

Color Drack GmbH
v.
Lexx International Vertriebs GmbH

C-386/05
3 May 2007

Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters – Regulation (EC) No 44/2001 – Special jurisdiction – First indent of Article 5(1)(b) – Court for the place of performance of the contractual obligation in question – Sale of goods – Goods delivered in different places within a single Member State

OPERATIVE PART:

The first indent of Article 5(1)(b) 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 must be interpreted as applying where there are several places of delivery within a single Member State. In such a case, the court having jurisdiction to hear all the claims based on the contract for the sale of goods is that for the principal place of delivery, which must be determined on the basis of economic criteria. In the absence of determining factors for establishing the principal place of delivery, the plaintiff may sue the defendant in the court for the place of delivery of its choice.

EXCERPT FROM THE REASONS:

1 This reference for a preliminary ruling concerns the interpretation of the first indent of Article 5(1)(b) 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 (OJ 2001 L 12, p. 1).

Regulation No 44/2001

2 According to recital 2 in the preamble to Regulation No 44/2001, '[p]rovisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation are essential'.

3 Recital 11 in the preamble to Regulation No 44/2001 states: '[t]he rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor'.

4 The rules on jurisdiction laid down by Regulation No 44/2001 are set out in Chapter II thereof, consisting of Articles 2 to 31.

Color Drack GmbH
protiv
Lexx International Vertriebs GmbH

C-386/05
3. svibnja 2007.

Nadležnost i priznanje i ovrha sudskih odluka u građanskim i trgovačkim stvarima – Uredba (EZ) br. 44/2001 – posebne nadležnosti – članak 5. stavak 1. točka b. prva alineja – sud nadležan za mjesto ispunjenja ugovorne obveze koja je predmet postupka – prodaja robe – roba isporučena u razna mjesta u državi članici

IZREKA:

Članak 5. stavak 1. točku b. prvu alineju Uredbe Vijeća (EZ) br. 44/2001 od 22. prosinca 2000. o nadležnosti i priznanju i ovrši sudskih odluka u građanskim i trgovačkim stvarima treba tumačiti tako da je ta odredba mjerodavna i u slučaju kada postoji više mjesta isporuke u jednoj državi članici. U takvu je slučaju za odluku o svim tužbama iz jednog ugovora o prodaji robe nadležan sud u čijem se području nadležnosti nalazi mjesto glavne isporuke, koje se treba odrediti prema gospodarskim kriterijima. Ako se ne može utvrditi mjesto glavne isporuke, tužitelj tuženika može tužiti pred sudom mjesta isporuke po svom izboru.

IZ OBRAZLOŽENJA:

1 Zahtjev za prethodnim tumačenjem odnosi se na tumačenje članka 5. stavka 1. točke b. prve alineje Uredbe Vijeća (EZ) br. 44/2001 od 22. prosinca 2000. o nadležnosti i priznanju i ovrši sudskih odluka u građanskim i trgovačkim stvarima (Sl. 2001, L 12, str. 1).

Uredba br. 44/2001

2 Sukladno točki 2. preambule Uredbe br. 44/2001, "nužno je donijeti propise kojima će se ujednačiti pravila o sukobu nadležnosti u građanskim i trgovačkim stvarima te pojednostaviti formalnosti u pogledu brzog i jednostavnog priznanja i ovrhe sudskih odluka".

3 Sukladno točki 11. preambule Uredbe br. 44/2001 "propisi o nadležnosti moraju biti visoko predvidljivi i utemeljeni na načelu da se nadležnost uglavnom utvrđuje prema prebivalištu tuženika, pri čemu takva nadležnost mora uvijek postojati, osim u nekim točno određenim slučajevima, u kojima je zbog predmeta spora ili stranačke slobode ugovaranja opravdana neka druga poveznica".

4 Pravila o nadležnosti iz Uredbe br. 44/2001 navedena su u poglavlju II koje obuhvaća članke 2. do 31.

5 Article 2(1) of Regulation No 44/2001, which forms part of Chapter II, Section 1, entitled 'General provisions', states:

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

6 Article 3(1) which appears in the same section, provides:

'Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.'

7 Article 5, which appears in Section 2, entitled 'Special jurisdiction', of Chapter II of Regulation No 44/2001, provides:

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

(1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

- in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
- in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,

(c) if Article 5(b) does not apply then Article 5(a) applies;

...'

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

8 This reference for a preliminary ruling has been submitted in the context of proceedings between Color Drack GmbH ('Color Drack'), a company established in Schwarzach (Austria), and Lexx International Vertriebs GmbH ('Lexx'), a company established in Nuremberg (Germany), concerning the performance of a contract for the sale of goods, under which Lexx undertook to deliver goods to various retailers of Color Drack in Austria, inter alia in the area of the registered office of Color Drack, which undertook to pay the price of those goods.

9 The dispute concerns in particular the non-performance of the obligation to which Lexx was subject under the contract to take back unsold goods and to reimburse the price to Color Drack.

10 By reason of that non-performance, on 10 May 2004 Color Drack brought an action for payment against Lexx before the Bezirksgericht St Johann im Pongau (Austria) within whose jurisdiction its registered office is located. That court accepted jurisdiction on the basis of the first indent of Article 5(1)(b) of Regulation No 44/2001.

11 Lexx appealed to the Landesgericht Salzburg (Austria), which set aside that judgment on the ground that the first instance court did not have jurisdiction. The appeal court took the view that a single linking place, as provided for in the first indent of Article 5(1)(b) of Regulation No 44/2001 for all claims arising from a contract for the sale of goods, could not be determined where there were several places of delivery.

5 U članku 2. stavku 1. Uredbe br. 44/2001 iz poglavlja II odjeljka 1. ("Opće odredbe") piše:

"Podložno odredbama ove Uredbe, osobe s prebivalištem u nekoj državi članici mogu biti tužene, bez obzira na njihovo državljanstvo, pred sudovima te države članice."

6 Članak 3. stavak 1. Uredbe br. 44/2001 koji se nalazi u istom odjeljku određuje:

"Osobe s prebivalištem u nekoj državi članici mogu biti tužene pred sudovima neke druge države članice samo prema odredbama odjeljaka 2. – 7. ovog poglavlja."

7 Članak 5. Uredbe br. 44/2001 koji se nalazi u Poglavlju II odjeljku 2. ("Posebna nadležnost") predviđa:

"Osoba s prebivalištem u nekoj državi članici može biti tužena u drugoj državi članici:

1. a) u sporovima iz ugovora, pred sudom mjesta u kojemu je obveza o kojoj je riječ ispunjena ili u kojemu je trebala biti ispunjena;

b) u smislu ove odredbe, osim ako nije drukčije ugovoreno, mjesto ispunjenja obveze o kojoj je riječ jest:

– ako se radi o kupoprodaji robe, mjesto u državi članici u kojemu je, prema ugovoru, roba isporučena ili je trebala biti isporučena,

– ako se radi o pružanju usluga, mjesto u državi članici u kojemu su, prema ugovoru, usluge pružene ili su trebale biti pružene,

c) ako se ne primjenjuje podstavak b), primjenjuje se podstavak a);

..."

Predmet glavnog postupka i prethodna pitanja

8 Zahtjev za prethodnim tumačenjem upućen je u okviru spora između društava Color Drack GmbH (u daljnjem tekstu: Color Drack) sa sjedištem u Schwarzachu (Austrija) i Lexx International Vertriebs GmbH (u daljnjem tekstu: Lexx) sa sjedištem u Nürnbergu (Njemačka), zbog ispunjenja ugovora o kupoprodaji robe. U ugovoru se društvo Lexx obvezalo na isporuku robe raznim preprodavačima Color Dracka u Austriji, prije svega u području sjedišta Color Dracka, a oni na plaćanje odgovarajuće kupovnine.

9 U glavnom se postupku radi posebice o neispunjenju ugovorne obveze od strane Lexxa da neprodanu robu uzme natrag i Color Dracku vrati kupovninu.

10 Zbog tog je neispunjenja Color Drack 10. svibnja 2004. pred sudom u St. Johannu im Pongau (Austrija), u čijem se području nadležnosti nalazi sjedište društva, podnijelo tužbu protiv Lexxa radi isplate. Taj se sud na temelju članka 5. stavka 1. točke b. prve alineje Uredbe br. 44/2001 proglasio mjesno nadležnim.

11 Nakon žalbe Lexxa *Landesgericht Salzburg* (Austrija) tu je presudu zbog mjesne nenadležnosti prvostupanjskog suda ukinuo. Žalbeni sud smatrao je da se, kada postoji više mjesta isporuke ne može odrediti mjesto koje je prema članku 5. stavku 1. točki b. prva alineja Uredbe br. 44/2001 jedina poveznica za sve obveze iz ugovora o kupoprodaji robe.

12 Color Drack appealed against the decision of the Landesgericht Salzburg, to the Oberster Gerichtshof, which considers that an interpretation of the first indent of Article 5(1)(b) of Regulation No 44/2001 is necessary in order to resolve the question of the jurisdiction of the Austrian court first seised.

13 The Oberster Gerichtshof notes that that provision specifies a single linking place for all claims arising out of a contract for the sale of goods, that is to say the place of delivery, and that that provision, which lays down a rule of special jurisdiction, must in principle be given a restrictive interpretation. In those circumstances, the Oberster Gerichtshof asks whether the court first seised on the basis of that provision has jurisdiction since, in this case, the goods were delivered not only in the area of that court's jurisdiction but at different places in the Member State concerned.

14 The Oberster Gerichtshof therefore decided to stay the proceedings and to refer the following question to the Court:

'Is Article 5(1)(b) of [Regulation No 44/2001] to be interpreted as meaning that a seller of goods domiciled in one Member State who, as agreed, has delivered the goods to the purchaser, domiciled in another Member State, at various places within that other Member State, can be sued by the purchaser regarding a claim under the contract relating to all the (part) deliveries – if need be, at the plaintiff's choice – before the court of one of those places (of performance)?'

The question referred for a preliminary ruling

15 By its question, the national court is essentially asking whether the first indent of Article 5(1)(b) of Regulation No 44/2001 applies in the case of a sale of goods involving several places of delivery within a single Member State and, if so, whether, where the claim relates to all those deliveries, the plaintiff may sue the defendant in the court for the place of delivery of its choice.

16 As a preliminary point, it must be stated that the considerations that follow apply solely to the case where there are several places of delivery within a single Member State and are without prejudice to the answer to be given where there are several places of delivery in a number of Member States.

17 First of all, it should be noted that the wording of the first indent of Article 5(1)(b) of Regulation No 44/2001 does not by itself enable an answer to be given to the question referred since it does not refer expressly to a case such as that to which the question relates.

18 Consequently, the first indent of Article 5(1)(b) of Regulation No 44/2001 must be interpreted in the light of the origins, objectives and scheme of that regulation (see, to that effect, Case C-103/05 *Reisch Montage* [2006] ECR I-6827, paragraph 29, and Case C-283/05 *ASML* [2006] ECR I-0000, paragraph 22).

19 In that regard, it is clear from recitals 2 and 11 in its preamble that Regulation No 44/2001 seeks to unify the rules of conflict of jurisdiction in civil and commercial matters by way of rules of jurisdiction which are highly predictable.

20 In that context, the regulation seeks to strengthen the legal protection of persons established in the Community, by enabling the plaintiff to identify easily the court in which he may sue and the defendant reasonably to foresee before which court he may be sued (see *Reisch Montage*, paragraphs 24 and 25).

12 *Oberster Gerichtshof*, vrhovni sud Austrije, koji je rješavao po žalbi koju je Color Drack uložio protiv odluke zemaljskog suda u Salzburgu, smatra da je za odgovor na pitanje o mjesnoj nadležnosti prvostupajnskog austrijskog suda potrebno tumačenje članka 5. stavka 1. točke b. prve alineje Uredbe br. 44/2001.

13 Ta odredba predviđa kao jednu jedinu poveznicu za sve obveze iz ugovora o kupoprodaji robe, mjesto isporuke, a ta se poveznica, budući da sadrži pravilo o posebnoj nadležnosti, načelno treba tumačiti usko. Upitno je je li prvostupajnski sud nadležan prema toj odredbi, jer u konkretnom slučaju roba nije isporučena samo u području nadležnosti toga suda, već na razna mjesta u državi članici u kojoj se nalazi i taj sud.

14 Iz tog je razloga *Oberster Gerichtshof* odlučio prekinuti postupak i Sudu uputiti zahtjev za prethodnim tumačenjem sljedećeg pitanja:

“Trebali li članak 5. stavak 1. točka b. Uredbe (EZ) br. 44/2001 tumačiti tako da prodavatelj robe, koji ima sjedište u jednoj državi članici i kupcu koji ima sjedište u nekoj drugoj državi članici robu sukladno ugovoru isporučuje na raznim mjestima te druge države članice, kupac s obzirom na ugovornu obvezu koja se odnosi na sve (parcijalne) isporuke može tužiti pred sudom jednog od tih mjesta (ispunjenja) – eventualno po izboru kupca?”

O pitanju iz zahtjeva za prethodnim tumačenjem

15 Ovim pitanjem, sud koji je uputio zahtjev za prethodnim tumačenjem želi znati je li članak 5. stavak 1. točka b. prva alineja Uredbe br. 44/2001 mjerodavan i kod prodaje robe s više mjesta isporuke u jednoj državi članici i može li tužitelj, ako se tužba odnosi na sve isporuke, eventualno tužiti tuženika pred sudom mjesta isporuke po svom izboru.

16 Na početku treba ukazati na to da su sljedeća razmatranja ograničena na slučaj više mjesta isporuke u jednoj državi članici te da prejudiciraju odluku u slučaju više mjesta isporuke u različitim državama članicama.

17 Ponajprije treba utvrditi da se na ovo pitanje ne može odgovoriti samo na temelju teksta članka 5. stavka 1. točke b. prve alineje Uredbe br. 44/2001, jer se on ne odnosi isključivo na slučaj o kojem se ovdje radi.

18 Iz tog se razloga članak 5. stavak 1. točka b. prva alineja Uredbe br. 44/2001 treba tumačiti u svjetlu povijesti njezina nastanka, njezinih ciljeva i sistematike (vidi u tom kontekstu presude od 13. srpnja 2006., *Reisch Montage*, C-103/05, [2006] ECR I-6827, točka 29. i od 14. prosinca 2006., *ASML*, C-283/05, [2006] ECR I-0000, točka 22.).

19 Uredba br. 44/2001 ima, prema točkama 2. i 11. svoje preambule, za cilj ujednačavanje odredaba o međunarodnoj nadležnosti u građanskim i trgovačkim stvarima kroz pravila o nadležnosti koja su visoko predvidljiva.

20 Time Uredba treba poboljšati pravnu zaštitu osoba s prebivalištem u Zajednici na način da tužitelj bez poteškoća može ustanoviti kojem se sudu može obratiti te da tuženik isto tako može predvidjeti pred kojim ga se sudom može tužiti (vidi presudu *Reisch Montage*, točke 24. i 25.).

21 To that end the rules of jurisdiction set out in Regulation No 44/2001 are founded on the principle that jurisdiction is generally based on the defendant's domicile, as provided for in Article 2 thereof, complemented by the rules of special jurisdiction (see *Reisch Montage*, paragraph 22).

22 Thus, the rule that jurisdiction is generally based on the defendant's domicile is complemented, in Article 5(1), by a rule of special jurisdiction in matters relating to a contract. The reason for that rule, which reflects an objective of proximity, is the existence of a close link between the contract and the court called upon to hear and determine the case.

23 Under that rule the defendant may also be sued in the court for the place of performance of the obligation in question, since that court is presumed to have a close link to the contract.

24 In order to reinforce the primary objective of unification of the rules of jurisdiction whilst ensuring their predictability, Regulation No 44/2001 defines that criterion of a link autonomously in the case of the sale of goods.

25 Pursuant to the first indent of Article 5(1)(b) of that regulation, the place of performance of the obligation in question is the place in a Member State where, under the contract, the goods were delivered or should have been delivered.

26 In the context of Regulation No 44/2001, contrary to Lexx's submissions, that rule of special jurisdiction in matters relating to a contract establishes the place of delivery as the autonomous linking factor to apply to all claims founded on one and the same contract for the sale of goods rather than merely to the claims founded on the obligation of delivery itself.

27 It is in the light of those considerations that it must be determined whether, where there are several places of delivery in a single Member State, the first indent of Article 5(1)(b) of Regulation No 44/2001 applies and, if so, whether, where the claim relates to all the deliveries, the plaintiff may sue the defendant in the courts for the place of delivery of its choice.

28 First of all, the first indent of Article 5(1)(b) of the regulation must be regarded as applying whether there is one place of delivery or several.

29 By providing for a single court to have jurisdiction and a single linking factor, the Community legislature did not intend generally to exclude cases where a number of courts may have jurisdiction nor those where the existence of that linking factor can be established in different places.

30 The first indent of Article 5(1)(b) of Regulation No 44/2001, determining both international and local jurisdiction, seeks to unify the rules of conflict of jurisdiction and, accordingly, to designate the court having jurisdiction directly, without reference to the domestic rules of the Member States.

31 In that regard, an answer in the affirmative to the question whether the provision under consideration applies where there are several places of delivery within a single Member State does not call into question the objectives of the rules on the international jurisdiction of the courts of the Member States set out in that regulation.

32 Firstly, the applicability of the first indent of Article 5(1)(b) of Regulation No 44/2001 where there are several places of delivery within a single Member State complies with the regulation's objective of predictability.

21 Pritom je polazište za pravila o nadležnosti iz Uredbe br. 44/2001 opća nadležnost u prebivalištu tuženika sukladno članku 2. Uredbe koja se dopunjava posebnom nadležnosti sudova (vidi presudu *Reisch Montage*, točka 22.).

22 Tako se pravilo nadležnosti suda u mjestu prebivališta tuženika dopunjuje pravilom posebne nadležnosti suda za ugovorne sporove iz članka 5. stavka 1. Uredbe br. 44/2001. Razlog za to pravilo, koje odgovara cilju prostorne blizine, jest bliska veza između ugovora i suda koji treba donijeti odluku.

23 Prema tom pravilu, tuženika se može tužiti i pred sudom mjesta u kojem je obveza ispunjena ili je trebala biti ispunjena budući da se polazi od bliske veze između tog suda i ugovora.

24 Kako bi se osnažio glavni cilj ujednačavanja pravila o nadležnosti, a sve u cilju predvidivosti, Uredba br. 44/2001 tu poveznicu za kupoprodaju robe određuje autonomno.

25 Prema članku 5. stavku 1. točke b. prve alineje Uredbe, mjesto ispunjenja obveze je mjesto u nekoj državi članici u kojem je roba isporučena ili je trebala biti isporučena.

26 Suprotno navodima Lexxa, time se u okviru Uredbe br. 44/2001 ovim pravilom o posebnoj nadležnosti za ugovorne sporove mjesto isporuke utvrđuje kao autonomna poveznica koja je mjerodavna za sve tužbe iz nekog ugovora o kupoprodaji robe, a ne samo na one iz obveze isporuke kao takve.

27 U svjetlu tih razmatranja treba preispitati je li članak 5. stavak 1. točka b. prva alineja Uredbe br. 44/2001 mjerodavna i u slučaju više mjesta isporuke u jednoj državi članici i, kada se tužba odnosi na sve isporuke, može li tužitelj tuženika tužiti pred sudom mjesta isporuke svog izbora.

28 Kao prvo treba ustanoviti da je članak 5. stavak 1. točka b. prva alineja Uredbe br. 44/2001 mjerodavan kod jednog, ali i kod više mjesta isporuke.

29 Određivanjem jednog mjesta, kako s obzirom na nadležni sud tako i na poveznicu, zakonodavac naime nije namjeravao općenito isključiti mogućnost više nadležnih sudova ili da taj kriterij može biti ispunjen s obzirom na više mjesta.

30 Svrha članka 5. stavka 1. točke b. prve alineje Uredbe br. 44/2001, koji određuje međunarodnu, ali i mjesnu nadležnost, jest ujednačavanje propisa o međunarodnoj nadležnosti te da se prema tomu nadležni sud može odrediti neposredno i bez pozivanja na nacionalna pravila država članica.

31 Potvrđan odgovor na pitanje je li predmetna odredba mjerodavna i u slučaju više mjesta isporuke u jednoj državi članici, ne dovodi u pitanje ciljeve koji se žele postići pravilima o međunarodnoj nadležnosti sudova država članica sadržanima u Uredbi br. 44/2001.

32 S jedne strane, mjerodavnost članka 5. stavka 1. točke b. prve alineje Uredbe br. 44/2001 u slučaju više mjesta isporuke u jednoj državi članici odgovara i cilju predvidivosti koji se želi postići Uredbom.

33 In that case, the parties to the contract can easily and reasonably foresee before which Member State's courts they can bring their dispute.

34 Secondly, the applicability of the first indent of Article 5(1)(b) of Regulation No 44/2001 where there are several places of delivery within a single Member State also complies with the objective of proximity underlying the rules of special jurisdiction in matters relating to a contract.

35 Where there are several places of delivery within a single Member State, that objective of proximity is met since, in application of the provision under consideration, it will in any event be the courts of that Member State which will have jurisdiction to hear the case.

36 Consequently, the first indent of Article 5(1)(b) of Regulation No 44/2001 is applicable where there are several places of delivery within a single Member State.

37 However, it cannot be inferred from the applicability of the first indent of Article 5(1)(b) of Regulation No 44/2001 in circumstances such as those of the main proceedings that that provision necessarily confers concurrent jurisdiction on a court for any place where goods were or should have been delivered.

38 With regard, secondly, to the question whether, where there are several places of delivery within a single Member State and the claim relates to all those deliveries, the plaintiff may sue the defendant in the court for the place of delivery of its choice on the basis of the first indent of Article 5(1)(b) of Regulation No 44/2001, it is necessary to point out that one court must have jurisdiction to hear all the claims arising out of the contract.

39 In that regard, it is appropriate to take into consideration the origins of the provision under consideration. By that provision, the Community legislature intended, in respect of sales contracts, expressly to break with the earlier solution under which the place of performance was determined, for each of the obligations in question, in accordance with the private international rules of the court seised of the dispute. By designating autonomously as 'the place of performance' the place where the obligation which characterises the contract is to be performed, the Community legislature sought to centralise at its place of performance jurisdiction over disputes concerning all the contractual obligations and to determine sole jurisdiction for all claims arising out of the contract.

40 In that regard it is necessary to take account of the fact that the special jurisdiction under the first indent of Article 5(1)(b) of Regulation No 44/2001 is warranted, in principle, by the existence of a particularly close linking factor between the contract and the court called upon to hear the litigation, with a view to the efficient organisation of the proceedings. It follows that, where there are several places of delivery of the goods, 'place of performance' must be understood, for the purposes of application of the provision under consideration, as the place with the closest linking factor between the contract and the court having jurisdiction. In such a case, the closest linking factor will, as a general rule, be at the place of the principal delivery, which must be determined on the basis of economic criteria.

41 To that end, it is for the national court seised to determine whether it has jurisdiction in the light of the evidence submitted to it.

42 If it is not possible to determine the principal place of delivery, each of the places of delivery has a sufficiently close link of proximity to the material elements of the dispute

33 Naime, u tom slučaju ugovorne strane bez poteškoća mogu predvidjeti u kojoj državi članici svoj spor mogu riješiti sudskim putem.

34 S druge strane, mjerodavnost članka 5. stavka 1. točke b. prve alineje Uredbe br. 44/2001 i u slučaju više mjesta isporuke u jednoj državi članici odgovara i cilju prostorne blizine na kojem se temelje pravila za posebnu nadležnost u slučaju ugovornih sporova.

35 Naime, u slučaju više mjesta isporuke u jednoj državi članici taj se cilj prostorne blizine ostvaruje u svakom slučaju, jer su sudovi te države članice nadležni za odluku u tom sporu.

36 Članak 5. stavak 1. točka b. prve alineje Uredbe br. 44/2001 stoga je mjerodavan i u slučaju više mjesta isporuke u jednoj državi članici.

37 No iz mjerodavnosti članka 5. stavka 1. točke b. prve alineje Uredbe br. 44/2001, eventualno kao u glavnom postupku, ne može se zaključiti da ta odredba nužno svim sudovima, u čijem je području nadležnosti roba isporučena ili je trebala biti isporučena, daje konkurirajuću nadležnost.

38 Drugo, u vezi s pitanjem može li u slučaju više mjesta isporuke u jednoj državi članici, ako se tužba odnosi na sve isporuke, na temelju članka 5. stavka 1. točke b. prve alineje Uredbe br. 44/2001 tužitelj tuženika tužiti pred sudom mjesta isporuke njegova izbora, valja reći da za odluku o svim tužbama iz jednog ugovora treba biti nadležan samo jedan sud.

39 Pritom se u obzir mora uzeti povijest nastanka odnosno odredbe. Naime, tom se odredbom europski zakonodavac kod kupoprodajnih ugovora izričito htio distancirati od prijašnjeg rješenja prema kojem se mjesto ispunjenja za svaku obvezu, koja je bila predmet spora, određivalo primjenom međunarodnog privatnog prava suda koji je trebao odlučiti o sporu. Autonomnim određivanjem "mjesta ispunjenja" mjestom u kojem se treba ispuniti ključna obveza ugovora, europski je zakonodavac sudsku nadležnost za sporove o svim ugovornim obvezama htio koncentrirati i utemeljiti jedinstvenu sudsku nadležnost za sve tužbe iz ugovora.

40 Posebna nadležnost sukladno članku 5. stavku 1. točki b. prvoj alineji Uredbe br. 44/2001 načelno je opravdana posebno bliskom vezom između ugovora i suda koji treba odlučiti u sporu i stoga pomaže u stručnom vođenju postupka. Iz tog se razloga, kada se roba isporučuje na više mjesta, pod mjestom ispunjenja u smislu predmetne odredbe načelno podrazumijeva mjesto na kojem postoji najbliža veza između ugovora i nadležnog suda. U takvu slučaju najbliža veza u načelu postoji na mjestu glavne isporuke, koje se treba odrediti prema gospodarskim kriterijima.

41 Dakle, utoliko je na nacionalnom sudu pred kojim je podnesena tužba da na temelju predočenih dokaza odluči o svojoj nadležnosti.

42 Ako se mjesto glavne isporuke ne može odrediti, svako mjesto isporuke obilježeno je dostatnom blizinom s predmetom spora, a time i vezom koja je mjerodavna za sudsku nadležnost. U takvu slučaju tužitelj na temelju članka 5. stavka 1. točke b. prve alineje Uredbe br. 44/2001 može tuženika tužiti pred sudom mjesta isporuke po svom izboru.

and, accordingly, a significant link as regards jurisdiction. In such a case, the plaintiff may sue the defendant in the court for the place of delivery of its choice on the basis of the first indent of Article 5(1)(b) of Regulation No 44/2001.

43 Giving the plaintiff such a choice enables it easily to identify the courts in which it may sue and the defendant reasonably to foresee in which courts it may be sued.

44 That conclusion cannot be called into question by the fact that the defendant cannot foresee the particular court of that Member State in which it may be sued; it is sufficiently protected since it can only be sued, in application of the provision under consideration, where there are several places of performance in a single Member State, in the courts of that Member State for the place where a delivery has been made.

45 In the light of all the foregoing considerations, the answer to the question referred must be that the first indent of Article 5(1)(b) of Regulation No 44/2001 applies where there are several places of delivery within a single Member State. In such a case, the court having jurisdiction to hear all the claims based on the contract for the sale of goods is that for the principal place of delivery, which must be determined on the basis of economic criteria. In the absence of determining factors for establishing the principal place of delivery, the applicant may sue the plaintiff in the court for the place of delivery of its choice.

43 Na temelju mogućnosti izbora, koja mu je dana na ovaj način, tužitelj bez poteškoća može utvrditi pred kojim sudovima može podići tužbu, a tuženik može predvidjeti pred kojim ga se sudovima može tužiti.

44 Taj se rezultat ne dovodi u pitanje zbog toga što tuženik ne može točno predvidjeti pred kojim ga se sudom države članice može tužiti, jer je utoliko dostatno zaštićen, što u slučaju više mjesta ispunjenja u jednoj državi članici, prema predmetnoj odredbi, može biti pozvan samo pred sudove te države članice, na čije je područje isporučivao robu.

45 Na temelju svega gore navedenog na pitanje iz zahtjeva za prethodnim tumačenjem treba odgovoriti da članak 5. stavak 1. točku b. prvu alineju Uredbe br. 44/2001 treba tumačiti tako da je ova odredba mjerodavna i u slučaju više mjesta isporuke u jednoj državi članici. U takvu je slučaju za odluku o svim tužbama iz ugovora o kupoprodaji robe nadležan sud u čijem se području nadležnosti nalazi mjesto glavne isporuke, koje se mora odrediti prema gospodarskim kriterijima. Ako se mjesto glavne isporuke ne može odrediti, tužitelj tuženika može tužiti pred sudom mjesta isporuke po svom izboru.