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## **Jurisdiction Over B2C e-Commerce Contracts**

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This week the highest European Union court (ECJ) handed down a long-awaited judgment concerning the evergreen question as to which courts may assume jurisdiction over B2C contracts concluded via or due to a web presence of the seller company. While obviously only binding within the European Union (EU), the decision applies largely common sense points which might be useful to argue the issue in other jurisdictions. The following are the main considerations established by the ECJ to determine when a company has sufficiently targeted foreign consumers to justify jurisdiction at the consumer's domicile (which under EU rules is partially exclusive for the benefit of the consumer – she/he may only be sued there, but may elect to sue the company also at the company's place):

- activities (website) of an intermediary are attributed to the company
- circumstances must show that before conclusion of the contract the company envisaged to do business with consumers domiciled in the other country
- mere accessibility of the company website abroad in the consumer's country is insufficient
- relevant factors to be taken into account and weighed include (non-exhaustive list):
  - the international nature of the company activity at issue (e.g., tourism sector),
  - use of a language or a currency other than the language or currency generally used in the company's country with the possibility of making and confirming the reservation in that other language,
  - mention of contact phone numbers with an international code,
  - directions how to physically reach the company from abroad,
  - company pays for internet referencing service (search engine) in order to facilitate access to the company's site (or that of its intermediary) by consumers domiciled in the other country,
  - use of a top-level domain name other than that of the company's country (this is potentially broad, since the reasons mention the ".com" domain as a relevant factor; that factor alone would likely not be decisive, but could tilt the balance in otherwise unclear situations),

- mention of an international clientele composed of customers domiciled in various countries (e.g., website contains feedback of customers from various countries)

Reference: [European Court of Justice, Judgment of 7 December 2010, Joined Cases C 585/08 and C 144/09 \(Pammer\)](#)

Holdings (extracts; emphasis added):

"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.

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."

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