

Does the occurrence of purely financial damage in a Member State justify in itself the jurisdiction of the courts of that State pursuant to Article 5 (3) of Regulation No 44/2001?

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Universal Music, a record company established in the Netherlands, acquired the Czech company B&M in the course of 1998. The contracts providing for the sale and delivery of B&M's shares were drawn up by a Czech law firm. Because of negligence by an associate of the Czech law firm the contracts provided a much higher sale price for B&M shares than intended by Universal Music. This led to a dispute between Universal Music and B&M's shareholders which was brought before an arbitration board in the Czech Republic, following a settlement between the parties in 2005. Because of this settlement Universal Music allegedly suffered financial damage of some 2.5 million EUR. Subsequently Universal Music has brought proceedings against the Czech lawyers before the Dutch courts. The Dutch courts have requested the CJEU to answer the question, whether Article 5 (3) of Regulation No 44/2001 must be interpreted as meaning that the *place where the harmful event occurred* can be construed as being the place, in a Member State, where the damage occurred, if that damage consists exclusively of financial damage which is the direct result of an unlawful act committed in another Member State. However the only connecting factor to the Netherlands, besides Universal Music being established in that state, was that the bank account from which Universal Music paid the settlement amount was situated in *Baarn* (The Netherlands). Thus the CJEU now finds that such "purely financial damage which occurs directly in the applicant's bank account can not, in itself, be qualified as a 'relevant connecting factor', pursuant to Article 5(3) of Regulation No 44/2001". Obviously in order not to contradict its ruling in „*Kolassa*“

(C-375/13) the CJEU clarifies that only where “other circumstances specific to the case also contribute to attributing jurisdiction to the courts for the place where a purely financial damage occurred, that such damage could, justifiably, entitle the applicant to bring the proceedings before the courts for that place”. Referring to „*Kronhofer*“ the CJEU further states that the *place where the harmful event occurred* “does not refer to the place where the applicant is domiciled and where his assets are concentrated by reason only of the fact that he has suffered financial damage there resulting from the loss of part of his assets which arose and was incurred in another Member State”. As a consequence the place where the loss of the claimant’s assets occurs and the place where his assets are concentrated only can be qualified as the *place where the harmful event occurred*, pursuant to Article 5 (3), if other circumstances specific to the case also contribute to attributing jurisdiction to the courts for these places.

The full judgment is available at:
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=180329&pageIndex=0&doclang=DE&mode=req&dir=&occ=first&part=1>