

Opinion of Advocate General Bobek on Articles 15 and 16 Regulation No 44/2001 (Schrems, Case C-498/16)

Written by Stephan Walter, Research Fellow at the Research Center for Transnational Commercial Dispute Resolution (TCDR), EBS Law School, Wiesbaden, Germany.

Today, Advocate General Bobek delivered his opinion in *Schrems* (Case C-498/16) on the interpretation of Articles 15 and 16 of Regulation No 44/2001.

The Austrian Supreme Court referred two preliminary questions to the CJEU:

(1) Is Article 15 of [Regulation No 44/2001] to be interpreted as meaning that a “consumer” within the meaning of that provision loses that status, if, after the comparatively long use of a private Facebook account, he publishes books in connection with the enforcement of his claims, on occasion also delivers lectures for remuneration, operates websites, collects donations for the enforcement of his claims and has assigned to him the claims of numerous consumers on the assurance that he will remit to them any proceeds awarded, after the deduction of legal costs?

(2) Is Article 16 of [Regulation No 44/2001] to be interpreted as meaning that a consumer in a Member State can also invoke at the same time as his own claims arising from a consumer supply at the claimant’s place of jurisdiction the claims of others consumers on the same subject who are domiciled

(a) in the same Member State,

(b) in another Member State,

or

(c) in a non-member State,

if the claims assigned to him arise from consumer supplies involving the same defendant in the same legal context and if the assignment is not part of a professional or trade activity of the applicant, but rather serves to ensure the joint enforcement of claims?

With regard to the first preliminary question, AG Bobek found that

42. (...) the central element upon which consumer status for the purpose of Articles 15 and 16 of Regulation No 44/2001 is to be assessed is the nature and aim of contract to which the claim(s) relate. In complex cases where the nature and aim of a contract is mixed, namely, that it is both private and professional, there must be an assessment of whether the professional 'content' can be considered as marginal. If that is indeed the case, consumer status may still be retained. Moreover, it ought not be excluded that in certain exceptional situations, due to the indeterminate content and the potentially long duration of the contract, the status of one of the parties may shift over time.

62. (...) the carrying out of activities such as publishing, lecturing, operating websites, or fundraising for the enforcement of claims does not entail the loss of consumer status for claims concerning one's own Facebook account used for private purposes.

However, AG Bobek answered the second question in the negative. He argued that

118. (...) on the basis of Article 16(1) of Regulation No 44/2001 a consumer cannot invoke, at the same time as his own claims, claims on the same subject assigned by other consumers domiciled in other places of the same Member State, in other Member States or in non-member States.

The very interesting opinion can be downloaded [here](#).