

# Travel destination in another (Member) State's territory in an otherwise purely domestic case triggers application of Art. 18(1) Brussels Ia

*By Salih Okur, University of Augsburg*

Earlier today, the CJEU rendered its long anticipated decision in Case C-774/22 (FTI Touristik) on whether Art. 18(1) Brussels Ia Regulation concerns “matters relating to a travel contract where both the consumer, as a traveller, and the other party to the contract, the tour operator [,] have their seat in the same Member State, but the travel destination is situated not in that Member State but abroad [...]”.

In accordance with the Opinion of AG Emiliou, the Court held that it does.

## 1. International Scope of the Brussels Ia Regulation

The question goes straight to the problem of the international scope of the Brussels Ia Regulation. In Case C-281/02 (Owusu), the CJEU had held that the application of the Brussels Ia Regulation always required an “international element” – otherwise the national rules of the Member State apply.

Whether this international element exists is particularly problematic in cases like the one at hand, where the parties of the dispute are domiciled in the same Member State but certain elements of the case are situated abroad.

With today's decision, the CJEU has now adjudicated on two of the most practically relevant situations in quick succession: Only recently, in Case C-566/22 (Inkreal), the CJEU held that the **choice of another Member State's court** is enough to establish the international element of a case, even if the parties are both domiciled in the same Member State, triggering the application of Art. 25 Brussels Ia Regulation.

In the present Case C-774/22 (FTI Touristik), the CJEU had to decide whether the **travel destination** of consumer package travel contracts is enough to establish an international element in the sense of the Brussels Ia Regulation, which would open up the consumer forum of Art. 18 Brussels Ia Regulation.

## 2. Facts

The parties to the dispute, JX, a private individual domiciled in Nuremberg (Germany), and FTI Touristik, a tour operator established in Munich (Germany), concluded a package travel contract for a trip to Egypt. JX brought proceedings against FTI before the Local Court of Nuremberg, claiming that he was not informed properly of the visa requirements in Egypt.

JX claimed that the Local Court of Nuremberg has international and territorial jurisdiction pursuant to Art. 18(1) Brussels Ia Regulation. FTI, on the other hand, argued that the case lacked any international element, meaning that not the Brussels Ia Regulation but the German Code of Civil Procedure (*ZPO*) was applicable. Under the latter, the Local Court of Nuremberg would not have had jurisdiction over the dispute as German law does not contain a general consumer forum.

## 3. The Court's decision

According to previous decisions of the CJEU, the existence of the international element is not only reserved to cases where the parties to the dispute are domiciled in different Member States (**para. 29**).

Thus, according to the Court, the place of performance being abroad can on its own raise questions relating to the determination of international jurisdiction and thus establish an international element, triggering the application of the Brussels Ia Regulation (**para. 30**).

Specifically for consumer contracts, this interpretation is confirmed by Art. 18(1) Brussels Ia Regulation, which applies “regardless of the domicile of the other party” (**para. 31**) and by Art. 19(3) Brussels Ia Regulation, which addresses choice of law agreements entered “by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State” (**para. 32**).

Finally, the Court refers to the general purpose of the Brussels Ia Regulation, which seeks to establish rules of jurisdiction which are highly predictable and thus pursues an objective of legal certainty which consists in strengthening the legal protection of persons established in the European Union, by enabling both the applicant to identify easily the court before which he or she may bring proceedings and the defendant reasonably to foresee the court before which he or she may be sued (**para. 33**).

These arguments lead the Court to the conclusion that the foreign travel destination of a package travel contract triggers the application of the Brussels Ia Regulation even if both parties are domiciled in the same Member State (**para. 40**).

#### **4. Commentary**

While this interpretation of the international element in the sense of the Brussels Ia regulation is in line with the opinion of AG Emiliou, it is difficult to square with the Court's interpretation in Case C-566/22 (Inkreal): There, the Court primarily relied on the existence of a conflict of (international) jurisdiction to establish the international element (**para. 31**): if the courts of two or more different Member States could find international jurisdiction under their domestic rules, it would disturb legal certainty. In that case, the application of the Brussels Ia Regulation is justified as it restores said legal certainty by unifying the rules on international jurisdiction.

Case C-774/22 (FTI Touristik) lacks this potential for a conflict of international jurisdiction. Within the European Union, no other court would have international jurisdiction under Art. 18(1) and 18(2) Brussels Ia Regulation as the domiciles of the parties to the consumer contract are situated in the same Member State – pursuant to Art. 17(1) Brussels Ia Regulation, Art. 7(1) Brussels Ia Regulation doesn't apply. Thus, within the European Union there cannot be a conflict of international jurisdiction; consequently, the Brussels Ia Regulation shall not apply. This argument does not seem to resonate with the Court, though; instead, the Court argues that the nature of the relevant provision of the Brussels Ia Regulation does not play a role when establishing the international element (**para. 39**).

Still, it cannot be denied that this decision immensely benefits consumers. The

Brussels Ia Regulation now applies to all (package) travel contracts for trips abroad, meaning that pursuant to Art. 18(1) Brussels Ia Regulation, consumers may at all times bring proceedings against the tour operator at their domicile.