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XXX. European Union

A. Legislation

As mentioned in the most recent reports,[1] there is now considerable debate at EU level as to whether or not to legislate in the field of artificial intelligence (AI), and whether or not to amend the Product Liability Directive (PLD).[2] There has been no concrete result yet, but the Commission launched a public consultation in October 2021 on 'Civil liability – adapting liability rules to the digital age and artificial intelligence'. The results were released in early 2022.[3] The Commission is expected to present two draft pieces of legislation in September 2022, one on product liability and the other on AI. This will of course be presented in next year's Yearbook report. **1**

B. Cases

1. Court of Justice of the European Union (CJEU) 29 April 2021 – C-383/19, *Powiat Ostrowski v Ubezpieczeniowy Fundusz Gwarancyjny*, ECLI:EU:C:2021:337

a) Brief Summary of the Facts

On 7 February 2018, a Polish district acquired ownership of a forfeited vehicle. According to Polish law, the district should have taken out liability insurance for the vehicle from that date, but this did not happen until 23 April. In May 2018, an expert found that the vehicle could not be driven due to its poor technical state, **2**

1 *BA Koch/T Thiede*, European Union, in: E Karner/BC Steininger (eds), European Tort Law (ETL) 2019 (2020) 684, no 1ff; *idem*, European Union, in: E Karner/BC Steininger (eds), ETL 2020 (2021) 684, no 1ff.

2 Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products [1985] Official Journal of the European Union (OJ) L 210/29, as amended by Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999 [1999] OJ L 141/20.

3 <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12979-Civil-liability-adapting-liability-rules-to-the-digital-age-and-artificial-intelligence/public-consultation_en>.

https://doi.org/10.1515/tortlaw-2022-0030

whereupon the district had the vehicle destroyed. It received a certificate of disassembly and deregistered the vehicle on the basis of that certificate. The vehicle had been parked in a guarded car park from the time of acquisition of ownership until its destruction. In July 2018, a fine was imposed on the district for failing to fulfil its obligation to insure the vehicle during the period from 7 February to 22 April. The district, however, took the view that it was not obliged to do so. It submitted that the vehicle was in a guarded car park and not in a location where it could have been driven. The Polish court therefore referred the question to the European Court of Justice (ECJ) of whether the conclusion of a contract of insurance is compulsory when a vehicle is parked on private property, not capable of being driven and to be destroyed in accordance with the wishes of its owner.

b) Judgment of the Court

3 The Court answered in the affirmative. It stressed that art 3 para 1 requires Member States to take appropriate measures to ensure that civil liability in respect of the use of vehicles is covered by insurance. The concept of 'vehicle' is defined in art 1, point 1, as '*any motor vehicle intended for travel on land and propelled my mechanical power, but not running on trails, and any trailer, whether or not coupled*'. This definition is a purely objective one. Subjective factors like the intention of the owner or any other person to use the vehicle or to destroy it are therefore of no significance. With respect to the notion of 'use', the Court pointed to previous decisions in which it held that art 3 para 1 applies only to situations where the vehicle can be used as a means of transport which, however, does not mean that it has actually to be used as such. Applying these principles, the Court concluded the duty of insurance extends to immobilised vehicles which are not capable of being driven. The Court justified its view mainly with the argument that the restoration of a vehicle largely depends on subjective factors like the will of the owner to repair it. The Court also mentioned that the duty of insurance only ends when the vehicle has been officially withdrawn from use in accordance with the applicable national rules (eg through its deregistration). The Court stressed that this interpretation guarantees legal certainty as it makes clear at any given time whether a contract of insurance must be concluded or upheld.

c) Commentary

The judgment is in line with the Court's earlier ruling in *Línea Directa Asegura-* **4**
dora,[4] which oddly was not cited by the Court at all.

2. CJEU 15 May 2021 – C-709/19, *Vereniging van Effectenbezitters v BP plc*, ECLI:EU:C:2021:377

a) Brief Summary of the Facts

In April 2010, an explosion occurred on the oil drilling platform Deepwater **5**
Horizon, leased by BP and located in the Gulf of Mexico, causing deaths and injuries as well as environmental damage. The defendant in the present case, BP, is, of course, an oil and gas company that operates on a worldwide scale. Its shares are listed on the London and Frankfurt (Germany) stock exchanges. The claimant, VEB, is an association with full legal capacity under Dutch law, whose purpose is to represent the interests of shareholders collectively.

In 2015, VEB initiated proceedings against BP before the *Rechtbank Amster-* **6**
dam, by means of a collective action on behalf of all persons who had bought, held or sold shares in BP through an investment account in the Netherlands from 16 January 2007 to 25 June 2010 and sought a ruling, inter alia, that the Dutch court has international jurisdiction to hear the claims for compensation brought by the BP shareholders. BP challenged jurisdiction and argued that that court could not derive international jurisdiction from the Brussels Ia Regulation. The *Rechtbank Amsterdam* held that it lacked jurisdiction. On appeal, the *Gerechtshof Amsterdam* upheld that judgment. Ultimately, the *Hoge Raad der Nederlanden* stayed the proceedings and referred, inter alia, the following question to the CJEU for a preliminary ruling:

'Should Article 7(2) [Brussels Ia Regulation] be interpreted as meaning that the direct occurrence of purely financial damage to an investment account in the Netherlands or to an investment account of a bank and/or investment firm established in the Netherlands, damage which is the result of investment decisions influenced by globally distributed but incorrect, incomplete and misleading

4 CJEU 20.6.2019, C-100/18, *Línea Directa Aseguradora, SA v Segurcaixa, Sociedad Anónima de Seguros y Reaseguros*, ECLI:EU:C:2019:517; see *BA Koch/T Thiede*, European Union, in: E Karner/BC Steininger (eds), ETL 2019 (2020) 684, no 36ff.

information ..., constitutes a sufficient connecting factor for the international jurisdiction of the Dutch courts by virtue of the location of the occurrence of the damage?'

b) Judgment of the Court

7 The CJEU held that art 7(2) Brussels Ia Regulation must be interpreted as meaning that the direct occurrence in an investment account of purely financial loss resulting from investment decisions taken as a result of information which is easily accessible worldwide but inaccurate, incomplete or misleading does not allow the attribution of international jurisdiction, on the basis of the place of the occurrence of the damage, to a court of the Member State in which the bank or investment firm in which the account is held has its registered office.

c) Commentary

8 At first glance the decision bears no news. The place of an account is irrelevant for establishing international jurisdiction. However, the logical follow-up question – what does establish jurisdiction? – is not answered by the CJEU subject only to the fact that misleading information in connection with a bank account also does not constitute a relevant connecting factor.

9 To be sure, the CJEU established quite a number of principles with regard to art 7(2) Brussels Ia Regulation in the past. First and foremost, the principle of ubiquity, whereby art 7(2) Brussels Ia Regulation provides for two prongs of competent courts, one at the place where the damage was caused, the other at the place where the damage was incurred.

10 As expanded in recent Yearbooks, the original sin, as it were, was that the principle of ubiquity, the second prong of jurisdiction, notoriously causes problems in quite a number of cases but specifically in all cases of pecuniary damage. The CJEU's connecting factor, that is essentially the place where the damage arose, is a part of the problem as any place where the respective legal interest was violated is covered. In the case of pecuniary damage, this could essentially be everywhere as the pecuniary assets could be everywhere. Of course, since the original sin of accepting an international competence at the place where the damage arose – also with respect to pecuniary assets – the CJEU has struggled for more than three decades to find solutions for problems caused. The late *Peter Mankowski* described the situation quite perfectly when he wrote: 'Der EuGH ist

von einer Kalamität in die nächste geraten.'[5] – the CJEU went from one calamity to the next. In *Kronhofer*[6] the CJEU referred to the place of the account where the original payment was made; in *Kolassa*,[7] *Universal Music*[8] and *Löber*[9] this was repealed in favour of quite detailed and not quite convincing decisions on a case-by-case basis, and academia struggles to establish some sort of overarching idea or system at all.

The CJEU seems to drift more or less into common law-style tort law in international jurisdictional matters where specific 'groups' of tortious damage are formed. As *Mankowski* also argued quite brilliantly, the price for such a system is rather high as this brings down any attempt to establish an overarching legal framework and structure for which the European continent's legal systems are praised throughout the world. The most obvious solution, that is, plainly giving up the second prong is, yet again, not even contemplated in the case at hand. **11**

3. CJEU 20 May 2021 – C-707/19, *K.S. v A.B.*, ECLI:EU:C:2021:405

a) Brief Summary of the Facts

A vehicle registered in Poland and its semi-trailer were damaged in an accident in Latvia. The vehicle and the semi-trailer were first removed to a car park for parking and subsequently towed to Poland, which caused parking and transfer costs. The liability insurer of the party responsible for the accident refused to pay any compensation for the costs of parking in Latvia and towing outside of Latvia. He submitted that, in accordance with Latvian law, he was required only to reimburse the costs of towing on Latvian territory and the costs of parking related to a criminal investigation for other proceedings. The ECJ therefore had to answer **12**

5 Erfolgsort bei reinen Vermögensschäden infolge von Anlageentscheidungen, LMK [Lindenmaier-Möhring – Kommentierte BGH-Rechtsprechung] 2021, 808834.

6 CJEU 10.6.2004, C-168/02, *Rudolf Kronhofer v Marianne Maier and Others*, ECLI:EU:C:2004:364.

7 CJEU 28.1.2015, C-375/13, *Harald Kolassa v Barclays Bank* plc, ECLI: EU:C:2015:37. On this case, see *BA Koch/T Thiede*, European Union, in: E Karner/BC Steininger (eds), ETL 2015 (2016) 647, no 18ff.

8 CJEU 16.6.2016, C-12/15, *Universal Music International Holding BV v Michael Tétreault Schilling and Others*, ECLI:EU:C:2016:449. On this case, see *BA Koch/T Thiede*, European Union, in: E Karner/BC Steininger (eds), ETL 2016, no 2ff.

9 CJEU 12.9.2018, C-304/17, *Helga Löber v Barclays Bank PLC*, ECLI:EU:C:2018:701. On this case, see *BA Koch/T Thiede*, European Union, in: E Karner/BC Steininger (eds), ETL 2018 (2019) 698, no 44ff.

the question of whether the limitation of cover of the liability insurance provided for under Latvian law was compatible with art 3 of Directive 2009/103/EG.

b) Judgment of the Court

13 The Court answered this question in the negative. It recalled that community law only requires Member States to take appropriate measures to ensure that civil liability in respect of the use of vehicles is covered by insurance. The Member States, however, are – in principle – free to determine the rules of civil liability applicable to road accidents. Subsequently, Member States, in principle, can determine which harm caused by motor vehicles must be compensated, the extent of such compensation, as well as the persons who are entitled to it. However, the national rules governing compensation may not deprive the Directive of its practical effectiveness. The Court then stressed that the Directive seeks to protect victims of traffic accidents and ensure comparable treatment. The Court further emphasised that the Latvian rules infringe that idea because the extent of the cover provided by the insurance effectively depends on the fact where the victim is domiciled and results in more favourable treatment of national residents. The Court, however, stressed that a limitation of cover on the basis of other criteria is in principle possible. Subsequently, it considered the rule governing the compensation of parking costs as lawful because the extent of the compensation is – at least *ad prima vista* – not connected to the domicile of the injured party.

c) Commentary

14 The ruling is rather straightforward and merely spells out what could have been expected ex ante. One wonders why the defendant insurer was willing to spend so much litigation money on an obviously losing case just to have this outcome now printed in black and white for future cases.

4. CJEU 20 May 2021, C-913/19, *CNP spółka z ograniczoną odpowiedzialnością v Gefion Insurance A/S*, ECLI:EU:C:2021:399

a) Brief Summary of the Facts

A car had been damaged in a traffic accident in Poland. The other car, whose driver was responsible for the collision, was insured with the Danish insurer *Gefion*. The first car was repaired in Poland, and in the interim, its owner rented a replacement vehicle from the repair shop. In lieu of payment for said lease, the owner assigned his claim against *Gefion* to the repair shop, which in turn assigned it to CNP, a Polish company carrying on the business of purchasing claims arising from insurance contracts. *Gefion* entrusted the *Polish Crawford Polska* with the settlement of the matter. As the latter reimbursed only a part of the costs, *CNP* brought an action against *Gefion* before a Polish court, whose jurisdiction was challenged by the defendant. **15**

The Polish court asked the CJEU whether a party like *CNP* may still rely on art 7 nos 2 and 5 of the Brussels Ia Regulation[10] as a basis for jurisdiction despite the applicability of the provisions on insurance laid down in Section 3 of Chapter II of said Regulation. If so, the referring court asked whether the Polish claims adjuster qualified as a branch, agency, or other establishment of *Gefion* as foreseen by art 7 no 5. **16**

b) Judgment of the Court

The Court first confirmed that in 'matters relating to insurance' as addressed by art 10 Brussels Ia Regulation, alternative grounds of jurisdiction other than those mentioned in that article itself were excluded. Thus, while art 10 is applied expressly 'without prejudice to … point 5 of Article 7', jurisdiction could not be based on art 7 no 2 instead. **17**

However, the Court underlined that Section 3 of Chapter II was designed to protect the weaker party to a contract, but that such protection could not be extended to those who do not need such protection. Since in the case at hand only companies professionally dealing with insurance matters were involved and no **18**

10 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 (recast) (2012) OJ L 351/1.

private parties, there was no need to protect one over the other, even if the dispute concerned a claim originally entitling a party worthy of protection (the injured party), but who had subsequently assigned it to professionals. The Court found support for this outcome in its earlier case involving a social security carrier.[11]

19 Since CNP could therefore not rely on art 10ff Brussels Ia Regulation, the Court examined whether it could instead sue on the basis of art 7 no 2 or no 5. The Court answered this question in the affirmative.

20 When it comes to the status of the defendant in the instant case and whether it was a party within the meaning of art 7 no 5 Brussels Ia Regulation, the Court set out the criteria which have to be met for the qualification of an undertaking as a branch, agency, or other establishment of the insurer: firstly, the undertaking must act as a unit of the insurer on at least a seemingly permanent basis. Secondly, it must have a management. And thirdly, the undertaking must be materially equipped to negotiate business with third parties, so that they do not have to deal directly with the insurer.

c) Commentary

21 The case complements the earlier rulings regarding other assignees of tort claims and thereby completes the picture already sketched by the *Vorarlberger Gebietskrankenkasse* case.[12] However, it is still noteworthy that the Court thereby exclusively relies on the purpose of a rule rather than on its express wording.

5. CJEU 10 June 2021 – C-923/19, *Van Ameyde España SA v GES, Seguros y Reaseguros SA*, ECLI:EU:C:2021:475

a) Brief Summary of the Facts

22 In an accident, a semi-trailer coupled to a road tractor was damaged. The tractor and the semi-trailer were owned by different persons and insured separately. The insurer of the semi-trailer compensated the injured party for the damage and subsequently brought an action for compensation against the liability insurer of the tractor before a Spanish court. The court of first instance dismissed the claim

11 ECJ 17.9.2009, C-347/08, *Vorarlberger Gebietskrankenkasse v WGV-Schwäbische Allgemeine Versicherungs AG*, ECLI:EU:C:2009:561. On this case, see *BA Koch*, European Union, in H Koziol/BC Steininger (eds), ETL 2009 (2010) 643, no 39ff.

12 C-347/08 *Vorarlberger Gebietskrankenkasse* (fn 11).

on the basis of art 5 para 2 of the Spanish law on motor vehicle liability insurance, which stipulates that liability insurance does not cover damage to transported objects. The court qualified the semi-trailer as such an object and therefore considered that the damage was not compensable. The claimant challenged the decision and submitted that the tractor and the semi-trailer continued to be two independent vehicles after their coupling, which meant that the limitation of liability under Spanish law did not apply. The Court of Appeal followed the view of the claimant, mainly because it considered the semi-trailer rather an object 'carried by' the tractor than one being 'carried in it'. The Supreme Court subsequently asked the ECJ whether a limitation of the cover of the liability insurance to the account of the owner of the semi-trailer is lawful under the Motor Insurance Directive (MID).[13]

b) Judgment of the Court

The Court first stated that both the tractor and the semi-trailer are to be qualified as vehicles within the meaning of the MID and therefore both are subject to compulsory insurance. The coupling of the two vehicles does not change this. The Court first pointed to art 1, point 1, to support this view. The wording of this provision explicitly states that a semi-trailer falls under the concept of 'vehicle' regardless of whether it has been coupled or not. Moreover, the use of the conjunction 'and' between the first and the second part of the definition indicates that the provision establishes two autonomous categories of vehicles. The Court also stressed that the definition of the concept of 'vehicle' is objective, which is not connected with the use which is or may be made of the vehicle. The Court ultimately emphasised that a contrary interpretation would undermine the predictability, stability and continuity of the duty of insurance and therefore lead to legal uncertainty. **23**

The Court then addressed the question of whether the limitation of coverage provided for in Spanish law is lawful. The Court first recalled that community law only requires Member States to take appropriate measures to ensure that civil liability in respect of the use of vehicles is covered by insurance, and that Member States therefore are, to a great extent, free to determine the rules of civil liability. **24**

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13 Directive 2009/103/EC of the European Parliament and the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability [2009] OJ L 263/11. On this Directive, see *D Hinghofer-Szalkay/BA Koch*, European Union, in: H Koziol/BC Steininger (eds), ETL 2008 (2009) 647, no 1ff.

Accordingly, national limitations with respect to coverage of the liability insurance are lawful within the limits of Community law. Such a limit is set by art 12 MID, stipulating that certain – particularly vulnerable – persons are entitled to compensation in any case. The owner of a semi-trailer, however, is not one of the persons mentioned, and, due to a lack of vulnerability, is also not comparable to them. Therefore, it was lawful to limit the cover of liability insurance accordingly.

c) Commentary

25 The case is noteworthy inasmuch as it addresses yet another type of vehicle and thereby further illustrates the meaning of that term under the MID. A tractor attached to and pulling a semi-trailer is therefore a combination of two vehicles rather than one transporting another.

6. CJEU 10 June 2021 – C-65/20, *VI v KRONE-Verlag Gesellschaft mbH & Co KG*, ECLI:EU:C:2021:471

a) Brief Summary of the Facts

26 The defendant is a media proprietor and the publisher of a regional edition of a newspaper. The latter newspaper published an article on the alleged health benefits of horseradish poultices under the name of a member of a religious order who was famous as an expert in the field of herbal medicine. The article suggested that grated horseradish should be applied for two to five hours on the bare skin in order to alleviate the symptoms of rheumatism. However, the correct duration should have been two to five minutes instead.

27 The claimant in the main proceedings, strictly following the duration of the treatment set out in the article, applied the substance to her ankle joint for approximately three hours and removed it only after experiencing severe pain due to a toxic skin reaction. She claimed that the defendant should be ordered to indemnify the physical harm she had suffered because of the false information contained in the article and that the publisher should be held liable for any current and future harmful consequences of the incident. That claim was dismissed at first instance and on appeal. The Austrian Supreme Court raised the question of whether a newspaper publisher or owner can be held liable under Directive 85/374, stayed the proceedings, and referred the following question to the Court of Justice for a preliminary ruling:

'[Must] Article 2 [of Directive 85/374] together with Article 1 and Article 6 [thereof] be interpreted as meaning that a physical copy of a daily newspaper containing a technically inaccurate health tip which, when followed, causes damage to health can also be regarded as a (defective) product?'

b) Judgment of the Court

28 In its judgment, the CJEU reiterated that, according to art 2 of the Directive, 'product' means all movables even if incorporated into another movable or into an immovable and that it is apparent from the wording of that article that services do not come within the scope of that Directive (para 26). In addition, the CJEU stated that, as reflected in the third recital of that Directive, the liability regime it defines can apply only to movables which were industrially produced (para 29).

29 While giving health advice is deemed a service in general, the Court then examined whether this is still true if such advice is printed in a physical item (the newspaper), and whether its flaws can thereby render the newspaper itself defective within the meaning of the PLD. The Court, however, made a distinction between the newspaper (undoubtedly a product) and the information contained therein (a service), and asserted that each should be assessed separately from a PLD perspective. False information printed in a newspaper can therefore not render the latter itself defective. Its publisher is not the producer of the information published and can consequently not be held liable under the PLD.

c) Commentary

30 Whether information can render its (tangible) carrier itself defective under the PLD has long been disputed[14] and now ruled out by the Court. Even if the outcome had been different, the claimant still might not have recovered at all or at least not in full due to her obvious contributory negligence (keeping a toxic paste on her skin for hours even though she should have experienced immediate pain after a much shorter period). It is also understandable that – as argued by the Court – the PLD was not intended to hold the media liable for false information they publish.

14 Cf eg *BA Koch*, Product Liability for Information in Europe? in: J Potgieter/J Knobel/R-M Jansen (eds), Essays in Honour of / Huldigingsbundel vir Johann Neethling (2015) 245.

31 However, had the advice not been given in a newspaper, but on the packaging of the horseradish, the producer of the latter would undoubtedly have been held liable for the defect of the information attached to his product. More importantly, it is highly doubtful that the information published in a newspaper is indeed completely separate and detached from it. The defectiveness of a newspaper is thereby essentially limited to features of the paper on which it is printed. However, it is not the paper the readers pay for, but the information printed on the paper. The information is the product, not its carrier. A newspaper publisher is also not a service provider, as suggested by the Court (or do I buy a service at a newsstand and not a tangible item?).

32 The question whether information can render a tangible carrier of information defective is therefore now answered, but not for good.

7. CJEU 17 June 2021 – C-800/19, *Mittelbayerischer Verlag KG v SM*, ECLI:EU:C:2021:489

a) Brief Summary of the Facts

33 The claimant, SM, is a Polish national residing in Warsaw who was a prisoner in the extermination camp at Auschwitz during the Second World War. He carries out activities aimed at preserving the memory of the victims of crimes committed by Nazi Germany against Polish nationals during that war. The defendant, Mittelbayerischer Verlag, is a company established in Regensburg, Germany. It publishes a regional online newspaper in German, which is also accessible from other countries, including Poland.

34 In April 2017, an article entitled 'Ein Kämpfer und sein zweites Leben' ('A Fighter and his Second Life') was published on that website. That article, concerning the fate of a Jewish Holocaust survivor, states that his sister 'was murdered in the Polish extermination camp of Treblinka'. This information was available on the internet for a few hours only until, after an email from the Polish Consulate in Munich, that wording was replaced by the words 'was murdered by the Nazis in the German Nazi extermination camp of Treblinka in occupied Poland'.

35 In November 2017, SM brought an action against Mittelbayerischer Verlag before the *Sąd Okręgowy w Warszawie* seeking protection of his personality rights, in particular his national identity and dignity, which, he claimed, had been infringed as a result of the use of that wording for some hours in April 2017.

In order to justify the jurisdiction of that court, SM relied on art 7(2) Brussels Ia Regulation and CJEU's ruling in *eDate*[15]. Mittelbayerischer Verlag raised a plea of inadmissibility, arguing that the Polish courts did not have jurisdiction to hear the action brought by SM on the ground that, unlike the situations at issue in the cases that gave rise to a judgment, the article it published on its website did not concern SM directly. Hence, it claims that it is not art 7(2) Brussels Ia Regulation, but art 4(1) thereof, which should be applied and lead to the recognition of the jurisdiction of the German courts. **36**

The *Sąd Okręgowy w Warszawie* rejected the plea of inadmissibility raised by Mittelbayerischer Verlag and held that the conditions for hearing the action brought by SM under art 7(2) Brussel Ia Regulation were met. On appeal before the referring court, the *Sąd Apelacyjny w Warszawie* stayed proceedings and referred the following questions to the Court for a preliminary ruling: **37**

> '(1) Should Article 7(2) Brussels Ia Regulation be interpreted as meaning that jurisdiction based on the centre-of-interests connecting factor is applicable to an action brought by a natural person for the protection of his personality rights in a case where the online publication cited as infringing those rights does not contain information relating directly or indirectly to that particular natural person, but contains, rather, information or statements suggesting reprehensible actions by the community to which the applicant belongs (in the circumstances of the case at hand: his nation [Poland]), which the applicant regards as amounting to an infringement of his personality rights?
>
> (2) In a case concerning the protection of material and non-material personality rights against online infringement, is it necessary, when assessing the grounds of jurisdiction set out in Article 7(2) [Brussels Ia Regulation], that is to say, when assessing whether a national court is the court of the place where the harmful event occurred or may occur, to take account of circumstances such as: the public to whom the website on which the infringement occurred is principally addressed; the language of the website and in which the publication in question is written; the period during which the online information in question remained accessible to the public; the individual circumstances of the applicant, such as the applicant's wartime experiences and his current social activism, which are invoked in the present case as justification for the applicant's special right to oppose, by way of judicial proceedings, the dissemination of allegations made against the community to which the applicant belongs?'

15 CJEU 25.10.2011, C-509/09 and C-161/10, *eDate Advertising GmbH v X and Olivier Martinez and Robert Martinez v MGN Limited*, ECLI:EU:C:2011:685. On this case, see *BA Koch*, European Union, in: K Oliphant/BC Steininger (eds), ETL 2011 (2012) 697, no 21ff.

b) Judgment of the Court

38 In its judgment, the CJEU emphasised that, in earlier cases, namely *eDate Advertising*[16] and *Bolagsupplysningen and Ilsjan*,[17] persons whose personality rights were allegedly infringed were directly referred to in content placed online, since they were mentioned by name (para 35). The CJEU added that, unlike in those cases, the case at hand concerns a situation in which the person who considers that his personality rights have been infringed is not referred to at all, neither directly nor indirectly, in that content, even if that content were interpreted in the broadest possible sense (para 36).

39 As a result, the CJEU held that art 7(2) Brussels Ia Regulation must be interpreted as meaning that the courts of the place in which the centre of interests of a person claiming that his personality rights have been infringed by content published online is situated have jurisdiction to hear, in respect of the entirety of the alleged damage, an action for damages brought by that person only if that content contains objective and verifiable elements which make it possible to identify, directly or indirectly, that person as an individual.

c) Commentary

40 In recent years and indeed in this very report, the authors have contended time and again that the CJEU's expansion of potentially competent courts in matters relating to tort is neither dogmatically nor practically sound. As argued in the report at hand,[18] the original sin was CJEU's utter disregard of the intention and, indeed, the wording the original historical legislator had planned for art 7 no 2 Brussel Ia Regulation by adding the court at the place where the damage arose to the number of internationally competent courts in Europe. And, as also expanded earlier, the CJEU is now faced with the need to constantly readjust as that root of the problem still persists.

41 Of course, all of this disturbs the system of cross-border jurisdiction and, indeed, legal relationships between European Member States. At this point we would argue some hypothetical as to what would happen if the Polish court

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16 See C-509/09 and C-161/10, *eDate Advertising* (fn 15).

17 CJEU 17.10.2017, C-194/16, *Bolagsupplysningen and Ilsjan*, ECLI:EU:C:2017:766. On this case, see *BA Koch/T Thiede*, European Union, in: E Karner/BC Steininger (eds), ETL 2017 (2018) 652, no 77ff.

18 See above no 7.

plainly omitted the preliminary reference procedure and just assumed its competence. However, there is no need for a hypothetical as this very case exists.[19]

42 In 2013, the public broadcaster *Zweites Deutsches Fernsehen* (ZDF) announced a documentary about the liberation of the concentration camps Ohrdruf, Buchenwald and Dachau. The wording of the announcement was a bad translation: the camps in Majdanek and Auschwitz were referred to as 'Polish extermination camps'. Following a complaint from the Embassy of the Republic of Poland and a Polish citizen and former prisoner of the concentration camps Auschwitz-Birkenau and Flossenbürg, ZDF immediately changed the wording to 'German extermination camps on Polish territory'. The concentration camp prisoner claimed that his personality rights had been violated and demanded that ZDF publish an apology. ZDF complied with this request, apologised in writing and published a correction. Despite these measures, the concentration camp prisoner filed a complaint in Poland in 2014. The Polish court assumed their competence and ZDF was ordered to publish an item on its homepage for a period of one month.[20] ZDF published this text at the turn of the year 2016/17. Nevertheless, in the opinion of the concentration camp prisoner, the publication on the website was not prominent enough, and he applied for the Polish sentence to be enforced in Germany. While the German court of first instance declared the judgment enforceable in just under five sentences[21] and the immediate appeal[22] was also unsuccessful, the *Bundesgerichtshof* refused to enforce the Polish judgement with reference to the *ordre public*. To be sure, the *ordre public* applies only in absolutely exceptional cases where the result of the foreign judgment to be enforced locally is in such blatant contradiction with the basic ideas of the domestic regulations and the concepts of justice contained therein that enforcement is absolutely unacceptable. We by no means assume that the Polish court in that latter case acted in consideration of political assessments and judgments. A 'humiliation' or 'punishment' of ZDF cannot be read into the considerations at all; on the contrary, ZDF's awareness of history is even emphasised. Our point is something else entirely: the most basic rule of the Brussels Ia Regulation is the competence at the court of the defendant's domicile. Much time and, indeed, money could have been saved for

19 BGH 19.7.2018, IX ZB 10/18.

20 'Zweites Deutsches Fernsehen, ..., regrets that in the publication ... an incorrect and the history of the Polish people falsifying formulation appeared, which insinuates that the extermination camps ... were established and run by Poles, and apologises to Mr. K. T., who was imprisoned in a German concentration camp, for the violation of his personal rights, in particular his national identity (feeling of belonging to the Polish people) and his national dignity.'

21 LG Mainz 27.1.2017, 3 O 35/17.

22 OLG Koblenz 11.1.2018, 2 U 138/17 AVAG.

ZDF as well as the Polish claimant if this rule had prevailed over the expanded rule of art 7(2) Brussels Ia Regulation.

8. CJEU 15 July 2021 – C-30/20, *RH v AB Volvo, Volvo Group Trucks Central Europe GmbH, Volvo Lastvagnar AB, Volvo Group España SA*, ECLI:EU:C:2021:604

a) Brief Summary of the Facts

43 RH is an undertaking domiciled in Cordoba where, between 2004 and 2009, it purchased five trucks from a Volvo Group España dealer. In July 2016, the Commission adopted a decision in antitrust law.[23] By that decision, the Commission found there to be a cartel in which 15 international truck manufacturers had participated, including Volvo, Volvo Group Trucks Central Europe and Volvo Lastvagnar, in respect of two cartelised product categories, namely trucks weighing between 6 and 16 tonnes and trucks weighing more than 16 tonnes.

44 RH brought a follow-on private enforcement action for damages against Volvo (Sweden), Volvo Group Trucks Central Europe (Germany), Volvo Lastvagnar (Sweden) and Volvo Group España (Spain), in support of which it argued it suffered a loss in that it purchased cartelised vehicles by paying an additional cost due to the collusive arrangements penalised by the Commission.

45 Although RH purchased the vehicles in Cordoba and is domiciled in that city, it brought its action before the *Juzgado de lo Mercantil de Madrid*. The defendants contested international jurisdiction, arguing that the 'place where the harmful event occurred', pursuant to art 7(2) Brussels Ia Regulation, is the place of the event giving rise to the loss, in this case the place where the truck cartel was concluded, and not where the applicant in the main proceedings is domiciled. As the cartel was arguably concluded in other Member States of the European Union, the defendants argued in essence that the Spanish courts did not have jurisdiction.

46 The *Juzgado de lo Mercantil de Madrid* entertained doubts as to how art 7(2) Brussels Ia Regulation should be interpreted, stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

> 'Should Article 7(2) [Brussels Ia Regulation], ... be interpreted as establishing only the international jurisdiction of the courts of the Member State for the aforesaid place, meaning

23 C(2016) 4673 final relating to proceedings under art 101 TFEU and art 53 of the EEA Agreement (Case AT.39824 – Trucks), OJ 2017 C 108, at 6.

that the national court with territorial jurisdiction within that State is to be determined by reference to domestic rules of procedure, or should it be interpreted as a combined rule which, therefore, directly determines both international jurisdiction and national territorial jurisdiction, without any need to refer to domestic regulation?'

b) Judgment of the Court

The CJEU held that art 7(2) Brussels Ia Regulation must be interpreted as meaning that, within the market affected by collusive arrangements on the fixing and increase in the prices of goods, either the court within whose jurisdiction the undertaking claiming to be harmed purchased the goods affected by those arrangements or, in the case of purchases made by that undertaking in several places, the court within whose jurisdiction that undertaking's registered office is situated, has international and territorial jurisdiction, in terms of the place where the damage occurred, over an action for compensation for the damage caused by those arrangements contrary to art 101 TFEU. **47**

c) Commentary

Whereas the decision in itself might be rather unsurprising, the referred question is astonishing. As it seems, the Madrilenian court asked the CJEU to confirm that it certainly does not have jurisdiction by omitting the decisive issue that could establish jurisdiction, that is, the Spanish subsidiary's registered office in Madrid. If we were to argue – probably in contrast to the Madrid court – the international jurisdiction and not the lack thereof, it is necessary to take a closer look at the Spanish subsidiary of the cartel participants in Madrid and thus the question of the subsidiary's role within the context of international jurisdiction. To be sure, that question was addressed by the CJEU later that year (see no [49] ff), so that the present decision is a rather unpleasant *'Glasperlenspiel'*, that is, local jurisdiction follows international jurisdiction, brings little to no news: it is one of the absolutely recognised principles of international civil procedure law that the Brussels Ia Regulation, just like its predecessors, directly and immediately assigns both international and local jurisdiction. The Member States, as well as the signatory States of the predecessor regulations, may not establish any criteria for the allocation within a Member State other than those provided for in the Brussels Ia Regulation. **48**

9. CJEU 6 October 2021 – C-882/19, *Sumal SL v Mercedes Benz Trucks España SL*, ECLI:EU:C:2021:800

a) Brief Summary of the Facts

49 Mercedes Benz Trucks España is a subsidiary company in the Daimler group, the parent company of which is Daimler. Between 1997 and 1999, Sumal acquired two trucks from Mercedes Benz Trucks España, via the intermediary Stern Motor SL, a dealership for the Daimler group.

50 As mentioned earlier,[24] in July 2016, the Commission adopted a decision in antitrust law, whereas 15 European truck producers, including Daimler, participated in a cartel that took the form of a single continuous infringement of art 101 TFEU consisting of concluding collusive arrangements on pricing and gross price increases for trucks in the European Economic Area (EEA).

51 Following that decision, Sumal brought an action for damages before the *Juzgado de lo Mercantil Barcelona* seeking to obtain damages from Mercedes Benz Trucks España. That court rejected the action on the ground that Mercedes Benz Trucks España could not be sued by means of that action since Daimler, which alone is referred to in the Commission decision, must be regarded as solely responsible for the infringement concerned. Sumal brought an appeal against that judgment before the referring *Audiencia Provincial de Barcelona*, which considered whether the actions for damages following decisions of competition authorities making findings of anti-competitive practices may be brought against subsidiary companies which are not referred to in those decisions but which are wholly owned by the companies directly referred to in those decisions. In those circumstances, the *Audiencia Provincial de Barcelona* stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

> 'Does the doctrine of the single economic unit developed by the [CJEU] itself provide grounds for extending liability from the parent company to the subsidiary, or does the doctrine apply solely in order to extend liability from subsidiaries to the parent company?
>
> In the context of intra-group relationships, should the concept of single economic unit be extended solely on the basis of issues of control, or can it also be extended on the basis of other criteria, including the possibility that the subsidiary may have benefited from the infringing acts?
>
> If it is possible to extend liability from the parent company to the subsidiary, what would be required in order for it to be possible?

24 See fn 14.

> If the answers to the earlier questions support the extension of subsidiaries' liability to cover acts of the parent company, would a provision of national law such as art 71(2) of the [Law on the Protection of Competition], which provides only for liability incurred by the subsidiary to be extended to the parent company, and then only where the parent company exercises control over the subsidiary, be compatible with that line of the Court's case-law?'

b) Judgment of the Court

The CJEU held that art 101(1) TFEU must be interpreted as meaning that the victim of an anti-competitive practice by an undertaking may bring an action for damages, without distinction, either against a parent company which has been punished by the Commission for that practice in a decision or against a subsidiary of that company which is not referred to in that decision, where those companies together constitute a single economic unit. **52**

However, the subsidiary company concerned must be able effectively to rely on its rights of defence in order to show that it does not belong to that undertaking and, where no decision has been adopted by the Commission under art 101 TFEU, it is also entitled to dispute the very existence of the conduct alleged to amount to an infringement. **53**

According to the CJEU, art 101(1) TFEU must be interpreted as precluding a national law which provides for the possibility of imputing liability for one company's conduct to another company only in circumstances where the second company controls the first company. **54**

c) Commentary

The present ruling essentially concerns a quite remote but practically immensely important aspect of the phenomenon known as *piercing the corporate veil*, that is, the legal imputation of misconduct between parent companies and their subsidiaries and – notably – vice versa, that is between the subsidiaries and their parents. **55**

Most readers will have been in contact with antitrust law from a public law perspective and may, for instance, remember cases where the Commission has handed out (at times) quite hefty fines against undertakings for a violation of art 101(1) TFEU. With regards to those fines, the principle of joint and several liability is widely accepted at least since CJEU's landmark ruling in *Akzo Nobel*.[25] **56**

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25 CJEU 10.9.2009, C-97/08, *Akzo Nobel NV and Others v Commission*, ECLI:EU:C:2009:536.

In essence, a parent company is liable for antitrust law violations by any of its subsidiaries. Antitrust law provides, however, for a rather new sibling, that is, private enforcement of antitrust law whereby private parties claim damages for antitrust law violations by cartelists. In that specific area of private law, the above-described joint and several liability of parent companies for antitrust violations of their subsidiaries was established only recently.[26] In the latter judgment, the CJEU argued for an imputation of liability between a parent company and the subsidiary as their consolidated action represent a single economic unit.

57 With the judgment at hand, the CJEU affirms the reversed case, that is, imputation of liability from the parent to the subsidiary. According to the CJEU, private enforcement is an essential part of antitrust law since by means of both fines as well as by private law actions, undertakings are deterred from violating antitrust law. In view of the identical purpose, the functional term 'undertaking' used in art 101(1) TFEU should also be interpreted identically. Since, in the law on fines, an 'undertaking' within the meaning of art 101(1) TFEU is to be understood as a single economic unit, irrespective of its legal form and the way in which it is financed, this also leads to joint and several civil liability of parent companies for antitrust infringements committed by their subsidiaries. As a result, the Grand Chamber of the CJEU transfers the imputation of the liability of a subsidiary to the parent to the reversed case: subsidiaries are also liable for the cartel law violations of their parent company, even if this subsidiary has not itself violated antitrust law.

58 According to the CJEU, it must only be ensured that the subsidiary can exercise its rights of defence appropriately by, for instance, proving that it does not belong to the same economic entity as the parent company. Thus, it is necessary – at least in principle – for the plaintiff to present and prove a single economic unit, that is, the organisation of personal, material and immaterial means, which permanently pursues a specific purpose and a specific connection between the economic activity of the subsidiary and the object of the established infringement of antitrust law. If – as in the present case – the defendant subsidiary is a group-affiliated distribution company that is active in the very same product market as the parent company, and if – as in the present case – there is a decision imposing a fine against the parent company, the aforementioned hurdles erected by the CJEU are overcome due to the binding effect of Commission

26 CJEU 14.3.2019, C-724/17, *Vantaan kaupunki v Skanska Industrial Solutions and Others*, ECLI:EU:C:2019:204. On this case, see *BA Koch/T Thiede*, European Union, in: E Karner/BC Steininger (eds), ETL 2019 (2020) 684, no 15ff.

decisions according to art 16 of Regulation 1/2003.[27] The plaintiff who has sustained damage due to an antitrust violation only needs to present and, if necessary, prove the economic, organisational and legal ties between the subsidiary and the parent and the existence of a connection between the economic activity of this subsidiary and the object of the antitrust violation of the parent company.

From a legal dogmatic point of view, against the judgment at hand, it may well be argued that the whole concept of a 'single economic unit' was originally based on the idea that the parent company exercises a determining influence on the subsidiary – or 'using' the subsidiary, as it were, to infringe antitrust law. Of course, in the reversed case at hand, there is a lack of precisely this determining influence. To be sure, the subsidiary does not exercise any determining influence on the parent company and hardly 'uses' the latter, as it were, to carry out a violation of antitrust law. However, such an argument ignores the fact that – at least for private enforcement – only a functional economic external perspective is relevant. Neither the concept of an 'undertaking' in art 101(1) TFEU nor the concept of a 'single economic unit' focuses on the legal structure of cartelists. Indeed, from that perspective, any corporate law relationship between undertakings is entirely irrelevant; they are (merely) multiple tortfeasors. **59**

From a practitioner's perspective, the clear strengthening of private enforcement of antitrust law through civil actions is to be welcomed. The objection of numerous subsidiaries that only their parent companies were fined is to be ignored in the foreseeable future, subject (of course) to a corresponding link between the companies. **60**

Moreover, the judgment will have considerable impact on any cross-border private enforcement, as the courts at the subsidiary's place are now internationally competent to hear a case of private enforcement pursuant to art 7(2) Brussels Ia Regulation. In addition, under art 8(1) Brussels Ia Regulation, several undertakings may be sued jointly before the court of the place where one of the defendants – the so-called main or anchor defendant – has its seat.[28] As the subsidiaries may very well be the main defendants and a competent court exists at their seat, this results in a rather significant expansion of the possible jurisdictions against all cartelists as numerous companies have subsidiaries in the respective European Member States for the purpose of selling their products. **61**

Since art 6(3) Rome II Regulation provides for the applicable law at the general place of jurisdiction of the main defendant, this also may very well result **62**

27 Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ 2003 L 1, at 1ff.

28 See CJEU 21.5.2015, C-352/13, *Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Evonik Degussa GmbH and Others*, ECLI:EU:C:2015:335. On this case, see *Koch/Thiede* (fn 7) no 47ff.

in extensive forum shopping. In essence, a well-informed claimant may consult all defendant subsidiaries jurisdictions with respect to the Member States' rules on private enforcement, bring the claim in the jurisdiction best suited from the claimant's perspective pursuant to art 4 Brussels Ia Regulation and extend said claim to all the other cartelists pursuant to art 8 Brussels Ia Regulation. The court in that Member State will apply the local – claimant friendly, as it were – law pursuant to art 6(3) Rome II Regulation.

63 Finally, it is important to consider the consequences of the decision at hand for M&A transactions. Any due diligence will now have to extend to antitrust damages claims not only with regard to the subsidiary, but also to the respective parent company. Of course, such risks must then be reflected in the agreements with corresponding indemnities and guarantees.

10. CJEU 9 December 2021 – C-708/20, *BT v Seguros Catalana Occidente and EB*, ECLI:EU:C:2021:986

a) Brief Summary of the Facts

64 BT, who is domiciled in the United Kingdom, tripped on a step of the patio of holiday accommodation in Spain and injured herself. She consequently sought damages from the owner of the property (domiciled in Ireland) and from the Spanish insurer of the property before an English court. The claimant argued that the owner of the property had breached a duty in contract and in tort, pointing inter alia to a lack of handrails or warning signs. BT suggested that the court was competent to hear her case against the Spanish insurer by virtue of art 11 para 1 lit b and art 13 para 2 Brussels Ia Regulation. Regarding the Irish owner of the property, BT pointed to art 13 para 3. The owner of the property, however, challenged the jurisdiction of the English court, and the insurer argued that he was not liable to compensate BT under the insurance contract.

65 The English court therefore asked the CJEU in essence whether art 13 para 3 Brussels Ia Regulation allows a victim who seeks compensation from an insurer via a direct action to sue the insured in the same court even if the latter has a different domicile and had not been challenged by the insurer so far.

b) Judgment of the Court

66 The Court noted that the wording of art 13 para 3 of the Brussels Ia Regulation itself does not provide an answer to the questions raised. However, by way of

systematic interpretation, this provision had to be assessed in light of the fact that it was part of Section 3 of Chapter II, which establishes an autonomous system of jurisdiction for insurance matters. Therefore, the nature of the injured person's direct action against the insurer under national law is irrelevant for purposes of applying para 3 of art 13.[29] When it comes to establishing jurisdiction under that provision, 'the action before the court must necessarily raise a question relating to rights and obligations arising out of an insurance relationship between the parties to that action' (para 30). It is not sufficient, however, that the claims against the insurer and the insured are based on the same facts, or that the latter two are in dispute about the validity or effect of the insurance policy. To strengthen its interpretation, the Court further emphasised by way of teleological interpretation that the special rules on jurisdiction in insurance matters aim to protect the weaker party of a relationship based on an insurance contract, whereas there is no obvious weaker party in that meaning in a case arising directly between the victim and the tortfeasor: 'That imbalance is generally absent where an action does not concern the insurer, in relation to whom both the insured and the injured person are considered to be weaker' (para 33). The risk of conflicting outcomes of a separate case filed against the insured elsewhere is avoided by the possibility to involve the insurer as a third party to that (second) action. Therefore, the claimant could not rely on art 13 para 3 Brussels Ia Regulation in order to establish jurisdiction of the English court against the Irish owner of the property.

c) Commentary

By excluding the possibility to bring the insured into the direct action against the insurer in the same jurisdiction, the Court narrowed the scope of Section 3 of Chapter II of the Brussels Ia Regulation, in particular of its art 13 para 3. The Court wanted to cut off the possibility to drag the tortfeasor into a court to which he may have no similarly close ties as (already generously) foreseen by art 7 no 2 Brussels Ia Regulation. After all, England was the domicile of the claimant only, whereas both her harm as well as its cause ('the place of the harmful event') occurred in Spain, which was also the seat of the insurer. **67**

It will still be interesting to see how the Court will decide a case where the insurer has its domicile in the same jurisdiction as the victim. In that case, the **68**

29 The Court cited CJEU 13.12.2007, C-463/06, *FBTO Schadeverzekeringen NV v Odenbreit*, ECLI:EU:C:2007:792, in support of this argument. On this case, see *BA Koch*, European Union, in: H Koziol/BC Steininger (eds), ETL 2007 (2008) 598, no 62ff.

insured is not entirely unrelated to that jurisdiction (as he was in the instant case), as he had chosen to enter into an insurance agreement with that insurer, and the latter's jurisdiction may typically also be the applicable law chosen in the insurance contract. However, if one takes the teleological arguments raised by the Court in this case seriously, that latter jurisdiction would still only be relevant for the relationship between the insurer and the insured (of which the latter is the weaker party by way of default assumption), but fail to provide for sufficient ties between the victim and the insured, who are not linked by that insurance contract. Therefore, the outcome would most likely have to be the same.

11. CJEU 21 December 2021 – C-251/20, *Gtflix Tv v DR*, ECLI:EU:C:2021:1036

a) Brief Summary of the Facts

69 The claimant is established in the Czech Republic and has its centre of interests there; the defendant is domiciled in Hungary. Both produce and distribute 'adult audiovisual content' online. The claimant alleged that the defendant had made disparaging comments about it on a number of websites and fora and therefore claimed damages and the removal and rectification of the comments before a French court. The defendant challenged the jurisdiction of the latter, which was upheld by the court of first instance in France.

70 The French appellate court agreed inasmuch as the claims for removal and rectification were concerned, but had doubts with respect to the claims for compensation, particularly in light of the *eDate* ruling,[30] and therefore asked the CJEU for a preliminary ruling. In essence, the French appellate court asked whether the injured party could establish jurisdiction in France because this was one of the jurisdictions where the harm occurred within the meaning of art 7 no 2 Brussels Ia Regulation, or whether the victim would have to sue in the court where he could also claim rectification and removal.

b) Judgment of the Court

71 The CJEU recalled that art 7 no 2 Brussels Ia Regulation provides for special jurisdiction in matters relating to tort, delict or quasi-delict. The injured party

30 CJEU C-509/09 and C-161/10 *eDate Advertising*. On this case, see *Koch* (fn 15) no 21ff.

therefore can raise an action for compensation before the courts of the Member State 'where the harmful event occurred or may occur', which, according to long-established case law, covers both the place where the damage occurred and the place of the event giving rising to it. The Court noted that the claimant in the instant case relied (only) on the first of those two options, since the defendant had not acted in France.

72 The Court then pointed to previous case law in which it had been held that a person who considers that his personality rights have been infringed can bring an action for compensation of the full damage before the courts of the Member State in which the centre of his interests is based. Alternatively, the injured party may also bring an action before the courts of each Member State in which the content is or has been accessible. Those courts, however, have jurisdiction only in respect of the damage caused in their territory. An action for rectification and removal, on the other hand, can only be brought in its entirety before the court of the State in which the centre of interests of the person concerned lies (and where he can claim compensation for his full loss), or where the publisher of that content has its domicile.[31]

73 The Court then addressed the question of whether a court competent to hear an action for compensation of damage that was incurred only in its own territory could be exclusively competent to hear both types of claims. It answered the question in the negative because such a conferral of jurisdiction does not follow from art 7 no 2 as interpreted by the Court. While a claim for compensation is divisible by nature, an injunction for rectification and removal is not in light of the 'ubiquitous nature of the information and the content placed online' (para 32).

74 Apart from that, both claims differ with respect to their purpose and their cause. Therefore, there is no legal necessity that both claims must be examined jointly by a single court. Nor was such an attribution of jurisdiction necessary with regard to the sound administration of justice, as it may be in an action for compensation where a court which has jurisdiction to rule solely on the damage incurred within its own judicial territory appears best capable of assessing the existence and the extent of the alleged damage there.

31 CJEU 17.10.2017, C-194/16, *Bolagsupplysningen OÜ*. On this case, see *Koch/Thiede* (fn 17) no 77ff.

c) Commentary

75 This is yet another attempt by the Court to recall the spirits that it summoned with its mosaic assessment of compensation claims in personality rights cases, as it had already done in *Bolagsupplysningen*.[32] It remains to be seen whether eventually all remaining broomsticks in the jurisdictional chaos the Court had created will return.

32 See *Koch*/*Thiede* (fn 17) no 90 f.