

Opinion of AG Szpunar on “civil and commercial matters” according to Article 1(1) Brussels I bis Regulation in Case C-73/19 - Movic

Today, AG *Szpunar* delivered his Opinion on the request for a preliminary ruling from the hof van beroep te Antwerpen (Court of Appeal of Antwerp, Belgium) on the interpretation of “civil and commercial matters” according to Article 1(1) Brussels I bis Regulation.

The question was (para. 10):

“Is an action concerning a claim aimed at determining and stopping unlawful market practices and/or commercial practices towards consumers, instituted by the Belgian Government in respect of Dutch companies which from the Netherlands, via websites, focus on a mainly Belgian clientele for the resale of tickets for events taking place in Belgium, (...) a civil or commercial matter within the meaning of Article 1(1) of [Regulation 1215/2012], and can a judicial decision in such a case, for that reason, fall within the scope of that regulation?”

The relevant Belgium law prohibits, amongst others, the resale of event admission tickets. In addition, the business practice in question falls under the unfair business-to-consumer commercial practices legislation in Belgium. In both cases, the President of the Commercial Court deals with the matter. Actions are brought at the request of the competent minister of the Belgium Government. A variety of measures of relief was sought in the proceedings at hand: (1) a declaration that unfair commercial practices have taken place, (2) an order for cessation of those practices, (3) an order to publicise the court’s decision about the infringement at the expense of the defendants, (4) an order for penalty payments to be made in a fixed amount in respect of every future infringement, and (5) a ruling permitting the fact of such infringement to be certified simply by means of a report drawn up

by an official, on oath, of the Algemene Directie Economische Inspectie (Directorate-General for Economic Inspection).

The matter thus was whether or to what extent the expression “civil and commercial matters” in Article 1(1) of the Brussels I bis Regulation, encompasses proceedings of that kind between the authorities of a Member State and private law entities established in another Member State. Evidently, this matter touches upon the delicate question of a private-public divide which generally is perceived to be more and more blurring (see e.g. *Burkhard Hess*, *The Private-Public Divide in International Dispute Resolution*, *Recueil des Cours* Vol. 388, The Hague 2018). Nevertheless, many instruments of Private International Law of the European Union make use of this divide to delineate their respective material scope of application and it may indeed be assumed that the term „civil and commercial matters“ should be interpreted not only autonomously but also consistently across the respective instruments (para. 41, with reference to the ECJ’s judgment of 28 July 2016, *Verein für Konsumenteninformation*, C-191/15, EU:C:2016:612, paragraph 39), at least in principle. The ECJ has struggled with this question in the past and has tended towards a broad understanding of civil and commercial matters, see e.g. ECJ, judgment of 9 March 2017, C-551/15, EU:C:2017:193 – *Pula Parking*, for a comment (mainly on other aspects of the case) on this blog see [here](#); see also the recent Opinion by AG *Spzunar* in *Rina*, C-641/18, EU:C:2020:3, reported on this blog [here](#). The judgment in *Rina* is expected to be handed down soon (originally scheduled for 7 May 2020, but was postponed – we will keep you posted). The Opinion in *Movic* seems to continue this tendency:

The following considerations were taken into account: (i) what does the nature of interests of the public authority to issue its request to the court need or not need to be (paras. 24 et seq.); (ii) in what way does the authority’s powers of investigation influence the analysis (paras. 48 et seq.), and (iii) whether the authority is granted special powers not available to private persons (here in particular the power to certify that infringements have occurred) contribute to the analysis (paras. 63 et seq.).

On the basis of this analysis, AG *Spzunar* proposed (para. 80) that

“proceedings relating to an action brought by the public authorities of a Member State against persons governed by private law established in another Member State, in which a declaration is sought that infringements constituting

unfair commercial practices have taken place, together with an order for the cessation of those practices, an order for measures of publicity at the expense of the defendants, and an order for penalty payments to be made in a fixed amount in respect of every future infringement, fall within the scope of 'civil and commercial matters' within the meaning of that provision. On the other hand, such proceedings do not fall within the scope of that expression in so far as they relate to an action in which the public authorities seek the grant of special powers that go beyond those arising from the rules applicable in relationships between private individuals."

The full text of the Opinion is available [here](#).