Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

12 May 2021 *

(Reference for a preliminary ruling – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation (EU) No 1215/2012 – Article 7(2) – Jurisdiction in tort, delict or quasi-delict – Place where the harmful event occurred – Damage consisting in purely financial loss)

In Case C-709/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), made by decision of 20 September 2019, received at the Court on 25 September 2019, in the proceedings

Vereniging van Effectenbezitters

v

BP plc,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen, C. Toader, M. Safjan (Rapporteur) and N. Jääskinen, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Vereniging van Effectenbezitters, by J. van der Beek, advocaat,

– BP plc, by W.H. van Hemel, A.F.J.A. Leijten, O.J.W. Schotel and J.S. Kortmann, advocaten,

– the European Commission, by G. Wils, R. Troosters and M. Heller, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 December 2020,

* Language of the case: Dutch.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 7(2) of 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 (OJ 2012 L 351, p. 1).

2 The request has been made in proceedings between the Vereniging van Effectenbezitters (Association of shareholders, Netherlands; 'VEB'), whose registered office is in The Hague (Netherlands), and BP plc, a company operating on a worldwide scale and having its registered office in London (United Kingdom), concerning the latter's liability for losses suffered by persons who bought, held or sold ordinary shares in BP through, in particular, an investment account in the Netherlands.

Legal context

European Union law

3 Recitals 15 and 16 of Regulation No 1215/2012 read as follows:

'(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

(16) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.'

4 Chapter II of Regulation No 1215/2012, entitled 'Jurisdiction', contains, inter alia, Section 1, entitled 'General provisions', and Section 2, entitled 'Special jurisdiction'. Article 4(1) of that regulation, which features in Section 1, provides:

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

5 Article 7 of Regulation No 1215/2012, which appears in Section 2, is worded as follows:

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

…

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

…’

The Netherlands law

6 Article 305 of Book 3 of the Burgerlijk Wetboek (Netherlands Civil Code; ‘the BW’), which entered into force on 1 July 1994, provides:

‘(1) Any institution or association which has full legal capacity may bring an action in defence of similar interests held by others, provided that the defence is conducted in accordance with its statutes.

…

(3) An action such as that provided for in paragraph (1) may not be brought for the purpose of obtaining … monetary damages.

…’

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

7 VEB is an association with full legal capacity under Netherlands law, whose purpose, as defined in its statutes, is to represent the interests of shareholders. It has capacity, inter alia, to bring collective actions in accordance with Article 3:305a of the BW.

8 BP is an oil and gas company that operates on a worldwide scale. Its ordinary shares are listed on the London and Frankfurt (Germany) stock exchanges. Its *American Depository Shares* derived from ordinary shares are listed on the New York Stock Exchange (United States).

9 On 20 April 2010, an explosion occurred on the oil drilling platform Deepwater Horizon, leased by BP and located in the Gulf of Mexico, causing deaths and injuries. It also caused environmental damage.

10 In 2015, VEB initiated proceedings against BP before the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands), by means of a collective action under Article 3:305a of the BW on behalf of all persons who had bought, held or sold ordinary shares in BP through an investment account in the Netherlands or through an investment account of a bank and/or investment firm established in the Netherlands during the period from 16 January 2007 to 25 June 2010 (the ‘BP shareholders’).

11 In the context of those proceedings, VEB sought a ruling from the Rechtbank Amsterdam (District Court, Amsterdam):

– that the Netherlands court has international jurisdiction to hear the claims for compensation brought by the BP shareholders;

– that the Rechtbank Amsterdam (District Court, Amsterdam) has territorial jurisdiction to hear those claims;

– that Netherlands law applies to the claims for compensation;

– that BP provided its shareholders with inaccurate, incomplete and misleading information concerning (i) its security and maintenance programmes prior to the oil spill of 20 April 2010, (ii) the extent of that oil spill and/or (iii) BP's role and responsibility with regard to that oil spill;

– that BP acted unlawfully towards its shareholders;

– that the purchase or sale of shares in BP by its shareholders would, in the absence of unlawful acts on the part of BP, have been carried out at a more favourable market price or would not have taken place at all;

– that there is a link between, on the one hand, BP's unlawful conduct and the resulting conditions of purchase and sale and, on the other hand, the loss suffered by BP's shareholders with regard to the share price between 16 January 2007 and 25 June 2010.

12 BP challenged the jurisdiction of the Netherlands court and argued that that court could not derive international jurisdiction from Regulation No 1215/2012.

13 The Rechtbank Amsterdam (District Court, Amsterdam) declared that it lacked jurisdiction to hear VEB's suit. On appeal, the Gerechtshof Amsterdam (Court of Appeal, Amsterdam, Netherlands) upheld that judgment declaring a lack of jurisdiction. The latter court found that the present case concerned purely financial loss that investors claim to have sustained in the Netherlands as a result of events, namely BP's acts and/or omissions, which did not occur in the Netherlands. The fact of losses sustained by an investment account held in the Netherlands is not in itself a sufficient connecting factor to establish the jurisdiction of the Netherlands courts pursuant to Article 7(2) of Regulation No 1215/2012, since other special circumstances are necessary for that purpose. The fact that BP is orientated towards a global community of investors, including Dutch investors, and the fact that VEB represents the interests of a large number of investors, most of whom are domiciled in the Netherlands, do not constitute such particular circumstances.

14 VEB brought an appeal on a point of law before the referring court, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands).

15 By that appeal, the VEB claimed, inter alia, that the circumstances of the present case are comparable to those of the cases which gave rise to the judgments of 28 January 2015, *Kolassa* (C-375/13, EU:C:2015:37), and of 12 September 2018, *Löber* (C-304/17, EU:C:2018:701), in which the Court found that the attribution of jurisdiction to the courts of the applicant's domicile is justified if the applicant's domicile is in fact the place in which the events giving rise to the damage took place or the damage occurred. VEB maintained that the devaluation of the

certificates did not result from the vagaries of the financial markets, but to BP's provision of incorrect, incomplete and misleading information concerning the oil spill, BP thereby failing to comply with its disclosure obligations. Consequently, the shareholders took investment decisions that they would not have made had the facts been presented correctly and fully. Once the correct information was made known, the value of their shares fell, causing them to sustain losses. Given that the shares or, at least, the shareholders' claims in respect of those shares, were managed through (credited and debited) and located in an investment account held in the Netherlands or in an investment account of a bank and/or an investment firm established in the Netherlands, the loss, in the form of the devaluation of the shares on foot of BP's unlawful conduct, occurred directly in the Netherlands in that investment account. It is for those reasons that VEB considers that the Netherlands courts have jurisdiction to hear its suit. In its view, no further or specific circumstances are necessary to attribute jurisdiction to Netherlands courts.

16 In its defence, BP submitted, among other arguments that, in the judgment of 28 January 2015, *Kolassa* (C-375/13, EU:C:2015:37), the mere fact that the financial loss occurred directly in a bank account held in Austria was insufficient to attribute jurisdiction to the Austrian courts. BP stated that the approach adopted in that judgment was based on circumstances which, taken together, made it possible to attribute jurisdiction to the courts of the applicant's place of domicile. In its view, purely financial damage, which occurs directly in the applicant's bank account, cannot, in itself, be classified as a relevant connecting factor, within the meaning of Article 7(2) of Regulation No 1215/2012 even in the absence of a risk that the injured party will a posteriori manipulate the place where the damage occurred by choosing to open a bank account in the State of its choice. In the absence of additional circumstances, the court in the place where the bank account is held does not, therefore, enjoy jurisdiction. According to BP, its arguments are applicable irrespective of the collective or individual nature of the proceedings brought.

17 According to the referring court, the facts at issue in the judgments of 28 January 2015, *Kolassa* (C-375/13, EU:C:2015:37), and of 12 September 2018, *Löber* (C-304/17, EU:C:2018:701), and those of the dispute before it are similar in that, in those three cases, investors suffered purely financial loss, which occurred directly in a bank account or in an investment account, that damage resulting from a decline in the value of the securities held as assets in that bank account or that investment account.

18 By contrast, the referring court considers that those facts differ in that the financial loss at issue in the main proceedings was caused by the BP's disclosure of incorrect, incomplete and misleading information, by means of press releases, reports published on its website, annual accounts and reports, and statements made publicly by the management board, and not, as in the first two cases, by the disclosure of such information in the territory of a particular Member State. Additionally, in the case in the main proceedings, the referring court takes the view that BP, when providing that information, did not separately or specifically approach Dutch investors. It is apparent from the facts as established by the Gerechtshof Amsterdam (Court of Appeal, Amsterdam) that the case in the main proceedings relates not to the sale and purchase of financial products on the secondary Netherlands market, but to the purchase of ordinary shares in BP, which are listed on the London or Frankfurt Stock Exchange, through an investment account held in the Netherlands or an investment account opened by a bank and/or an investment firm established in the Netherlands.

19 According to the referring court, the judgments of 28 January 2015, *Kolassa* (C-375/13, EU:C:2015:37), and of 12 September 2018, *Löber* (C-304/17, EU:C:2018:701), also differ significantly from the present case in that the latter concerns a collective action, which may

therefore give rise to additional problems in locating the place where the damage occurred. In so far as such an action seeks to protect similar interests, the individual circumstances of the injured parties should be disregarded. Since the specific features of individual transactions are not set out in the collective action, the question is whether and, if so, how any additional specific circumstances should be established.

20 That court states that in the eventuality that the Netherlands court seized has jurisdiction in the context of a collective action brought under Article 3:305a of the BW to hear VEB's claims and holds that BP acted unlawfully vis-à-vis its shareholders, those shareholders could, on that basis, individually bring new proceedings for the payment of monetary compensation. In that case, it is necessary to ascertain whether such actions may be brought before the court which has jurisdiction to rule on the collective action. That question might arise if the domicile of the BP shareholder or the location of their bank account and/or of their investment account in the Netherlands is outside the jurisdiction of the court seized. Moreover, the referring court considers that the question arises as to which factor or factors determine internal territorial jurisdiction.

21 In those circumstances, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) (a) Should Article 7(2) of [Regulation No 1215/2012] be interpreted as meaning that the direct occurrence of purely financial damage to an investment account in the Netherlands or to an investment account of a bank and/or investment firm established in the Netherlands, damage which is the result of investment decisions influenced by globally distributed but incorrect, incomplete and misleading information from an international listed company, constitutes a sufficient connecting factor for the international jurisdiction of the Netherlands courts by virtue of the location of the occurrence of the damage ("*Erfolgsort*")?

(b) If not, are additional circumstances required to justify the jurisdiction of the Netherlands courts and what are those circumstances? Are the following additional circumstances – the fact that BP focuses on a global investment public, including Dutch investors; VEB represents the interests of a large number of investors, the vast majority of whom are domiciled in the Netherlands; the settlement reached between BP and its shareholders in the United States has not been offered to the investors whose interests are represented by VEB, and no other similar procedure is being conducted in Europe; and, finally, the fact that the shareholders for whom VEB is acting include consumers, to whom Regulation No 1215/2012 affords special legal protection – sufficient to found the jurisdiction of the Netherlands courts?

(2) Would the answer to Question 1 be different in the case of a claim brought under Article 3:305a of the BW by an association the purpose of which is to defend, in its own right, the collective interests of investors who have suffered damage as referred to in Question 1, which means, among other things, that neither the places of domicile of the aforementioned investors, nor the special circumstances of individual purchase transactions or of individual decisions not to sell shares which were already held, have been established?

(3) If courts in the Netherlands have jurisdiction on the basis of Article 7(2) of [Regulation No 1215/2012] to hear the claim brought under Article 3:305a of the BW, do those courts then, on the basis of Article 7(2) of [Regulation No 1215/2012], also have international and internal territorial jurisdiction to hear all subsequent individual claims for compensation brought by investors who have suffered damage as referred to in Question 1?

(4) If courts in the Netherlands as referred to in Question 3 above have international, but not internal, territorial jurisdiction to hear all individual claims for compensation brought by investors who have suffered damage as referred to in Question 1, will the internal territorial jurisdiction be determined on the basis of the place of domicile of the misled investor, the place of establishment of the bank in which that investor holds his or her personal bank account or the place of establishment of the bank in which the investment account is held, or on the basis of some other connecting factor?'

Consideration of the questions referred

The first and second questions

22 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that the direct occurrence in an investment account of purely financial loss resulting from investment decisions taken as a result of information that was easily accessible worldwide but inaccurate, incomplete or misleading and emanating from an international listed company permits, in certain circumstances, the attribution of international jurisdiction, on the basis of the occurrence of damage, to the courts of the Member State in which the bank or investment firm (with which the account is listed) is established, where that firm was not subject to statutory reporting obligations in that Member State.

23 As a preliminary point, it must be noted that, in so far as, in accordance with recital 34 of Regulation No 1215/2012, that regulation repeals and replaces 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), which itself replaced the Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), as amended by successive conventions on the accession of new Member States to that convention, the Court's interpretation of the provisions of the latter legal instruments also applies to Regulation No 1215/2012 whenever those provisions may be regarded as 'equivalent'. That is the case with point 3 of Article 5 of that convention, as amended, and Regulation No 44/2001, on the one hand, and with Article 7(2) of Regulation No 1215/2012, on the other (judgment of 9 July 2020, *Verein für Konsumenteninformation*, C-343/19, EU:C:2020:534, paragraph 22).

24 It must also be recalled that, according to the Court's settled case-law, the rule of special jurisdiction laid down by Article 7(2) of Regulation No 1215/2012 must be interpreted independently and strictly (see, to that effect, judgment of 12 September 2018, *Löber*, C-304/17, EU:C:2018:701, paragraph 17 and the case-law cited).

25 The jurisdiction provided for in Article 4 of Regulation No 1215/2012, namely that of the courts of the Member State in which the defendant is domiciled, constitutes the general rule. It is only by way of derogation from that general rule that the regulation provides for special and exclusive

rules of jurisdiction for cases, which are exhaustively listed, in which the defendant may or must, depending on the case, be sued in the courts of another Member State (see, to that effect, judgment of 12 September 2018, *Löber*, C-304/17, EU:C:2018:701, paragraph 18 and the case-law cited).

26 Nevertheless, as the Court has repeatedly found, the concept of 'place where the harmful event occurred', within the meaning of Article 7(2) of Regulation No 1215/2012, is intended to cover both the place where the damage occurred and the place of the event giving rise to that damage, with the result that the defendant may be sued, at the option of the applicant, in the courts for either of those two places (judgment of 9 July 2020, *Verein für Konsumenteninformation*, C-343/19, EU:C:2020:534, paragraph 23 and the case-law cited).

27 That concept of the 'place where the harmful event occurred' in Article 7(2) of Regulation No 1215/2012 may not, however, be construed so extensively as to encompass any place where the adverse consequences of an event, which has caused damage actually arising elsewhere, can be felt (judgment of 12 September 2018, *Löber*, C-304/17, EU:C:2018:701, paragraph 23 and the case-law cited).

28 The Court has also clarified that that concept does not refer to the place where the applicant is domiciled and where his assets are concentrated by reason only of the fact that he or she has suffered financial damage there resulting from the loss of part of his or her assets which arose and was incurred in another Member State (judgments of 10 June 2004, *Kronhofer*, C-168/02, EU:C:2004:364, paragraph 21, and of 16 June 2016, *Universal Music International Holding*, C-12/15, EU:C:2016:449, paragraph 35).

29 Although the mere fact that the applicant has suffered financial consequences cannot justify the attribution of jurisdiction to the courts of the applicant's domicile, such an attribution of jurisdiction is justified if that domicile is in fact the place in which the events giving rise to the damage took place or the damage occurred (see, to that effect, judgment of 12 September 2018, *Löber*, C-304/17, EU:C:2018:701, paragraphs 24 and 25 and the case-law cited).

30 In this instance, the case in the main proceedings concerns the identification of the place where the damage occurred.

31 It is apparent from the Court's case-law that such a place is that where the alleged damage actually manifests itself (judgment of 12 September 2018, *Löber*, C-304/17, EU:C:2018:701, paragraph 27 and the case-law cited).

32 In that regard, the Court has already noted that it is possible for the courts where the applicant is domiciled to have jurisdiction, on the basis of the place where the damage occurred, to hear and determine an action seeking to put in issue the liability of the issuer of a certificate on the basis of the prospectus relating to it and of breach of other legal information obligations binding on the issuer, particularly when the damage alleged occurred directly in the applicant's bank account held with a bank established within the area of jurisdiction of those courts (judgment of 12 September 2018, *Löber*, C-304/17, EU:C:2018:701, paragraph 28 and the case-law cited).

33 The place in which the damage occurred thus identified is in line with the objective of Regulation No 1215/2012, which is to strengthen the legal protection of persons established in the European Union by simultaneously enabling the applicant to identify easily the court in which he or she may sue and the defendant reasonably to foresee in which court he or she may be sued, given that the

issuer of a certificate who does not comply with their legal obligations in respect of the prospectus must, when they decide to notify the prospectus relating to that certificate in other Member States, anticipate that inadequately informed operators, domiciled in those Member States, might invest in that certificate and suffer damage (see, to that effect, judgments of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 56, and of 12 September 2018, *Löber*, C-304/17, EU:C:2018:701, paragraph 35).

34 It should be noted that that objective of foreseeability is not ensured in the same way where, in the Member State in which the investment account used for the purchase of securities listed on the stock exchange of another State is situated, the issuer of those securities is not subject to statutory reporting obligations. As the Advocate General noted in point 29 of his Opinion, the criteria relating to the domicile and the place where the shareholders hold their accounts do not enable the issuing company to foresee the courts with international jurisdiction before which it could be sued, which would be contrary to the objective, referred to in recital 16 of Regulation No 1215/2012, of preventing, in order to ensure the principle of legal certainty, the possibility of the defendant being sued before a court of a Member State which he could not reasonably have foreseen.

35 It follows that, in the case of a listed company such as that at issue in the main proceedings, only the jurisdiction of the courts of the Member States in which that company has complied, for the purposes of its listing on the stock exchange, with the statutory reporting obligations can be established on the basis of the place where the damage occurred. It is only in those Member States that such a company can reasonably foresee the existence of an investment market and incur liability.

36 Finally, as regards the extent to which the collective nature of an action such as that brought in the main proceedings allows the domicile of investors to be disregarded, it should be noted that it is apparent from the foregoing considerations that this is not, in itself, decisive in determining the place where the harmful event occurred, in accordance with Article 7(2) of Regulation No 1215/2012.

37 In the light of the foregoing, the answer to the first and second questions is that Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that the direct occurrence in an investment account of purely financial loss resulting from investment decisions taken as a result of information which is easily accessible worldwide but inaccurate, incomplete or misleading from an international listed company does not allow the attribution of international jurisdiction, on the basis of the place of the occurrence of the damage, to a court of the Member State in which the bank or investment firm where the account is held has its registered office, where that firm was not subject to statutory reporting obligations in that Member State.

The third and fourth questions

38 By its third and fourth questions, the referring court asks, in essence, whether, if it has jurisdiction to hear the collective action brought in the main proceedings, on the basis of Article 7(2) of Regulation No 1215/2012, it would also have jurisdiction subsequently to hear actions for damages brought individually by the investors.

39 It should be noted, however, that it is apparent from the order for reference that the dispute in the main proceedings does not concern such individual actions for damages. It follows that those questions are, at this stage, hypothetical and that the inherent need for the answer to them for

the resolution of that dispute has not been established. In those circumstances, since the function entrusted to the Court of Justice is to contribute to the administration of justice in the Member States and not to deliver advisory opinions on general or hypothetical questions, those questions are inadmissible (see, by analogy, judgment of 26 November 2020, *Sögård Fastigheter*, C-787/18, EU:C:2020:964, paragraphs 76, 80 and 81).

Costs

40 Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 7(2) of 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 must be interpreted as meaning that the direct occurrence in an investment account of purely financial loss resulting from investment decisions taken as a result of information which is easily accessible worldwide but inaccurate, incomplete or misleading from an international listed company does not allow the attribution of international jurisdiction, on the basis of the place of the occurrence of the damage, to a court of the Member State in which the bank or investment firm in which the account is held has its registered office, where that firm was not subject to statutory reporting obligations in that Member State.

[Signatures]