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Joined Cases C-585/08 and C-144/09

Peter Pammer

v

Reederei Karl Schlüter GmbH & Co. KG

and

Hotel Alpenhof GesmbH

v

Oliver Heller

(References for a preliminary ruling from the Oberster Gerichtshof)

(Jurisdiction in civil and commercial matters – Regulation (EC) No 44/2001 – Article 15(1)(c) and (3) – Jurisdiction over consumer contracts – Contract for a voyage by freighter – Concept of 'package travel' – Contract for a hotel stay – Presentation of the voyage and the hotel on a website – Concept of activity 'directed to' the Member State of the consumer's domicile – Criteria – Accessibility of the website)

Summary of the Judgment

1. *Judicial cooperation in civil matters – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation No 44/2001 – Jurisdiction over consumer contracts*

(Council Regulation No 44/2001, Art. 15(3); Council Directive 90/314, Art. 2(1))

2. *Judicial cooperation in civil matters – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation No 44/2001 – Jurisdiction over consumer contracts – Concept of activities directed to the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of the regulation*

(Council Regulation No 44/2001, Art. 15(1)(c))

1. A contract concerning a voyage by freighter can be a contract of transport which, for an inclusive price, provides for a combination of travel and accommodation within the meaning of Article 15(3) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

That is the case where, apart from transport, the voyage by freighter involves, for an inclusive price, accommodation too and the voyage is for a period of more than 24 hours. Accordingly, such a service fulfils the necessary conditions for a package within the meaning of Article 2(1) of Directive 90/314 on package travel, package holidays and package tours and falls within the definition, set out in Article 15(3) of Regulation No 44/2001 read in the light of Article 2(1) of the directive, of a contract of transport at an inclusive price.

(see paras 45-46, operative part 1)

2. In order to determine whether a trader whose activity is presented on its website or on that of an intermediary can be considered to be 'directing' its activity to the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, it should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with them.

The following matters, the list of which is not exhaustive, are capable of constituting evidence from which it may be concluded that the trader's activity is directed to the Member State of the consumer's domicile, namely the

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international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States. It is for the national courts to ascertain whether such evidence exists.

On the other hand, the mere accessibility of the trader's or the intermediary's website in the Member State in which the consumer is domiciled is insufficient. The same is true of mention of an email address and of other contact details, or of use of a language or a currency which are the language and/or currency generally used in the Member State in which the trader is established.

(see paras 92-94, operative part 2)

JUDGMENT OF THE COURT (Grand Chamber)

7 December 2010 (*)

(Jurisdiction in civil and commercial matters – Regulation (EC) No 44/2001 – Article 15(1)(c) and (3) – Jurisdiction over consumer contracts – Contract for a voyage by freighter – Concept of 'package travel' – Contract for a hotel stay – Presentation of the voyage and the hotel on a website – Concept of activity 'directed to' the Member State of the consumer's domicile – Criteria – Accessibility of the website)

In Joined Cases C-585/08 and C-144/09,

REFERENCES for a preliminary ruling under Articles 68 and 234 EC from the Oberster Gerichtshof (Austria), made by decisions of 6 November 2008 and 26 March 2009, received at the Court on 24 December 2008 and 24 April 2009 respectively, in the proceedings

Peter Pammer

v

Reederei Karl Schlüter GmbH & Co KG (C-585/08),

and

Hotel Alpenhof GesmbH

v

Oliver Heller (C-144/09),

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot, K. Schiemann and J.-J. Kasel, Presidents of Chambers, and A. Rosas, R. Silva de Lapuerta, P. Lindh

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(Rapporteur) and M. Safjan, Judges,

Advocate General: V. Trstenjak,

Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 16 March 2010,

after considering the observations submitted on behalf of:

– Mr Pammer, by C. Neuhuber, Rechtsanwalt,

– Hotel Alpenhof GesmbH, by M. Buchmüller, Rechtsanwalt,

– Mr Heller, by H. Hegen, Rechtsanwalt,

– the Austrian Government, by E. Riedl and G. Kunnert, acting as Agents,

– the Czech Government, by M. Smolek, acting as Agent,

– the Italian Government (C-585/08), by G. Palmieri, acting as Agent, and L. Ventrella, avvocato dello Stato,

– the Luxembourg Government, by C. Schiltz, acting as Agent,

– the Netherlands Government (C-144/09), by C. Wissels and Y. de Vries, acting as Agents,

– the Polish Government (C-585/08), by M. Dowgielewicz, acting as Agent,

– the United Kingdom Government, by H. Walker, acting as Agent, and J. Stratford, Barrister,

– the Commission of the European Communities, by A.-M. Rouchaud-Joët, S. Grünheid and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 May 2010,

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Article 15(1)(c) and (3) 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).

2 The references have been made (i) in proceedings between Mr Pammer and Reederei Karl Schlüter GmbH & Co KG (‘Reederei Karl Schlüter’) concerning the latter’s refusal to reimburse Mr Pammer in full the cost of a voyage by freighter described on the internet which he did not undertake (Case C-585/08) and (ii) in proceedings between Hotel Alpenhof GesmbH (‘Hotel Alpenhof’) and Mr Heller concerning his refusal to pay his hotel bill for a stay booked on the internet (Case C-144/09).

Legal context

Regulation No 44/2001

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3 Recital 13 in the preamble to Regulation No 44/2001 states that, in relation to consumer contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for.

4 In Section 1 (‘General provisions’) of Chapter II of Regulation No 44/2001, Article 2(1) provides:

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

5 Article 5(1)(a) of the regulation lays down the following rule of special jurisdiction:

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

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

6 In Section 4 (‘Jurisdiction over consumer contracts’) of Chapter II of the regulation, Articles 15(1) and (3) and 16(1) and (2) are worded as follows:

‘*Article 15*

1. 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:

(a) it is a contract for the sale of goods on instalment credit terms; or

(b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or

(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.

…

3. This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 16

1. 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.

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.’

7 As is evident from its preamble, Regulation No 44/2001 is the successor to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (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 version – 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’). From its entry into force, on 1 March 2002, the regulation

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replaced the Brussels Convention in relations between the Member States, with the exception of the Kingdom of Denmark.

8 In recital 19 in the preamble to Regulation No 44/2001, the Council of the European Union underlined the need to ensure continuity between the Brussels Convention and the regulation, including as regards the interpretation already given by the Court to provisions of that convention which are equivalent to those of the regulation.

Brussels Convention

9 The first paragraph of 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 Articles 4 and 5(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.’

Regulation (EC) No 593/2008

10 Recital 7 in the preamble to Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6) states that the substantive scope and the provisions of that regulation should be consistent with those of Regulation No 44/2001.

11 Recital 24 in the preamble to Regulation No 593/2008 is worded as follows:

‘With more specific reference to consumer contracts, … consistency with Regulation (EC) No 44/2001 requires both that there be a reference to the concept of directed activity as a condition for applying the consumer protection rule and that the concept be interpreted harmoniously in Regulation (EC) No 44/2001 and this Regulation, bearing in mind that a joint declaration by the Council and the Commission on Article 15 of Regulation (EC) No 44/2001 states that “for Article 15(1)(c) to be applicable it is not sufficient for an undertaking to target its activities at the Member State of the consumer’s residence, or at a number of Member States including that Member State; a contract must also be concluded within the framework of its activities”. The declaration also states that “the mere fact that an Internet site is accessible is not sufficient for Article 15 to be applicable, although a factor will be that this Internet site solicits the conclusion of distance contracts and that a contract has actually been concluded at a distance, by whatever means. In this respect, the language or currency which a website uses does not constitute a relevant factor.”’

12 Article 6(4)(b) of Regulation No 593/2008 provides that the rules in Article 6(1) and (2) on the law applicable to consumer contracts are not to apply to:

‘a contract of carriage other than a contract relating to package travel within the meaning of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours’.

Directive 90/314/EEC

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13 Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59) defines ‘package’ in Article 2(1) as follows:

‘For the purposes of this Directive:

1. “package” means the pre-arranged combination of not fewer than two of the following when sold or offered for sale at an inclusive price and when the service covers a period of more than twenty-four hours or includes overnight accommodation:

(a) transport;

(b) accommodation;

(c) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package.

The separate billing of various components of the same package shall not absolve the organiser or retailer from the obligations under this Directive’.

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-585/08

14 This dispute, between Mr Pammer, who resides in Austria, and Reederei Karl Schlüter, a company established in Germany, concerns a voyage by freighter from Trieste (Italy) to the Far East organised by that company which gave rise to a contract between it and Mr Pammer (‘the voyage contract’).

15 Mr Pammer booked the voyage through Internationale Frachtschiffreisen Pfeiffer GmbH, a company whose seat is in Germany (‘the intermediary company’).

16 The intermediary company, which operates in particular via the internet, described the voyage on its website, indicating that there was a fitness room, an outdoor swimming pool, a saloon and video and television access on the vessel. Reference was also made to three double cabins with shower and toilet, to a separate living room with seating, a desk, carpeting and a fridge, and to stopping at ports of call from which excursions into towns could be undertaken.

17 Mr Pammer refused to embark and sought reimbursement of the sum which he had paid for the voyage, on the ground that that description did not, in his view, correspond to the conditions on the vessel. Since Reederei Karl Schlüter reimbursed only a part of that sum, that is to say, roughly EUR 3 500, Mr Pammer claimed payment of the balance, roughly EUR 5 000, together with interest before an Austrian court of first instance, the Bezirksgericht (District Court) Krems an der Donau.

18 Reederei Karl Schlüter contended that it did not pursue any professional or commercial activity in Austria and raised the plea that the court lacked jurisdiction.

19 That plea was dismissed at first instance by judgment of the Bezirksgericht Krems an der Donau of 3 January 2008, the court holding that it had jurisdiction on the ground that the voyage contract was a consumer contract, namely a contract for package travel, and that the intermediary company had engaged in advertising activity in Austria on behalf of Reederei Karl Schlüter by means of the internet.

20 The appellate court, the Landesgericht (Regional Court) Krems an der Donau, on the other hand, declared by judgment of 13 June 2008 that the Austrian courts lacked jurisdiction, holding that the voyage contract constituted a contract of transport not covered by Section 4 of Chapter II of Regulation No 44/2001. The fact that the proposed voyage, namely a lengthy crossing from Europe to the Far East, involved a degree of comfort did not transform the voyage contract into a consumer contract.

21 Mr Pammer appealed on a point of law against that judgment.

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22 The Oberster Gerichtshof (Supreme Court) harbours doubts regarding the criteria applicable to the concept of ‘package travel’ and observes that in this instance the question arises as to whether the services offered are comparable to a cruise, which would justify the conclusion that there is a ‘package’ and, accordingly, a contract of transport covered by Section 4 of Chapter II of Regulation No 44/2001.

23 According to the Oberster Gerichtshof, if such a contract were involved, Article 15(1)(c) of Regulation No 44/2001 could be applicable and it would then be helpful to know what criteria must be met by a website in order for the activities engaged in by the trader to be capable of being regarded as ‘directed to’ the Member State of the consumer within the meaning of that provision. The Oberster Gerichtshof points out, however, that in the case in point, the first instance court and the appellate court have not made specific findings as to the way in which the voyage contract was concluded, the role played by the website or the links between Reederei Karl Schlüter and the intermediary company.

24 It is in those circumstances that the Oberster Gerichtshof decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Does a “voyage by freighter” constitute package travel for the purposes of Article 15(3) of [Regulation No 44/2001]?

2. If the answer to Question 1 is in the affirmative: is the fact that an intermediary’s website can be consulted on the internet sufficient to justify a finding that activities are being “directed” [to the Member State of the consumer’s domicile] within the meaning of Article 15(1)(c) of Regulation No 44/2001?’

Case C-144/09

25 Hotel Alpenhof, a company which operates the hotel bearing the same name located in Austria, is in dispute with a consumer, Mr Heller, who resides in Germany.

26 After finding out about the hotel from its website, Mr Heller reserved a number of rooms for a period of a week around 1 January 2008. His reservation and the confirmation thereof were effected by email, the hotel’s website referring to an address for that purpose.

27 Mr Heller is stated to have found fault with the hotel’s services and to have left without paying his bill despite Hotel Alpenhof’s offer of a reduction. Hotel Alpenhof then brought an action before an Austrian court, the Bezirksgericht Sankt Johann im Pongau, for payment of a sum of roughly EUR 5 000.

28 Mr Heller raised the plea that the court before which the action had been brought lacked jurisdiction. He submits that, as a consumer, he can be sued only in the courts of the Member State of his domicile, namely the German courts, pursuant to Article 15(1)(c) of Regulation No 44/2001.

29 The Bezirksgericht Sankt Johann im Pongau, by judgment of 14 July 2008, and the Landesgericht Salzburg, ruling on appeal by judgment of 27 November 2008, both dismissed the action before them, holding that the Austrian courts lacked jurisdiction to hear it. They stated that the concept of an activity ‘directed to’ the Member State of the consumer’s domicile covers both the operation of an interactive website enabling a contract to be concluded with the consumer on line, that is to say, electronically on the trader’s site itself, and a website not providing such a possibility and presenting only advertising. According to those courts, even in the latter situation the activity is directed to the consumer in other Member States, given the fact that internet advertising crosses borders. This ‘directing abroad’ can be excluded only by an express statement concerning the trader’s business contact with consumers domiciled in one or more other specified Member States. The activity is also directed to the Member State of the consumer where the latter finds out about the trader’s services through a website and the subsequent reservation is made by means of the email address, geographical address or telephone number indicated on that website.

30 Hotel Alpenhof appealed on a point of law to the Oberster Gerichtshof.

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31 Since the Oberster Gerichtshof was not sure that the Court would answer its second question in Case C-585/08, an answer being dependent upon the answer given to the first question asked in that case, it considered it necessary to stay proceedings and to refer the following question to the Court for a preliminary ruling:

‘Is the fact that a website of the party with whom a consumer has concluded a contract can be consulted on the internet sufficient to justify a finding that an activity is being “directed” within the meaning of Article 15(1)(c) of [Regulation No 44/2001]?’

32 Given the similarity between the second question in Case C-585/08 and the only question in Case C-144/09, the two cases should be joined for the purposes of the present judgment pursuant to Article 43 of the Rules of Procedure of the Court.

Consideration of the questions

33 It should be stated first of all that, having regard to the date of the references for a preliminary ruling, the Court has jurisdiction to rule on the interpretation of Regulation No 44/2001 by virtue of Article 68 EC since the questions have been asked by the Oberster Gerichtshof, a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law.

The first question in Case C-585/08

34 By its first question in Case C-585/08, the referring court asks whether a contract concerning a voyage by freighter, such as that at issue in the main proceedings, is a contract of transport envisaged by Article 15(3) of Regulation No 44/2001.

35 Under Article 15(3) of Regulation No 44/2001, only contracts of transport which, for an inclusive price, provide for a combination of travel and accommodation are subject to the rules of jurisdiction laid down in Section 4 of Chapter II of the regulation.

36 The contracts of transport thereby referred to are close to those corresponding to the concept of ‘package travel’ for the purposes of Directive 90/314, a concept which the Oberster Gerichtshof indeed expressly mentions in its order for reference.

37 As the Court has already held, for a service to qualify as a package within the meaning of Article 2(1) of Directive 90/314, it is enough if, first, it combines tourist services sold at an inclusive price including two of the three services referred to in that provision, namely transport, accommodation and other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package, and second, it covers a period of more than 24 hours or includes overnight accommodation (see Case C-400/00 *Club-Tour* [2002] ECR I-4051, paragraph 13).

38 In order to answer the question submitted, it should therefore be determined whether the concept of ‘package travel’, to which the referring court makes reference and which forms part of the subject-matter specified in Article 1 of Directive 90/314, is relevant in interpreting Article 15(3) of Regulation No 44/2001.

39 That term does not appear in Article 15(3) of Regulation No 44/2001, although the regulation postdates Directive 90/314. As the Advocate General has observed in point 47 of her Opinion, the terms used by the European Union legislature for the purposes of Regulation No 44/2001 are identical to those that were in the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1). In 2008, that convention was replaced by Regulation No 593/2008, which, in Article 6(4)(b), makes express reference to the concept of ‘package travel’ within the meaning of Directive 90/314.

40 Article 6 of Regulation No 593/2008 relates to the law applicable to consumer contracts and the purpose of Article 6(4)(b) is that consumer contracts should not include contracts of carriage, with the exception of those which correspond to the concept of ‘package travel’ for the purposes of Directive 90/314.

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41 It follows from the parallel between the contracts of transport mentioned in Article 15(3) of Regulation No 44/2001 and the contracts of carriage referred to in Article 6(4)(b) of Regulation No 593/2008 that the European Union legislature intended to cover the same types of contracts, that is to say those that may be governed by the rules protecting consumers respectively laid down in those two regulations.

42 That objective is also apparent from recital 7 in the preamble to Regulation No 593/2008, which states that the substantive scope and the provisions of that regulation should be consistent with those of Regulation No 44/2001.

43 It is therefore appropriate to interpret Article 15(3) of Regulation No 44/2001 in the light of the corresponding provision in Regulation No 593/2008 and to refer to the concept of 'package travel' to which the latter regulation makes reference. Indeed, first, the concept in question is contained in a directive designed specifically to protect consumers in relation to package travel in particular. Second, the more recent regulation, namely Regulation No 593/2008, makes express reference to that concept. Finally, in the explanatory memorandum accompanying the proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348 final), the Commission of the European Communities used the term 'package holiday' and expressly referred to Directive 90/314 to explain its proposed Article 15(3), the wording of which remained unchanged in the final version of Regulation No 44/2001.

44 It must therefore be determined whether a voyage by freighter such as that at issue in the main proceedings corresponds to the concept of 'package' as defined in Directive 90/314.

45 It is not in dispute that, apart from transport, that voyage by freighter involved, for an inclusive price, accommodation too and that the voyage was for a period of more than 24 hours. Accordingly, such a service fulfils the necessary conditions for a 'package' within the meaning of Article 2(1) of Directive 90/314 and falls within the definition, set out in Article 15(3) of Regulation No 44/2001 read in the light of Article 2(1) of the directive, of a contract of transport at an inclusive price.

46 The answer to the first question in Case C-585/08 therefore is that a contract concerning a voyage by freighter, such as that at issue in the main proceedings, is a contract of transport which, for an inclusive price, provides for a combination of travel and accommodation within the meaning of Article 15(3) of Regulation No 44/2001.

The second question in Case C-585/08 and the only question in Case C-144/09

47 By its second question in Case C-585/08 and its only question in Case C-144/09, the referring court asks, in essence, first, on the basis of what criteria a trader whose activity is presented on its website or on that of an intermediary can be considered to be 'directing' its activity to the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of Regulation No 44/2001, and second, whether the fact that those sites can be consulted on the internet is sufficient for that activity to be regarded as such.

48 As is apparent from the orders for reference, this question is asked in the context of two separate disputes.

49 In Case C-585/08, the dispute involves a trader, Reederei Karl Schlüter, which concluded a contract with a consumer, Mr Pammer, domiciled in a Member State other than that in which that company is established. It does not appear to be in dispute that the contract falls within the scope of the trader's commercial activities.

50 According to the observations submitted to the Court by Mr Pammer, he found out that the voyage existed by consulting the intermediary company's website on which various voyages were advertised. He initially contacted the intermediary company by email to obtain further information and subsequently booked the voyage by post.

51 In Case C-144/09, the dispute involves a trader, Hotel Alpenhof, which concluded a contract falling within the scope of its commercial activities with a consumer, Mr Heller, domiciled in a Member State other than

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that in which the hotel concerned is located. It is not in dispute that Mr Heller found out that the hotel existed and made and confirmed his reservation at a distance, by means of the internet.

52 In these two cases, the Oberster Gerichtshof is seeking to decide whether the trader directed its activity to the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of Regulation No 44/2001, in order to determine which court has jurisdiction to give judgment on the disputes in the main proceedings.

53 Article 15(1)(c) of Regulation No 44/2001 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 of 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 (see, to this effect, Case C-464/01 *Gruber* [2005] ECR I-439, paragraph 34).

54 If the trader's activity were to be regarded as 'directed to' the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of Regulation No 44/2001, it would follow, in Case C-585/08 between Mr Pammer and Reederei Karl Schlüter, that the Austrian courts would have jurisdiction, in accordance with Article 16(1) of the regulation, should the consumer elect to bring the dispute before them and not before the courts of the Member State in which the defendant, Reederei Karl Schlüter, is established, that is to say, the German courts. In Case C-144/09, since the consumer, Mr Heller, is domiciled in Germany, the courts of that State would have jurisdiction, in accordance with Article 16(2) of the regulation, and not those of the Member State in which Hotel Alpenhof is located, which is Austria.

55 Regulation No 44/2001 does not define the concept in Article 15(1)(c) of activity 'directed to' the Member State of the consumer's domicile. This concept, like those in Article 13 of the Brussels Convention, which Article 15 of the regulation replaces, must be interpreted independently, by reference principally to the system and objectives of the regulation, in order to ensure that it is fully effective (see Case C-96/00 *Gabriel* [2002] ECR I-6367, paragraph 37).

56 It is necessary in this connection, as indicated in recital 19 in the preamble to Regulation No 44/2001, to have regard to the interpretation which the Court has placed on Article 13 of the Brussels Convention, whilst taking account of the changes which have been made to that article by the regulation.

57 The Court has already held that, in the system established by Regulation No 44/2001, Article 15(1)(c) occupies, as it is clear from recital 13 in the preamble to the regulation, the same place and fulfils the same function of protecting the weaker party as does point 3 of the first paragraph of Article 13 of the Brussels Convention (Case C-180/06 *Ilsinger* [2009] ECR I-3961, paragraph 41).

58 As regards the latter provision, the Court has indeed repeatedly held that the special rules introduced by the provisions of the Brussels Convention on jurisdiction over consumer contracts 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, commercial, party to the contract (see, inter alia, *Gruber*, paragraph 34, and Case C-27/02 *Engler* [2005] ECR I-481, paragraph 39).

59 However, the Court has also stated – in *Ilsinger*, paragraph 48 – that the wording of Article 15(1) of Regulation No 44/2001 is not identical in every respect to that of the first paragraph of Article 13 of the Brussels Convention. In particular, it held in paragraph 50 of that judgment that the conditions for application which consumer contracts must fulfil are now worded more generally than they were, in order to ensure better protection for consumers with regard to new means of communication and the development of electronic commerce.

60 The European Union legislature has thus removed the conditions requiring, first, the trader to have addressed a specific invitation to the consumer or to have advertised in the State of the consumer's domicile and, second, the consumer to have taken in that State the steps necessary for the conclusion of the contract, replacing them with conditions applicable to the trader alone. The trader must pursue its commercial activities in the Member State of the consumer's domicile or, by any means, direct such

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activities to that Member State or to several States including that Member State, and the contract must fall within the scope of such activities.

61 The wording of Article 15(1)(c) must be considered to encompass and replace 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.

62 This change, which strengthens consumer protection, was made because of the development of internet communication, which makes it more difficult to determine the place where the steps necessary for the conclusion of the contract are taken and at the same time increases the vulnerability of consumers with regard to traders’ offers.

63 It is not clear, however, from Article 15(1)(c) of Regulation No 44/2001 whether the words ‘directs such activities to’ refer to the trader’s intention to turn towards one or more other Member States or whether they relate simply to an activity turned *de facto* towards them, irrespective of such an intention.

64 The question which this raises is whether intention on the part of the trader to target one or more other Member States is required and, if so, in what form such an intention must manifest itself.

65 That intention is implicit in certain methods of advertising.

66 The Court has held that ‘advertising’ and ‘specific invitation addressed’ within the meaning of Article 13 of the Brussels Convention 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 (*Gabriel*, paragraph 44).

67 The classic forms of advertising expressly referred to in the previous paragraph involve the outlay of, sometimes significant, expenditure by the trader in order to make itself known in other Member States and they demonstrate, on that very basis, an intention of the trader to direct its activity towards those States.

68 That intention is not, on the other hand, always present in the case of advertising by means of the internet. Since this method of communication inherently has a worldwide reach, advertising on a website by a trader is in principle accessible in all States, and, therefore, throughout the European Union, without any need to incur additional expenditure and irrespective of the intention or otherwise of the trader to target consumers outside the territory of the State in which it is established.

69 It does not follow, however, that the words ‘directs such activities to’ must be interpreted as relating to a website’s merely being accessible in Member States other than that in which the trader concerned is established.

70 Whilst there is no doubt that the aim of Articles 15(1)(c) and 16 of Regulation No 44/2001 is to protect consumers, that does not imply that that protection is absolute (see, by analogy, with regard to Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31), Case C-215/08 *E. Friz* [2010] ECR I-0000, paragraph 44).

71 As the Advocate General has observed in point 64 of her Opinion, if that had been the intention of the European Union legislature, it would have laid down as a condition for the application of the rules relating to consumer contracts not the ‘directing of activities to a Member State’ but the mere existence of the website.

72 Whilst seeking to confer further protection on consumers, the European Union legislature did not go as far as to lay down that mere use of a website, which has become a customary means of engaging in trade, whatever the territory targeted, amounts to an activity ‘directed to’ other Member States which triggers application of the protective rule of jurisdiction referred to in Article 15(1)(c) of Regulation No 44/2001.

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73 It is accordingly clear from the proposal for a regulation that is mentioned in paragraph 43 of the present judgment that the European Union legislature rejected a suggestion by the Commission seeking the insertion, in the preamble of Regulation No 44/2001, of a recital according to which the marketing of goods or services by electronic means accessible in a Member State constitutes an activity 'directed to' that State.

74 This interpretation is also borne out by the joint declaration of the Council and the Commission at the time of the adoption of Regulation No 44/2001, reproduced in recital 24 in the preamble to Regulation No 593/2008, according to which the mere fact that a website is accessible is not sufficient for Article 15(1)(c) of Regulation No 44/2001 to be applicable.

75 Consequently, it must be held that, in order for Article 15(1)(c) of Regulation No 44/2001 to be applicable, the trader must have manifested its intention to establish commercial relations with consumers from one or more other Member States, including that of the consumer's domicile.

76 It must therefore be determined, in the case of a contract between a trader and a given consumer, whether, before any contract with that consumer was concluded, there was evidence demonstrating that the trader was envisaging doing business with consumers domiciled in other Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with those consumers.

77 Such evidence does not include mention on a website of the trader's email address or geographical address, or of its telephone number without an international code. Mention of such information does not indicate that the trader is directing its activity to one or more other Member States, since that type of information is, in any event, necessary to enable a consumer domiciled in the Member State in which the trader is established to make contact with it.

78 Furthermore, some of that information has become mandatory in the case of services offered on line. As the Court has already held, by virtue of Article 5(1)(c) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1), a service provider is required to supply to recipients of the service before the conclusion of a contract with them, in addition to its email address, other information which allows the service provider to be contacted rapidly and communicated with in a direct and effective manner (Case C-298/07 *Bundesverband der Verbraucherzentralen und Verbraucherverbände* [2008] ECR I-7841, paragraph 40). That obligation applies whichever the Member State to which the trader directs its activity and even if its activity is directed solely to the Member State in which it is established.

79 It follows that the distinction drawn by certain governments and certain parties that submitted observations to the Court between websites enabling the trader to be contacted electronically, indeed even the contract to be concluded on line by means of an 'interactive' site, and websites not offering that possibility, a distinction according to which only the former are to be included in the category of sites that enable pursuit of an activity 'directed to' other Member States, is not decisive. If a geographical address or other contact details for the trader are given, the consumer can in fact contact it in order to conclude a contract. This opportunity for contact exists, whether or not the trader has envisaged doing business with consumers domiciled in Member States other than that in which it is established.

80 Among the evidence establishing whether an activity is 'directed to' the Member State of the consumer's domicile are all clear expressions of the intention to solicit the custom of that State's consumers.

81 Clear expressions of such an intention on the part of the trader include mention that it is offering its services or its goods in one or more Member States designated by name. The same is true of the disbursement of expenditure on an internet referencing service to the operator of a search engine in order to facilitate access to the trader's site by consumers domiciled in various Member States, which likewise demonstrates the existence of such an intention.

82 However, a finding that an activity is 'directed to' other Member States does not depend solely on the existence of such patent evidence. In this connection, it should be noted that, by its legislative resolution

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on the proposal for a regulation that is referred to in paragraph 43 of the present judgment (OJ 2001 C 146, p. 101), the European Parliament rejected wording stating that the trader had to have ‘purposefully directed his activity in a substantial way’ to other Member States or to several countries, including the Member State of the consumer’s domicile. Such wording would have resulted in a weakening of consumer protection by requiring proof of an intention on the part of the trader to develop activity of a certain scale with those other Member States.

83 Other items of evidence, possibly in combination with one another, are capable of demonstrating the existence of an activity ‘directed to’ the Member State of the consumer’s domicile. In cases such as those in the main proceedings, the following features, which have been invoked before the Court and the list of which is not exhaustive, would, subject to the relevant national court ascertaining that they are present, constitute evidence of an activity ‘directed to’ one or more other Member States within the meaning of Article 15(1)(c) of Regulation No 44/2001: 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.

84 So far as concerns the language or the currency used, the joint declaration of the Council and the Commission mentioned in paragraph 11 of the present judgment and reproduced in recital 24 in the preamble to Regulation No 593/2008 states that they do not constitute relevant factors for the purpose of determining whether an activity is directed to one or more other Member States. That is indeed true where they correspond to the languages generally used in the Member State from which the trader pursues its activity and to the currency of that Member State. If, on the other hand, the website permits consumers to use a different language or a different currency, the language and/or currency can be taken into consideration and constitute evidence from which it may be concluded that the trader’s activity is directed to other Member States.

85 In a case such as that between Hotel Alpenhof and Mr Heller, there would appear to be several items of evidence amongst those set out in paragraphs 83 and 84 of the present judgment such as to demonstrate that the trader directed its activity to one or more Member States other than the Republic of Austria. It is, however, for the relevant national court to ascertain that that is the case.

86 Hotel Alpenhof contends, however, that the contract with the consumer is concluded on the spot and not at a distance, as the room keys are handed over and payment is made on the spot, and that accordingly Article 15(1)(c) of Regulation No 44/2001 cannot apply.

87 In that regard, the fact that the keys are handed over to the consumer and that payment is made by him in the Member State in which the trader is established does not prevent that provision from applying if the reservation was made and confirmed at a distance, so that the consumer became contractually bound at a distance.

88 In Case C-585/08, between Mr Pammer and Reederei Karl Schlüter, the referring court has been able to provide only a small amount of information concerning that company’s activity, the intermediary company’s site and the relationship between the two companies.

89 The fact that the website is the intermediary company’s and not the trader’s site does not preclude the trader from being regarded as directing its activity to other Member States, including that of the consumer’s domicile, since that company was acting for and on behalf of the trader. It is for the relevant national court to ascertain whether the trader was or should have been aware of the international dimension of the intermediary company’s activity and how the intermediary company and the trader were linked.

90 The international nature of the activity in question, namely the organisation of voyages by freighter from Europe to the Far East, constitutes relevant evidence, but does not in itself enable it to be concluded that the trader directed its activity to other Member States, including that of the consumer’s domicile. The

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trader's activity would involve such a feature even if the trader, by itself or through the intermediary company, pursued its activity only in Germany and did not direct it to other Member States. Consequently, other evidence, in particular from among the evidence referred to in paragraphs 83 and 84 of the present judgment, must necessarily be present, such as mention of telephone numbers with the international code, the use of a language other than German or mention of an international clientele composed of customers domiciled in various Member States, in order to establish that the trader was envisaging doing business with customers domiciled in the European Union, whatever the Member State.

91 On the other hand, mention of the email address or geographical address of the intermediary company or the trader does not constitute relevant evidence, as is clear from paragraph 77 of the present judgment. The same is true of use of the German language and the ability to book a voyage in that language when that is the trader's language.

92 In view of the foregoing considerations, the answer to be given to the referring court is that, in order to determine whether a trader whose activity is presented on its website or on that of an intermediary can be considered to be 'directing' its activity to the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of Regulation No 44/2001, it should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with them.

93 The following matters, the list of which is not exhaustive, are capable of constituting evidence from which it may be concluded that the trader's activity is directed to the Member State of the consumer's domicile, namely the international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States. It is for the national courts to ascertain whether such evidence exists.

94 On the other hand, the mere accessibility of the trader's or the intermediary's website in the Member State in which the consumer is domiciled is insufficient. The same is true of mention of an email address and of other contact details, or of use of a language or a currency which are the language and/or currency generally used in the Member State in which the trader is established.

Costs

95 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Grand Chamber) hereby rules:

1. **A contract concerning a voyage by freighter, such as that at issue in the main proceedings in Case C-585/08, is a contract of transport which, for an inclusive price, provides for a combination of travel and accommodation within the meaning of Article 15(3) 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.**

2. **In order to determine whether a trader whose activity is presented on its website or on that of an intermediary can be considered to be 'directing' its activity to the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of Regulation No 44/2001, it**

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should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with them.

The following matters, the list of which is not exhaustive, are capable of constituting evidence from which it may be concluded that the trader's activity is directed to the Member State of the consumer's domicile, namely the international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States. It is for the national courts to ascertain whether such evidence exists.

On the other hand, the mere accessibility of the trader's or the intermediary's website in the Member State in which the consumer is domiciled is insufficient. The same is true of mention of an email address and of other contact details, or of use of a language or a currency which are the language and/or currency generally used in the Member State in which the trader is established.

[Signatures]

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* Language of the case: German.