Jurisdiction over disputes relating to electronic consumer contracts under Brussels I
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Abstract
Article 15(1)(c) of ‘Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters’ (hereafter ‘Brussels I) states that jurisdiction is established over consumer transactions if the “contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer’s domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities”. This measure accommodates e-commerce among all other types of communication.

Where an electronic transaction falls under 15(1)(c), Article 16 of Brussels I stipulates that a consumer can bring proceedings either in his own jurisdiction or in the place where the supplier is domiciled. Moreover, proceedings may be brought against a consumer by the business only in the courts of the Member State in which the consumer is domiciled, so that the consumer retains the right to be sued only in his own jurisdiction.

Article 15(1)(c) is not without problems. First there are definitional problems such as standing on the meaning of the concepts ‘consumer’ and ‘directs such activities’. This uncertainty is intensified because Brussels I does not require that the business directs its activities to the specific consumer.

In standing on the class/capacity distinction of consumer contracts, the paper applies fairness theories in the construction of Article 15(1)(c) opposed to power theories. Although jurisdictional rights of the courts of the Member States and the fairness of their assertion are almost presumed in all business to consumer transactions, theories of fairness may still play a significant role in giving a precise construction of the extent of Article 15(1)(c).

The paper concludes that the words ‘directs such activities’ should be interpreted to include all cases where a website has entered into an online contract with a consumer whether purposefully targeting the consumer’s jurisdiction or in absence of such an intention. However, there are exceptions to the ‘single contract’ rule where the consumer acts in bad faith, for example by providing false information of his place of domicile, which effectively, for the business, is a determining factor on whether to go ahead with the transaction. The underlying principle which patently governs the exceptions discussed above is the principle of good faith. It is also noticeable that this principle has gained momentum in the ECJ jurisprudence in its interpretation of the Brussels I.