

## Can Internet Presence Establish a Jurisdiction Abroad?

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*Most companies that provide and sell goods or services use the Internet to market or sell these services. This leads to a larger circle of customers and thus also to customers abroad being addressed. On the one hand, distribution via the Internet increases the sales market, but on the other hand it also entails the risk of legal action being taken by customers abroad.*



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With a larger market also comes greater risks. A customer from another country has under certain given circumstances the possibility to hold a Swiss company responsible in the courts of his place of origin. This is also possible if the contracts have a jurisdiction agreement in their general terms and conditions. The following explains the conditions under which a Swiss company with a Euro-international clientele can be held liable in court abroad.

The provisions of the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Lugano Convention) are relevant when answering questions of jurisdiction in the euro-international area. According to Art. 23 Lugano Convention, agreements on jurisdiction concluded between the parties must be respected by the courts. Thus, in principle, the provisions in general terms and conditions would be sufficient to establish a place of jurisdiction in Switzerland. However, according to Art. 17 Lugano Convention, jurisdiction agreements with consumers are exempt from this provision. Consumers enjoy special protection and cannot derogate from the ordinary place of jurisdiction before a dispute arises.

Consequently, the question arises as to when a consumer contract is concluded. Consumers according to Art. 15 Lugano Convention can only be natural persons. To be classified as a consumer contract, the contract must not have been concluded for professional or commercial purposes.

Finally, the company's activity must be directed towards the consumer's country. This is obviously the case if the business operates a branch for this purpose within the consumer's country of residence. The operation of a website, on the other hand, is not clear-cut. In principle, a website can be visited worldwide. However, it would be repugnant to equate the operation of a website with a worldwide offer of the goods or services. Rather, it must be decided on a case-by-case basis whether the company wishes to explicitly target the market of a country. Various indicators can be decisive for this. For example, if the company limits the countries to which it delivers, it must be assumed that the advertising is limited to these countries only. If in principle worldwide delivery is possible, the language of the website and the currency in which the goods or services are offered may limit the targeted market.

It should therefore be noted that offering goods and services on the international market can lead to the establishment of a jurisdiction abroad. For reasons of consumer protection, this cannot be waived from the outset. However, Art. 15 of the Lugano Convention only protects consumers of member states who are directly addressed by a company. The internet presence of a company abroad can therefore certainly establish a place of jurisdiction abroad. It is therefore advisable to design the internet presence with care. If a company wishes to completely waive the risk of a foreign jurisdiction, it can, for example, limit the delivery options.

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