

Opinion of Advocate General Campos Sánchez-Bordona in the case C-343/19, Verein für Konsumenteninformation: ‘Dieselgate’-related claims and forum of the place where the damage occurred under Article 7(2) of the Brussels I bis Regulation

A non-profit consumer protection association established in Austria is bringing an action before the Austrian courts against a motor vehicle manufacturer with its registered office in Germany. The association asserts claims for damages, assigned to it by the purchasers of motor vehicles, and seeks the payment of a fixed amount and a declaration establishing the liability of the defendant for all future damage. These claims are related to an alleged emission manipulation: had the purchasers been aware of the manipulation, they would have not purchased the vehicles or would have purchased them at a reduced price.

To establish the international jurisdiction of the Austrian court, the associations relies on Article 7(2) of the Brussels I bis Regulation. It argues, in particular, that the damage materialised in the form of a reduction in the value of the purchasers’ assets, at the earliest upon the purchase and transfer of the vehicles within the Austrian territory.

In those circumstances, the national court refers the matter to the Court of Justice and asks **whether the ‘place where the harmful event occurred’ within the meaning of Article 7(2) of the Brussels I bis Regulation may be construed as the place in a Member State where the damage occurred,**

when that damage consists exclusively of financial damage that is the direct result of an unlawful act committed in another Member State.

This issue is thoroughly analyzed in today's Opinion of Advocate General Campos Sánchez-Bordona. At point 81, the Opinion concludes:

Article 7(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, where an unlawful act committed in a Member States consists of the manipulation of a product, the existence of which is concealed and only becomes apparent after the product is purchased in another Member State for a price that is higher than its actual value:

- *a purchaser of that product, who retains the product as part of his or her assets when the defect is made public, is a direct victim;*
- *the place where the event giving rise to the damage occurred is the place where the event which created the defect in the product took place; and*
- *the damage occurred in the place, situated in a Member State, where the victim purchased the product from a third party, provided that the other circumstances confirm the attribution of jurisdiction to the courts of that State. Those circumstances must include, at all events, one or more factors which enabled the defendant reasonably to foresee that an action to establish civil liability as a result of his or her actions might be brought against him or her by future purchasers who acquire the product in that place.*

Interestingly, in particular at points 65 et seq., the Opinion addresses the doubts raised by the referring court and relating to the question whether, in the present case, the German courts are not better placed to examine the association's action. If anything, that would be tantamount to the implantation of some variation of the forum non conveniens doctrine within Article 7(2) of the Brussels I bis Regulation in order to give preference either to 'Handlungsort' or 'Erfolgort'. However, according to the final point of the Opinion:

Article 7(2) of [the Brussels I bis Regulation] must be interpreted as meaning that it does not authorise the court for the place where the damage occurred to

determine that it does or does not have jurisdiction based on an appraisal of the other circumstances of the case, aimed at identifying which court — itself or the court for the place of the event giving rise to the damage — is best placed, in terms of proximity and foreseeability, to decide on the dispute.'

Instead of presenting a synthesis of the Opinion (press release can be found [here](#)), it is best to recommend giving it an attentive lecture. Definitely a must-read.