Provisional text

JUDGMENT OF THE COURT (First Chamber)

9 July 2020 (*)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Point 2 of Article 7 — Jurisdiction in matters relating to tort, delict or quasi-delict — Place where the harmful event occurred — Place where the damage occurred — Manipulation of data relating to the emission of exhaust gases from engines produced by a motor vehicle manufacturer)

In Case C-343/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesgericht Klagenfurt (Regional Court, Klagenfurt, Austria), made by decision of 17 April 2019, received at the Court on 30 April 2019, in the proceedings

Verein für Konsumenteninformation

v

Volkswagen AG,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, M. Safjan (Rapporteur), L. Bay Larsen, C. Toader and N. Jääskinen, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Verein für Konsumenteninformation, by M. Poduschka and A. Klauser, Rechtsanwälte,

– Volkswagen AG, by T. Kustor and S. Prossinger, Rechtsanwälte,

– the United Kingdom Government, by Z. Lavery and F. Shibli, acting as Agents, and by B. Lask, Barrister,

– the European Commission, by M. Heller and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 April 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of point 2 of Article 7 of 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 (OJ 2012 L 351, p. 1).

2 The request has been made in proceedings between the Verein für Konsumenteninformation, an association for consumer information having its registered office in Vienna (Austria) ('the VKI'), and Volkswagen AG, a motor vehicle manufacturer having the legal form of a company limited by shares under German law, having its registered office in Wolfsburg (Germany), concerning the latter's liability for damage arising from the installation in vehicles purchased by Austrian consumers of software that manipulates data relating to exhaust gas emissions.

Legal context

EU law

Regulation No 1215/2012

3 Recitals 15 and 16 of Regulation No 1215/2012 read as follows:

'(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

(16) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.'

4 Chapter II of Regulation No 1215/2012, entitled 'Jurisdiction', contains, inter alia, a Section 1, entitled 'General provisions', and a Section 2, entitled 'Special jurisdiction'. Article 4(1) of that regulation, which features in Section 1, provides:

'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

5 Article 7 of Regulation No 1215/2012, which features in Section 2 of Chapter II of that regulation, is worded as follows:

'A person domiciled in a Member State may be sued in another Member State:

…

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

…'

The Rome II Regulation

6 Article 6 of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 40; 'the Rome II Regulation'), entitled 'Unfair competition and acts restricting free competition', states, in paragraph 1 thereof:

'The law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected.'

The dispute in the main proceedings and the question referred for a preliminary ruling

7 The VKI, the tasks of which, according to its statutes, include the assertion of consumers' claims assigned to it for the purpose of bringing proceedings before the courts, brought an action on 6 September 2018 before the Landesgericht Klagenfurt (Regional Court, Klagenfurt, Austria), claiming that Volkswagen should be ordered to pay it EUR 3 611 806 plus associated costs and be declared liable for all damage that is not yet quantifiable and/or that is yet to be incurred in the future.

8 The VKI bases its application on Volkswagen's liability in tort, delict and quasi-delict, relying on the fact that the 574 consumers who assigned to it their claims for the purposes of the action in the main proceedings purchased in Austria new or used vehicles equipped with an EA 189 engine before the disclosure to the public, on 18 September 2015, of Volkswagen's manipulation of data relating to exhaust gas emissions from those vehicles. According to the VKI, those engines are equipped with a 'defeat device' which is unlawful under Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with regard to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ 2007 L 171, p. 1). The software in question makes it possible to display, during tests and when measurements are being taken, exhaust gas emissions that comply with the prescribed limit values, whereas a level of pollutants many times higher than the prescribed limit values is actually emitted under the real-world driving conditions of the vehicles concerned, that is to say, on the road. It was only by means of that software which manipulates data relating to those emissions that Volkswagen was able to obtain the type approval provided for under EU legislation for vehicles with the EA 189 engine.

9 According to the VKI, the damage suffered by the owners of those vehicles consists in the fact that, had they been aware of the manipulation at issue, they either would not have purchased such a vehicle or would have purchased it at a price reduced by at least 30%. Since the vehicles in question were defective from the outset, their market value and therefore their purchase price are significantly lower than the purchase price actually paid. The VKI argues that the difference constitutes a recoverable loss.

10 In order to justify the international jurisdiction of the referring court, the VKI relies on point 2 of Article 7 of Regulation No 1215/2012. The conclusion of the sales contract, the payment of the purchase price and the transfer or delivery of the vehicles in question all took place within the area of jurisdiction of the referring court. According to the VKI, this is not a case of mere consequential damage following the purchase of the vehicles, but initial damage that confers jurisdiction on that court. That damage takes the form of a reduction in the value of the assets of each consumer concerned, suffered at the earliest on the date of purchase and delivery of the vehicles in question at the place of delivery and, consequently, within the area of jurisdiction of the referring court. According to the VKI, it was at this place that the tortious conduct of Volkswagen took effect for the first time and directly caused damage to the consumers concerned.

11 Volkswagen contends that the VKI's action should be dismissed and it disputes the international jurisdiction of the referring court in the light of point 2 of Article 7 of Regulation No 1215/2012.

12 The referring court harbours doubts as to whether, in the present case, the mere purchase of the vehicles in question from car dealers established in Austria and the delivery of those vehicles in Austria are sufficient

in themselves to establish the jurisdiction of the Austrian courts in the light of that provision. It infers from the case-law of the Court, and in particular from the judgment of 19 September 1995, *Marinari* (C-364/93, EU:C:1995:289, paragraphs 14 and 15), that jurisdiction in matters relating to tort, delict or quasi-delict is available to direct victims only if they assert initial damage and not mere consequential damage.

13 The referring court takes the view that the software that makes it possible to manipulate data relating to the exhaust gas emissions of the vehicles concerned gave rise to initial damage, whereas the damage asserted by the VKI in the form of a reduction in the value of those vehicles constitutes consequential damage resulting from the fact that those vehicles have a material defect.

14 Furthermore, the referring court is uncertain whether jurisdiction for purely financial damage arising from a tortious act can be conferred pursuant to point 2 of Article 7 of Regulation No 1215/2012.

15 That court notes that, in the light of the judgment of 16 June 2016, *Universal Music International Holding* (C-12/15, EU:C:2016:449), certain aspects of the case in the main proceedings militate in favour of Germany being the place where the damage at issue occurred. Even if that damage occurred, according to the view taken by the VKI, when vehicles equipped with software that manipulates data relating to exhaust gas emissions were purchased and delivered in Austria, all of the claims for compensation relate, in the light of the facts, to one and the same thing, namely the wrongful acts of which Volkswagen is accused, which took place at the registered office of that company, and thus in Germany. From the standpoint of the efficacious conduct of proceedings, in particular because of the proximity to the subject matter of the dispute and the ease of taking evidence, the German courts would therefore be objectively better placed to clarify where liability for the alleged damage lies. Moreover, conferring jurisdiction on the courts of the place where the vehicles in question were purchased and delivered to end customers, including purchasers of used vehicles, would not necessarily meet the requirement that jurisdiction be predictable.

16 Lastly, the referring court also harbours doubts as to whether a finding that the Austrian courts have international jurisdiction would be compatible with the strict interpretation, required pursuant to the case-law of the Court, of the rules of special jurisdiction laid down in Regulation No 1215/2012.

17 In those circumstances, the Landesgericht Klagenfurt (Regional Court, Klagenfurt) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is point 2 of Article 7 of Regulation … No 1215/2012 … to be interpreted as meaning that, in a situation such as that in the main proceedings, the “place where the harmful event occurred” may be construed as the place in a Member State where the damage occurred, when that damage consists exclusively of financial damage that is the direct result of an unlawful act committed in another Member State?’

Admissibility

18 In its written observations, the VKI submits that the request for a preliminary ruling is inadmissible on the ground that the question referred is both irrelevant and hypothetical.

19 However, in accordance with settled case-law, questions referred for a preliminary ruling by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, judgment of 7 May 2020, *Rina*, C-641/18, EU:C:2020:349, paragraph 22 and the case-law cited).

20 In the present case, the request for a preliminary ruling must be declared admissible, since it is apparent from the order for reference that the interpretation of point 2 of Article 7 of Regulation No 1215/2012

sought is necessary in order to establish whether the referring court has jurisdiction under that provision to rule on the dispute in the main proceedings.

Consideration of the question referred

21 By its question, the referring court asks, in essence, whether point 2 of Article 7 of Regulation No 1215/2012 must be interpreted as meaning that, where a manufacturer in a Member State has unlawfully equipped its vehicles with software that manipulates data relating to exhaust gas emissions before those vehicles are purchased from a third party in another Member State, the place where the damage occurred is in that latter Member State.

22 As a preliminary point, it must be noted that, in so far as, in accordance with recital 34 of Regulation No 1215/2012, that regulation repeals and replaces Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1), which itself replaced the Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), as amended by successive conventions on the accession of new Member States to that convention ('the Brussels Convention'), the Court's interpretation of the provisions of the latter legal instruments also applies to Regulation No 1215/2012 whenever those provisions may be regarded as 'equivalent' (judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 23 and the case-law cited). That is the case with point 3 of Article 5 of the Brussels Convention and Regulation No 44/2001, on the one hand, and with point 2 of Article 7 of Regulation No 1215/2012, on the other (see, to that effect, judgment of 31 May 2018, *Nothartová*, C-306/17, EU:C:2018:360, paragraph 18 and the case-law cited).

23 As has repeatedly been held by the Court in its case-law concerning those provisions, the concept of the 'place where the harmful event occurred' is intended to cover both the place where the damage occurred and the place of the event giving rise to it, with the result that the defendant may be sued, at the option of the applicant, in the courts for either of those places (judgments of 16 July 2009, *Zuid-Chemie*, C-189/08, EU:C:2009:475, paragraph 23, and of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 25 and the case-law cited).

24 In the present case, first, it is apparent from the documents before the Court that the place of the event giving rise to the damage is in the Member State within the territory of which the motor vehicles at issue were equipped with software that manipulates data relating to exhaust gas emissions, that is to say, in Germany.

25 As regards, secondly, the place where the damage occurred, it is necessary to determine where that place is in circumstances such as those of the dispute in the main proceedings, that is to say, when the harmful consequences have arisen only after the vehicles in question were purchased and in another Member State, in this case, in Austria.

26 In this regard, the referring court accurately recalled that, according to settled case-law, the concept of the 'place where the harmful event occurred' cannot be construed so extensively as to encompass every place where the adverse consequences of an event, which has already caused damage actually occurring elsewhere, can be felt. Consequently, that concept cannot be construed as including the place where the victim claims to have suffered financial damage following initial damage arising and suffered by him in another State (judgments of 19 September 1995, *Marinari*, C-364/93, EU:C:1995:289, paragraphs 14 and 15, and of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 28 and the case-law cited).

27 The Court has also ruled, as regards point 3 of Article 5 of the Brussels Convention, that damage which is no more than the indirect consequence of the harm initially suffered by other persons who were the direct victims of damage which occurred at a place different from that where the indirect victim subsequently suffered harm cannot establish jurisdiction under that provision (see, to that effect, judgment of 11 January 1990, *Dumez France and Tracoba*, C-220/88, EU:C:1990:8, paragraphs 14 and 22).

28 Similarly, the Court has held that subsequent adverse consequences are not capable of providing a basis for jurisdiction under point 2 of Article 7 of Regulation No 1215/2012 (see, to that effect, judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 27 and the case-law cited).

29 That said, in the main proceedings, it is apparent from the documents before the Court, subject to the assessment of the facts which it is for the referring court to make, that the damage alleged by the VKI takes the form of a loss in value of the vehicles in question stemming from the difference between the price paid by the purchaser for such a vehicle and its actual value owing to the installation of software that manipulates data relating to exhaust gas emissions.

30 Consequently, while those vehicles became defective as soon as that software had been installed, the view must be taken that the damage asserted occurred only when those vehicles were purchased, as they were acquired for a price higher than their actual value.

31 Such damage, which did not exist before the purchase of the vehicle by the final purchaser who considers himself adversely affected, constitutes initial damage within the meaning of the case-law recalled in paragraph 26 of the present judgment, and not an indirect consequence of the harm initially suffered by other persons within the meaning of the case-law cited in paragraph 27 of the present judgment.

32 Moreover, contrary to the view taken by the referring court, that damage does not constitute purely financial damage either.

33 Admittedly, the action for damages at issue in the main proceedings seeks to obtain compensation for the reduction in value of the vehicles in question estimated at 30% of their purchase price, that is to say, quantifiable financial compensation. However, as the European Commission noted in its written observations, the fact that the claim for damages is expressed in euros does not mean that the damage is purely financial. Unlike in the cases that gave rise to the judgments of 10 June 2004, *Kronhofer* (C-168/02, EU:C:2004:364), of 28 January 2015, *Kolassa* (C-375/13, EU:C:2015:37), and of 12 September 2018, *Löber* (C-304/17, EU:C:2018:701), in which financial investments had led to a reduction in the financial assets of the persons concerned with no connection to a tangible asset, the case in the main proceedings concerns a defect that affects vehicles, which are tangible assets.

34 Thus, rather than purely financial damage, the present case concerns material damage resulting from a loss in value of each vehicle concerned and stemming from the fact that, with the disclosure that software which manipulates data relating to exhaust gas emissions was installed, the purchaser received, in return for the payment made to purchase such a vehicle, a vehicle which is defective and, accordingly, has a lower value.

35 It must therefore be concluded that, where vehicles equipped by their manufacturer with software that manipulates data relating to exhaust gas emissions are sold, the damage suffered by the final purchaser is neither indirect nor purely financial and occurs when such a vehicle is purchased from a third party.

36 In circumstances such as those referred to in paragraphs 34 and 35 of the present judgment, such an interpretation of point 2 of Article 7 of Regulation No 1215/2012 meets the objective of predictability of the rules governing jurisdiction, referred to in recital 15 of that regulation, in so far as a motor vehicle manufacturer which is established in a Member State and engages in unlawful tampering with vehicles sold in other Member States may reasonably expect to be sued in the courts of those States (see, by analogy, judgments of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 56, and of 12 September 2018, *Löber*, C-304/17, EU:C:2018:701, paragraph 35).

37 By knowingly contravening the statutory requirements imposed on it, such a manufacturer must anticipate that damage will occur at the place where the vehicle in question has been purchased by a person who could legitimately expect that the vehicle was compliant with those requirements and who subsequently realises that the vehicle is defective and of lower value.

38 That interpretation is also consistent with the objectives of proximity and of the sound administration of justice, referred to in recital 16 of Regulation No 1215/2012, in so far as, in order to determine the amount of the damage suffered, the national court may be required to assess the market conditions in the Member State where that vehicle was purchased. The courts of that Member State are likely to have best access to the evidence needed to carry out those assessments (see, to that effect, judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 34).

39 Lastly, that interpretation satisfies the requirement of consistency laid down in recital 7 of the Rome II Regulation, in so far as, in accordance with Article 6(1) thereof, the place where the damage occurs in a case involving an act of unfair competition is the place where ‘competitive relations or the collective interests of consumers are, or are likely to be, affected’. An act, such as that at issue in the main proceedings, which, by being likely to affect the collective interests of consumers as a group, constitutes an act of unfair competition (judgment of 28 July 2016, *Verein für Konsumenteninformation*, C-191/15, EU:C:2016:612, paragraph 42), may affect those interests in any Member State within the territory of which the defective product is purchased by consumers. Thus, under the Rome II Regulation, the place where the damage occurs is the place in which such a product is purchased (see, by analogy, judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 35).

40 In the light of all the foregoing, the answer to the question is that point 2 of Article 7 of Regulation No 1215/2012 must be interpreted as meaning that, where a manufacturer in a Member State has unlawfully equipped its vehicles with software that manipulates data relating to exhaust gas emissions before those vehicles are purchased from a third party in another Member State, the place where the damage occurs is in that latter Member State.

Costs

41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Point 2 of Article 7 of 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 must be interpreted as meaning that, where a manufacturer in a Member State has unlawfully equipped its vehicles with software that manipulates data relating to exhaust gas emissions before those vehicles are purchased from a third party in another Member State, the place where the damage occurs is in that latter Member State.

[Signatures]

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* Language of the case: German.