ECJ on „civil and commercial matters“ under Article 1 (1) Brussels Ibis Regulation, judgment of 16 July 2020, C-73/19 – Movic

The Court decided that Article 1(1) of Regulation (EU) No 1215/2012 of Brussels Ibis Regulation must be interpreted as meaning that an action where the opposing parties are the authorities of a Member State and businesses established in another Member State, in which those authorities seek, primarily, findings of infringements constituting allegedly unlawful unfair commercial practices and an order for the cessation of such infringements and, as ancillary measures, an order for publicity measures and the imposition of a penalty payment, falls within the scope of the concept of ‘civil and commercial matters’ in that provision.

As AG Spzunar had proposed (see post on CoL), the Court held that

> *[t]o hold proceedings brought by a public authority are outside the scope of Regulation No 1215/2012 merely because of the use by that authority of evidence gathered by virtue of its public powers would undermine the practical effectiveness of one of the models of implementation of consumer protection envisaged by the EU legislature. In that model, in contrast to the one in which it is the administrative authority itself that determines the consequences that are to follow from an infringement, in circumstances such as those in the main proceedings the public authority is assigned the task of defending the interests of consumers before the courts.*

The Court explained:

> *[26] The question posed by the referring court relates, in essence, to the determination of which court has jurisdiction to rule on actions brought by the authorities of a Member State against companies in another Member State that*

seek to identify and stop allegedly unlawful commercial practices of those companies that are aimed at consumers residing in the former Member State. (…).

[35] [T]he Court has repeatedly held that, although certain actions where the opposing parties are a public authority and a person governed by private law may come within the scope of Regulation No 1215/2012, it is otherwise where the public authority is acting in the exercise of its public powers (see, to that effect, judgments of 11 April 2013, Sapir and Others, C?645/11, EU:C:2013:228, paragraph 33 and the case-law cited, and of 12 September 2013, Sunico and Others, C?49/12,EU:C:2013:545, paragraph 34). (…).

[37] [I]n order to determine whether or not a matter falls within the scope of the concept of 'civil and commercial matters' within the meaning of Article 1(1) of Regulation No 1215/2012, and, consequently, whether it comes within the scope of that regulation, it is necessary to determine the nature of the legal relationships between the parties to the action and the subject matter of the action or,alternatively, the basis of the action and the detailed rules applicable to it (see, to that effect, judgments of 14 October 1976, LTU, 29/76, EU:C:1976:137, paragraph 4, and of 28 February 2019, Gradbeništvo Korana, C?579/17, EU:C:2019:162, paragraph 48 and the case-law cited).

[41] [T]he Court has previously held that an action concerning the prohibition on traders using unfair terms, within the meaning of Directive 93/13, in their contracts with consumers, in so far as it seeks to make relationships governed by private law subject to review by the courts, falls within the concept of a 'civil matter' (see, to that effect, judgment of 1 October 2002, Henkel, C?167/00, EU:C:2002:555, paragraph 30). That case-law has subsequently been reiterated and extended more generally to cessation orders under Directive 2009/22 (see, to that effect, judgment of 28 July 2016, Verein für Konsumenteninformation, C?191/15, EU:C:2016:612, paragraphs 38 and 39).

[42] It follows that actions aimed at determining and stopping unfair commercial practices, within the meaning of Directive 2005/29, are also 'civil and commercial matters' within the meaning of Article 1(1) of Regulation No 1215/2012.

[48] In the present case, it is apparent from the wording of Article 14(1) of the

> *Law of 30 July 2013 and Article XVII.7 of the CEL that the Belgian authorities, in the same way as interested parties and consumer protection associations, can apply to the President of the rechtbank van koophandel (Commercial Court), subsequently the ondernemingsrechtbank (Companies Court), for a finding that the relevant national legislation has been infringed and for the making of a cessation order.*
>
> *[49] It follows that the procedural position of the Belgian authorities is, in that regard, comparable to that of a consumer protection association.*

A number of points were raised by the defendants against this characterization (e.g. no need to show an interest in bringing proceedings; acting in a general interest; use of evidence gathered by exercising public powers; ancillary publicity and penalty measures against the infringer), but none of them had success.

The full text of the judgment is here.