ORDER OF THE COURT (First Chamber)
22 March 2002 *

In Case C-24/02,

REFERENCE to the Court by the Tribunal de commerce de Marseille (France) for a preliminary ruling in the proceedings pending before that court between

Marseille Fret SA

and

Seatrano Shipping Company Ltd,

on the interpretation of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, and — amended text — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1), by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285,

* Language of the case: French.

p. 1), by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1) and by 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),

THE COURT (First Chamber),

composed of: P. Jann (Rapporteur), President of the Chamber, M. Wathelet and A. Rosas, Judges,

Advocate General: L.A. Geelhoed,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By judgment of 22 January 2002, received at the Court on 31 January 2002, the Tribunal de commerce de Marseille (Commercial Court, Marseilles) referred to the Court for a preliminary ruling four questions on the interpretation of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of

Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 and — amended text — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1), by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1), by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1), respectively 'the Convention' and 'the Accession Conventions', and 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).

2 Those questions have been raised in the course of proceedings between Marseille Fret SA ('Marseille Fret'), established in Marseilles, and Seatrano Shipping Company Ltd ('Seatrano Shipping'), established in Limassol (Cyprus).

Dispute in the main proceedings and the questions referred for a preliminary ruling

3 On 6 November 2000, Marseille Fret sued Seatrano Shipping before the Tribunal de commerce de Marseille seeking an order for damages for financial loss suffered as a result of the intention to cause harm manifested by Seatrano Shipping in previous litigation, which led in October 1999 to an interim award by an arbitration tribunal sitting in London (United Kingdom).

4 On 20 March 2001 the High Court of Justice (United Kingdom), on the application of Seatrano Shipping, granted an anti-suit injunction ordering Marseille Fret to discontinue its action before the Tribunal de commerce de Marseille or face penalties in the United Kingdom.

5 Marseille Fret then decided to discontinue its action. Seatrano Shipping objected and counterclaimed for damages for abuse of process.

6 In those circumstances the Tribunal de commerce de Marseille, by reference to Article 177 of the EC Treaty (now Article 234 EC), decided to stay proceedings and to refer the following four questions to the Court for a preliminary ruling:

'1. Does Title II of the Brussels Convention of 27 September 1968, as reproduced in Regulation (EC) No 44/2001 of 22 December 2000, permit a court of a Member State to restrain a citizen of another Contracting State from bringing proceedings before the courts of his home country, under either his national law or Community law?

2. May an English court, by way of an anti-suit injunction, purport to restrain a person from having access to another Community court which nevertheless has jurisdiction under the Brussels Convention of 27 September 1968, as reproduced in Regulation (EC) No 44/2001 of 22 December 2000?

3. May an English court, by means of that procedure, deprive other Community courts of the power to rule on matters falling within their own competence when that power appears to arise from the provisions of Chapter II of Regulation (EC) No 44/2001 of 22 December 2000?

4. Is an order compelling a Community national to withdraw an independent action already commenced before a French court, under threat of punitive sanctions such as those provided for by the English anti-suit injunction

procedure, consistent with the fundamental principle of the right to access to a court, as protected by the Court of Justice of the European Communities?'

Jurisdiction of the Court

7 Under Article 92(1) of the Rules of Procedure, where it is clear that the Court has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible, the Court may, after hearing the Advocate General and without taking further steps in the proceedings, give a decision on the action by reasoned order.

8 It must be observed at the outset that the four questions referred to the Court for a preliminary ruling, although worded differently, have the same subject-matter. By those questions the national court seeks to ascertain, essentially, the likely effects of an anti-suit injunction issued by the High Court of Justice under the Convention and Regulation No 44/2001, in the context of the proceedings before it.

9 The jurisdiction of the Court to interpret the Convention is established by the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention (OJ 1975 L 304, p. 28), as amended by the Accession Conventions ('the Protocol').

10 Unlike Article 234 EC, which is not applicable, the Protocol reserves to certain courts, referred to in Article 2, the power to request the Court of Justice to give preliminary rulings on questions of interpretation of the Convention, so that it is appropriate, in that regard, to examine whether the Court has jurisdiction to answer the questions which have been referred.

11 Article 2(1) and (3) of the Protocol set out expressly and exhaustively — the first directly, the second by reference to Article 37 of the Convention — the courts which may make references to the Court. Article 2(2) adds that the courts of the Contracting States sitting in an appellate capacity may also do so.

12 French Tribunaux de commerce are not mentioned in Article 2(1) of the Protocol or in Article 37 of the Convention. Furthermore, according to the file on the case in the main proceedings, the judgment referring questions to the Court was given in proceedings at first instance.

13 It follows that, in the main proceedings, the Tribunal de commerce de Marseille may not request the Court to give a preliminary ruling on the interpretation of the Convention.

14 As regards Regulation No 44/2001, it is sufficient to observe that it only entered into force on 1 March 2002, after the judgment referring questions to the Court was delivered. In addition, since the regulation was adopted on the basis of Article 61(c) EC, it follows from Article 68(1) EC that only a court or a tribunal of a Member State against whose decisions there is no judicial remedy under national law has jurisdiction to request the Court to give a preliminary ruling on its interpretation.

15 In those circumstances Article 92(1) of the Rules of Procedure must be applied, and it must be held that the Court clearly has no jurisdiction to rule on the questions put by the Tribunal de commerce de Marseille.

Costs

16 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.

On those grounds,

THE COURT (First Chamber)

hereby orders:

The Court of Justice of the European Communities clearly has no jurisdiction to answer the questions put by the Tribunal de commerce de Marseille in its judgment of 22 January 2002.

Luxembourg, 22 March 2002.

R. Grass — Registrar

P. Jann — President of the First Chamber