Het Europese Hof van Justitie oordeelde over het recht van de consument om voor zijn eigen lidstaat te dagvaarden wanneer de consumentenovereenkomst niet op afstand werd gesloten

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The new bill of 24 September 2012 regarding market practices contains some clarifications about sales, with the aim of ending the discussion about their compatibility with EU law. It is, however, questionable whether the desired effect will be achieved.

In the EU, the rules concerning jurisdiction in civil and commercial matters are regulated by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the so-called «Brussels I Regulation».

This Regulation states as a basic principle regarding jurisdiction that persons domiciled in an EU Member State shall, whatever their nationality, be sued in the court of that Member State (Article 2). Regarding consumer contracts, however, the Regulation allows for consumers to bring proceedings against the other party to a contract in the courts of the Member State where the consumer is domiciled, when 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. (Article 15 1 c) and Article 16.)

It is clear from recital 13 in the preamble to the Regulation that this derogation has the function of protecting the consumer as the weaker party.

Most of the EU Court of Justice decisions regarding this «consumer contracts» derogation concern contracts concluded on the internet. Since the exception only applies when the trader specifically pursued commercial and professional activities in the Member State of the consumer
and websites are accessible from everywhere, traders often offer their goods and services in other EU Member States without being physically present there and consumers from other Member States can access these websites, even when the trader never intended to develop trade in that Member State.

The EU Court of Justice has developed extensive case law regarding the right of consumers to sue in the courts of their own Member States when concluding a contract over the internet. The idea set forward in this case law is that the Article 15 1 c) derogation only applies when the trader intended to trade and conclude a consumer contract at a distance, in that Member State.

In case C-190/11, the Court was asked by the Oberster Gerichtshof (Supreme Court) of Austria if the consumer derogation as provided in Article 15 1 c) of the Brussels I Regulation must be interpreted as requiring the contract between the consumer and the trader to be concluded at a distance.

Even though the joint statement of the Council and the Commission regarding Article 15 and recital 24 in the preamble to the Rome I Regulation, which cites the joint statement, mentioned the need for the consumer contracts to be concluded at a distance, the Court decided that Article 15 1 c) of the Brussels I Regulation does not expressly make its application conditional on the fact that the contracts falling within its scope have been concluded at a distance.