Gesellschaft für Freiheitsrechte

PUBLIC CONSULTATION ON JURISDICTION RULES AND RECOGNITION AND ENFORCEMENT OF JUDGMENTS – BRUSSELS IA REGULATION (REVIEW)

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A. INTRODUCTION

1 Gesellschaft für Freiheitsrechte e.V. (Society for Civil Rights, GFF) is a Berlin-based civil society organisation that specialises in leading, supporting, and coordinating litigation and legal interventions. We are active in multiple areas, among them platform accountability. We have supported several cases concerning the Digital Services Act (DSA) and other EU rules governing online platforms. In our experience, the substantive rules of the DSA which are supposed to bring transparency and a certain level of accountability to platform behaviour are undermined by the current regime of international jurisdiction which, at the very least, creates significant deterrents to litigation.

2 Platforms routinely argue that they may only be sued in their country of establishment – most often Ireland. Even absent cost considerations, users are unlikely to litigate abroad given unfamiliarity with the foreign legal system. In addition, Ireland's legal system encompasses certain features that make litigation particularly risky. Bringing proceedings in Ireland can expose claimants to substantial costs, including the risk of an adverse costs order. Restrictions on third-party litigation funding can further narrow the options available to claimants with limited resources. This leads to a situation in which platforms first and foremost challenge jurisdiction knowing that the case will never be pursued before Irish courts.

3 In particular, users are frequently not considered consumers (B.I). Thus, they have to rely on contractual claims, for which a majority of German courts find jurisdiction in Ireland (B.II). Tort claims are often excluded to the existence of a contractual relationship between the parties (B.III). Moreover, choice-of-court clauses frequently require users to bring proceedings in Ireland. (B.IV). Even if some of the underlying domestic decisions can be challenged (and German courts have accepted jurisdiction in several cases supported by GFF), it should be noted that legal uncertainty itself may create significant deterrents against litigation.

4 Finally, we would like to provide some general comments on potential solutions (B.V).

B. ANALYSIS

I. CONSUMERS (ART. 17 AND 18 BRUSSELS IA)

5 Art. 17 Brussels Ia defines consumers contracts based on their purpose being "outside [a person's] trade or profession". While this distinction may have been relatively straightforward in one-off contracts (such as a purchase via an online marketplace), many current platform contracts are of a continuous nature and will have may serve both private and professional purposes, and the balance between those purposes may change over time. For example, a journalist may frequently post about their vacation, family updates, and everyday banalities such as dinner but may also contact other users for professional purposes and post about their job-related research, publications, and achievements. In the area of content creators, posting about the traditionally private may even become a professional activity.

6 This makes a clear delineation between a consumer and a non-consumer contract exceedingly difficult. This difficulty often disadvantages the user, as German courts have begun to look at posts and descriptions of accounts and decline jurisdiction when accounts also have a professional dimension.[1] For instance, in one German case, the court examined a lawyer's username, profile photograph and date of registration to determine whether she could rely on the consumer forum.[2]

7 It is arguable that such domestic decisions do not sufficiently reflect the case law of the CJEU. While according to *Gruber* a dual purpose contract would not be considered a consumer contract unless the trade or professional purpose is so negligible that it is out of the question in the overall context of the transaction,[3] the CJEU had accepted in *Schrems v. Facebook*, that Schrems was considered a consumer despite publications, speeches, and other professional activities connected to private enforcement.[4] Nonetheless, at the very least, the domestic decisions showcase that social media users cannot readily predict whether they will

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[1] OLG Frankfurt a. M., Decision of 6 May 2025 – 16 U 127/24; OLG Frankfurt a. M., Decision of 23 July 2025 – 16 U 9/25; LG Lübeck, Decision of 5 October 2023 – 15 O 218/23; OLG Nürnberg, Decision of 19 August 2025 – 3 W 1224/25 Kart.

[2] KG Berlin, Decision of 10 July 2025 – 10 U 104/24.

[3] Case C-464/01, Decision of 20 January 2005.

[4] Case C-498/16, Decision of 25 January 2018.

be able to pursue legal action in front of their local courts and assessing their own consumer status will frequently entail significant uncertainty.

II. CONTRACTUAL CLAIMS (ART. 7(1) BRUSSELS IA)

8 While older German decisions partly accepted jurisdiction under Art. 7(1) Brussels Ia,[5] by now most German courts reach the opposite conclusion: Contracts with platforms are fulfilled at the place of establishment of the platform. Hence, Art. 7(1) Brussels Ia does not allow users to litigate at their own local courts.[6]

III. NON-CONTRACTUAL CLAIMS (ART. 7(2) BRUSSELS IA)

9 In several cases we supported, the claimants relied on Article 7(2) Brussels Ia which deals with tort, delict, or quasi-delict. However, this line of argumentation faces its own challenges. First, there is still a lack of clarity on the distinction between Art. 7(1) and Art. 7(2) Brussels Ia. Second, the scope of tort, delict, and quasi-delict can likewise be uncertain.

1. CONTRACTUAL VS. NON-CONTRACTUAL

10 According to the case law of the CJEU, Art. 7(1) and (2) Brussels Ia are mutually exclusive grounds of jurisdiction for the same claim. However, this does not mean that the mere existence of any contract will exclude jurisdiction as a tort claim. In its *Wikingerhof* decision, the CJEU shed further light on this distinction, finding that jurisdiction cannot be based on Art. 7(2) if the interpretation of a contractual clause is indispensable for the claims brought forward.[7]

11 Pre-DSA content moderation litigation supported by GFF relied on *Wikingerhof* to argue that arbitrary content moderation without providing a sufficient statement of

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[5] OLG München, Decision of 24 August 2018 – 18 W 1294/18; OLG München, Decision of 2 August 2018 – 18 W 1173/18; OLG München, Decision of 12 December 2018 – 18 W 1873/18; OLG München, Decision of 12 May 2020 – 18 U 2689/19 Pre; LG Nürnberg-Fürth, Decision of 7 June 2019 – 11 O 3362/19; LG Frankfurt a.M., Decision of 30 June 2020 – 2-03 O 238/20.

[6] OLG Köln, Decision of 11 March 2021 – 15 W 10/21; OLG Düsseldorf, Decision of 24 March 2023 – I-16 W 8/23; LG Lübeck, Decision of 5 October 2023 – 15 O 218/23; LG Berlin, Decision of 4 June 2024 – 27 O 52/23 (2), KG Berlin, Decision of 10 July 2025 – 10 U 104/24; LG Nürnberg-Fürth, Decision of 7 July 2025 – 19 O 3742/25; OLG Nürnberg, Decision of 19 August 2025 – 3 W 1224/25 Kart.

[7] Case C-59/19, Decision of 24 November 2020.

reasons constitutes an abuse of a dominant position (Art. 102 TFEU). As the specific user contract did not need to be interpreted for this finding, Art. 7(2) Brussels Ia could be applied. The court agreed with this interpretation.[8]

12 However, several German courts have come to different conclusions in similar cases and denied their jurisdiction under Art. 7(2) Brussels Ia, leading to high uncertainty.[9]

2. CLASSIFICATION AS TORT

13 In much of the case law, the primary question is whether a claim is contractual. In those cases, a non-contractual claim will usually be qualified as tort, delict, or quasi-delict. However, new legislation also brings new obligations that can be difficult to qualify.

14 For instance, GFF has supported cases based on Art. 40(12) DSA on researcher data access. Like in other cases, substantive arguments were limited; the defence focused largely on procedural issues, most prominently international jurisdiction. These corresponding decisions showcase the lack of legal uncertainty regarding international jurisdiction. In the first case, the district court of Berlin (Landgericht Berlin), confirmed its jurisdiction.[10] In the second case, a different chamber of the same court denied its jurisdiction,[11] a decision that was then reversed by the High Court of Berlin (Kammergericht Berlin), which confirmed its international jurisdiction.[12] While, thus the current case law granting international jurisdiction encompasses a beneficial High Court ruling, it is nevertheless far from legally certain.

IV. CHOICE-OF-COURT CLAUSES

15 While Art. 19 Brussels Ia limits the possibility to employ choice-of-court clauses for consumers, the regulation accepts them outside of this area. Unsurprisingly, platforms make extensive use of this possibility. Hence, even if Art. 7 were to be

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[8] OLG Düsseldorf, Decision of 2 April 2025 – VI-U (Kart) 5/24.
[9] OLG Nürnberg, Decision of 19 August 2025 – 3 W 1224/25 Kart; OLG Hamburg, Decision of 5 June 2026 – 15 W 13/26; OLG Frankfurt a. M., Decision of 23 July 2025 – 16 U 9/25.
[10] LG Berlin II, Decision of 13 May 2025 – 41 O 140/25 eV.
[11] LG Berlin II, Decision of 23 December 2025 – 67 O 173/25 eV.
[12] KG Berlin, Decision of 17 February 2026 – 1 W 399/25.

interpreted differently, its application might be largely excluded due to such clauses.

16 In the *Filmwerkstatt* case supported by GFF, the OLG Düsseldorf found that the clause did not encompass competition law claims as they were not explicitly mentioned.[13]

17 However, the specific clause can be amended to include such claims. Moreover, this line of reasoning relies on bringing forth a competition law claim, which creates barriers for users not proficient in this area of law.

18 A more helpful approach is to challenge the overall validity of such clauses. In fact, they largely seem to be aimed at shielding platforms from – at least – most kinds of litigation. Hence, in a preliminary assessment, the Berlin Court of Appeal indicated that such a clause may constitute an abuse of a dominant position.[14]

V. RECOMMENDATIONS

19 Jurisdictional rules should never limit access to justice. Specifically, they should not result in a situation, in which one party to a contract can violate its obligations to the other party without fearing enforcement. Moreover, since disputes with online platforms frequently concern speech, national courts play a key role: they can protect freedom of expression promptly and with a profound understanding of the linguistic, cultural and legal context in which the speech takes place.

20 At the same time, legal certainty rightly constitutes a fundamental principle of any rules governing jurisdiction. Moreover, rules aimed at improving access to justice should not benefit SLAPPs.

21 We propose that a correct balance between these requirements results in a situation in which litigation against at least very large online platforms and search engines (pursuant to Art. 33 DSA) that operate on a for-profit basis should not be shielded by choice-of-court clauses. They have built their business model on

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[13] OLG Düsseldorf, Decision of 2 April 2025 – VI-U (Kart) 5/24.

[14] KG Berlin, Order of 4 March 2026 – U 2/25 Kart; See also CNMC (Comisión Nacional de los Mercados y la Competencia), Decision of 29 July 2024, S/0005/21.

attracting users all over Europe and thus cannot legitimately expect that this business activity would not come with legal responsibility in front of local courts.

22 We further recommend that natural persons in general should be granted more opportunities to seek legal redress in their home jurisdiction. Access to justice is a human right, not one just reserved to consumers. Additionally, it is and will become increasingly harder to distinguish who can be considered a consumer. However, politicians, journalists, academics, artists, etc. should not be hindered in pursuing their rights. Oftentimes, their speech and expression will receive special protections substantively. It thus seems counterintuitive that their access to legal enforcement will be more difficult.

23 In addition, at least small and medium-sized enterprises (SMEs) and (non-profit) organisations as well as researchers and research organisations should likewise be protected. Civil society is most often at the forefront of protecting rights and speaking to injustice under precarious financial conditions. These organisations should be able to bring proceedings before their local courts.

24 On the other hand, exposing natural persons as well as SMEs to litigation throughout the Union may expose them to financial risks and may open the doors to SLAPPs.

25 We see multiple routes to achieve a more properly balanced jurisdictional regime:

26 The General Data Protection Regulation (GDPR) contains its own jurisdictional clause, giving data subjects access to the courts of their habitual residence (Art. 79(2) GDPR).

27 It could thus be considered whether a similar provision could be included in other substantive regulations such as the DSA. While this would solve some issues such as data access or content moderation, it would not necessarily answer all of them. For instance, claims seeking the removal of content or the disclosure of information about a user may arise under national law. A clause that would only cover rights under a specific legal act might thus fall short of its objective.

28 It could also be considered to expand the notion of consumer contract under Art. 17 and 18 Brussels Ia to include natural persons or SMEs (at least in certain situations or against certain platforms).

29 In addition, clarifications may be helpful, such as regarding the place where a service has been provided.

30 Finally, none of these rules will bring greater access to justice unless stricter limits are placed on the enforceability of choice-of-court clauses. Art. 19 Brussels Ia already strikes a good balance for consumer cases, by putting strong restrictions on their use. This rule could easily be expanded beyond the realm of consumer protection.