

THE EU COURT OF JUSTICE: TWO LANDMARK DECISIONS IN REACTION TO CZECH COURTS' REQUESTS FOR A PRELIMINARY RULING

Two recent rulings by the Court of Justice of the European Union (the "CJEU") should have significant implications for the Czech market and beyond. In *Inkreal s.r.o. v Dúha reality s.r.o.*¹, the CJEU clarified that parties established in one EU member state are free to choose the courts of another EU member state to settle their disputes. This choice constitutes the international element necessary for the Brussels I *bis* Regulation² to apply. Additionally, when assessing the Czech time limitation rules in *Heureka Group a.s. v Google LLC*³, the CJEU rejected any regime that would make private enforcement of the EU competition law impossible or excessively difficult.

INKREAL S.R.O. V DÚHA REALITY S.R.O.

In *Inkreal s.r.o. v Dúha reality s.r.o.*, the parties to a contract, both established in the same EU member state, agreed on the jurisdiction of the courts of another EU member state to settle their disputes. The CJEU was asked to determine whether this agreement was sufficient to trigger the application of the Brussels I *bis* Regulation, despite there being no other connection to the chosen jurisdiction.

TWO ENTITIES, SAME STATE OF INCORPORATION, DIFFERENT JURISDICTION

The case concerned a request for a preliminary ruling from *Nejvyšší soud České republiky* (the "Supreme Court") regarding two Slovak entities that were parties to two loan agreements signed in 2016 and 2017, respectively. These agreements contained the parties' agreement that any dispute "shall be settled by a court of the Czech Republic having substantive and territorial jurisdiction". When the debtor failed to repay the loans provided

Key points from *Inkreal s.r.o. v Dúha reality s.r.o.*:

- Two parties established in the same EU member state may agree on the jurisdiction of the courts of a different EU member state to settle their disputes.
- Parties may start considering more closely which jurisdiction might be more "favourable" for their potential disputes.
- The above does not apply to exclusive jurisdiction cases (regarding real estate, IP rights etc.) and cases involving insurance, consumer or employment contracts, which follow different principles as well.

Key points from *Heureka Group a.s. v Google LLC*:

- Prior to the transposition of the EU Damages Directive, the Czech general rules on time limitation were applicable. In the context of competition damages, however, the CJEU found them incompatible with EU law.
- The EU member states must ensure that the rules on time limitation do not make it in practice impossible or excessively difficult to exercise rights conferred by EU law.

¹ Judgment of the CJEU, Case C-566/22 *Inkreal s.r.o. v Dúha reality s.r.o.*

² Regulation (EU) No. [1215/2012](#), on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

³ Judgment of the CJEU, Case C-605/21 *Heureka Group a.s. v Google LLC*

under both agreements, the creditor brought an action before the Supreme Court, seeking payment of the debts and a determination of which Czech court had territorial jurisdiction to rule on the dispute.

The CJEU pointed that, for the Brussels I *bis* Regulation to apply to an agreement conferring jurisdiction, according to the settled case-law (for example, cases *Owusu*⁴ or *IRnova*⁵), an international or, as it is usually known, cross-border element, must be present.

After having examined the case, the CJEU ruled that the parties to an agreement which are established in the same EU member state may agree on the jurisdiction of the courts of another EU member state to settle their disputes. The CJEU concluded that an agreement conferring jurisdiction is sufficient to constitute an international element and should be upheld in view of the objective of legal certainty for both the parties and the courts.

CROSS-BORDER ELEMENT AND LEGAL CERTAINTY

In this case, the CJEU clarified that the existence of an agreement conferring jurisdiction on the courts of another EU member state (other than the one in which the parties are established) demonstrates the cross-border implications of the dispute. This, in itself, constitutes a sufficient cross-border element, which is valid even in the absence of any further connection to the chosen jurisdiction. The CJEU argued that the Brussels I *bis* Regulation seeks to unify the rules on conflict of jurisdictions and aims to make them highly predictable and consistent with the principle of legal certainty.

Based on this judgment, it is clear that a simple contractual clause is capable, without any additional conditions, of diverting the jurisdiction from a state relevant to the parties and the agreement entered into between them, to a different EU member state.

Even though the judgment applies to a wide range of commercial and other contracts, it must be emphasized that this does not extend to cases involving rights to real estate, IP rights, and certain commercial register and corporate disputes, where the Brussels I *bis* Regulation stipulates exclusive jurisdiction. Furthermore, in cases involving insurance, consumer or employment contracts, the parties have only limited autonomy to determine the courts having jurisdiction.

Nevertheless, further interesting judgments and practical issues may arise from the situation at hand, as contractual parties may start considering more closely which jurisdiction might be more "favourable" or more predictable for their potential disputes. Perhaps legislators should take notes.

HEUREKA GROUP A.S. V GOOGLE LLC

In Heureka Group a.s. v Google LLC, the CJEU examined the Czech rules on time limitation applicable before the transposition of the EU Damages Directive⁶ in relation to infringements of EU competition law. The CJEU considered whether these rules, as set out contained in the Czech Civil Code, are in line with EU law.

HEUREKA' CLAIM BEFORE THE CZECH COURT

As established by the European Commission in its decision in 2018, Google LLC positioned and displayed its own sales price comparison service in the best possible place amongst the results in its general search services between 2013 and 2017. According to Heureka Group a.s., this conduct led to a decrease in traffic to its sales price comparison portal, Heureka.cz, resulting in damage for which Heureka Group a.s. sought compensation before the Czech courts. As the Municipal Court in Prague assessed the rules of time limitation applicable to this claim, it

⁴ Judgment of the CJEU, Case [C-281/02](#), *Andrew Owusu v N. B. Jackson*

⁵ Judgment of the CJEU, Case [C-399/21](#), *IRnova AB v FLIR Systems AB*

⁶ Directive 2014/104/EU on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union

expressed doubts whether the rules applicable to the part of the claim that arose before the transposition of the EU Damages conformed with EU law, and sought a preliminary ruling from the CJEU.

CLAIMING DAMAGES SHOULD NOT BE EXCESSIVELY DIFFICULT

According to the CJEU, until the transposition deadline of the EU Damages Directive, it was for the legal system of each EU member state to lay down detailed rules governing the exercise of the right to claim compensation for the harm resulting from an infringement of Articles 101 and 102 TFEU⁷, provided that the principles of equivalence and effectiveness were observed and that those rules did "*not make it in practice impossible or excessively difficult to exercise rights conferred by EU law.*"

The CJEU clarified that the limitation period should not start to run until (i) the anti-competitive infringement has ceased, and (ii) the injured party has the necessary information to bring an action for damages, particularly the information that the conduct constitutes an infringement. Furthermore, the limitation period should be suspended or interrupted during the Commission's investigation and until one year after the issuance of the Commission's decision.

Following the entry into force of the Czech Act No. 262/2017 Coll., on Compensation for Harm in Competition Matters, these aspects are addressed by this Act. Prior to its entry into force, the general Czech rules on time limitation (contained in the Czech Civil Code) would normally have applied; however, according to the CJEU, these rules are incompatible with EU law in the context of competition damages, and the above conditions must be achieved by interpreting EU law, which takes precedence over national law.

This ruling shows the EU's strong determination to support private parties in enforcing the EU competition law through damages claims against dominant companies and to balance their difficult position in such disputes. And although the CJEU framed its decision firmly into the competition law framework, it may serve as a reminder that certain national law barriers might be traversed with the help of the EU law.

⁷ Treaty on the Functioning of the European Union

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