



Reports of Cases

OPINION OF ADVOCATE GENERAL
CRUZ VILLALÓN
delivered on 8 September 2015¹

Case C-297/14

Dr Rüdiger Hobohm

v

Benedikt Kampik Ltd & Co. KG,

Benedikt Aloysius Kampik

and

Mar Mediterraneo Werbe- und Vertriebsgesellschaft für Immobilien SL

(Request for a preliminary ruling from the Bundesgerichtshof (Germany))

(Area of freedom, security and justice — Judicial cooperation in civil and commercial matters — Regulation (EC) No 44/2001 — Jurisdiction in respect of consumer contracts — Article 15(1)(c) — Activity directed to another Member State — Concept of commercial or professional activity directed to the Member State of the consumer — Transaction-management contract designed to achieve the economic objective pursued by an earlier contract concluded within the scope of the activity directed by the professional to the Member State of the consumer)

1. The present request for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice (Germany)) concerns the question of whether jurisdiction based on the consumer's domicile under Regulation (EC) No 44/2001² may be accepted in a situation in which, following the conclusion and performance of a brokerage contract relating to the purchase of a property in Spain — which was an activity that the professional directed to Germany by means of advertising —, a transaction-management contract was concluded for the purpose of resolving various difficulties relating to the contract for the sale of the property in question.

2. This case provides a further opportunity for the Court to rule on the interpretation of Articles 15(1)(c) and 16(1) of the Brussels I Regulation, which have already been construed by the Court on several occasions, inter alia in the judgments in *Pammer and Hotel Alpenhof*,³ *Mühlleitner*,⁴ *Emrek*,⁵ and *Maletic*.⁶

1 — Original language: Spanish.

2 — Council Regulation of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, (OJ 2001 L 12, p. 1) ('the Brussels I Regulation'). From 10 January 2015 this regulation has been replaced by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments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).

3 — C-585/08 and C-144/09, EU:C:2010:740.

4 — C-190/11, EU:C:2012:542.

5 — C-218/12, EU:C:2013:666.

6 — C-478/12, EU:C:2013:735.

3. Unlike the position in those cases, in each of which the Court was required to rule on those provisions in the context of a single contract, the present case has the distinguishing feature of involving a situation in which there are several contracts of different dates relating to different services, although they are, to a certain extent, connected. As I have already indicated, in specific terms, the national court is asking the Court whether a consumer can bring an action against a professional in the courts of the consumer's domicile in relation to a contract which, we are told, does not come directly within the scope of the activity which the contractual partner directs to the consumer's Member State of residence, but which seeks to achieve the economic outcome pursued by a contract which the parties had previously concluded within the scope of an activity which is so directed.

4. In the present case, the debate therefore focuses on the specific question of whether the conditions set out in Article 15(1)(c) of the Brussels I Regulation can be considered to have been satisfied in the case where two related contracts, which are closely linked to each other, were successively concluded with a consumer, but only the conclusion of the first of them came directly within the scope of the activities that the professional was directing, through advertising, to the Member State of the consumer's domicile.

I – Legislative background

5. Recitals 11, 12, 13 and 15 in the preamble to the Brussels I Regulation provide as follows:

‘(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 contracts and employment, 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. There must be a clear and effective mechanism for resolving cases of *lis pendens* and related actions and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation that time should be defined autonomously.’

6. The relevant rules for determining jurisdiction are to be found in Chapter II of the Brussels I Regulation. Article 2(1) of that regulation, which comes under Section 1, entitled ‘General provisions’, of Chapter II, provides that, subject to 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 the Brussels I Regulation, which appears in the same section, provides: ‘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. Section 4 of Chapter II of the Brussels I Regulation, comprising Articles 15 to 17, relates to jurisdiction over consumer contracts. Article 15(1) is worded as follows:

‘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. Article 16(1) of the Brussels I Regulation provides that ‘[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’.

II – Facts and procedure in the main proceedings

10. The question for a preliminary ruling in the present case has arisen in the context of proceedings between, on the one hand, Mr Rüdiger Hobohm, who is the applicant and appellant on a point of law, and, on the other hand, Benedikt Kampik Ltd & Co. KG, Mr Benedikt Aloysius Kampik (‘Mr Kampik’) and Mar Mediterraneo Werbe- und Vertriebsgesellschaft für Immobilien SL (‘Mar Mediterraneo’), who are the defendants and respondents in the appeal on a point of law.

11. In 2005, Mr Kampik acted as an intermediary on behalf of the applicant, Mr Hobohm, in the conclusion of an ‘option agreement’ with Kampik Immobilien KG relating to the purchase from a German developer of an apartment in an as yet unbuilt holiday complex in the Spanish town of Denia. The complex was marketed in Germany, amongst other countries, using a brochure written in German. It is apparent from the order for reference that the defendants also advertise on the internet, offering to act as intermediary in property transactions in Spain.⁷

12. In 2006, the purchase contract envisaged by the option agreement was concluded between, on the one hand, the applicant and his wife and, on the other hand, the developer. After the purchasers had paid the first two instalments of the purchase price, amounting to a total of EUR 62 490, the vendor encountered financial difficulties in 2008, which meant that completion of the complex was at risk.

13. Mr Kampik then offered the applicant his services to try to ensure that the apartment would be certified complete and fit to be occupied. The applicant and his wife travelled to Spain, where they signed a power of attorney in favour of Mr Kampik for the purposes of safeguarding their interests in relation to the sale contract concluded in 2006. The applicant gave Mr Kampik a bearer cheque for

⁷ — The Bundesgerichtshof does not call into question the conclusion reached by the court deciding on the facts, which was that the agency activities carried out by the defendant resident in Spain were directed to Germany, and it highlights certain factors evidencing this, such as the fact that the services were offered on the internet in German, that a contact email address with the domain code ‘.de’ was given, and that they provided a Berlin telephone number for their ‘back office’ and used brochures written in German.

EUR 27 647 as part of the third instalment of the purchase price, which Mr Kampik paid into the account of the defendant company Mar Mediterraneo. Finally, in 2009, Mr Hobohm transferred to Mr Kampik a further sum of EUR 1448.72, which the latter claimed was needed in order to secure the discharge of a mortgage registered against the applicant. The mortgage was not, however, discharged.

14. After a series of disagreements between the parties in connection with the developer's insolvency, the applicant and his wife revoked the power of attorney granted to Mr Kampik. The applicant is claiming repayment of the sums of money paid to the defendants. However, the Landgericht (Regional Court) within the jurisdiction of which the applicant is domiciled, and before which proceedings were brought, dismissed the application as inadmissible on the ground that it lacked territorial jurisdiction. Having been unsuccessful in challenging that decision before the appellate court, Mr Hobohm has now appealed on a point of law to the referring court.

III – The question referred for a preliminary ruling and the procedure before the Court of Justice

15. The Bundesgerichtshof has referred the following question to the Court of Justice:

‘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 the 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?’

16. The Italian, Portuguese and Swiss Governments have submitted written observations to the Court, as has the European Commission.

IV – The question referred for a preliminary ruling

A – Observations submitted to the Court

17. All of the written observations submitted to the Court, with the exception of those submitted by the Italian Government, support the application of Article 15(1)(c) of the Brussels I Regulation in this case.

18. The Portuguese Government submits that, although the first contract, signed in 2005, came to an end when the sale contract was concluded, with the result that the 2008 transaction-management contract is not directly linked to the activity that the defendants advertised on the internet, there is, nevertheless, a direct link between those two contracts since, were it not for the initial brokerage contract, the transaction-management contract, the purpose of which was precisely to resolve the post-sale problems, would not have existed. The applicant is therefore also deserving of protection in relation to the transaction-management contract, in view of the fact that its conclusion was closely associated with the first contract concluded with the defendants. The Portuguese Government argues, relying on the judgment of the Court of Justice in *Emrek*,⁸ that to introduce new conditions not provided for in Article 15(1)(c) of the regulation — such as the existence of a causal link between the

⁸ — C-218/12, EU:C:2013:666.

means used to direct the commercial or professional activity to the Member State of the consumer's domicile, and the conclusion of the contract — would be contrary to the objective sought by that provision. However, the fact that the activity that the defendants directed to Germany was at the root of the transaction-management contract must be regarded as evidence of the applicability of the second alternative in Article 15(1)(c) of Regulation No 44/2001. In short, the Portuguese Government proposes that the question referred for a preliminary ruling be answered in the affirmative.

19. The Commission, having noted that Article 15(1)(c) of the Brussels I Regulation constitutes an exception to the general jurisdictional rule of the defendant's domicile and must therefore be strictly interpreted, also points to the need for the terms used in that provision to be interpreted autonomously, having regard, in particular, to the regulation's system and objectives. Like the Portuguese Government, the Commission emphasises that the defendant's agency activities, which were directed to Germany, led to both the sale contract and the transaction-management contract being concluded at a later stage. Thus, there is a close and substantive link between the agency activities of the defendant and the conclusion of the transaction-management contract. As a result, the initial brokerage contract and the transaction-management contract are inextricably linked, which is the reason why the forum more favourable to the consumer should apply not only to the former, but also to the latter. The Commission further argues that this interpretation is consistent with the Court's judgment in *Maletic*.⁹ Finally, concerning the requirement that the jurisdiction of the consumer's domicile be predictable, the Commission points out that the defendant could reasonably foresee that the rules applicable to the brokerage contract agreement concluded with him would also apply to the transaction-management contract, as the two contracts were inextricably linked.

20. The Swiss Government submits that, for the purposes of Article 15(1)(c) of the Brussels I Regulation, the contract must relate to a service offered within the scope of the commercial activity in question, even if the service provider's advertising, on the basis of which it can be said that the activity is directed to the State of the consumer's domicile, does not relate to that particular activity: this would therefore cover services which, although not forming part of the services normally offered by the professional, nevertheless have a sufficient substantive connection with his habitual activity and are provided within the same commercial structure. Furthermore, both for practical reasons and as a matter of principle, the same rules should apply to all services connected with a particular commercial activity. In particular, the Swiss Government argues that, in the case of services which the provider does not offer officially, the threshold for consumer protection is lower, because the service is not being offered in a general way to an indeterminate number of persons but individually to a specific customer: in that scenario, the service provider is aware that he is dealing with a person residing in another Member State.

21. Adopting the opposite approach to the other observations submitted to the Court, the Italian Government insists that, as it is an exception to the general rule, Article 15(1)(c) must be construed narrowly. The connection between the purchase of the apartment and the later transaction-management contract does not warrant application of this provision, in conjunction with Article 16(1), to the latter agreement. Although the Italian Government does accept that the special jurisdiction could be extended to cases in which a secondary contract has a causal link to the main contract in the sense of being legally necessary, this would not apply in a situation where the link is merely financial and practical, as in the present case. Otherwise, a broad interpretation might lead to a distortion of the facts for the sole purpose of altering the ordinary rules of international jurisdiction.

9 — C-478/12, EU:C:2013:735.

B – Analysis

1. Preliminary observations and rewording of the question referred for a preliminary ruling

22. As we have seen, the Bundesgerichtshof is asking whether the special jurisdiction in respect of consumer contracts pursuant to Article 16(1) of the Brussels I Regulation can be applied in relation to a contract between a consumer and a professional which does not come directly within the scope of the activities that the professional directs to the Member State of the consumer's domicile through his advertising, within the meaning of Article 15(1)(c) of that regulation, but which is nevertheless closely linked to an earlier contract between the same parties which clearly does meet the requirements of that provision.

23. For reasons which I will go on to explain, however, I think that it is necessary to reword the question referred so as to enable the Court to provide an answer which will be of use.

24. Before I do so, I would like to make a few observations of a general nature.

25. The necessary starting point for addressing the issues involved in this case is the wording of Article 15(1) of the Brussels I Regulation. This provision has already been interpreted in the case-law of the Court, which has consistently held that it is applicable if each of three conditions is met.¹⁰

26. First, one party to the contract must be a consumer, that is to say, someone who is acting in a context which can be regarded as being outside his trade or profession.¹¹ In the present case it is not disputed that, although the defendants in the main proceedings were acting in pursuance of their trade or profession, the applicant, Mr Hobohm, was acting as a private individual.

27. Second, the contract between the consumer and the professional must actually have been concluded.¹² On this point, it is clear from the order for reference that in 2008 Mr and Mrs Hobohm and Mr Kampik concluded the transaction-management contract at issue. With regard to the other defendants in the main proceedings, it should be noted that the Bundesgerichtshof has specifically highlighted the fact that, in the appeal on a point of law, which is the stage reached in the main proceedings, the question of whether the applicant's arguments adequately establish that there are contractual rights vis-à-vis all the defendants is immaterial, since the appeal court did not examine whether those arguments were well founded. The Bundesgerichtshof therefore takes the view that the question referred is equally relevant in respect of all the defendants, as, potentially, contractual rights exist vis-à-vis all of them. In the light of those considerations, I do not think that it is for the Court to rule on whether contractual relations exist between the applicant and the three defendants.

28. Third, the contract must fall within one of the categories referred to in Article 15(1),¹³ of which the relevant one in the case in the main proceedings is category (c),¹⁴ which has already been interpreted in the case-law of the Court.

10 — Judgments in *Česká spořitelna* (C-419/11, EU:C:2013:165), paragraph 30, and *Kolassa* (C-375/13, EU:C:2015:37), paragraph 23.

11 — On the concept of a consumer in the context of the Brussels Convention and the Brussels I Regulation, see, for example, judgments in *Shearson Lehman Hutton* (C-89/91, EU:C:1993:15); *Gabriel* (C-96/00, EU:C:2002:436); *Gruber* (C-464/01, EU:C:2005:32); and *Česká spořitelna* (C-419/11, EU:C:2013:165).

12 — *Česká spořitelna* (C-419/11, EU:C:2013:165), paragraph 30. On the requirement that there be a contract concluded between the consumer and the professional, see the recent judgment in *Kolassa* (C-375/13, EU:C:2015:37), paragraph 29 et seq.

13 — *Česká spořitelna* (C-419/11, EU:C:2013:165), paragraph 30.

14 — Categories (a) (concerning a contract for the sale of goods on instalment credit terms) and (b) (concerning a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods) of Article 15(1) of the Brussels I Regulation are not relevant for the purposes of the present dispute.

29. It has been consistently held that two conditions must also be satisfied for this provision to be applicable. First, it is necessary either that the professional pursues his activities in the Member State of the consumer's domicile or that, by any means, he directs such activities to that Member State (or to several States, including that of the consumer's domicile). Secondly, it is necessary that the contract at issue should come within the scope of such activities.¹⁵

30. The referring court takes the view that, considered in isolation, the transaction-management contract concluded in 2008 does not satisfy the conditions of the second alternative in Article 15(1)(c) of the Brussels I Regulation, in particular because the transaction-management role assumed thereunder could not be said to come within the scope of the activity of acting as an intermediary in property-purchase transactions which was directed to Germany. The referring court is nevertheless inclined to take the view, based on a teleological approach to interpretation and focusing on the causal link between the defendants' activities directed to Germany, which resulted in the first contract, namely the brokerage contract, and the transaction-management contract, that there is a sufficiently strong connection between the brokerage contract and the transaction-management contract for the conditions of the provision in question to be deemed satisfied. The Bundesgerichtshof is of the opinion that both contracts have the same objective, namely the purchase and actual use of the apartment, and that, consequently, the two legal relationships should be considered together.

31. Thus, the referring court stresses in particular that, although a causal link is not a precondition, it should be viewed as evidence of a 'directed activity', in accordance with the judgment in *Emrek*.¹⁶ However, the Bundesgerichtshof is unsure whether this interpretation can be applied, given that it has been consistently held that Article 15(1)(c) of the Brussels I Regulation must be strictly interpreted.

32. In this regard, it should be pointed out that the question referred, as formulated by the Bundesgerichtshof, concerns whether it is possible to apply Article 15(1)(c) of the Brussels I Regulation by 'uncoupling' the satisfaction of the two conditions set out therein. The referring court is effectively asking whether, in a situation in which there is an activity directed by a professional to the Member State of the consumer, Article 15(1)(c) of the Brussels I Regulation can apply to a contract concluded within the scope, not of that activity, but of an activity pursued by the same professional which is not directed to the Member State of the consumer in an immediate way, on the basis that there is a substantive connection with a contract concluded at an earlier date.

33. In this respect, I must point out that the inherent connection between the two conditions set out in Article 15(1)(c) of the Brussels I Regulation is explicit and requires the contract to come within the scope of the activities which the professional directs to the consumer's Member State. A question framed in the terms used by the referring court would therefore inevitably produce a negative response.

34. Nevertheless, in the interests of providing an answer that will be of use, I think it appropriate to reword the question referred, since both the order for reference and the written observations submitted to the Court concern the interpretation of the concept of a 'directed activity'.

35. For those reasons, I think that the question referred for a preliminary ruling may be worded as follows: 'Can the second alternative in Article 15(1)(c) of the Brussels I Regulation, in conjunction with the second alternative in Article 16(1) thereof, be interpreted as meaning that it is applicable in relation to a contract which seeks to achieve the economic objective pursued by another contract which was previously concluded between the parties and has already been performed and which comes within the scope of the commercial or professional activities which the professional directs to the Member State of the consumer's domicile?'

¹⁵ — *Mühlleitner* (C-190/11, EU:C:2012:542), paragraph 36.

¹⁶ — C-218/12, EU:C:2013:666.

2. The concept of ‘directed activity’ and the indication of the ‘causal link’

36. First of all, when considering the interpretation of the concept of ‘directed activity’, which is not defined in the Brussels I Regulation, it should be recalled that the Court has consistently held that the concepts used in the Brussels I Regulation must be interpreted independently, by reference to the system and objectives of that regulation.¹⁷ These objectives include, by virtue of recital 13 in the preamble to that regulation, which relates specifically to Article 15(1)(c), the function of protecting the consumer as the party who is weaker and less experienced in legal matters than the professional counterparty,¹⁸ and that of ‘[minimising] the possibility of concurrent proceedings ... to ensure that irreconcilable judgments will not be given in two Member States’.¹⁹

37. Secondly, it should be noted that the Court’s established case-law also indicates that, whilst there is no doubt that the objective of Articles 15(1)(c) and 16 of the Brussels I Regulation is to protect consumers, that does not imply that that protection is absolute.²⁰ Thus, as the Bundesgerichtshof has also pointed out, the nature of Article 15(1)(c) as a derogation under the scheme of the Brussels I Regulation means that the consumer-protection objective cannot give rise to a broad interpretation. Article 15(1) of the regulation ‘constitutes a derogation both from the general rule of jurisdiction laid down in Article 2(1) of the regulation, which confers jurisdiction upon the courts of the Member State in which the defendant is domiciled, and from the rule establishing special jurisdiction for contracts, set out in Article 5(1) of the regulation, under which jurisdiction lies with the courts for the place of performance of the obligation in question’.²¹ Article 15(1)(c) of the Brussels I Regulation must therefore be strictly interpreted.²²

38. In the light of these considerations, it seems clear that, were the consumer-contract jurisdiction under Article 16(1) of the Brussels I Regulation to be accepted in all cases on the sole basis that a contract, which did not of itself meet the conditions of Article 15(1)(c) of the regulation, had a substantive link to an earlier contract between the parties, this would imply a broad interpretation of this provision, which must be rejected in the light of the nature of the special jurisdiction for consumer contracts as constituting a derogation under the general scheme of the Brussels I Regulation.²³

39. Nevertheless, for the reasons which I am about to explain, I am of the view that the existence of a substantive causal link is capable of constituting one of the items of evidence from which the national court may conclude that there is an activity ‘directed’ to the Member State of the consumer within the meaning of Article 15(1)(c) of the Brussels I Regulation.

17 — See, for example, judgments in *Pammer and Hotel Alpenhof* (C-585/08 and C-144/09, EU:C:2010:740), paragraph 55; *Mühlleitner* (C-190/11, EU:C:2012:542), paragraph 28; and *Česká spořitelna* (C-419/11, EU:C:2013:165), paragraph 25.

18 — See, inter alia, judgments in *Ilsinger* (C-180/06, EU:C:2009:303), paragraph 41; *Mühlleitner* (C-190/11, EU:C:2012:542), paragraph 29; and *Česká spořitelna* (C-419/11, EU:C:2013:165), paragraph 33.

19 — See recital 15 in the preamble to the Brussels I Regulation, and judgment in *Maletic* (C-478/12, EU:C:2013:735), paragraph 30.

20 — Judgment in *Pammer and Hotel Alpenhof* (C-585/08 and C-144/09, EU:C:2010:740), paragraph 70.

21 — Judgments in *Pammer and Hotel Alpenhof* (C-585/08 and C-144/09, EU:C:2010:740), paragraph 53; *Mühlleitner* (C-190/11, EU:C:2012:542), paragraph 26; and *Česká spořitelna*, (C-419/11, EU:C:2013:165), paragraph 26.

22 — Ibid. See also, in relation to the Brussels Convention, judgments in *Shearson Lehman Hutton* (C-89/91, EU:C:1993:15), paragraph 16; *Benincasa* (C-269/95, EU:C:1997:337), paragraph 13; and *Gruber* (C-464/01, EU:C:2005:32), paragraph 32.

23 — The Court has also declined to give a broad interpretation to the condition that the contract between the consumer and the professional must actually have been concluded, stating that that condition ‘does not lend itself to an interpretation to the effect that such a requirement is satisfied when there is a chain of contracts through which certain rights and obligations of the professional in question are transferred to the consumer’; see judgment in *Kolassa* (C-375/13, EU:C:2015:37), paragraph 30.

40. In this regard, it should be recalled that the Court held in *Emrek* that, although the existence of a causal link does not constitute an additional condition, on top of those set out in Article 15(1)(c) of the Brussels I Regulation,²⁴ it may well constitute evidence of ‘directed activity’ in the same way as the establishment of contact at a distance, which gives rise to the consumer being contractually bound at a distance.²⁵

41. However, this case-law pertains to the particular circumstances in *Emrek*, in which the causal link appeared in a completely different context. Specifically, that case looked at the role of the causal link as a precondition for the application of Article 15(1)(c) of the Brussels I Regulation, the absence of which might constitute a potential obstacle, preventing a court from finding that an activity was ‘directed’ to the consumer’s Member State. It was against that background that the Court held that, although for the purposes of deciding whether a particular activity is directed to a particular Member State a causal link should not be treated as an unwritten condition, it could, however, constitute evidence in that regard.

42. By contrast, the situation in the present case is that causality is being invoked, not as a potential obstacle to the application of Article 15(1)(c), but as the sole basis for its application. In this respect, it is undoubtedly the case that, in the circumstances of the main proceedings, the professional activity directed by the defendant to the Member State of the applicant consumer’s domicile by means of advertising, as well as the contract that was concluded as a result, are matters which are connected to the 2008 transaction-management contract by an almost automatic causal link.

43. As the referring court correctly points out, we are not here concerned with evaluating whether the relationship of trust established between the parties in the main proceedings in the context of their initial contractual relationship was causative in terms of place and time. Indeed, as the Italian Government observes, there is no main contract which is related to a secondary contract in the sense of being legally necessary in terms of causality. The causality referred to here when we talk about evidence of the ‘directed activity’ requires that there be a strong and substantive interconnection between legal relationships, which, in this case, is provided by the fact that the transaction-management contract seeks precisely to achieve the economic objective pursued by the first contract between the parties.

44. However, while a causal link, as so defined, can be regarded as one of the items of evidence determining the Member State to which the professional activity of the defendant is directed, that link is not the only basis for finding that the conditions laid down in Article 15(1)(c) of the Brussels I Regulation have been satisfied, particularly where the causal link is indirect, as in the case of the main proceedings. In fact, the conclusion of the transaction-management contract did not result directly from the activity directed by the defendant professional to the Member State of the consumer’s domicile by means of advertising, but from the events following the problems associated with the performance of a contract of sale concluded with a third party.

45. It is thus for the national court to examine whether, on consideration of all the information at its disposal, there are other factors, in addition to the aforementioned causal link, that lead to the conclusion that this case in fact comes within the scope of an activity directed by the professional to the Member State of the consumer’s domicile. Such other factors might include, without being limited to them, the degree of connection between the services offered by the professional and those directed by him to the Member State of the consumer by means of advertising or by any other means, the fact that the professional habitually provides transaction-management services to clients residing in another

²⁴ — C-218/12, EU:C:2013:666, paragraph 21.

²⁵ — *Ibid.*, paragraph 29. As I have already pointed out in my Opinion in *Emrek* ‘... while preparatory pre-contractual activity, like the existence of a proven causal link, is not an implied condition over and above those that are specifically laid down in Article 15(1)(c) of Regulation No 44/2001, it does make the task of the national court significantly easier when it comes to determining whether an economic activity is directed to a particular Member State’; see Opinion in *Emrek* (C-218/12, EU:C:2013:494), point 31.

Member State, to whom he also provides estate-agency services, or that the different types of services are provided within the framework of the same commercial structure, with the result that the consumer could not reasonably foresee that the contracts would be subject to different places of jurisdiction.

46. This would also help to safeguard the objective of the Brussels I Regulation, expressed in recital 11 in the preamble thereof, of ensuring that the rules for determining jurisdiction are predictable, thereby strengthening the legal protection of persons established in the European Union. This would also enable the applicant to identify easily the court in which he may sue and make it possible for the defendant reasonably to foresee before which court he may be sued.²⁶

47. Having established the foregoing, it remains for me to address one further aspect of this case. It should be noted that the order for reference specifically states that Mr Kampik ‘offered the applicant his services in respect of attending to the apartment’s readiness for occupancy’, whereupon Mr Hobohm and his wife travelled to Spain and concluded the transaction-management contract. In the absence of further particulars, it is in any event for the national court to determine whether in fact there was an offer by the defendants to the consumer in the main proceedings in relation to the conclusion of the transaction-management contract.

48. The referring court has emphasised, however, that none of the items of, essentially, advertising-related evidence mentioned by the Court in *Pammer and Hotel Alpenhof*,²⁷ was present in relation to the activity which was the subject-matter of the transaction-management contract, and neither was there any equivalent evidence.

49. It is important, however, to highlight the fact that Article 15(1)(c) of the Brussels I Regulation does not stipulate that the activity of the professional must be directed to the Member State of the consumer by means of advertising,²⁸ but expressly refers to *any means*.

50. It should be mentioned at this point that, in *Pammer and Hotel Alpenhof*, the Court gave as the first and most obvious factor for establishing whether an activity is directed to the Member State of the consumer’s domicile ‘all clear expressions of the intention to solicit the custom of that State’s consumers’.²⁹

51. Furthermore, subparagraph 3 of the first paragraph of Article 13 of the Brussels Convention,³⁰ which occupied the same place and fulfilled the same function of protecting the consumer qua weaker party as does Article 15(1)(c) of the Brussels I Regulation,³¹ established that one of the cases in which the consumer-contract jurisdiction was applicable, subject to the restrictions specified therein, was where, in the State of the consumer’s domicile, the conclusion of the contract was preceded by advertising or by a specific *invitation* addressed to him. As there was a clear intention on the part of

26 — In this regard, see judgments in *Hypoteční banka* (C-327/10, EU:C:2011:745), paragraph 44, and *eDate Advertising and Others* (C-509/09 and C-161/10, EU:C:2011:685), paragraph 50.

27 — C-585/08 and C-144/09, EU:C:2010:740. Such items of evidence, according to the Court in paragraph 83 of that judgment, include ‘the international nature of the activity at issue, such as certain tourist activities; mention of telephone numbers with the international code; use of a top-level domain name other than that of the Member State in which the trader is established, for example “.de”, or use of neutral top-level domain names such as “.com” or “.eu”; the description of itineraries from one or more other Member States to the place where the service is provided; and mention of an international clientele composed of customers domiciled in various Member States, in particular by presentation of accounts written by such customers’.

28 — In this regard, see Magnus, U., and Mankowski, P., *Brussels I Regulation*, 2nd Revised Edition, Munich, 2012, p. 380, and Mankowski, P., ‘Zum Begriff des “Ausrichtens” auf den Wohnsitzstaat des Verbrauchers unter Art. 15 Abs. 1 lit. c EuGVVO’, *Verbraucher und Recht*, 2006, pp. 289-294.

29 — C-585/08 and C-144/09, EU:C:2010:740, paragraph 80.

30 — Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36; consolidated version in OJ 1998 C 27, p. 1).

31 — Judgments in *Česká spořitelna* (C-419/11, EU:C:2013:165), paragraph 28; *Ilseger* (C-180/06, EU:C:2009:303), paragraph 41; *Pammer and Hotel Alpenhof* (C-585/08 and C-144/09, EU:C:2010:740), paragraph 57; and *Mühlleitner* (C-190/11, EU:C:2012:542), paragraph 29.

the EU legislature to extend the scope of the protection provided by the first paragraph of Article 13 of the Brussels Convention,³² the phrase ‘by any means’ must cover not only any means of advertising, but also direct contact between the professional and the consumer through the making of an offer.³³

52. In this regard, the Court has held, again in *Pammer and Hotel Alpenhof*, that ‘[t]he wording of Article 15(1)(c) ... [encompasses] and [replaces] the previous concepts of a “specific invitation addressed” to the consumer and “advertising”, covering, as the words “by any means” indicate, a wider range of activities’.³⁴

53. Thus, in the event that it is established that an offer was made, it is clear that this is a factor which reveals a ‘clear expression of the intention’ of the professional to ‘direct’ his services to a consumer residing in another Member State, and to a consumer who, moreover, is a client in the context of an earlier contractual relationship which was within the scope of the activity unequivocally directed to another Member State.

54. In conclusion, having regard to all the reasoning, I am of the view that the second alternative in Article 15(1)(c) of the Brussels I Regulation, in conjunction with the second alternative in Article 16(1) thereof, must be interpreted as meaning that, in the particular circumstances of the main proceedings, the existence of an earlier contract between the parties, and in respect of which there is a substantive causal link, is capable of constituting evidence that the activity pursued by the professional is ‘directed’ to the Member State of the consumer’s domicile; this must be assessed in the light of all the facts available to the national court.

55. Furthermore, in the event that the national court finds that an offer was made by the professional to the consumer, such an offer should be regarded as coming within the notion of ‘any means’ by which the professional may direct his activity to the Member State of the consumer’s domicile.

V – Conclusion

56. In the light of all the arguments set out above, I propose that the Court reply in the following terms to the question referred for a preliminary ruling by the Bundesgerichtshof:

The second alternative in 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, in conjunction with the second alternative in Article 16(1) thereof, must be interpreted as meaning that, in the particular circumstances of the main proceedings, the existence of an earlier contract between the parties, and in respect of which there is a substantive causal link, is capable of constituting evidence that the activity pursued by the professional is ‘directed’ to the Member State of the consumer’s domicile; this must be assessed in the light of all the facts available to the national court.

32 — The Court of Justice has indicated that if there is similarity between the drafting of a provision of the Brussels Convention and a provision of the Brussels I Regulation it is necessary to ensure, in accordance with recital 19 in the preamble to the latter, continuity in the interpretation of those two instruments (judgment in *Ilsinger*, C-180/06, EU:C:2009:303, paragraph 58). Despite marked differences in the drafting of Article 15 of the regulation and that of Article 13 of the Brussels Convention, it should be noted that both the case-law and the *travaux préparatoires* make it clear that the wording of Article 15(1)(c) of the Brussels I Regulation is broader and more general than the first paragraph of Article 13 of the Brussels Convention ‘in order to ensure better protection for consumers with regard to new means of communication and the development of electronic commerce’. On this point, see judgments in *Ilsinger* (C-180/06, EU:C:2009:303), paragraph 50; *Pammer and Hotel Alpenhof* (C-585/08 and C-144/09, EU:C:2010:740), paragraph 59; and *Mühlleitner* (C-190/11, EU:C:2012:542), paragraph 38. See also point 4.2 of the Proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, COM(199) 348 final (OJ 1999 C 376 E, p. 1).

33 — In this regard, see Magnus and Mankowski, op. cit., p. 380. The concept of ‘specific invitation addressed’ in the Brussels Convention covers ‘commercial offers made to the consumer in person, in particular by an agent or door-to-door salesman’. Judgment in *Gabriel* (C-96/00, EU:C:2002:436), paragraph 44.

34 — Judgment in *Pammer and Hotel Alpenhof* (C-585/08 and C-144/09, EU:C:2010:740), paragraph 61.

Furthermore, in the event that the national court finds that an offer was made by the professional to the consumer, such an offer should be regarded as coming within the notion of ‘any means’ by which the professional may direct his activity to the Member State of the consumer’s domicile.