Collective Redress in Environmental Matters - A Private International Law Perspective Through the Lens of the Dieselgate Scandal

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1.- Introduction: The Emissions scandal - background and litigation history before the CJEU.

The Dieselgate scandal, stands, according to the European Consumer Organisation, as a stark testament to the failure, barring a few national exceptions, of both public and private enforcement mechanisms in the EU[1]. The ramifications of this incident were far-reaching[2], resonating throughout the Union. The genesis of the scandal can be traced back to the early 2010s. During this period, German car manufacturers, especially Volkswagen, positioned themselves as paragons of environmental stewardship within the automotive sector. Volkswagen spearheaded several campaigns, vigorously advocating for the environmental efficiency of their vehicles, thereby setting up a certain level of objective consumer expectations regarding their cars' emissions and overall ecological impact[3].

The scandal unfolded when the United States Environmental Protection Agency (hereinafter referred to as EPA) revealed the lies and deception promoted by the German

[1] BEUC, 'Volkswagen Dieselgate: Four Years Down the Road' (September 2019) https://www.beuc.eu/sites/default/files/publications/beuc-x-2019-050_report_-_four_years_after_the_dieselgate_scandal.pdf [accessed 22.01.2024], p. 3.

[2] For the wider ramifications of the Dieselgate scandal see Jae C Jung and Elizabeth Sharon, 'The Volkswagen Emissions Scandal and Its Aftermath' (2019) 38(4) GBOE 6 and Thomas Eger and Hans-Bernd Schaefer, 'Reflections on the Volkswagen Emissions Scandal' (25 January 2018) https://ssrn.com/abstract=3109538 [accessed 22.01.2024].

[3] See, for example, some press reports from this period demonstrating the deceptive environmental campaigns of the German automotive industry, Michael Reidel (26 February 2010), 'VW startet Umweltkampagne' (Horizont.net) https://www.horizont.net/marketing/nachrichten/-VW-startet-Umweltkampagne-90492 [accessed 22.01.2024], auto.de, 'Volkswagen startet neue Kampagne zu "Think Blue."' (auto.de, 4 August 2011) https://www.auto.de/magazin/volkswagen-startet-neue-kampagne-zu-think-blue/ [accessed 22.01.2024].

automotive industry by identifying significant anomalies in the engines of German-manufactured vehicles[4]. An intricate system had been embedded within the engines, consisting of two primary components designed to manipulate emission readings: the main computer, which was responsible for engine control, and an auxiliary compartment known as the nitrogen oxide trap. This system operated in a dual mode. During environmental testing, the nitrogen oxide trap would activate to ensure that the car's emissions remained within the legal thresholds. However, it was subsequently uncovered that under normal driving conditions, the trap was deliberately disabled by the engine control module, resulting in emissions that significantly exceeded the permissible limits[5].

This revelation not only triggered a wave of litigation across the United States but also, more critically for the context of this paper, in several member states of the European Union[6]. Consequently, the emissions scandal became a recurrent theme in the case law of the CJEU[7].

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[4] For a detailed timeline of the revelation of the scandal see the website of the EPA, U.S. Environmental Protection Agency, 'Learn About Volkswagen Violations' (EPA, last updated 14 September 2023) https://www.epa.gov/vw/learn-about-volkswagen-violations [accessed 22.01.2024].

[5] German automobile manufacturers took advantage of the transparency inherent in emission testing procedures. These tests, standardised and public for fairness and clarity, include known speed profiles to facilitate independent verification. However, this openness allowed manufacturers to specifically tailor vehicle behaviour to meet test conditions, without truly adhering to emission standards in regular use. This tactic, often referred to as "cycle beating," represents a strategic manipulation of vehicle performance to pass regulated tests. For a detailed analysis of the mechanisms deployed by the German car manufacturers in order to deceive environmental authorities during tests see M Contag, G Li, A Pawlowski, F Domke, K Levchenko, T Holz, and S Savage, 'How They Did It: An Analysis of Emission Defeat Devices in Modern Automobiles' in '2017 IEEE Symposium on Security and Privacy (SP)' (IEEE, 22-26 May 2017) Electronic ISSN 2375-1207, https://ieeexplore.ieee.org/document/7958580 [accessed 22.01.2024].

[6] For an overview of the different actions taken against the German car manufacturers see the reports published by the European Consumer Organisation, BEUC, 'Volkswagen Dieselgate: Four Years Down the Road' (September 2019) https://www.beuc.eu/sites/default/files/publications/beuc-x-2019-050_report_-_four_years_after_the_dieselgate_scandal.pdf [accessed 22.01.2024], BEUC, 'FIVE YEARS OF DIESELGATE: A BITTER ANNIVERSARY 2015-2020: A long and bumpy road towards compensation for European consumers' (September 2020) https://www.beuc.eu/sites/default/files/publications/beuc-x-2020-081_five_years_of_dieselgate_a_bitter_anniversary_report.pdf [accessed 22.01.2024], BEUC, 'Six years after Dieselgate scandal broke, consumer authorities finally jointly call on VW to compensate consumers' (2021) https://www.beuc.eu/sites/default/files/publications/beuc-pr-2021-034_six_years_after_dieselgate_scandal_broke_consumer_authorities_finally_jointly_call_on_vw_to_compensate_consumers.pdf [accessed 22.01.2024], BEUC, 'SEVEN YEARS OF DIESELGATE: A never-ending story' (December 2022) https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130_Dieselgate_7th_report.pdf [accessed 22.01.2024].

[7] For an overview of the CJEU case law see R Simon, 'Manipulated Software as a Minor Lack of Conformity? Case Note on Porsche Inter Auto and Volkswagen (C-145/20)' (2023) EuCML 71.

The inaugural CJEU decision in this context, case C-343/19[8], addressed issues of international jurisdiction concerning environmental representative actions initiated against Volkswagen. A more detailed analysis of this case law will follow in the next section that discusses issues of international jurisdiction.

Subsequent cases centred on the interplay between the mechanisms installed in vehicles involved in the emissions scandal and the legislative framework of the EU concerning the environmental performance and certification of cars[9]. The first such case was C-693/18[10] where, on the basis of a systematic and teleological interpretation of art. 3(10) and 5(2)(a) of Regulation 715/2007[11], the CJEU[12] ruled that art. 3(10) of Regulation 715/2007 must be interpreted as meaning that software installed or acting on the electronic engine controller constitutes an "element of design", within the meaning of that provision, where it acts on the operation of the emission control system and reduces its effectiveness. In addition, the Court emphasised that art. 3(10) of Regulation No 715/2007 must be interpreted as meaning that the concept of an "emission control system", within the meaning of that provision, covers both "exhaust gas after-treatment" technologies and strategies that reduce emissions downstream, that is to say after their formation, and those which, like the exhaust gas recirculation system, reduce emissions upstream, that is to say during their formation. Most importantly, the Court went on to rule that art. 3(10) of Regulation No 715/2007 must be interpreted as meaning that a device which detects any parameter related to the conduct of the approval procedures provided for by that regulation in order to improve the performance of the emission control system during those procedures, and thus obtain approval of the vehicle, constitutes a "defeat device", within the meaning of that provision, even if such an improvement may also be observed, occasionally, under normal conditions of vehicle use. Finally, the Court declared that Article 5(2)(a) of Regulation No 715/2007 must be interpreted as meaning that a defeat device which systematically improves the performance of the emission control system of vehicles during type-approval procedures in

[8] Case C-343/19 VKI v Volkswagen AG [2020] ECLI:EU:C:2020:534.

[9] Most notably Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, OJ L 171/1.

[10] Case C-693/18 X, CLCV and Others, A and Others, B, AGLP and Others, C and Others [2020] ECLI:EU:C:2020:1040.

[11] See Case C-693/18 X, CLCV and Others, A and Others, B, AGLP and Others, C and Others [2020] ECLI:EU:C:2020:1040, paras 62-67, 71-89 and 94-101.

[12] Following in major parts the Opinion of AG Sharpston in case C-693/18 X, CLCV and Others, A and Others, B, AGLP and Others, C and Others [2020] ECLI:EU:C:2020:323.

order to comply with the emission limits laid down by that regulation, and thus to obtain the approval of those vehicles, cannot fall within the scope of the exception to the prohibition on such devices laid down in that provision, which relates to the protection of the engine against damage or accident and the safe operation of the vehicle, even if that device helps to prevent the ageing or clogging up of the engine. In essence, the intricate emissions system embedded in German cars was declared as incompatible with EU Law on type approval and certification of motor vehicles with respect to emissions. These findings were largely repeated in two subsequent cases, namely in GSMB Invest GmbH & Co. KG[13] and in IR v Volkswagen[14].

In the third wave of litigation, which is more relevant from a private law perspective, the relationship between the environmental obligations breached by car manufacturers and consumer contract law was scrutinised in greater detail. In this series of cases[15], most notably in the DS v Porsche Inter Auto & Volkswagen[16], the CJEU, aligning substantially with the opinion of AG Rantos[17], recognized that the violation of the EU framework related to car certification and environmental emissions transcended a mere infraction of EU public law. It also constituted a significant non-conformity with the sales contracts of these vehicles under EU consumer law. This interpretation was anchored in the provisions of the old Sales of Goods Directive[18], which has since been superseded by the newer Directive on contracts for the sales of goods[19]. AG Rantos adeptly drew comparisons between the old and new legislative regimes, illustrating how, under both frameworks, the behaviour of the German car manufacturers constituted a breach of EU consumer protection law[20]. However, ratione

[13] Case C-128/20 GSMB Invest GmbH & Co. KG v Auto Krainer GesmbH [2022] ECLI:EU:C:2022:570.

[14] Case C-134/20 IR v Volkswagen AG [2022] ECLI:EU:C:2022:571.

[15] For an overview of CJEU and Member State case law dedicated to the private law aspects of the Dieselgate scandal see Carlos Villacorta, 'The Dieselgate before Spanish Courts' (2023) 12(3) EuCML 128.

[16] Case C-145/20 DS v Porsche Inter Auto & Volkswagen [2022] ECLI:EU:C:2022:572.

[17] Opinion of Advocate General Rantos, Cases C-128/20, C-134/20 and C-145/20 GSMB Invest GmbH & Co. KG v Auto Krainer Gesellschaft mbH; IR v Volkswagen AG; DS v Porsche Inter Auto GmbH & Co. KG, Volkswagen AG [2021] ECLI:EU:C:2021:758, especially paras 140-151.

[18] Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7.7.1999, p. 12–16.

[19] Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC, OJ L 136, 22.5.2019, p. 28–50.

[20] Opinion of Advocate General Rantos, Cases C-128/20, C-134/20 and C-145/20 GSMB Invest GmbH & Co. KG v Auto Krainer Gesellschaft mbH; IR v Volkswagen AG; DS v Porsche Inter Auto GmbH & Co. KG, Volkswagen AG [2021] ECLI:EU:C:2021:758, especially para 148.

temporis, the older regime was applicable to these cases. Ultimately, the CJEU affirmed in these cases that violating the emission standards set by the EU legislator is not merely a public law violation but also a significant (private) contract law non-conformity, specifically in terms of consumer sales law[21]. Furthermore, the court emphasised that such non-conformity is substantial enough to justify consumers withdrawing from these sales contracts, with options extending beyond mere repair, replacement, or compensation[22].

A very recent addition to the CJEU's Dieselgate jurisprudence raised the question of whether the violations committed by the German car manufacturers – specifically, the breach of certification standards and car emission regulations – could be construed as a tort under civil law[23]. A critical aspect of this deliberation was whether the legislation setting environmental targets for cars served solely the public interest or extended protection to individual consumer interests as well. The CJEU, largely in concord with AG Rantos[24], declared that such provisions not only safeguard public interest but also protect individual consumers, who harbour legitimate expectations of not receiving cars that fail to comply with the emission targets established by EU law[25].

Consequently, consumers are presented with multiple legal avenues for pursuing claims against car manufacturers. They can assert claims based on their contractual relationship with the manufacturers and/or authorised car dealers, arguing that cars equipped with defeat devices do not conform to the sales contracts entered into at the time of purchase. Alternatively, they can initiate tort actions, contending that cars with defeat devices constitute a tortious act as they violate their legitimate expectation of not acquiring such vehicles, including their legitimate expectation to drive environmentally efficient cars that respect the emissions standards set by the Union.

Despite the evident legal avenues, it has been exceedingly challenging for individual consumers or even consumer associations to initiate such actions in courts. They have consistently encountered a myriad of procedural barriers, which provided the necessary impetus for the European Union to undertake a comprehensive reform of its collective

[21] Case C-145/20 DS v Porsche Inter Auto & Volkswagen [2022] ECLI:EU:C:2022:572, paras 47-58.

[22] Case C-145/20 DS v Porsche Inter Auto & Volkswagen [2022] ECLI:EU:C:2022:572, paras 85-97.

[23] Case C-100/21 QB v Mercedes-Benz Group AG, formerly Daimler AG [2023] ECLI:EU:C:2023:229.

[24] Opinion of Advocate General Rantos, Case C-100/21 QB v Mercedes-Benz Group AG, formerly Daimler AG [2022] ECLI:EU:C:2022:420, paras 39-50.

[25] Case C-100/21 QB v Mercedes-Benz Group AG, formerly Daimler AG [2023] ECLI:EU:C:2023:229, paras 68-85.

redress regime. This reform materialised in the form of Directive 2020/1828[26], commonly referred to as the Representative Actions Directive (hereinafter referred to as RAD). This directive marks a significant development in the EU's approach, expanding the available channels for collective redress[27]. Moving beyond the limited scope of injunctive actions, the new RAD now encompasses redress remedies as well[28]. It is imperative to note that while this step represents a cautious yet progressive advancement, the RAD does not replace existing national legislation relevant to collective consumer redress. Instead, it coexists alongside any national measures enacted by Member States. Of particular importance for this paper is the recognition, as stated in recital 21 of the RAD, that the directive does not include provisions pertaining to private international law[29]. Thus, issues of private international law and jurisdiction remain governed by the traditional instruments of EU Private International Law (PIL), most notably the Brussels Ia Regulation[30]. It is on this background that the next two sessions will attempt to highlight certain procedural challenges of allocating international jurisdiction and of coordinating parallel proceedings in environmental representative actions.

[26] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, OJ L 409, 4.12.2020, p. 1–27.

[27] For a more detailed overview and assessment of the RAD see Beate Gsell, 'The new European Directive on representative actions for the protection of the collective interests of consumers – A huge, but blurry step forward' (2021) 58 Common Market Law Review 1365, Astrid Stadler, 'Are Class Actions Finally (Re)Conquering Europe? Some Remarks on Directive 2020/1828' (2021) 30 Juridica Int'l 14 and Diego Agulló Agulló, 'Directive 2020/1828 on Representative Actions for the Protection of the Collective Interests of Consumers: An Overview' (2022) 8(1) EU Law Journal 127.

[28] According to art. 3(10) of the RAD a redress remedy should encompass “a measure that requires a trader to provide consumers concerned with remedies such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate and as available under Union or national law”. It becomes, therefore, apparent that the RAD goes well beyond injunctions.

[29] Recital 21 of the RAD reads as follows: “This Directive should not affect the application of rules of private international law regarding jurisdiction, the recognition and enforcement of judgments or applicable law, nor should it establish such rules. Existing instruments of Union law should apply to the procedural mechanism for representative actions required by this Directive. In particular, Regulation (EC) No 864/2007, Regulation (EC) No 593/2008 and Regulation (EU) No 1215/2012 of the European Parliament and of the Council should apply to the procedural mechanism for representative actions required by this Directive”.

[30] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ L 351, 20.12.2012, p. 1–32.

2.- Selected Challenges of International Jurisdiction in Environmental Collective Actions.

2.1.- Background and a duo of pivotal questions.

Addressing challenges in international jurisdiction is a logical first step in understanding the obstacles faced by environmental representative actions. Typically, determining the appropriate court jurisdiction is a fundamental aspect of any litigation, as it profoundly influences the litigation strategy as well as various procedural aspects and the overall progression of the case. The Dieselgate scandal, rife with jurisdictional complexities, exemplifies the critical role of international jurisdiction. This is further underscored by the fact that some of the earliest interventions of the CJEU in the Dieselgate scandal are clearly jurisdiction-related cases[31].

It could be argued that in the realm of environmental collective actions, the issue of jurisdiction assumes an exceptionally critical role for a multitude of reasons[32].

Firstly, one must consider the pervasive issue of inadequate funding that often afflicts consumer associations[33]. This financial constraint inherently compels these organisations to seek litigation in jurisdictions that do not impose prohibitively high fees and costs, thus making the financial aspect a key factor in their jurisdictional decision-making process.

Additionally, the familiarity with the applicable law, encompassing both procedural and substantive dimensions, stands as another significant consideration. This familiarity not only facilitates a more efficient legal process but also potentially enhances the likelihood of a favourable outcome, thereby underscoring the importance of identifying suitable legal forums.

Finally, and perhaps most crucially, considering that qualified entities typically represent the interests of a broad spectrum of consumers from various Member States, their ideal scenario would be to initiate legal proceedings in a single jurisdiction. Such a choice is strategically aimed at avoiding an unwieldy proliferation of parallel proceedings. This is not only a matter of curtailing additional costs but also a means to safeguard the efficacy of their

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[31] Most prominently case C-343/19 VKI v Volkswagen AG [2020] ECLI:EU:C:2020:534.

[32] For the importance and intricacies of allocating jurisdiction in representative actions see Burkhard Hess, 'Collective Redress and the Jurisdictional Model of the Brussels I Regulation' in Arnaud Nuyts and Nikitas E Hatzimihail (eds), Cross-Border Class Actions: The European Way (Sellier 2014) 59.

[33] For a more detailed account of the funding challenges faced by qualified entities see Beate Gsell, 'The new European Directive on representative actions for the protection of the collective interests of consumers – A huge, but blurry step forward' (2021) 58 Common Market Law Review 1365, 1393-1399, Diego Agulló Agulló, 'Directive 2020/1828 on Representative Actions for the Protection of the Collective Interests of Consumers: An Overview' (2022) 8(1) EU Law Journal 127, 137-140.

collective actions. An increase in the number of proceedings carries the risk of resulting in irreconcilable judgments, which could ultimately nullify the enforcement of any favourable decisions. Therefore, from a strategic standpoint, qualified entities are inclined to consolidate their actions in a singular court, regardless of whether they represent consumers from the same or different Member States. This approach is driven by a desire to streamline the legal process and maximise the impact of their collective actions.

In this context, the challenges of international jurisdiction faced by qualified entities can be distilled into two fundamental questions: a) Are qualified entities eligible to avail themselves of the protective regime delineated in Chapter II, Section 4 of the Brussels Ia Regulation? and b) In the absence of eligibility for this regime, can they identify alternative jurisdictional grounds within the Brussels Ia Regulation to effectively consolidate their claims? These questions are pivotal in determining the jurisdictional strategy of qualified entities and profoundly influence their ability to effectively represent and advocate for the collective interests of consumers across different Member States in environmental litigation.

2.2.- Can qualified entities representing collective environmental claims benefit from Chapter II, Section 4 of the Brussels Ia Regulation?

The initial inquiry, therefore, centres on whether qualified entities can benefit from the consumer-oriented jurisdictional advantages delineated in Chapter II, Section 4 of the Brussels Ia Regulation. This possibility presents itself as ideal, as it would not only allow qualified entities to consolidate their litigation in one single Member State, but it would also allow them to do so before courts that would be more favourable to them. Indeed, Chapter II, Section 4 of the Brussels Ia Regulation crafts a highly favourable jurisdictional landscape for consumers, where art. 17 empowers consumers to initiate lawsuits in their own Member State courts. Additionally, art. 19 imposes constraints on jurisdictional agreements in consumer-involved scenarios, barring agreements that exclude the consumer's domicile Member State as a potential litigation venue. Furthermore, art. 18 extends the possibility for consumers to sue traders based outside the EU, who would otherwise fall outside the territorial scope of the Brussels Ia Regulation. These jurisdictional privileges would significantly benefit qualified entities under the RAD, making Chapter II, Section 4 of the Brussels Ia Regulation a logical focal point for their jurisdictional investigations. To put it succinctly, if qualified entities were able to take advantage of Section 4 of the Brussels Ia Regulation, they would have the opportunity to present their claims in the courts of the Member States where the consumers they represent are domiciled. This would be feasible regardless of the trader's domicile, offering a more accessible and potentially advantageous jurisdictional option for these entities.

However, based on existing jurisprudence from the CJEU, it seems improbable that qualified entities would be able to utilise the jurisdictional privileges afforded by Chapter II, Section 4 of the Brussels Ia Regulation. Indeed. As early as the Shearson Lehman Hutton case[34], the CJEU has expressed reservations in extending the jurisdictional privileges of Chapter II, Section 4 in situations where consumer claims are not brought by individual consumers themselves. In the case of Shearson Lehman Hutton, a German judge assigned his claims arising from an agency contract to a company. Subsequently, when this company initiated legal proceedings against the brokers in Germany, the jurisdiction of German courts became a focal point of the litigation. Addressing the issue of how to interpret the consumer protection jurisdictional regime within the context of investment contracts, the CJEU clarified that this protective regime does not apply when the plaintiff is not the consumer themselves, but rather a legal entity to which the consumer's claims have been transferred.[35] This ruling underscores the specificity of the consumer jurisdictional regime and its inapplicability in cases where the litigating party is a legal person, distinct from the original consumer, holding assigned consumer claims. The CJEU extended the same interpretation to consumer associations in Henkel[36]. In the case of Henkel, a consumer association representing Austrian consumers filed an injunctive action against a German trader. The aim was to prevent the trader from using disputed terms in contracts with Austrian clients, and the action was initiated in Austrian courts. When the German trader challenged the jurisdiction of the Austrian courts, the Court of Justice of the European Union (CJEU) issued a significant ruling. The Court determined that consumer associations, even when advocating on behalf of consumers through injunctive claims, are not entitled to the preferential jurisdictional regime specifically designated for consumers. Consequently, the CJEU clarified that such actions by consumer associations should adhere to the standard jurisdictional channels outlined in the Brussels jurisdictional regime. This includes resorting to Article 7(1) or Article 7(2) for determining jurisdiction in contractual and non-contractual matters, respectively. This ruling marked a pivotal clarification in the application of jurisdictional rules, particularly highlighting the distinction in treatment between individual consumers and associations representing them in legal proceedings[37]. It appears, therefore, that Chapter II, Section 4 of

[34] Case C-89/91 Shearson Lehman Hutton v TVB [1993] ECR I-139.

[35] Case C-89/91 Shearson Lehman Hutton v TVB [1993] ECR I-139, paras 18-24.

[36] Case C-167/00 VKI v Karl Heinz Henkel [2002] ECR I-8111.

[37] Case C-167/00 VKI v Karl Heinz Henkel [2002] ECR I-8111, para 33.

the Brussels Ia Regulation is exclusively tailored for individual consumer actions against traders and does not encompass representative actions[38].

One might speculate whether individual consumers could assign their claims to another natural person consumer, potentially facilitating a collective representation of multiple individual claims and their procedural concentration in a single venue, as prescribed by Chapter II, Section 4 of the Brussels Ia Regulation. In fact, this is exactly what happened in the Schrems case[39]: when the privacy activist Max Schrems initiated another chapter in his extensive litigation history with Facebook, he brought accusations of numerous data protection violations before Austrian courts. In this instance, Schrems extended his legal action beyond his own personal claims, incorporating identical claims that were assigned to him by other individual consumers. These consumers were not only domiciled in Austria but also in other EU Member States, and even in third countries. In response, Facebook challenged the jurisdiction of the Austrian courts. Their contention applied both to the individual actions brought by Max Schrems himself and to the claims of other consumers that had been assigned to him. While the CJEU acknowledged the consumer status of Max Schrems[40], it proceeded to clarify that the protective consumer jurisdictional regime under Chapter II, Section 4 of the Brussels Ia Regulation could not be extended to encompass the claims assigned to Max Schrems. Drawing upon the precedent set in Shearson Lehman, the Court emphasised that Chapter II, Section 4 is applicable exclusively in cases where the individual consumer directly initiates legal proceedings against a trader, with whom they have established a contractual relationship. Despite the fact that Max Schrems was entitled to benefit from the special jurisdictional regime of Chapter II, Section 4 of the Brussels Ia Regulation for his own personal claims, the Court ruled that this privilege could not be extended to cover the claims of other consumers that had been assigned to him[41]. This interpretation by the CJEU underscores the precise and limited scope of the jurisdictional protections afforded to individual consumers under the Brussels Ia Regulation, delineating a clear boundary between personal consumer claims and those acquired through assignment from others.

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[38] For the same conclusion see Zheng Sophia Tang, 'Consumer Collective Redress in European Private International Law' (2011) 7(1) Journal of Private International Law 101, 111-114, Diego Agulló Agulló, 'Directive 2020/1828 on Representative Actions for the Protection of the Collective Interests of Consumers: An Overview' (2022) 8(1) EU Law Journal 127, 131-133. For a different outlook see Mihail Danov, 'The Brussels I Regulation: Cross-Border Collective Redress Proceedings and Judgments' (2010) 6(2) Journal of Private International Law 359, 372-377.

[39] Case C-498/16 Schrems v Facebook Ireland [2018] ECLI:EU:C:2018:37.

[40] Case C-498/16 Schrems v Facebook Ireland [2018] ECLI:EU:C:2018:37, paras 29-41.

[41] Case C-498/16 Schrems v Facebook Ireland [2018] ECLI:EU:C:2018:37, paras 43-49.

It appears that qualified entities or other ad hoc consumer representatives will not receive differential treatment if they opt to pursue environmental representative actions before the courts of Member States. The cumulative impact of the CJEU rulings in Shearson Lehman, Henkel, and Schrems suggests that such claims cannot be consolidated through the jurisdictional avenues outlined in Chapter II, Section 4 of the Brussels Ia Regulation. Furthermore, neither qualified entities nor ad hoc consumer representatives will be in a position to assert any special jurisdictional privileges under this section, as it appears to be tailored specifically for individual consumers in direct contractual relationships with traders.

2.3.- Given that Chapter II, Section 4 does not apply to collective actions brought by qualified entities, is there any other way for them to consolidate their actions under the Brussels Ia Regulation?

This leads to the second question: Despite their inability to claim the protections of Chapter II, Section 4 of the Brussels Ia Regulation, can qualified entities still consolidate multiple actions before a single court under the Brussels Ia Regulation? This is a crucial consideration, given that qualified entities might represent consumers from various Member States. Although they likely cannot consolidate cases in venues outlined by Chapter II, Section 4, they may seek to do so through other mechanisms within the Brussels Ia Regulation. Failure to achieve this could result in litigation across numerous Member States, escalating costs and potentially encouraging delaying procedural tactics by traders. The Brussels Ia Regulation does offer some jurisdictional avenues that may permit consolidation. For instance, if a qualified entity chooses to sue in the Member State where the trader is domiciled according to art. 4 of the Brussels Ia Regulation, all represented interests and claims could be consolidated in that venue[42]. They may also strategically utilise Article 8(1) of the Brussels Ia Regulation, a tactic already successfully employed in Austria, where a qualified entity initiated action against VW's parent company in conjunction with its Austrian representative[43].

Yet, the domicile of the trader or a consolidation under Article 8 may not always be the most advantageous strategies.

Should the qualified entity seek alternatives to the trader's domicile, attention naturally shifts to Articles 7(1) and (2) of the Brussels Ia Regulation.

[42] For the importance of art. 4 of the Brussels Ia Regulation in representative actions see Chrisoula Michailidou, Prozessuale Fragen des Kollektivrechtsschutzes im europäischen Justizraum: Eine rechtsvergleichende Studie (Nomos 2007), 310.

[43] This strategy seems to have been successfully applied in Case C-145/20 DS v Porsche Inter Auto & Volkswagen [2022] ECLI:EU:C:2022:572.

Starting with Article 7(1), its potential application should not be summarily dismissed, despite its atypical nature in this context[44]. While collective redress is often associated with non-contractual litigation, it's important to recall that in Porsche Inter Auto and Volkswagen[45], the CJEU recognized that vehicles equipped with defeat devices did not conform to the sales contracts between the trader and individual consumers, giving a contractual character to the underlying nature of such cases[46]. Even when such claims are bundled and assigned to a qualified entity or an ad hoc representative, the underlying legal nature of the dispute should not be put into question, as established by the CJEU in ÖFAB[47] and CDC Peroxide[48]. Consequently, a qualified entity might represent several contractual non-conformity claims, with jurisdiction determined under Article 7(1)(b) of the Brussels Ia Regulation[49]. Although this would enable qualified entities to litigate away from the trader's domicile, it does not necessarily facilitate the consolidation of the various claims. Under art. 7(1)(b) of the Brussels Ia Regulation, jurisdiction for sales contracts is assigned to the country where the goods were delivered, and for service contracts, it lies in the country where the services were rendered. If a qualified entity represents consumers from a single Member State, then Article 7(1)(b) could direct them towards a singular jurisdictional avenue. However, the situation grows markedly more complex when a qualified entity represents consumers from multiple Member States. In such cases, the location of delivery or service provision corresponds to the number of consumers represented, with these locations spread across different Member States. Taking the Dieselgate scandal as an illustrative example, if a qualified entity represents consumers from France, Spain, and Portugal, jurisdiction under Article 7(1)(b) would be divided among these countries, correlating to where the defective cars were delivered. Although consolidating such claims in a single Member State, following

[44] For a probably different assessment see Petra Leupold, Private International Law and Cross-Border Collective Redress: A Legal Analysis of Jurisdiction, Applicable Law, Pendency, Recognition and Enforcement under the Representative Actions Directive 1828/2020 (30 August 2022) https://www.beuc.eu/reports/private-international-law-and-cross-border-collective-redress [accessed 22.01.2024], p. 23-25.

[45] Case C-145/20 DS v Porsche Inter Auto & Volkswagen [2022] ECLI:EU:C:2022:572.

[46] Case C-145/20 DS v Porsche Inter Auto & Volkswagen [2022] ECLI:EU:C:2022:572, paras 47-58.

[47] Case C-147/12 ÖFAB, Östergötlands Fastigheter AB v Frank Koot, Evergreen Investments BV [2013] ECLI:EU:C:2013:490, paras 56-59.

[48] Case C-352/13 Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Akzo Nobel NV and Others [2015] ECLI:EU:C:2015:335, par 35.

[49] For the idea that art. 7(1) might also apply in the context of representative actions see Burkhard Hess, Europäisches Zivilprozessrecht (2nd edn, de Gruyter 2021) 828, before para 11.80 where he notes: "...Der besondere Gerichtsstand für vertragliche Streitigkeiten (Art. 7 Nr. 1 EuGVO) kommt nur in Betracht, sofern der Verband sich Individualansprüche der Verbraucher (etwa aus Vertrag) abtreten lässt und diese gebündelt (etwa in Prozessstandschaft) geltend macht…".

the jurisprudence established in such CJEU cases as Color Drack[50], Rehder[51] and Wood Floor[52], is conceivable, in practice, this approach might also present significant challenges[53].

Leaving art. 7(1) aside, the focus will naturally shift to art. 7(2) which offers another avenue. One might even say that art. 7(2) is a more natural venue for collective redress claims, especially in environmental matters. In fact, the provision of art. 7(2) has already been engaged in environmental matters and/or more generally in representative actions: the classic Handelskwekerij Bier v Mines de Potasse d'Alsace case is dedicated to environmental pollution[54], while the CJEU has already accommodated representative injunctive actions under art. 7(2) in Henkel[55] .

The application of this provision in the context of collective environmental actions, particularly in the wake of the emissions scandal, was further examined by the CJEU in VKI v Volkswagen AG[56]. In this particular case the VKI (i.e. the Austrian Consumer's Association) brought an action in Austria against Volkswagen, representing 574 Austrian consumers who have purchased Volkswagen cars. The foundational argument of VKI posited that Volkswagen, by equipping their vehicles with unlawful "defeat devices" under Regulation 715/2007, unequivocally committed a tort against Austrian consumers who purchased these cars. This tortious act resulted in tangible damages. The rationale behind this assertion was that, had the Austrian consumers been aware of the illicit nature of the "defeat device," they would have either refrained from purchasing Volkswagen vehicles altogether or would have negotiated a significantly lower purchase price, estimated to be at least 30% less than the paid amount.

Volkswagen challenged the jurisdiction of the Austrian court where VKI brought the action and the referring court itself expressed doubts about its jurisdiction. In first place the referring court was of the opinion that the software enabling manipulation of data about the exhaust gas emissions of the vehicles in question caused the initial harm. The damage claimed by the VKI, represented as a diminution in the value of these vehicles, is purely

[50] Case C-386/05 Color Drack GmbH v Lexx International Vertriebs GmbH [2007] ECLI:EU:C:2007:262, paras 32-45.

[51] Case C-204/08 Peter Rehder v Air Baltic Corporation [2009] ECLI:EU:C:2009:439, paras 36-47.

[52] Case C-19/09 Wood Floor Solutions Andreas Domberger GmbH v Silva Trade SA [2010] ECLI:EU:C:2010:137, paras 31-43.

[53] In that spirit Frederick Rieländer, 'Aligning the Brussels Regime with the Representative Actions Directive' (2022) 71(1) International & Comparative Law Quarterly 107, 118-119.

[54] Case C-21/76 Handelskwekerij GJ Bier BV v Mines de Potasse d'Alsace SA [1976] ECR I-1735.

[55] C-167/00 VKI v Karl Heinz Henkel [2002] ECR I-8111, paras 35-41.

[56] Case C-343/19 VKI v Volkswagen AG [2020] ECLI:EU:C:2020:534.

financial consequential harm, which, as per the decision of the CJEU in Marinari[57], should not suffice for the establishment of international jurisdiction in Austria. Secondly, the referring court raised concerns regarding the suitability of Austrian courts to adjudicate the case. This apprehension stems from the fact that, even if the damage claimed by VKI were to be perceived as primary damage occurring in Austria, it is inherently linked to Volkswagen's actions in Germany, particularly the installation of the “defeat devices” in the vehicles. Consequently, this suggests that German courts might be more apt for handling the case, considering the principles of sound administration of justice and the direct connection of the alleged actions to Germany. Finally, the referring court also expressed reservations about whether a determination that Austrian courts possess international jurisdiction would align with the strict interpretation mandated by the CJEU’s case-law on art. 7(2) of the Brussels Ia Regulation.

The CJEU was not convinced by the reservations expressed by Volkswagen and by the reluctance displayed by the referring court as regards its own jurisdiction. In the first place, the CJEU confirmed the classic jurisdictional scheme of art. 7(2), reiterating that the notion of the “place where the harmful event occurred” is intended to cover both the place where the damage occurred and the place of the event giving rise to it[58]. In this particular case, it was clear that the place of the event giving rise to the damage was located in Germany, since this was the place where Volkswagen equipped the vehicles in question with the unlawful “defeat devices”[59]. As regards the place where the actual damage occurred, the CJEU acknowledged that the referring court was right to recall Marinari and to highlight that the notion of the “place where the harmful event occurred” should not be extended to the point where it covers all locations where the repercussions of an incident are felt, especially if the actual damage originated elsewhere[60]. Nevertheless, the CJEU offered a markedly different analysis of the facts of the case compared to the assessment by the referring court. The CJEU declared that the harm sustained by the Austrian consumers was neither consequential nor solely financial in nature. Addressing the first point, regarding whether the damage claimed in Austria was merely consequential, the CJEU emphasised that even though Volkswagen had equipped the disputed vehicles with “defeat devices” in Germany, the actual damage manifested only upon the purchase and delivery of the contested vehicles in Austria[61]. The rationale is that the nature of the damage alleged by VKI, specifically the

[57] Case C-364/93 Marinari v Lloyd's Bank plc [1995] ECR I-2719, paras 11-15.

[58] Case C-343/19 VKI v Volkswagen AG [2020] ECLI:EU:C:2020:534, para 23.

[59] Case C-343/19 VKI v Volkswagen AG [2020] ECLI:EU:C:2020:534, para 24.

[60] Case C-343/19 VKI v Volkswagen AG [2020] ECLI:EU:C:2020:534, para 26.

[61] Case C-343/19 VKI v Volkswagen AG [2020] ECLI:EU:C:2020:534, paras 29-30.

reduced value of the contested vehicles, could only become apparent at the point of their actual acquisition and delivery within Austria, and not before[62]. Concerning the second point, namely that the damage claimed by VKI was purely financial, the CJEU noted that this was not accurate. While VKI's claim was quantified in monetary terms, the essence of this claim pertained to a defective vehicle, a tangible physical object[63]. Consequently, the location where the damage occurred was Austria, where consumers finalised their purchases and received the contested vehicles.

Supporting this conclusion, the CJEU demonstrated that its interpretation aligned with the fundamental objectives of the special jurisdictional ground under Article 7(2)[64]. Firstly, this jurisdictional determination was predictable, as Volkswagen could reasonably foresee potential litigation in all countries where the vehicles equipped with “defeat devices” were sold[65]. Moreover, the Court affirmed that the Austrian courts exhibited sufficient proximity to the dispute. This proximity is particularly relevant given that assessing the extent of the damage suffered may require the national court to evaluate market conditions in the Member State where the vehicle was purchased[66]. Finally, the CJEU also found that allocating jurisdiction in Austria would also align with the provisions of the Rome II Regulation on the law applicable, especially in view of art. 6(1) of the Rome II Regulation[67].

While the decision of the Court of Justice of the European Union (CJEU) in VKI v Volkswagen could be perceived as reasonable and importantly, paves the way for defending environmental consumer claims through Article 7(2) of the Brussels Ia Regulation, it may not fully alleviate the constraints on collective environmental redress inherent in the general operational characteristics of Article 7(2). In the VKI v Volkswagen case, the application of Article 7(2) was relatively straightforward, primarily because all consumers represented were

[62] Case C-343/19 VKI v Volkswagen AG [2020] ECLI:EU:C:2020:534, para 31.

[63] Case C-343/19 VKI v Volkswagen AG [2020] ECLI:EU:C:2020:534, paras 32-34.

[64] Case C-343/19 VKI v Volkswagen AG [2020] ECLI:EU:C:2020:534, para 36.

[65] Case C-343/19 VKI v Volkswagen AG [2020] ECLI:EU:C:2020:534, para 37.

[66] Case C-343/19 VKI v Volkswagen AG [2020] ECLI:EU:C:2020:534, para 38.

[67] Case C-343/19 VKI v Volkswagen AG [2020] ECLI:EU:C:2020:534, para 39.

from Austria[68]. However, this may not be the case when a consumer association represents consumers from multiple Member States.

Expanding upon the VKI v Volkswagen ruling, if VKI were to represent consumers from different Member States, such as Austria, Greece, and Malta, then the location of the damage would be divided among these countries. For instance, Austria would be the place of damage for Austrian consumers, Greece for Greek consumers, and Malta for Maltese consumers, all represented by VKI. Considering the mosaic principle, this would imply that courts in Austria, Greece, and Malta could only adjudicate and award damages for consumers domiciled within their respective jurisdictions, thereby fragmenting the litigation[69].

To address this issue, several academic commentators have proposed that instead of distributing jurisdiction among various courts where the damage occurred, representative actions should be centralised before the courts of the Member State where the collective consumer interests have been most significantly impacted[70]. This concept is grounded in the established jurisprudence of the CJEU, particularly in the eDate Advertising case, where the CJEU established the unique jurisdictional basis at the place where the centre of interests of the victim of online personality infringements is located[71].

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[68] Although even in such cases, art. 7(2) might create challenges at the level of local jurisdiction within the Member State where the damage occurred, something evidenced by a relevant decision of the Rechtbank Amsterdam, Private Law Department, Case Numbers C/13/708095 / HA ZA 22-1 (and C/13/715885 HA ZA 22-283 and C/13/716027 HA ZA 22-295) https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBAMS:2023:5310 [accessed 22.01.2024]. For an analysis of the case see Stefan Tuinenga, 'Regional Jurisdiction in Private International Law: Dutch Court to Refer Preliminary Questions to the ECJ in Collective Action Proceedings Against Apple' (Kluwer Competition Law Blog, 20 October 2023) https://competitionlawblog.kluwercompetitionlaw.com/2023/10/20/regional-jurisdiction-in-private-international-law-dutch-court-to-refer-preliminary-questions-to-the-ecj-in-collective-action-proceedings-against-apple/ [accessed 22.01.2024], where it is also reported that the case might feature before the CJEU.

[69] See Burkhard Hess, Europäisches Zivilprozessrecht (2nd edn, de Gruyter 2021) 828, para 11.80: "...Besondere Bedeutung hat hingegen der Gerichtsstand des Art. 7 Nr. 2 EuGVO, der im Fall von Wettbewerbsverstößen, Kapitalanlagedelikten, Kartellverstößen und sonstigen Verstößen gegen zwingendes Verbraucherrecht anwendbar ist. Danach kann am Tatort geklagt werden, d. h. sowohl am Handlungsort als auch am Erfolgsort. Allerdings sind die Einschränkungen der Shevill-Rechtsprechung des EuGH zu beachten. Danach können am Erfolgsort nur die individuellen Schäden (gebündelt) eingeklagt werden, die dort jeweils eingetreten sind…" and also Petra Leupold, Private International Law and Cross-Border Collective Redress: A Legal Analysis of Jurisdiction, Applicable Law, Pendency, Recognition and Enforcement under the Representative Actions Directive 1828/2020 (30 August 2022) https://www.beuc.eu/reports/private-international-law-and-cross-border-collective-redress [accessed 22.01.2024], p. 28.

[70] See, most notably, Arnaud Nuyts, 'The Consolidation of Collective Claims under the Brussels I Regulation' in Arnaud Nuyts and Nikitas E Hatzimihail (eds), Cross-Border Class Actions: The European Way (Sellier 2014) 69, 77-79.

[71] Joined Cases C-509/09 and C-161/10 eDate Advertising GmbH v X; Olivier Martinez, Robert Martinez v MGN Limited [2011] ECLI:EU:C:2011:685, paras 43-52.

However, it is crucial not to overlook the dogmatic and practical challenges posed by such a strategy. This approach would require careful consideration and potential adaptation of existing legal frameworks to effectively address the unique complexities of collective redress in the realm of consumer protection[72].

In summary, while the traditional jurisdictional channels provided by the Brussels Ia Regulation do not render environmental collective redress unfeasible, they do not invariably yield entirely satisfactory outcomes, particularly when considering the distinctive characteristics of such collective actions. Effective representation of collective consumer interests may necessitate a clearly defined, singular venue endowed with comprehensive authority over all the interests involved. Utilising the conventional jurisdictional routes outlined in the Brussels Ia Regulation, as they are presently constituted, may not consistently ensure such a result.

The EU legislator has shown hesitance in amending the jurisdictional framework to specifically cater to the unique demands of collective redress actions. This reluctance raises questions about whether the EU will maintain its current stance or opt to intervene and revise the framework in light of emerging needs and challenges. The future of this legal landscape remains uncertain, and it will be interesting to observe if and how the legislator responds to the evolving dynamics of collective redress, especially in environmental cases[73].

3.- Selected challenges of Parallel Proceedings in Environmental Collective Actions.

In the context of environmental litigation involving qualified entities, Articles 29 and 30 of the Brussels Ia Regulation are likely to play a crucial role. The nature of such cases often leads to parallel proceedings. Indeed, representative actions create a complex tripartite dynamic involving the qualified entity, the trader, and individual consumers[74]. The

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[72] On the possible difficulties of adapting the jurisdictional basis of the centre of interests in the context of representative actions see Frederick Rieländer, 'Aligning the Brussels Regime with the Representative Actions Directive' (2022) 71(1) International & Comparative Law Quarterly 107, 114-117, Petra Leupold, Private International Law and Cross-Border Collective Redress: A Legal Analysis of Jurisdiction, Applicable Law, Pendency, Recognition and Enforcement under the Representative Actions Directive 1828/2020 (30 August 2022) https://www.beuc.eu/reports/private-international-law-and-cross-border-collective-redress [accessed 22.01.2024], p. 28.

[73] For a discussion on establishing a separate jurisdictional head to accommodate representative actions within the ongoing debates on reforming the Brussels Ia Regulation see Burkhard Hess et al, 'The Reform of the Brussels Ibis Regulation' (15 November 2022) MPILux Research Paper 2022(6) https://ssrn.com/abstract=4278741 [accessed 22.01.2024], p. 12-13.

[74] See further Chrisoula Michailidou, Prozessuale Fragen des Kollektivrechtsschutzes im europäischen Justizraum: Eine rechtsvergleichende Studie (Nomos 2007), 322 ff.

simultaneous involvement of these diverse parties in a single legal dispute opens up a myriad of potential litigation scenarios, each with its own set of procedural intricacies.

In simpler scenarios, it is conceivable to have multiple qualified entities representing identical consumer interests against the same trader for the same violations[75]. In such scenarios, the application of the rules on parallel proceedings established in art. 29 and 30 of the Brussels Ia Regulation may not be as straightforward as initially perceived. Regarding subject matter, representative actions that stem from the same alleged violations by a particular trader against a uniform group of consumers typically satisfy either the criterion of "same cause of action" under art. 29[76] or "relatedness" under art. 30 of the Brussels Ia Regulation[77]. However, the subjective requirements, particularly for art. 29, should not be assumed as a given. Art. 29 necessitates the involvement of the "same parties" in the two parallel proceedings for its application. Yet, when two distinct qualified entities represent the same group of consumers against the same trader for identical violations, this requirement may not be fulfilled, as there are different entities in the role of the plaintiff[78]. In this context, art. 30 of the Brussels Ia Regulation might present a more suitable solution to such complexities[79]. Nevertheless, it is important to remember that art. 30 does not automatically lead to the suspension of proceedings in the court subsequently seized.

The landscape becomes equally complex in other scenarios. For instance, consider a situation where an individual consumer, who has already brought an individual action against the trader, opts to also be included in a representative action against the same trader. Art. 29 necessitates identical parties for its application, but in a situation where a collective action is

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[75] Petra Leupold, Private International Law and Cross-Border Collective Redress: A Legal Analysis of Jurisdiction, Applicable Law, Pendency, Recognition and Enforcement under the Representative Actions Directive 1828/2020 (30 August 2022) https://www.beuc.eu/reports/private-international-law-and-cross-border-collective-redress [accessed 22.01.2024], p. 85, advises caution regarding the possibility of multiple representations of consumers by different qualified entities in the same case.

[76] Case C-144/86 Gubisch Maschinenfabrik KG v Palumbo [1987] ECR I-4861, paras 14-19, Case C-406/92 The Owners of the Cargo lately laden on board the Ship "Tatry" v The Owners of the Ship "Maciej Rataj" [1994] ECR I-5439, paras 37-45.

[77] Case C-406/92 The Owners of the Cargo lately laden on board the Ship "Tatry" v The Owners of the Ship "Maciej Rataj" [1994] ECR I-5439, paras 51-58.

[78] In the same vein Zheng Sophia Tang, 'Consumer Collective Redress in European Private International Law' (2011) 7(1) Journal of Private International Law 101, 125-127.

[79] Burkhard Hess, Europäisches Zivilprozessrecht (2nd edn, de Gruyter 2021) 829, para 11.81 also envisions art. 30 as being applicable in this case: "...Gehen verschiedene Verbraucherverbände parallel gegen die identische Verletzungshandlung eines Unternehmens vor, kommt mangels Parteiidentität nicht Art. 29 EuGVO, sondern Art. 30 EuGVO zur Anwendung: Die Parallelklagen sind, soweit sie im Zusammenhang stehen, auszusetzen…". See also Mihail Danov, 'The Brussels I Regulation: Cross-Border Collective Redress Proceedings and Judgments' (2010) 6(2) Journal of Private International Law 359, 380-384.

launched by a qualified entity and a separate individual action is pursued by a consumer against the same trader, the 'same parties' requirement might not be satisfied. This is because the plaintiffs differ in the parallel proceedings – a qualified entity in one case and an individual consumer in the other. Again art. 30 of the Brussels Ia Regulation might appear as a possible solution.

To mitigate these complexities, it has been proposed that the notion of “same parties” within art. 29 of the Brussels Ia Regulation must be interpreted widely, so as to encompass not only the parties actually bringing the actions (representative or individual) but also the individual interests represented in them[80]. Such an interpretation might allow a more straightforward application of art. 29 of the Brussels Ia, at least in some of the scenarios examined above. It remains, however, to be seen whether such proposals will gain further support, especially in court practice[81].

4.- Final thoughts and outlook.

In conclusion, the exploration of collective redress in environmental matters, particularly through the prism of the Dieselgate scandal, underscores the complexities and limitations inherent in the current framework of Private International Law within the European Union. The scandal's widespread impact across the EU highlighted the inadequacies in both public and private enforcement mechanisms in providing straightforward and effective protection for EU consumers. The ensuing litigation sagas before the CJEU further illustrated these challenges.

Despite the enactment of the RAD, which aimed to streamline collective redress, the primary regulatory framework as regards Private International Law remains rooted in the Brussels Ia Regulation. This regulation stipulates the traditional mechanisms for allocating jurisdiction in environmental representative actions. Significantly, qualified entities seeking redress cannot avail themselves of the protective regime in Chapter II, Section 4 of the Brussels Ia Regulation, as CJEU case law restricts its application to individual consumers.

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[80] Frederick Rieländer, 'Aligning the Brussels Regime with the Representative Actions Directive' (2022) 71(1) International & Comparative Law Quarterly 107, 121-122 with arguments inspired by Case C-351/96 Drouot assurances SA v Consolidated metallurgical industries (CMI industrial sites) and others [1998] ECR I-3075, para 19 and art. 9(4) of the RAD.

[81] For a possible rebuttal of the argumentation of Rieländer on expanding the notion of “same parties” on the basis of the Drouot case law see Zheng Sophia Tang, 'Consumer Collective Redress in European Private International Law' (2011) 7(1) Journal of Private International Law 101, 125-127. The other argument presented by Rieländer on the basis of art. 9(4) of the RAD might also not be entirely convincing in view of the decision of the CJEU in Joined Cases C-381/14 and C-385/14 Jorge Sales Sinués v Caixabank SA; Youssouf Drame Ba v Catalunya Caixa SA (Catalunya Banc SA) [2016] ECLI:EU:C:2016:252, paras 21-43.

The domicile of the trader, as per Article 4 of the Brussels Ia Regulation, offers a potential avenue for identifying a single jurisdictional venue with the authority to adjudicate all represented interests. However, this may pose challenges for qualified entities in terms of costs and familiarity with the local laws and procedural environment at the trader's domicile. Moreover, alternative bases of jurisdiction under Articles 7(1) and 7(2) present their own set of limitations. Crucially, neither appears capable of consolidating the jurisdictional venue, leading to the fragmentation of disputes across different Member States.

Another significant challenge in the realm of environmental representative actions is ensuring the proper administration of justice. The possibility of qualified entities, individual consumers, and traders initiating separate actions gives rise to issues of parallel proceedings. Articles 29 and 30 of the Brussels Ia Regulation are designed to address such issues, while the RAD offers minimal guidance in mitigating these risks. The application of Article 29 is not always straightforward, particularly when its prerequisite – involving the same parties in different proceedings – is not met. Article 30, on the other hand, appears to be a more natural fit for such scenarios.

In summary, the Dieselgate scandal has significantly highlighted the necessity for effective collective redress in environmental matters, casting light on the current Private International Law (PIL) framework within the EU, primarily governed by the Brussels Ia Regulation. While the application of the Regulation in representative actions does present challenges, such as jurisdictional consolidation limitations, complexities in managing parallel proceedings, and achieving an efficient administration of justice, it also lays a foundational structure for addressing cross-border environmental disputes. The challenges, though notable, are not insurmountable and might be effectively addressed through judicial intervention and interpretation. As the EU continues to evolve in its approach to these issues, a combination of legislative refinement and insightful judicial guidance appears to be key in fostering a more robust and efficient system for collective redress in environmental contexts. This balanced approach underscores a commitment to continually enhancing the legal mechanisms in place, ensuring they remain effective in the face of complex, transnational environmental challenges.