



## Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

23 December 2015\*

(Reference for a preliminary ruling — Judicial cooperation in civil and commercial matters — Regulation (EC) No 44/2001 — Jurisdiction in respect of consumer contracts — Articles 15(1)(c) and 16(1) — Meaning of a commercial or professional activity ‘directed to’ the Member State of the consumer’s domicile — Transaction-management contract designed to achieve the economic objective pursued by means of a brokerage contract concluded beforehand in the course of a commercial or professional activity ‘directed to’ the Member State of the consumer’s domicile — Close link)

In Case C-297/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 15 May 2014, received at the Court on 17 June 2014, in the proceedings

**Rüdiger Hobohm**

v

**Benedikt Kampik Ltd & Co. KG,**

**Benedikt Aloysius Kampik,**

**Mar Mediterraneo Werbe- und Vertriebsgesellschaft für Immobilien SL,**

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský, M. Safjan (Rapporteur), A. Prechal and K. Jürimäe, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Italian Government, by G. Palmieri, acting as Agent, assisted by G. Palatiello, avvocato dello Stato,
- the Portuguese Government, by L. Inez Fernandes and A. Fonseca Santos, acting as Agents,

\* Language of the case: German.

— the Swiss Government, by M. Jametti, acting as Agent,  
— the European Commission, by A.-M. Rouchaud-Joët and W. Bogensberger, acting as Agents,  
after hearing the Opinion of the Advocate General at the sitting on 8 September 2015,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 15(1)(c) 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), read in conjunction with Article 16(1) of that regulation.
- 2 The request has been made in the course of proceedings between, on the one hand, Mr Hobohm, domiciled in Germany, and, on the other hand, Benedikt Kampik Ltd & Co. KG, Mr Kampik and Mar Mediterraneo Werbe- und Vertriebsgesellschaft für Immobilien SL, established in Spain, concerning the repayment of sums of money made available to Mr Kampik by Mr Hobohm.

### **The legal framework**

#### *Regulation No 44/2001*

- 3 Recital 2 of Regulation No 44/2001 states that that regulation is intended, in the interests of the sound operation of the internal market, to implement '[p]rovisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation'.
  - 4 Recitals 11 to 13, 15 and 19 of that regulation state:
    - '(11) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.
    - (12) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.
    - (13) In relation to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for.
- ...
- (15) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. ...

...

(19) 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; “the Brussels Convention”)] 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 of the Brussels Convention by the Court of Justice of the European [Union] ...’

5 The rules on jurisdiction for which that regulation makes provision are set out in Chapter II. Section 1 of that chapter, entitled ‘General provisions’, includes Articles 2 and 3, while Section 4 of that chapter concerns jurisdiction over consumer contracts and comprises Articles 15 to 17.

6 Article 2(1) of Regulation No 44/2001 provides that, subject to the other provisions of that regulation, ‘persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State’.

7 Article 3(1) of that regulation is worded as follows:

‘Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.’

8 Article 15(1)(c) of Regulation No 44/2001 provides:

‘In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5, if:

...

(c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer’s domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.’

9 According to Article 16(1) of Regulation No 44/2001:

‘A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.’

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

10 According to the order for reference, Mr Kampik, who pursues his professional activities in Spain, acted as an intermediary in 2005 between Mr Hobohm and Kampik Immobilien KG for the purchase of an apartment (‘the brokerage contract’) in a tourist complex in Denia (Spain) which was to be built by a German developer.

11 The apartments forming part of that tourist complex were marketed in, inter alia, Germany by means of a prospectus written in German.

12 On 17 June 2006 the developer of the tourist complex, as vendor, and Mr Hobohm and his wife (‘Mr and Mrs Hobohm’), as buyers, entered into the contract for the sale of the apartment in Denia referred to in the brokerage contract (‘the sale contract’).

- 13 After Mr and Mrs Hobohm had paid the first two instalments of the purchase price of their apartment in the amount of EUR 62 490, the developer, in the course of 2008, encountered financial difficulties which jeopardised completion of the construction of the tourist complex.
- 14 Mr Kampik then made a proposal to Mr Hobohm to carry out the finishing work on his apartment. Mr and Mrs Hobohm travelled to Spain, where they signed a notarised power of attorney conferring on Mr Kampik the task of safeguarding their interests in relation to the sale contract ('the transaction-management contract').
- 15 Mr Hobohm gave Mr Kampik a bearer cheque for EUR 27 647, covering part of the third instalment of the purchase price of the apartment. Mr Kampik paid that cheque into the account of Mar Mediterraneo Werbe- und Vertriebsgesellschaft für Immobilien SL. In 2009, Mr Hobohm paid to Mr Kampik a further sum of EUR 1448.72.
- 16 Because of disagreements which arose between the parties to the transaction-management contract following the developer's insolvency, Mr and Mrs Hobohm revoked the power of attorney which they had granted to Mr Kampik.
- 17 Mr Hobohm subsequently brought an action before the Landgericht Stade (Regional Court, Stade), within the jurisdiction of which he is domiciled, seeking reimbursement of the sums which he had paid to Mr Kampik. By decision of 21 September 2011, that court dismissed his action as inadmissible on the ground that it lacked territorial jurisdiction.
- 18 The appeal brought before the Oberlandesgericht Celle (Higher Regional Court, Celle) by Mr Hobohm against the decision of the Landgericht Stade (Regional Court, Stade) was dismissed by decision of 18 July 2012. In that regard, the appeal court rejected the applicability of Article 15(1)(c) of Regulation No 44/2001, and, accordingly, the jurisdiction of the courts of the defendant's domicile, on the ground that the transaction-management contract could not be directly connected to the property-intermediary activity 'directed' by Mr Kampik 'to' Germany for the purposes of that provision.
- 19 Mr Hobohm brought an appeal before the referring court on a point of law ('Revision') against that appeal decision. The referring court takes the view that the activity of property intermediary pursued by Mr Kampik in Spain was 'directed to' Germany, for the purposes of Article 15(1)(c) of Regulation No 44/2001, given that certain evidence pointing to an activity 'directed to' the Member State of the consumer's domicile, such as was accepted by the Court in its judgment in *Pammer and Hotel Alpenhof*, C-585/08 and C-144/09, EU:C:2010:740, is present in these proceedings, in particular the facts that: (i) Mr Kampik offered his services on the internet by means of a website registered under a top-level domain name, '.com.', written in German; (ii) that website provided a contact e-mail address hosted on a server using a top-level domain name '.de'; (iii) the support service for Mr Kampik's commercial activity could be contacted using a Berlin telephone number; and (iv) Mr Kampik used prospectuses written in German for the purposes of his activity. The brokerage contract, in the view of the referring court, thus satisfies the conditions for application of Article 15(1)(c) of Regulation No 44/2001, inasmuch as it was concluded in the course of Mr Kampik's activity 'directed to' the Member State of Mr Hobohm's domicile. On the other hand, according to the referring court, the transaction-management contract on which Mr Hobohm bases his claims, if examined in isolation, does not satisfy the conditions for application of that provision, as it does not come within the scope of such an activity.
- 20 However, that court states that there is a compelling material link between the property-intermediary activity 'directed' by Mr Kampik 'to' Germany and the conclusion of the transaction-management contract. That activity led to Mr and Mrs Hobohm entering into the brokerage contract and the sale contract in 2005 and 2006. Had it not been for those contracts, the transaction-management contract, which forms the basis of Mr Hobohm's claims and was intended to resolve the problems in performing

the sale contract, would not have been concluded. According to the referring court, even if the parties' obligations under the brokerage contract were fulfilled as a result of the conclusion of the sale contract, the economic objective of the brokerage contract — which was to ensure that Mr and Mrs Hobohm could also have effective enjoyment of the apartment which they acquired as a result of the intermediary activity — has not, however, been achieved.

- 21 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Can a consumer, pursuant to the second alternative in Article 15(1)(c) of Regulation No 44/2001, in conjunction with the second alternative in Article 16(1) of that regulation, bring proceedings in the courts for the place where he is domiciled against the other party to the contract, who pursues commercial or professional activities in another Member State of the European Union if, whilst the contract underlying the proceedings does not fall directly within the scope of such activities of the other party to the contract which are directed to the Member State of the consumer's domicile, the contract serves, however, to achieve the economic result that is sought by another contract — previously concluded between the parties and already performed — which falls within the scope of the aforementioned provisions?'

### **Consideration of the question referred for a preliminary ruling**

- 22 By its question, the referring court asks, in essence, whether Article 15(1)(c) of Regulation No 44/2001, in so far as it relates to the contract concluded in the context of a commercial or professional activity 'directed' by a professional 'to' the Member State of the consumer's domicile, read in conjunction with Article 16(1) of that regulation, must be interpreted as meaning that it may be applied to a contract concluded between a consumer and a professional which on its own does not come within the scope of the commercial or professional activity 'directed' by that professional 'to' the Member State of the consumer's domicile, but which is linked to a contract concluded beforehand by those same parties in the context of that activity.
- 23 As a preliminary point, it must be stated that the jurisdiction of the courts of the consumer's domicile, as provided for in Article 16(1) of Regulation No 44/2001, requires that the conditions for applying Article 15(1) of that regulation be satisfied.
- 24 In that regard, the Court has held that Article 15(1) of Regulation No 44/2001 applies if three conditions are met: first, a party to a contract is a consumer who is acting in a context which can be regarded as being outside his trade or profession; second, the contract between such a consumer and a professional has actually been concluded; and, third, such a contract falls within one of the categories referred to in Article 15(1)(a) to (c). All of those conditions must be fulfilled, with the result that, if one of those three conditions is not met, jurisdiction cannot be determined under the rules relating to consumer contracts (judgment in *Kolassa*, C-375/13, EU:C:2015:37, paragraph 23 and the case-law cited).
- 25 It is apparent from the order for reference that the first condition mentioned in the preceding paragraph is satisfied in the present case, since Mr and Mrs Hobohm acted, not for purposes which can be regarded as being within their trade or professional activities, but as private final consumers (see, to that effect, judgment in *Vapenik*, C-508/12, EU:C:2013:790, paragraph 28).
- 26 With regard to the second of those conditions, it is common ground that Mr and Mrs Hobohm and Mr Kampik did indeed enter into the transaction-management contract in 2008.

- 27 As regards the third condition, it follows from the wording of Article 15(1)(c) of Regulation No 44/2001 that, in order for the contract in question to be covered by that provision in circumstances such as those in the main proceedings, two elements must be present. It is thus necessary, first, that the professional pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State and, secondly, that the contract at issue comes within the scope of such activities. It must be made clear in that respect that the referring court's questions focus on the part of that provision which concerns the contract concluded in the context of a commercial or professional activity 'directed' by a professional 'to' the Member State of the consumer's domicile.
- 28 In the present case, it is apparent from the order for reference that, in the circumstances of the main proceedings, although the brokerage contract came within the scope of the activity of a property intermediary 'directed to' Germany by Mr Kampik, the same was not true of the transaction-management contract considered in isolation. However, the referring court considers that there is a link between the brokerage contract and the transaction-management contract which arises out of their common economic objective, which would justify the fact that the latter contract nevertheless comes within the scope of Article 15(1)(c) of Regulation No 44/2001, as does the brokerage contract.
- 29 Accordingly, it is necessary to examine, with reference to Article 15(1)(c) of Regulation No 44/2001 and the objectives pursued by that regulation, whether the existence of a link between contracts, such as those in the main proceedings, allows the conclusion that the transaction-management contract comes within the scope of the activity 'directed to' Germany by Mr Kampik and, if so, what the nature of such a link must be.
- 30 As is apparent from recitals 11, 13 and 15 of Regulation No 44/2001, those objectives include the predictability of the rules of jurisdiction, consumer protection and the aim of minimising the possibility of concurrent proceedings in order to ensure that irreconcilable judgments will not be given in two Member States.
- 31 With regard to consumer protection, it is apparent from the case-law of the Court on the special rules introduced by the provisions of the Brussels Convention, transposable to the equivalent provisions of Regulation No 44/2001, that those rules serve to ensure adequate protection for the consumer, as the party deemed to be economically weaker and less experienced in legal matters than the other, professional, party to the contract (see, to that effect, judgments in *Česká spořitelna*, C-419/11, EU:C:2013:165, paragraph 33 and the case-law cited, and in *Kolassa*, C-375/13, EU:C:2015:37, paragraph 21 and the case-law cited).
- 32 However, it must also be recalled that Article 15(1) of Regulation No 44/2001 constitutes a derogation both from the general rule of jurisdiction laid down in Article 2(1) of that regulation, which confers jurisdiction upon the courts of the Member State in which the defendant is domiciled, and from the rule of special jurisdiction for contracts, set out in Article 5(1) of that regulation, under which jurisdiction lies with the courts for the place of performance of the obligation in question. Thus, that provision must necessarily be interpreted strictly (judgment in *Kolassa*, C-375/13, EU:C:2015:37, paragraph 28 and case-law cited). It further follows from the Court's case-law that, even though the aim of Article 15(1)(c) of Regulation No 44/2001 is to protect consumers, that does not imply that that protection is absolute (see judgment in *Mühlleitner*, C-190/11, EU:C:2012:542, paragraph 33).
- 33 In the light of the objectives set out in paragraph 30 above, and having regard to the fact that the jurisdiction devolved on the courts of the consumer's domicile, as provided for in Article 16(1) of Regulation No 44/2001, is in the nature of a derogation, the view must be taken that Article 15(1)(c) of that regulation may be applied to a contract such as the transaction-management contract at issue in the main proceedings in so far as it is closely linked to a contract such as the brokerage contract.

- 34 With regard to the determination of the constituent elements of such a close link, it appears in the present case, as is clear from the order for reference, that following the developer's insolvency it was not possible to achieve the economic objective of the brokerage contract, that is to say, the effective enjoyment of the apartment purchased by Mr and Mrs Hobohm as a result of the property intermediary activity 'directed' by Mr Kampik 'to' the Member State of their domicile. It was precisely in order to rectify that failure to achieve the economic objective pursued, and in order that Mr and Mrs Hobohm, as consumers, would obtain the service to which that activity related, that the professional, that is to say, Mr Kampik, proposed that they enter into the transaction-management contract. The purpose of the transaction-management contract was therefore to achieve the specific economic objective pursued by means of the brokerage contract.
- 35 Accordingly, even though the transaction-management contract on its own does not come within the scope of the commercial or professional activity 'directed' by the professional 'to' the Member State of the consumer's domicile, it was nevertheless concluded as a direct extension of that activity, and it is complementary to the brokerage contract, in that it seeks to make it possible for the economic objective of that contract to be achieved.
- 36 Consequently, even though it is true that there is no legal interdependence between the brokerage contract and the transaction-management contract, it must be held that there is an economic link between those two contracts. That link lies in the achievement of the economic objective of the brokerage contract, that is to say, the effective enjoyment of the apartment, the accomplishment of which was jeopardised by the developer's insolvency. Without the finishing work as agreed between the parties under the transaction-management contract, that effective enjoyment would not be possible.
- 37 By examining, in its overall assessment of the circumstances in which the transaction-management contract was concluded, whether there is a close link between the brokerage contract and that transaction-management contract, the national court must have regard to the constituent elements of that link, in particular whether the parties to both of those contracts are identical in law and in fact, whether the economic objective of those contracts concerning the same specific subject-matter is identical and whether the transaction-management contract complements the brokerage contract, in that it seeks to make it possible for the economic objective of the brokerage contract to be achieved.
- 38 Those elements must be taken into account by the national court in order to decide whether Article 15(1)(c) of Regulation No 44/2001 is applicable to the transaction-management contract (see, by analogy, judgment in *Emrek*, C-218/12, EU:C:2013:666, paragraph 31).
- 39 Moreover, with regard to the guarantee of the predictability of the rules of jurisdiction, set out in recital 11 of Regulation No 44/2001, it must be pointed out that, in circumstances such as those at issue in the main proceedings, the courts of the consumer's domicile have jurisdiction to hear an action relating to a brokerage contract coming within the scope of the professional's activity 'directed to' the Member State of that consumer's domicile. If the professional then proposes to conclude and, as the case may be, does conclude a contract with the same consumer which is intended to achieve the essential objective of the first contract, that professional may reasonably expect both contracts to be subject to the same rules of jurisdiction.
- 40 In view of the foregoing considerations, the reply to the question referred is that Article 15(1)(c) of Regulation No 44/2001, read in conjunction with Article 16(1) of that regulation, must, in so far as it relates to the contract concluded in the context of a commercial or professional activity 'directed' by the professional 'to' the Member State of the consumer's domicile, be interpreted as meaning that it may be applied to a contract concluded between a consumer and a professional, which on its own does not come within the scope of the commercial or professional activity 'directed' by that professional 'to' the Member State of the consumer's domicile, but which is closely linked to a contract concluded beforehand by those same parties in the context of such an activity. It is for the

national court to determine whether the constituent elements of that link are present, in particular whether the parties to both of those contracts are identical in law or in fact, whether the economic objective of those contracts concerning the same specific subject-matter is identical and whether the second contract complements the first contract in that it seeks to make it possible for the economic objective of that first contract to be achieved.

### **Costs**

- <sup>41</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 (Fourth Chamber) hereby rules:

**Article 15(1)(c) 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, read in conjunction with Article 16(1) of that regulation, must, in so far as it relates to the contract concluded in the context of a commercial or professional activity ‘directed’ by the professional ‘to’ the Member State of the consumer’s domicile, be interpreted as meaning that it may be applied to a contract concluded between a consumer and a professional which on its own does not come within the scope of the commercial or professional activity ‘directed’ by that professional ‘to’ the Member State of the consumer’s domicile, but which is closely linked to a contract concluded beforehand by those same parties in the context of such an activity. It is for the national court to determine whether the constituent elements of that link are present, in particular whether the parties to both of those contracts are identical in law or in fact, whether the economic objective of those contracts concerning the same specific subject-matter is identical and whether the second contract complements the first contract in that it seeks to make it possible for the economic objective of that first contract to be achieved.**

[Signatures]