

JUDGMENT OF THE COURT (Sixth Chamber)

11 July 2002 *

In Case C-96/00,

REFERENCE to the Court pursuant to the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the Oberster Gerichtshof (Austria) for a preliminary ruling in the proceedings brought before that court by

Rudolf Gabriel,

on the interpretation of Articles 5(1) and (3) and 13, first paragraph, point 3, of the abovementioned Convention of 27 September 1968 (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 and — amended text — p. 77), by the

* Language of the case: German.

Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1), by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1), and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1),

THE COURT (Sixth Chamber),

composed of: F. Macken, President of the Chamber, C. Gulmann, R. Schintgen (Rapporteur), V. Skouris and J.N. Cunha Rodrigues, Judges,

Advocate General: F.G. Jacobs,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Mr Gabriel, by A. Klauser, Rechtsanwalt,

- the Austrian Government, by H. Dossi, acting as Agent,

- the German Government, by R. Wagner, acting as Agent,

— the Commission of the European Communities, by J.L. Iglesias Buhigues, acting as Agent, assisted by B. Wägenbaur, Rechtsanwalt,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Gabriel, represented by A. Klauser, and the Commission, represented by A.-M. Rouchaud, acting as Agent, assisted by B. Wägenbaur, at the hearing on 11 October 2001,

after hearing the Opinion of the Advocate General at the sitting on 13 December 2001,

gives the following

Judgment

- 1 By order of 15 February 2000, received at the Court on 13 March 2000, the Oberster Gerichtshof (Supreme Court, Austria) referred to the Court for a preliminary ruling, pursuant to the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, a question on the interpretation of Articles 5(1) and (3) and 13, first paragraph, point 3, of that Convention (OJ 1978 L 304, p. 36), as amended by the Convention of

9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 and — amended text — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1), by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1), and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1) ('the Brussels Convention').

- 2 That question has arisen in proceedings brought before the Oberster Gerichtshof by Mr Gabriel, an Austrian national domiciled in Vienna, for the purpose of determining the court having jurisdiction *ratione loci* to give judgment in the action which he proposes to bring in his State of domicile against a mail-order company established in Germany.

The legal framework

The Brussels Convention

- 3 The rules on jurisdiction laid down by the Brussels Convention are set out in Title II thereof, which consists of Articles 2 to 24.

- 4 The first paragraph of Article 2 of the Brussels Convention, which forms part of Section 1, entitled ‘General provisions’, of Title II, sets out the basic rule in the following terms:

‘Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.’

- 5 The first paragraph of Article 3 of the Brussels Convention, which features in the same section, provides:

‘Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title.’

- 6 Articles 5 to 18 of the Brussels Convention, which make up Sections 2 to 6 of Title II thereof, lay down rules governing special, mandatory or exclusive jurisdiction.

7 Thus, under Article 5, which appears in Section 2, entitled ‘Special jurisdiction’, of Title II of the Brussels Convention:

‘A person domiciled in a Contracting State may, in another Contracting State, be sued:

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question;...

...

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;

...’.

8 Also under Title II of the Brussels Convention, Articles 13 and 14 form part of Section 4, entitled ‘Jurisdiction over consumer contracts’.

9 Article 13 of the Brussels Convention is worded as follows:

‘In proceedings concerning a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, hereinafter called “the consumer”, jurisdiction shall be determined by this Section, without prejudice to the provisions of point 5 of Articles 4 and 5, if it is:

1. a contract for the sale of goods on instalment credit terms; or
2. a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
3. any other contract for the supply of goods or a contract for the supply of services, and

(a) in the State of the consumer’s domicile the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising;

and

(b) the consumer took in that State the steps necessary for the conclusion of the contract.

Where a consumer enters into a contract with a party who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

This Section shall not apply to contracts of transport.’

- 10 The first paragraph of Article 14 of the Brussels Convention provides:

‘A consumer may bring proceedings against the other party to a contract either in the courts of the Contracting State in which that party is domiciled or in the courts of the Contracting State in which he is himself domiciled.’

- 11 That rule of jurisdiction may be departed from only if there is compliance with the conditions laid down in Article 15 of the Brussels Convention, which also features in Section 4 of Title II thereof.

The relevant provisions of national law

- 12 Under Paragraph 28.1.1 of the Austrian Law of 1 August 1895 on the exercise of jurisdiction and the competence of the ordinary courts in civil matters (Jurisdiktionsnorm (Law on Jurisdiction), RGrBl. 111), the Oberster Gerichtshof must, when so requested by a party, designate, from among the courts having

jurisdiction *ratione materiae* to deal with a civil matter, the court which will be territorially competent where the Austrian court having local jurisdiction is not designated by the rules laid down in that Law or by any other legal provision, but jurisdiction must none the less be exercised pursuant to an international convention.

13 It is common ground that the Brussels Convention is an international convention within the meaning of that provision.

14 Paragraph 5j of the Austrian Consumer Protection Law (BGBl. I, 1979, p. 140) reads:

‘Undertakings which send prize notifications or other similar communications to specific consumers, and by the wording of those communications give the impression that a consumer has won a particular prize, must give that prize to the consumer; it may also be claimed in legal proceedings.’

15 That provision was added to the Consumer Protection Law by Paragraph 4 of the Austrian Law on Distance Contracts (BGBl. I, 1999, p. 185) when Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ 1997 L 144, p. 19) was transposed into Austrian law.

16 That provision entered into force on 1 October 1999.

- 17 In its order for reference, the Oberster Gerichtshof points out that the purpose of Paragraph 5j is to grant consumers who have been misled by reason of the fact that a professional contacted them personally, creating within them the impression that they had won a prize, whereas the true nature of the transaction is explained only in small print or in an inconspicuous place in the correspondence and in terms difficult to understand, a right to bring legal proceedings to seek enforcement of such a 'promise of financial benefit'.

The case in the main proceedings and the question submitted for preliminary ruling

- 18 According to the documents relating to the case in the main proceedings, Schlank & Schick GmbH ('Schlank & Schick'), a company established under German law and having its registered office in Lindau (Germany), sells goods by mail order in, *inter alia*, Germany, Austria, France, Belgium and Switzerland.
- 19 In October 1999 Mr Gabriel received at his private address and in a sealed envelope several personalised letters from Schlank & Schick which he claims were of such a kind as to lead him to believe that, following a draw, he was the lucky winner of ATS 49 700 and that he was entitled to receive that amount simply on demand, subject only to the condition that he ordered at the same time from that company goods to a minimum value of ATS 200, to be selected in a catalogue and entered on an order form attached to those letters.
- 20 Those letters stated *inter alia* as follows: 'Dear Mr Rudolf Gabriel, you have not yet claimed your cash credit.... Do you really want to forfeit your money?... You are still entitled to your cash credit, but now you really must act quickly. The attached letter from European Credit explains everything in greater detail... PS.

By way of proof for you, Mr Gabriel, I have attached the payment receipt. You are entitled to 100% of your cash credit on condition that you also order goods without incurring any obligation.'

- 21 A letter annexed to that mail, headed 'European Credit' and entitled 'Official confirmation of payment', to which were annexed the copy of a 'receipt' and the facsimile of a 'savings book', both of which bore Mr Gabriel's name and the amount of ATS 49 700, was worded as follows: 'Dear Mr Rudolf Gabriel, we hereby confirm to you once again the payment to our account of the cash credit amount totalling ATS 49 700. We have attached specially for you a copy of a receipt. In order to seize your opportunity and speed up payment of the sum of ATS 49 700, all you have to do is return the copy of the receipt together with your test order, which does not involve any obligation... There is now nothing further to prevent payment. In order that you can receive your money as quickly as possible, I shall simply send you a cheque after the receipt has been received. You will then be able to encash it as you please at the financial institution of your choice.'
- 22 It appears, however, from various statements printed in relatively small characters and featuring in part on the reverse side of the documents sent to Mr Gabriel that the sum of ATS 49 700 did not constitute a firm promise on the part of Schlank & Schick to pay the prize.
- 23 Thus, on the reverse of the letter from 'European Credit', it was stated *inter alia*, under the heading 'Award Conditions', that participation in the 'winning game', governed by German law, was subject to the placing of a 'test order, which does not involve any obligation', that the expiry date for this 'action' was 30 November 1999 and that all judicial proceedings were excluded. Reference was also made to the fact that the draw had been made by the mail-order company, that the cash prizes were divided into 'different lots' being the subject of several payments split up according to the number of copies of receipts returned to the organiser with the properly filled-out order form, and that, on grounds of cost, the 'credits' having a value lower than ATS 35 would not result in any payment but would be placed in the jackpot for a later draw.

- 24 Mr Gabriel duly filled out and returned to Schlank & Schick the relevant documents to claim payment of the financial benefit promised and placed an order for goods in that company's catalogue for an amount in excess of ATS 200.
- 25 Schlank & Schick subsequently delivered to him the goods which he had ordered but did not send him the sum of ATS 49 700 which he claimed to have won.
- 26 Mr Gabriel accordingly decided to institute legal proceedings for an order requiring Schlank & Schick to pay him that amount, together with interest and legal costs, pursuant to Paragraph 5j of the Austrian Consumer Protection Law.
- 27 As he wished to bring that action in Austria — the State in which he is domiciled — pursuant to the first paragraph of Article 14 of the Brussels Convention, but as he considered that Austrian law does not contain any provision determining the national court having territorial jurisdiction to hear and determine the case, Mr Gabriel, before lodging the application containing his substantive claim, referred the matter to the Oberster Gerichtshof in order that it might designate that court pursuant to Paragraph 28.1.1 of the Austrian Law of 1 August 1895.
- 28 The Oberster Gerichtshof takes the view that, while the action which Mr Gabriel proposes to bring appears to be covered by Paragraph 5j of the Austrian Consumer Protection Law, the question whether his application for designation of the national court having territorial jurisdiction should be granted depends on the nature of the action which Mr Gabriel intends to bring against Schlank & Schick.

- 29 If that action relates to a contract concluded by a consumer within the meaning of Article 13, first paragraph, point 3, of the Brussels Convention, such a designation will be indispensable because that Convention allows a consumer only to bring the dispute before the courts of the Contracting State in which he is domiciled but does not determine directly which court of that State has jurisdiction to give judgment in that regard.
- 30 In contrast, the application pending before the Oberster Gerichtshof would serve no purpose if Mr Gabriel's right of action were contractual in nature, within the meaning of Article 5(1) of the Brussels Convention, or relating to tort, delict or quasi-delict within the meaning of Article 5(3) thereof, on the ground that those provisions specifically designate the courts having territorial jurisdiction, that is to say, respectively, the courts for the place of performance of the contractual obligation in question or those for the place where the harmful event occurred.
- 31 As it formed the view that, in those circumstances, the reply to the request which Mr Gabriel had made to it depended on the interpretation of the Brussels Convention, the Oberster Gerichtshof decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'For the purposes of the Brussels Convention..., does the provision in Paragraph 5j of the Austrian Consumer Protection Law..., in the version of Art I, para. 2, of the Austrian Law on Distance Contracts..., which entitles certain consumers to claim from undertakings in the courts prizes ostensibly won by them where the undertakings send (or have sent) them prize notifications or other similar

communications worded so as to give the impression that they have won a particular prize, constitute:

(1) a contractual claim under Article 13(3);

or

(2) a contractual claim under Article 5(1);

or

(3) a claim in respect of a tort, delict or quasi-delict under Article 5(3)?

The question submitted for preliminary ruling

- 32 Having regard to the factual background to the case in the main proceedings, the question posed must be construed as asking essentially whether the jurisdiction rules set out in the Brussels Convention are to be interpreted as meaning that judicial proceedings by which a consumer seeks an order, in the Contracting State

in which he is domiciled and pursuant to that State's legislation, requiring a mail-order company established in another Contracting State to pay him a financial benefit in circumstances where that company had sent to that consumer in person a letter likely to create the impression that a prize would be awarded to him on condition that he ordered goods to a specified amount, and where that consumer actually placed such an order in the State of his domicile without, however, obtaining payment of that financial benefit, are contractual in nature in the sense contemplated in Articles 5(1) or 13, first paragraph, point 3, of the Brussels Convention, or relating to tort, delict or quasi-delict within the meaning of Article 5(3) thereof.

33 In order to reply to the question as thus reformulated, it should be noted at the outset that, according to settled case-law, the concept of matters relating to tort, delict or quasi-delict within the meaning of Article 5(3) of the Brussels Convention covers all actions which seek to establish the liability of a defendant and which are not related to a contract within the meaning of Article 5(1) of that Convention (see, *inter alia*, Case 189/87 *Kalfelis* [1988] ECR 5565, paragraph 17; Case C-261/90 *Reichert and Kockler* [1992] ECR I-2149, paragraph 16; and Case C-51/97 *Réunion Européenne and Others* [1998] ECR I-6511, paragraph 22).

34 It is thus necessary in the first instance to examine whether an action such as that in point in the main proceedings is contractual in nature.

35 In that connection, it must be observed that Article 5(1) of the Brussels Convention relates to contractual matters in general, whereas Article 13 thereof specifically covers various types of contracts concluded by consumers.

- 36 As Article 13 of the Brussels Convention thus constitutes a *lex specialis* in relation to Article 5(1) thereof, it is first of all necessary to determine whether an action having the characteristics set out in the question referred for a preliminary ruling, as reformulated, can fall within the scope of the former of those two provisions.
- 37 According to settled case-law, the concepts used in Article 13 of the Brussels Convention must be interpreted independently, by reference principally to the system and objectives of the Convention, in order to ensure that it is fully effective (see, in particular, Case 150/77 *Bertrand* [1978] ECR 1431, paragraphs 14, 15 and 16; Case C-89/91 *Shearson Lehman Hutton* [1993] ECR I-139, paragraph 13; Case C-269/95 *Benincasa* [1997] ECR I-3767, paragraph 12; and Case C-99/96 *Mietz* [1999] ECR I-2277, paragraph 26).
- 38 It follows from the actual wording of Article 13 that it is applicable only in so far as the action relates generally to a contract concluded by a consumer for a purpose outside his trade or profession.
- 39 It follows from that wording, and from the purpose of the special regime introduced by the provisions of Title II, Section 4, of the Brussels Convention, which is to ensure adequate protection for the consumer as the contracting party deemed to be economically weaker and less experienced in legal matters than his professional co-contractor, that those provisions cover only a private final consumer, not engaged in trade or professional activities, who is bound by one of the three types of contract listed in Article 13 of that Convention and who is also personally a party to the action, in accordance with Article 14 thereof (see *Shearson Lehman Hutton*, cited above, paragraphs 19, 20, 22 and 24).
- 40 With regard, more specifically, to a contract for the supply of services — other than a contract of transport, which is excluded from the scope of Section 4 of

Title II of the Brussels Convention pursuant to the third paragraph of Article 13 thereof — or a contract for the supply of goods, as referred to in Article 13, first paragraph, point 3, that provision sets out two additional conditions of application, namely that the conclusion of the contract was preceded in the State of the consumer's domicile by a specific invitation addressed to him or by advertising, and that the consumer took in that State the steps necessary for the conclusion of that contract.

41 As is clear from the Schlosser Report on the Convention on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Brussels Convention (OJ 1979 C 59, p. 71, at p. 118), those two concurrent conditions are designed to ensure that there are close connections between the contract in issue and the State in which the consumer is domiciled.

42 With regard to the scope of the concepts employed in those conditions, Professor Schlosser refers, at page 119 of his report, to the Giuliano and Lagarde Report on the Convention on the law applicable to contractual obligations (OJ 1980 C 282, p. 1), which was opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1) ('the Rome Convention'), in view of the fact that Article 5(2), first indent, of that Convention, relating to consumer contracts, contains two conditions which use wording identical to that in Article 13, first paragraph, point 3(a) and (b), of the Brussels Convention.

43 According to the Giuliano and Lagarde Report, that provision of the Rome Convention is intended to cover situations in which the trader has taken steps to market his goods or services in the country where the consumer resides and, *inter alia*, situations of mail-order and doorstep selling (see the above Report, pages 23 and 24).

- 44 The concepts of 'advertising' and 'specific invitation addressed' featuring in the first of those conditions common to the Brussels and Rome Conventions cover all forms of advertising carried out in the Contracting State in which the consumer is domiciled, whether disseminated generally by the press, radio, television, cinema or any other medium, or addressed directly, for example by means of catalogues sent specifically to that State, as well as commercial offers made to the consumer in person, in particular by an agent or door-to-door salesman.
- 45 With regard to the second of those conditions, the expression 'steps necessary for the conclusion' of the contract refers to any document written or any other step whatever taken by the consumer in the State in which he is domiciled and which expresses his wish to take up the invitation made by the professional.
- 46 It must be concluded that all of those conditions are satisfied in a case such as that in the main proceedings.
- 47 First, it is common ground that Mr Gabriel has in this case the capacity of a private final consumer covered by the first paragraph of Article 13 of the Brussels Convention inasmuch as it is clear from the case-file that he ordered goods offered by Schlank & Schick for his personal use, without that transaction having any connection whatever with his trade or profession.
- 48 Second, in a situation such as that in point in the main proceedings, the consumer and the professional vendor were indubitably linked contractually once Mr Gabriel had ordered goods offered by Schlank & Schick, thereby demonstrating his acceptance of the offer — including all conditions attaching thereto — which that company had sent to him in person.

- 49 Furthermore, that concordance of intention between the two parties gave rise to reciprocal and interdependent obligations within the framework of a contract which has specifically one of the objects described in Article 13, first paragraph, point 3, of the Brussels Convention.
- 50 Thus, in regard to a case such as that in the main proceedings, that contract relates more specifically to the supply, through a mail-order sale, of goods ordered by a consumer on the basis of a proposal made and at a price specified by the vendor.
- 51 Third, the two conditions specifically set out in Article 13, first paragraph, point 3(a) and (b), of the Brussels Convention are also satisfied.
- 52 The vendor addressed the consumer in the Contracting State in which the latter was domiciled by sending him several personalised letters, to which were attached a sales catalogue and an order form, with a view to persuading him to contract on the basis of those proposals and the conditions relating thereto. Furthermore, as a result of those letters, the consumer took in that State the steps necessary to conclude the contract by placing an order for the amount stipulated by the vendor and by sending to the vendor the order form together with the copy of the 'receipt'.
- 53 In those circumstances, where a consumer has been contacted at his home by one or more letters sent by a professional vendor for the purpose of bringing about the placement of an order for goods offered under the conditions determined by that vendor, and where the consumer has in fact placed such an order in the Contracting State in which he is domiciled, the action by which such a consumer

seeks through judicial proceedings brought against the vendor to obtain a prize which he has apparently won is an action relating to a contract concluded by a consumer within the meaning of Article 13, first paragraph, point 3, of the Brussels Convention.

- 54 As is evident from the case-file placed before the Court, the right of a consumer to bring an action is intimately linked to the contract concluded between the parties inasmuch as, in a situation such as that in point in the main proceedings, the correspondence which the professional sent to that consumer establishes an indissociable relationship between the promise of financial benefit and the order for goods, that order being presented by the vendor as constituting the prerequisite for the grant of the promised financial benefit, specifically for the purpose of persuading the consumer to enter into a contract. Furthermore, the consumer concluded the contract for the purchase of goods essentially, if indeed not exclusively, by reason of the vendor's proposal involving a promise of financial benefit significantly greater than the minimum amount required for the order and the consumer otherwise met all of the conditions laid down by the professional, thereby accepting that professional's proposal in its entirety.
- 55 Consequently, judicial proceedings by which a consumer seeks an order, in the Contracting State in which he is domiciled, requiring a mail-order company established in another Contracting State to send to him a prize which he has apparently won must be capable of being brought before the same court as that which has jurisdiction to deal with the contract concluded by that consumer.
- 56 An interpretation of Article 13, first paragraph, of the Brussels Convention which would have the result that certain claims under a contract concluded by a consumer fall within the jurisdiction rules of Articles 13 to 15 of that Convention, whereas other actions that are linked so closely to that contract as to be indissociable are subject to other rules cannot be accepted.

- 57 The Court has in this regard recently recalled the need to avoid, so far as possible, a situation in which several courts have jurisdiction in respect of one and the same contract (see, by way of analogy, with regard to Article 5(1) of the Brussels Convention, Case C-256/00 *Besix* [2002] ECR I-1699, paragraph 27).
- 58 That need is all the more compelling in the case of a contract such as that in issue in the main proceedings. In view of the fact that a multiplicity of courts having jurisdiction risks placing at a particular disadvantage a party deemed to be weak, such as a consumer, it is in the interest of the proper administration of justice that the latter should be able to bring before one and the same court — *in casu* that of his place of domicile — all of the difficulties that are likely to arise from a contract which the consumer has been induced to conclude by reason of the professional's use of forms of wording liable to mislead the other contracting party.
- 59 An action such as that which Mr Gabriel proposes to bring before the competent national court therefore falls within the scope of Article 13, first paragraph, point 3, of the Brussels Convention, and it is for that reason unnecessary to examine whether it is covered by Article 5(1) thereof.
- 60 In the light of all the foregoing considerations, the answer to the question submitted must be that the jurisdiction rules set out in the Brussels Convention are to be construed as meaning that judicial proceedings by which a consumer seeks an order, in the Contracting State in which he is domiciled and pursuant to that State's legislation, requiring a mail-order company established in another Contracting State to pay him a financial benefit in circumstances where that company had sent to that consumer in person a letter likely to create the impression that a prize would be awarded to him on condition that he ordered goods to a specified amount, and where that consumer actually placed such an

order in the State of his domicile without, however, obtaining payment of that financial benefit, are contractual in nature in the sense contemplated in Article 13, first paragraph, point 3, of the Brussels Convention.

Costs

- 61 The costs incurred by the Austrian and German Governments and by the Commission, which have submitted observations to the Court, are not recoverable. As 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.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Oberster Gerichtshof by order of 15 February 2000, hereby rules:

The jurisdiction rules set out in the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters,

as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, are to be construed as meaning that judicial proceedings by which a consumer seeks an order, in the Contracting State in which he is domiciled and pursuant to that State's legislation, requiring a mail-order company established in another Contracting State to pay him a financial benefit in circumstances where that company had sent to that consumer in person a letter likely to create the impression that a prize would be awarded to him on condition that he ordered goods to a specified amount, and where that consumer actually placed such an order in the State of his domicile without, however, obtaining payment of that financial benefit, are contractual in nature in the sense contemplated in Article 13, first paragraph, point 3, of that Convention.

Macken

Gulmann

Schintgen

Skouris

Cunha Rodrigues

Delivered in open court in Luxembourg on 11 July 2002.

R. Grass

F. Macken

Registrar

President of the Sixth Chamber