action for an injunction within the meaning of Directive 2009/22 on injunctions for the protection of consumers' interests directed against the use of allegedly unfair contractual terms by an undertaking established in a Member State which concludes contracts in the course of electronic commerce with consumers resident in other Member States, in particular in the State of the court seised, must be determined in accordance with Article 6(1) of the Rome II Regulation, whereas the law applicable to the assessment of a particular contractual term must always be determined pursuant to the Rome I Regulation, whether that assessment is made in an individual action or in a collective action.

Where, however, in an action for an injunction an assessment is being made of whether a particular contractual term is unfair, it follows from Article 6(2) of the Rome I Regulation that the choice of the applicable law is without prejudice to the application of the mandatory provisions laid down by the law of the country of residence of the consumers whose interests are being defended by means of that action. Those provisions may include the provisions transposing Directive 93/13 on unfair terms in consumer contracts, provided that they ensure a higher level of protection for the consumer, in accordance with Article 8 of that directive.

(see paras 59, 60, operative part 1)

2. Article 3(1) of Directive 93/13 on unfair terms in consumer contracts must be interpreted as meaning that a term in the general terms and conditions of a seller or supplier which has not been individually negotiated, under which the contract concluded with a consumer in the course of electronic commerce is to be governed by the law of the Member State in which the seller or supplier is established, is unfair in so far as it leads the consumer into error by giving him the impression that only the law of that Member State applies to the contract, without informing him that under Article 6(2) of Regulation No 593/2008 on the law applicable to contractual obligations (Rome I) he also enjoys the protection of the mandatory provisions of the law that would be applicable in the absence of that term, this being for the national court to ascertain in the light of all the relevant circumstances.

(see para. 71, operative part 2)

3. Article 4(1)(a) of Directive 95/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as meaning that the processing of personal data carried out by an undertaking engaged in electronic commerce is governed by the law of the Member State to which that undertaking directs its activities, if it is shown that the undertaking carries out the data processing in question in the context of the activities of an establishment situated in that Member State. It is for the national court to ascertain whether that is the case.

While the fact that the undertaking responsible for the data processing does not have a branch or subsidiary in a Member State does not preclude it from having an establishment there within the meaning of Article 4(1)(a) of Directive 95/46, such an establishment cannot exist merely because the undertaking's website is accessible there. Rather, both the degree of stability of the arrangements and the effective exercise of activities in the Member State in question must be assessed.

(see paras 76, 77, 81, operative part 3)