



Revised Rules on jurisdiction in disputes involving weaker parties/relevance of other EU legal instruments

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SUMMARY

1. INTRODUCTION

2. SELECTED ISSUES TO BE
REVISED

3. CONCLUSIONS

1. INTRODUCTION

- **Section IV BIR (recast)**
 - **Art 17** → scope of application
 - **Art 18** → jurisdiction rules
 - Consumer as a claimant: *Forum actoris (procedural benefit)*
 - Consumer as a defendant → exclusivity defendant's domicile
 - **Art 19** → limited choice of court agreements
- **The rationale behind the protective jurisdiction rules**
 - they aim to guarantee protection to the consumer as the **weaker party** to the contract.
 - the consumer should not feel unable to defend his rights being forced to litigate before the courts of the professional's domicile.
 - only those for whom litigation is something unusual should be protected.
 - Only apply to consumers *stricto sensu* (conditions set forth in Article 17 of the Regulation)

2. SELECTED ISSUES

- a) **International element** required at the time of conclusion of the contract or at the time of the start of the proceedings
- b) **Who is a consumer** under section IV?
- c) The need of concluding a contract and the exclusion of extracontractual obligations
- d) **Contracts covered** in Section IV?
 - 17 a) and b)
 - 17 c)
 - 17 (3) → Exclusion of transport contracts

a) International element

- **Is the foreign element** required at the time of conclusion of the contract or at the time of the start of the proceeding → **Commerzbank C-296/20**.
- This questions has also arisen at national courts (credit contracts)
- The main problem relates to art. 17.1 c) → is the internationality of the situations inherent to the provision?
 - AG → yes
 - ECJ → no
- **Possible solutions**

b) Who is a consumer?

- **Art 17** → defines the term consumer as the person “*who concludes a contract for a purpose which can be regarded as being outside his trade or profession*”
- The ECJ has developed the term “consumer” contained in the Bla through case law and defends the need for an **autonomous**, **teleological** and **restrictive** interpretation.
- The ECJ has not constructed a theory of strong and weak parties and the rules currently do not aim to protect any weaker party, but only ***stricto sensu* consumers**.



- Problems have arisen with this restrictive interpretation

b) Who is a consumer?

- Other EU instruments (mainly Directives) laid down a broader concept of consumer and a more restrictive concept of professional → need of coherence
- Main problems encountered refer to:
 - **Natural person**
 - Consumer associations, NGOs
 - Small business, start ups
 - Acting “for a purpose which can be regarded outside his trade or profession”
 - Professionals operating in an ambit outside their professional competence, skills and knowledge
 - Investors
 - Peers

c) The need to conclude a contract

- Section IV has been interpreted as requiring the conclusion of a contract



- This restricts the application of Section IV
 - “in matters relating to...” when there is no contract concluded
 - Non-contractual obligations → cases on product liability

Art. 17 a and b) → possible enlargement to cover other long term contracts

Art. 17 c) → very broad interpretation of the target activity test by ECJ though no problems applying it

17(3) → it excludes of **transport contracts** other than package travel

Many difficulties encounter by travelers specially with airlines.

EU substantive law protects the consumer also special rule in Rome I



Possible amendment of art. 17 (3) and include such contracts or have a special rule

d) Consumer contracts under Section IV

3. CONCLUSIONS

- Enlarge Section IV scope of application in terms of:

- Definition of consumer
- Consumer contracts covered



This enlargement is coherent and a step further in the evolution of the **European Consumer Policy** and its goals. ECL not only pursues a high level of consumer protection but also **promotes** the use of the internal market

- Two drawbacks
 - ‘**ad intra**’ the cost of overprotecting the consumer will be paid by it
 - ‘**ad extra**’ → this enlargement may result unrealistic and inefficient and may jeopardize any attempt to globally unify jurisdiction rules over consumer contracts