

Opinion of AG Campos Sánchez-Bordona in the case C-709/19, Vereniging van Effectenbezitters: jurisdiction in matters of non-contractual liability in connection with investments in securities and collective actions

In his Opinion delivered last Thursday, AG Campos Sánchez-Bordona presents his take on determination of the place where the damage occurred ('Erfolgsort') under Article 7(2) of the Brussels I bis Regulation in the context of a collective action for declaration of liability in connection with investments in securities. The Opinion provides further clarification in relation to the case law established by the Court of Justice in the cases Kolassa, Universal Music International Holding and Löber.

Factual context

An oil and gas company established in United Kingdom, whose ordinary shares are listed on the stock exchanges in that State and in Germany, leases an oil rig in the Gulf of Mexico. In 2010, an explosion occurs on this oil rig, causing serious environmental damage.

Before the courts in the Netherlands, an association established in this Member State brings a collective action for a declaratory judgment against the oil and gas company on behalf of all persons who bought, held or sold the ordinary shares through an investment account in the Netherlands. It argues that the oil and gas company acted unlawfully towards its shareholders inasmuch as it made incorrect, incomplete and misleading statements about the circumstances pertaining to, inter alia, the aforementioned explosion resulting in an oil spill.

The first instance court considers that it lacks jurisdiction to rule on the action in

question. The second instance court upholds this decision.

The association lodges an appeal in cassation with the Supreme Court of the Netherlands, which refers questions to the Court of Justice for a preliminary ruling.

Opinion of Advocate General

It is worth noting at the outset that the Opinion of 17 December 2020 does not address all the questions referred to the Court. As it states at its point 17, the Opinion elaborates only on two first questions of the Supreme Court of the Netherlands, relating to, firstly, the determination of the place where the damage occurred in the context of the action in the main proceedings and, secondly, the potential impact of the collective nature of that action on such determination.

As a consequence, the third and fourth questions on international and internal territorial jurisdiction to hear subsequent individual claims of the investors are not covered by the Opinion.

In relation to the first question, the Opinion explains, in essence, that the location of the investment account (in which the fall in the value of the shares of a company listed on stock exchanges has been reflected/'recorded') in a Member State is not sufficient to confer on the courts of this Member State jurisdiction to rule on the action in matters of non-contractual liability in connection with investments in securities. It then goes on to analyse whether other circumstances, combined with the location of the investment account, could justify a different outcome.

Ultimately, it concludes at point 96:

[For the purposes of Article 7(2) of the Brussels I bis Regulation] it is not a sufficient connecting factor for attributing international jurisdiction to the courts of a Member State that a fall in the value of the shares of a company listed on stock exchanges in other Member States is recorded in investment accounts located in that Member State or in investment accounts of a bank or investment firm established in that Member State, where the damage is the result of decisions taken by investors on the basis of allegedly incorrect, incomplete and misleading information distributed globally by the listed company;

the existence of a settlement between the defendant company and some shareholders in a third State which has not been offered to the applicants in the main proceedings and the fact that some applicants are consumers are [also] not relevant specific circumstances for the purposes of attributing international jurisdiction pursuant to Article 7(2) of [the Brussels I bis Regulation]. Nor is the fact that the relevant information was distributed worldwide by the defendant company.

Here, it is worth noting that, at points 68 to 71, the Opinion discusses the question whether it is always necessary to ensure the applicant the option of bringing an action in a place where damage is said to have occurred. It does not seem to be the case, as the Opinion explains it.

Concerning the second question, the Opinion contends that the exercise of a collective action in accordance with national rules of procedure by an association representing the interests of the holders of the securities who suffered the damage does not alter the interpretation of Article 7(2) of the Brussels I bis Regulation presented for the purposes of the first question.

The Opinion can be consulted [here](#).