



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

16 July 2020\*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Article 1(1) — Scope — Concept of ‘civil and commercial matters’ — Action for the cessation of unfair commercial practices brought by a public authority to protect the interests of consumers)

In Case C-73/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the hof van beroep te Antwerpen (Court of Appeal, Antwerp, Belgium), made by decision of 24 January 2019, received at the Court on 31 January 2019, in the proceedings

**Belgische Staat**, represented by the Minister van Werk, Economie en Consumenten, belast met de Buitenlandse handel, and by the Directeur-Generaal van de Algemene Directie Controle en Bemiddeling van de FOD Economie, K.M.O., Middenstand en Energie, now Algemene Directie Economische Inspectie,

**Directeur-Generaal van de Algemene Directie Controle en Bemiddeling van de FOD Economie, K.M.O., Middenstand en Energie**, now Algemene Directie Economische Inspectie

v

**Movic BV**,

**Events Belgium BV**,

**Leisure Tickets & Activities International BV**,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, M. Safjan, L. Bay Larsen, C. Toader (Rapporteur) and N. Jääskinen, Judges,

Advocate General: M. Szpunar,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 29 January 2020,

after considering the observations submitted on behalf of:

– Movic BV, by L. Savelkoul and B. Schildermans, advocaten,

\* Language of the case: Dutch.

- Events Belgium BV and Leisure Tickets & Activities International BV, by T. Baes, advocaat,
- the Belgian Government, by P. Cottin, L. Van den Broeck and C. Pochet, acting as Agents, and by E. Vervaeke, advocaat,
- the European Commission, by M. Heller and G. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 April 2020,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 1(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).
- 2 The request has been made in proceedings between, on the one hand, the Belgian State, represented by the Minister van Werk, Economie en Consumenten, belast met de Buitenlandse Handel (Minister for Work, Economic Affairs and Consumer Affairs, responsible for Foreign Trade), and by the Directeur-Generaal van de Algemene Directie Controle en Bemiddeling van de FOD Economie, K.M.O., Middenstand en Energie (Director-General of the Directorate-General for the Inspection and Mediation of the Federal Public Service for the Economy, SMEs (small and medium-sized enterprises), Middle classes and Energy), now the Algemene Directie Economische Inspectie (Directorate-General for Economic Inspection), and the Director-General of the Directorate-General for the Inspection and Mediation of the Federal Public Service for the Economy, SMEs, Middle classes and Energy, now the Directorate-General for Economic Inspection ('the Belgian authorities'), and, on the other, Movic BV, Events Belgium BV and Leisure Tickets & Activities International BV, companies incorporated under Netherlands law, concerning, in particular, the cessation of those companies' commercial practice of reselling admission tickets for events taking place in Belgium.

### **Legal context**

#### *European Union law*

- 3 Article 7 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) provides:

'1. Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.

2. The means referred to in paragraph 1 shall include provisions whereby persons or organisations, having a legitimate interest under national law in protecting consumers, may take action according to the national law concerned before the courts or before competent administrative bodies for a decision as to whether contractual terms drawn up for general use are unfair, so that they can apply appropriate and effective means to prevent the continued use of such terms.

...'

4 Article 11 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22) is headed 'Enforcement' and is worded as follows:

'1. Member States shall ensure that adequate and effective means exist to combat unfair commercial practices in order to enforce compliance with the provisions of this Directive in the interest of consumers.

Such means shall include legal provisions under which persons or organisations regarded under national law as having a legitimate interest in combating unfair commercial practices, including competitors, may:

(a) take legal action against such unfair commercial practices;

and/or

(b) bring such unfair commercial practices before an administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings.

It shall be for each Member State to decide which of these facilities shall be available and whether to enable the courts or administrative authorities to require prior recourse to other established means of dealing with complaints, including those referred to in Article 10. These facilities shall be available regardless of whether the consumers affected are in the territory of the Member State where the trader is located or in another Member State.

...

2. Under the legal provisions referred to in paragraph 1, Member States shall confer upon the courts or administrative authorities powers enabling them, in cases where they deem such measures to be necessary taking into account all the interests involved and in particular the public interest:

(a) to order the cessation of, or to institute appropriate legal proceedings for an order for the cessation of, unfair commercial practices;

or

(b) if the unfair commercial practice has not yet been carried out but is imminent, to order the prohibition of the practice, or to institute appropriate legal proceedings for an order for the prohibition of the practice,

even without proof of actual loss or damage or of intention or negligence on the part of the trader.

Member States shall also make provision for the measures referred to in the first subparagraph to be taken under an accelerated procedure:

– either with interim effect,

– or with definitive effect,

on the understanding that it is for each Member State to decide which of the two options to select.

Furthermore, Member States may confer upon the courts or administrative authorities powers enabling them, with a view to eliminating the continuing effects of unfair commercial practices the cessation of which has been ordered by a final decision:

- (a) to require publication of that decision in full or in part and in such form as they deem adequate;
- (b) to require in addition the publication of a corrective statement.

...'

5 According to Article 1 of Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJ 2009 L 110, p. 30), the purpose of that directive is to approximate the laws, regulations and administrative provisions of the Member States relating to actions for an injunction aimed at the protection of the collective interests of consumers included in the directives listed in Annex I to that directive, with a view to ensuring the smooth functioning of the internal market.

6 Annex I to that directive includes Directives 93/13 and 2005/29 in the list of directives intended to protect the collective interests of consumers.

7 Recitals 10 and 34 of Regulation No 1215/2012 state:

'(10) The scope of this Regulation should cover all the main civil and commercial matters apart from certain well-defined matters, ...

...

(34) Continuity between the ... Convention [of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36)], [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)] and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation by the Court of Justice of the European Union of [that] Convention ... and of the Regulations replacing it.'

8 Article 1(1) of Regulation No 1215/2012, which is contained in Chapter I thereof, that chapter being headed 'Scope and definitions', provides:

'This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).'

### ***Belgian law***

#### *The Law of 30 July 2013*

9 Article 5(1) of the Wet betreffende de verkoop van toegangsbewijzen tot evenementen (Law regarding the resale of event admission tickets), of 30 July 2013 (*Belgisch Staatsblad*, 6 September 2013, p. 63069, 'the Law of 30 July 2013'), prohibits the regular display of event admission tickets with a view to resale and the provision of means which will be used for the purposes of such resale. Article 5(2) of that law prohibits the occasional resale of event admission tickets at a price greater than their fixed price.

10 Under Article 14 of the Law of 30 July 2013, it is for the President of the rechtbank van koophandel (Commercial Court, Belgium), subsequently the ondernemingsrechtbank (Companies Court), to find that conduct has taken place which constitutes an infringement of Article 5 of that law and to order its cessation. Article 14 of the law also provides that actions for a cessation order in respect of that conduct are to be brought at the request of the Minister responsible for Economic Affairs, of the Director-General of the Directorate-General for Inspection and Mediation of the Federal Public Service for the Economy, SMEs, Middle classes and Energy, or of the interested parties.

#### *The CEL*

- 11 Book VI of the Wetboek economisch recht (Code of Economic Law) of 28 February 2013 (in the version applicable to the main proceedings; ‘the CEL’) contains a Title 4 which in turn contains a Chapter 1 entitled ‘Unfair business-to-consumer commercial practices’. That chapter contains Articles VI.92 to VI.100 of the code, which implement Directive 2005/29. In that context, certain unfair commercial practices are defined by Articles VI.93, VI.97, VI.99 and VI.100 of that code.
- 12 Under Article XVII.1 of the CEL, it is (subject to exceptions for certain specific actions) for the President of the rechtbank van koophandel (Commercial Court) to find that conduct has taken place which constitutes an infringement of the CEL and to order its cessation.
- 13 Article XVII.7 of the CEL provides for actions based on Article XVII.1 of that code to be brought at the request of, inter alia, the interested parties, the Minister responsible for Economic Affairs, or the Director-General of the General-Directorate for Inspection and Mediation of the Federal Public Service for the Economy, SMEs, Middle classes and Energy, or a trade or cross-industry association with legal personality, or a consumer protection association where it brings legal proceedings in defence of the collective interests of consumers as defined by statute.
- 14 Pursuant to Article XV.2(2) of the CEL, reports drawn up by the responsible officials are deemed to be authentic unless and until the contrary is proved.
- 15 Under Article XV.3.1 of that code, the officials referred to in Article XV.2 may issue a warning, or a report, or propose an administrative penalty on the basis, inter alia, of the findings they have made.

#### *The judicial code*

- 16 Chapter XXIII of the Gerechtelijk Wetboek (Belgian Judicial Code) is headed ‘Penalty payments’. In that chapter, Article 1385bis provides that on the application of one of the parties, a court may order the other party to pay a sum of money, known as a penalty payment, if the principal obligation laid down in the judgment has not been performed, without prejudice to damages, where appropriate. Under Article 1385ter of that code, the court may (amongst other things) set the penalty payment in a fixed amount per infringement.

#### **The disputes in the main proceedings and the question referred for a preliminary ruling**

- 17 On 2 December 2016 the Belgian authorities brought interlocutory proceedings against Movici, Events Belgium and Leisure Tickets & Activities International before the president of the rechtbank van koophandel Antwerpen-afdeling Antwerpen (Commercial Court, Antwerp Division, Antwerp, Belgium), their primary claim being, first, for a declaration that those companies were reselling event admission tickets in Belgium, via websites managed by them, at a price greater than their original price, which constituted infringements of the provisions of the Law of 30 July 2013 and the CEL, and, second, for an order for the cessation of those commercial practices.

- 18 The Belgian authorities also made applications for ancillary measures, namely an order for the publication of the judgment delivered, with those companies ordered to pay the costs of that publication, an order imposing a penalty payment of EUR 10 000 for every infringement which might be found to have taken place after service of that judgment, and a declaration that future infringements can be identified simply by a report issued, on oath, by an official of the Directorate-General for Economic Inspection, in accordance with the CEL.
- 19 The three companies in the proceedings raised an objection that the Belgian courts lacked international jurisdiction, maintaining that the Belgian authorities had brought actions in the exercise of public powers, so that their actions did not come within the scope of Regulation No 1215/2012.
- 20 By decision of 25 October 2017, the president of the rechtbank van koophandel Antwerpen-afdeling Antwerpen (Commercial Court, Antwerp Division, Antwerp) held that he lacked international jurisdiction to rule on the actions in the main proceedings. In that regard, he held that Regulation No 1215/2012 was not applicable in the present case, on the ground that those actions could not be regarded as falling within the scope of ‘civil or commercial matters’ within the meaning of that regulation.
- 21 The Belgian authorities brought an appeal against that decision before the hof van beroep te Antwerpen (Court of Appeal, Antwerp, Belgium).
- 22 The parties to the main proceedings disagree as to whether the exercise by a public authority of its powers to institute proceedings for the purpose of curbing infringements of the Law of 30 July 2013 and the CEL may or may not constitute the exercise of public powers.
- 23 The Belgian authorities submit that, in the main proceedings, they are not defending any public interest comparable to their own, but rather a general interest, which consists in promoting respect for the national regulation of commercial practices, which in turn seeks to protect the private interests of both businesses and consumers, those practices being governed by ordinary legal rules applicable to relationships between individuals, so that those disputes fall within the scope of ‘civil and commercial matters’ within the meaning of Article 1(1) of Regulation No 1215/2012.
- 24 The defendants in the main proceedings contend, conversely, that the Belgian authorities are exercising a right specific to public authorities, on the basis of which they can, unlike mere individuals or businesses, institute proceedings for a cessation order without having their own interest in the matter. They therefore submit that the Belgian authorities are bringing legal proceedings in the exercise of public powers, as they are not affected themselves by the commercial practices of the companies concerned.
- 25 In those circumstances, the Hof van beroep te Antwerpen (Court of Appeal, Antwerp) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:
- ‘Is an action concerning a claim aimed at determining and stopping unlawful market practices and/or commercial practices towards consumers, brought by the Belgian authorities pursuant to Article 14 of the Law of 30 July 2013 ... and Article XVII.7 [of the CEL] against Netherlands companies which, from the Netherlands, via websites, focus on a mainly Belgian clientele for the resale of tickets for events taking place in Belgium, to be regarded as proceedings in “civil or commercial matters” within the meaning of Article 1(1) of [Regulation 1215/2012], and can a judicial decision delivered in those proceedings, for that reason, fall within the scope of that regulation?’



## Consideration of the question referred

- 26 The question posed by the referring court relates, in essence, to the determination of which court has jurisdiction to rule on actions brought by the authorities of a Member State against companies in another Member State that seek to identify and stop allegedly unlawful commercial practices of those companies that are aimed at consumers residing in the former Member State.
- 27 It should be noted that the proceedings pending before that court also include three applications for ancillary measures, namely applications for an order for publicity measures, an order imposing a penalty payment, and a declaration that future infringements can be identified simply by a report issued, on oath, by an official of one of those authorities.
- 28 Therefore, as noted by the Advocate General in point 14 of his Opinion, before the referring court can declare itself to have jurisdiction to hear the main proceedings under Regulation No 1215/2012, it must satisfy itself that none of the Belgian authorities' heads of claim takes those proceedings, either in whole or in part, outside the material scope of that regulation.
- 29 It is settled case-law that it is for the Court to give the referring court full guidance on the interpretation of EU law in order to enable it to rule on the case before it (see, to that effect, judgments of 16 December 2008, *Gysbrechts and Santurel Inter*, C-205/07, EU:C:2008:730, paragraph 31 and the case-law cited, and of 12 February 2015, *Baczó and Vizsnyiczai*, C-567/13, EU:C:2015:88, paragraph 32 and the case-law cited), reformulating, if necessary, the question referred.
- 30 In those circumstances, the Court's reply to the request for a preliminary ruling will address the applications for ancillary measures brought before the referring court as well as the primary heads of claim before that court.
- 31 Consequently, it must be held that, by its question, the referring court seeks, in essence, to ascertain whether Article 1(1) of Regulation No 1215/2012 should be interpreted as meaning that an action where the opposing parties are the authorities of a Member State and businesses established in another Member State, in which those authorities seek, primarily, a finding of infringements constituting allegedly unlawful unfair commercial practices and an order for the cessation of such infringements, and, as ancillary measures, an order for publicity measures, the imposition of a penalty payment in a fixed sum in respect of the identified infringements, and a declaration that the fact of future infringements may be certified simply by means of a report issued, on oath, by an official of one of those authorities, falls within the scope of the concept of 'civil and commercial matters', in that provision.
- 32 It should be noted at the outset that, in so far as Regulation No 1215/2012 repeals and replaces Regulation No 44/2001, which itself replaced the Convention referred to in recital 34 of Regulation No 1215/2012, the Court's interpretation in respect of the provisions of those legal instruments is also applicable to that regulation when, as is apparent from that recital, the provisions of those instruments can be regarded as 'equivalent'.
- 33 In order to ensure, as far as possible, that the rights and obligations which derive from Regulation No 1215/2012 for the Member States and the persons to whom it applies are equal and uniform, the concept of 'civil and commercial matters' in Article 1(1) of that regulation should not be interpreted as a mere reference to the internal law of a Member State. That concept must be regarded as an autonomous concept to be interpreted by reference, first, to the objectives and scheme of that regulation and, second, to the general principles which stem from the corpus of the national legal systems (judgment of 7 May 2020, *Rina*, C-641/18, EU:C:2020:349, paragraph 30 and the case-law cited).

- 34 Moreover, as is apparent from, inter alia, recital 10 of Regulation No 1215/2012, the need to ensure the smooth functioning of the internal market and the need to ensure, in the interests of the harmonious administration of justice, that irreconcilable judgments will not be delivered in the Member States require a broad interpretation of that concept of ‘civil and commercial matters’ (judgment of 28 February 2019, *Gradbeništvo Korana*, C-579/17, EU:C:2019:162, paragraph 47 and the case-law cited).
- 35 Last, the Court has repeatedly held that, although certain actions where the opposing parties are a public authority and a person governed by private law may come within the scope of Regulation No 1215/2012, it is otherwise where the public authority is acting in the exercise of its public powers (see, to that effect, judgments of 11 April 2013, *Sapir and Others*, C-645/11, EU:C:2013:228, paragraph 33 and the case-law cited, and of 12 September 2013, *Sunico and Others*, C-49/12, EU:C:2013:545, paragraph 34).
- 36 The exercise of public powers by one of the parties to the action, because it exercises powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals, excludes such an action from ‘civil and commercial matters’ within the meaning of Article 1(1) of Regulation No 1215/2012 (see, to that effect, judgments of 15 February 2007, *Lechouritou and Others*, C-292/05, EU:C:2007:102, paragraph 34 and the case-law cited, and of 28 February 2019, *Gradbeništvo Korana*, C-579/17, EU:C:2019:162, paragraph 49 and the case-law cited).
- 37 It follows that, in order to determine whether or not a matter falls within the scope of the concept of ‘civil and commercial matters’ within the meaning of Article 1(1) of Regulation No 1215/2012, and, consequently, whether it comes within the scope of that regulation, it is necessary to determine the nature of the legal relationships between the parties to the action and the subject matter of the action or, alternatively, the basis of the action and the detailed rules applicable to it (see, to that effect, judgments of 14 October 1976, *LTU*, 29/76, EU:C:1976:137, paragraph 4, and of 28 February 2019, *Gradbeništvo Korana*, C-579/17, EU:C:2019:162, paragraph 48 and the case-law cited).
- 38 As regards the basis of a claim such as that made primarily in the main proceedings, it must be borne in mind that Article 7(2) of Directive 93/13 provides that Member States must institute cessation actions against the use of unfair terms in consumer contracts.
- 39 In the same vein, Article 11 of Directive 2005/29, headed ‘Enforcement’, provides for various means by which commercial practices can be recognised as unlawful and their cessation can be ordered.
- 40 Last, Annex I to Directive 2009/22 refers to Directives 93/13 and 2005/29 in the list of EU legal instruments protecting the collective interests of consumers.
- 41 As regards cessation actions and the concept of ‘civil and commercial matters’ within the meaning of Article 1(1) of Regulation No 1215/2012, the Court has previously held that an action concerning the prohibition on traders using unfair terms, within the meaning of Directive 93/13, in their contracts with consumers, in so far as it seeks to make relationships governed by private law subject to review by the courts, falls within the concept of a ‘civil matter’ (see, to that effect, judgment of 1 October 2002, *Henkel*, C-167/00, EU:C:2002:555, paragraph 30). That case-law has subsequently been reiterated and extended more generally to cessation orders under Directive 2009/22 (see, to that effect, judgment of 28 July 2016, *Verein für Konsumenteninformation*, C-191/15, EU:C:2016:612, paragraphs 38 and 39).
- 42 It follows that actions aimed at determining and stopping unfair commercial practices, within the meaning of Directive 2005/29, are also ‘civil and commercial matters’ within the meaning of Article 1(1) of Regulation No 1215/2012.



- 43 In the present case, the purpose of the actions pending before the referring court is to ensure compliance with the prohibition, set out in the national legislation in question in the main proceedings, on the regular resale of event admission tickets or the occasional resale of such tickets at a price greater than their fixed price, as such resale is capable of being regarded as an unfair commercial practice in the light of that legislation.
- 44 Nonetheless, as regards the detailed rules applicable to the action, it must be noted that the actions at issue in the main proceedings have been brought, not by persons governed by private law, such as consumers or consumer protection associations, but by the Belgian authorities tasked by the Member State concerned to ensure, inter alia, consumer protection.
- 45 In the present case, the defendants in the main proceedings dispute that those actions are capable of falling within the concept of ‘civil and commercial matters’, submitting, first of all, that the Belgian authorities are not required to demonstrate that they have an interest of their own in bringing proceedings such as those of the main proceedings.
- 46 In that regard, it should be noted, in the first place, that the list of persons entitled to bring such legal proceedings under Article 14(1) of the Law of 30 July 2013 and Article XVII.7 of the CEL has been laid down by the national legislature.
- 47 In that respect, the Court has previously held that the fact that a power was introduced by legislation is not, in itself, decisive in order to conclude that a State authority acted in the exercise of public powers (see, by analogy, regarding the concept of ‘civil and commercial matters’ within the meaning of Regulation (EC) No 1393/2007 of the European Parliament and the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79), judgment of 11 June 2015, *Fahnenbrock and Others*, C-226/13, C-245/13 and C-247/13, EU:C:2015:383, paragraph 56).
- 48 In the present case, it is apparent from the wording of Article 14(1) of the Law of 30 July 2013 and Article XVII.7 of the CEL that the Belgian authorities, in the same way as interested parties and consumer protection associations, can apply to the President of the rechtbank van koophandel (Commercial Court), subsequently the ondernemingsrechtbank (Companies Court), for a finding that the relevant national legislation has been infringed and for the making of a cessation order.
- 49 It follows that the procedural position of the Belgian authorities is, in that regard, comparable to that of a consumer protection association.
- 50 In the second place, the national legislation in question in the main proceedings does not appear to set out rules for establishing an interest in bringing proceedings, applicable to the Belgian authorities that it mentions, that are not comparable to the rules laid down for other applicants.
- 51 More specifically, subject to verification by the referring court, the public authorities, in the same way as the two other categories of applicants mentioned in Article XVII.7 of the CEL, are not exempt from establishing an interest in bringing proceedings.
- 52 Thus, although it is the case that, in the main proceedings, the Belgian authorities do not appear to have been required to establish their interest in bringing proceedings, that is necessarily connected to the fact that they were able to bring proceedings solely on the basis of a power granted to them by legislation in the area of combating certain unfair commercial practices.
- 53 In addition, as observed by the Advocate General in point 29 of his Opinion, acting in the general interest should not be confused with the exercise of public powers.

- 54 Thus, in the main proceedings, the conditions laid down that govern whether the Belgian authorities have an interest in bringing proceedings do not appear, subject to verification by the referring court, to constitute the exercise of public powers.
- 55 Next, the defendants in the main proceedings emphasise the fact that the Belgian authorities use their own reports and findings as evidence in court, so that the crucial documents in the case file consist of a series of reports and findings of State inspectors, which, they submit, amounts to the exercise of public powers.
- 56 As noted by the Advocate General in point 59 of his Opinion, to hold that proceedings brought by a public authority are outside the scope of Regulation No 1215/2012 merely because of the use by that authority of evidence gathered by virtue of its public powers would undermine the practical effectiveness of one of the models of implementation of consumer protection envisaged by the EU legislature. In that model, in contrast to the one in which it is the administrative authority itself that determines the consequences that are to follow from an infringement, in circumstances such as those in the main proceedings the public authority is assigned the task of defending the interests of consumers before the courts.
- 57 Only where, due to the use to which a public authority has put certain pieces of evidence, it is not specifically in the same position as a person governed by private law in the context of a similar action, would it be appropriate to make a finding that such an authority has, in the particular case, exercised public powers.
- 58 It should be pointed out that merely collecting and compiling complaints or evidence, as a trade or consumer association could do, cannot amount to the exercise of such powers.
- 59 In that regard, it is not apparent from the information available to the Court that, in the context of the proceedings pending before the referring court, the Belgian authorities made any use of evidence collected by exercising their public powers, which, as the case may be, it falls to the referring court to verify.
- 60 It follows that an action where the opposing parties are the authorities of a Member State and businesses established in another Member State in which those authorities seek, primarily, findings of infringements constituting allegedly unlawful unfair commercial practices and an order for the cessation of such infringements falls within the scope of the concept of ‘civil and commercial matters’ within the meaning of Article 1(1) of Regulation No 1215/2012.
- 61 As regards the applications for ancillary measures in the main proceedings, it should be noted that those publicity measures and the imposition of a penalty payment are, as noted by the Advocate General in points 71 and 72 of his Opinion, normal measures of civil procedure intended to ensure the enforcement of the forthcoming ruling.
- 62 However, as regards the application made by the Belgian authorities to the referring court that it should be granted the power to determine future infringements simply by means of a report issued, on oath, by an official of the Directorate-General for Economic Inspection, as noted by the Advocate General in points 75 to 77 of his Opinion, such an application cannot be said to come within the scope of ‘civil and commercial matters’, as that application relates in actual fact to special powers that go beyond those arising from the ordinary legal rules applicable to relationships between private individuals.
- 63 However, the general scheme of Regulation No 1215/2012 does not require that the treatment of ancillary claims should necessarily be linked to the treatment of the primary claims (see, to that effect, judgment of 22 October 2015, *Aannemingsbedrijf Aertssen and Aertssen Terrasements*, C-523/14,

EU:C:2015:722, paragraph 33 and the case-law cited), and consequently the international jurisdiction of a court of a Member State to hear a primary claim may be based on that regulation though that is not necessarily the case with regard to ancillary claims, and vice versa.

- <sup>64</sup> In the light of all the foregoing considerations, the answer to the question referred is that Article 1(1) of Regulation No 1215/2012 must be interpreted as meaning that an action where the opposing parties are the authorities of a Member State and businesses established in another Member State, in which those authorities seek, primarily, findings of infringements constituting allegedly unlawful unfair commercial practices and an order for the cessation of such infringements and, as ancillary measures, an order for publicity measures and the imposition of a penalty payment, falls within the scope of the concept of ‘civil and commercial matters’ in that provision.

### **Costs**

- <sup>65</sup> Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

**Article 1(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action where the opposing parties are the authorities of a Member State and businesses established in another Member State, in which those authorities seek, primarily, findings of infringements constituting allegedly unlawful unfair commercial practices and an order for the cessation of such infringements and, as ancillary measures, an order for publicity measures and the imposition of a penalty payment, falls within the scope of the concept of ‘civil and commercial matters’ in that provision.**

[Signatures]