

**Case 589: CISG 31 (c); 57 (1) (a)**

Germany: Landgericht Gießen 6 O 23/02

17 December 2002

Original in German

Published in German: Internationales Handelsrecht (IHR) 2003, 276

Abstract prepared by Klaus Bitterich

The interlocutory judgement deals with the international jurisdiction under Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters hereinafter Brussels I Regulation) with respect to a sales contract governed by the CISG.

A German trading company, the plaintiff, bought hazard-warning triangles from the Dutch defendant. The plaintiff's standard terms setting the German city of Linden as place of performance and providing that the courts of the German city of Gießen will have jurisdiction over disputes arising out of relationship were included in the contract between the parties. After having declared avoidance of the contract based on the allegation that the goods were non-conforming to the requirements of the sales contract, the plaintiff sued for restitution of the sales price and compensation for the storage expenses.

The Regional Court of Gießen found that it had jurisdiction pursuant to Art. 5(1)(a) of the Brussels-I-Regulation. According to this provision a person domiciled in a (?) Member State can be sued in the courts for the place of performance of the contractual obligation in question. As the CISG lacks an express provision as to the place of performance of an obligation to repay the sales price, the Court found Art. 57(1)(a) CISG applicable *mutatis mutandis* (and Art. 31(c) CISG as to the obligation to return the goods), i.e. unless the parties have not agreed otherwise, the buyer's place of business—in the case at issue the city of Linden—is the place of performance for the obligations to repay the price and to return the goods. In the Court's opinion the same is true for the claim for compensation. Therefore, the Regional Court of Gießen found that it had jurisdiction under Art. 5(1)(a) Brussels-I-Regulation and that the question whether the parties had entered into a valid and effective jurisdiction clause was irrelevant.