Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

20 May 2021 *

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters – Regulation (EU) No 1215/2012 – Jurisdiction in insurance matters – Article 10 – Article 11(1)(a) – Ability to sue an insurer domiciled in a Member State in another Member State, in the case of actions brought by the policyholder, the insured person or a beneficiary, in the courts of the place where the person bringing the claim is domiciled – Article 13(2) – Action brought by the injured party directly against the insurer – Scope *ratione personae* – Concept of 'injured party' – Business active in the insurance sector – Special jurisdiction – Article 7(2) and (5) – Concept of 'branch', 'agency' or 'other establishment')

In Case C-913/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy w Białymstoku (District Court, Białystok, Poland), made by decision of 18 November 2019, received at the Court on 13 December 2019, in the proceedings

CNP spółka z ograniczoną odpowiedzialnością

v

Gefion Insurance A/S,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, N. Wahl, F. Biltgen, L.S. Rossi (Rapporteur) and J. Passer, 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:

– CNP spółka z ograniczoną odpowiedzialnością, by K. Janiec-Janowska, radca prawny,

– Gefion Insurance A/S, by I. Łyszkiewicz, radca prawny,

* Language of the case: Polish.

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by M. Heller and B. Sasinowska, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 January 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 13(2), read in conjunction with Article 10 and Article 7(2) and (5), 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 CNP spółka z ograniczoną odpowiedzialnością ('CNP'), a limited liability company established in Poland, and Gefion Insurance A/S ('Gefion'), an insurance undertaking with its registered office in Denmark, concerning compensation for damage caused by a road traffic accident which occurred in Poland.

Legal context

European Union law

Regulation No 1215/2012

3 Recitals 15, 18 and 34 of Regulation No 1215/2012 state:

'(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.

…

(18) In relation to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules.

…

(34) Continuity between the [Convention on jurisdiction and the enforcement of judgments in civil and commercial matters dated 27 September 1968 (OJ 1978 L 304, p. 36), as amended by the successive conventions on the accession of new Member States to that convention], [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)] and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation by the Court of Justice of the European Union of [that] Convention and of the Regulations replacing it.'

4 Chapter II of Regulation No 1215/2012, dealing with 'Jurisdiction', includes Section 1, entitled 'General provisions', which contains Articles 4 to 6 of that regulation.

5 Article 4(1) of that regulation provides:

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

6 Under Article 5(1) of Regulation No 1215/2012:

'Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.'

7 Section 2 of Chapter II of that regulation, entitled 'Special jurisdiction', contains, inter alia, Article 7 of the regulation, which states:

'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;

…

(5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated;

…'

8 Section 3 of Chapter II of Regulation No 1215/2012, under the heading 'Jurisdiction in matters relating to insurance', comprises Articles 10 to 16 of that regulation.

9 Article 10 of that regulation is worded as follows:

'In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7.'

10 Article 11(1) of Regulation No 1215/2012 provides:

'An insurer domiciled in a Member State may be sued:

(a) in the courts of the Member State in which he is domiciled;

(b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the claimant is domiciled; or

…’

11 Article 12 of that regulation states:

‘In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.’

12 Article 13(1) and (2) of that regulation provides:

‘1. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.

2. Articles 10, 11 and 12 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.’

Directive 2009/138/EC

13 Article 145 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ 2009 L 335, p. 1), entitled ‘Conditions for branch establishment’, provides in paragraph 1:

‘Member States shall ensure that an insurance undertaking which proposes to establish a branch within the territory of another Member State notifies the supervisory authorities of its home Member State.

Any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as a branch, even where that presence does not take the form of a branch, but consists merely of an office managed by the own staff of the undertaking or by a person who is independent but has permanent authority to act for the undertaking as an agency would.’

14 Article 151 of that directive, entitled ‘Non-discrimination of persons pursuing claims’ states:

‘The host Member State shall require the non-life insurance undertaking to ensure that persons pursuing claims arising out of events occurring in its territory are not placed in a less favourable situation as a result of the fact that the undertaking is covering a risk, other than carrier’s liability, classified under class 10 in Part A of Annex I by way of provision of services rather than through an establishment situated in that State.’

15 Article 152 of that directive, entitled ‘Representative’, provides:

‘1. For the purposes referred to in Article 151, the host Member State shall require the non-life insurance undertaking to appoint a representative resident or established in its territory who shall collect all necessary information in relation to claims, and shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of that Member State in relation to those claims.

…

3. The appointment of the representative shall not in itself constitute the opening of a branch for the purpose of Article 145.

…'

Polish law

16 In accordance with Article 1099 of the kodeks postępowania cywilnego (Code of Civil Procedure), the court before which the action is brought is to examine of its own motion, at any stage of the proceedings, whether the national courts lack jurisdiction to hear the dispute, and declare the application inadmissible in the event of lack of jurisdiction. A finding that national courts do not have jurisdiction constitutes a ground of invalidity of the proceedings.

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

17 On 28 February 2018 a road traffic accident occurred in Poland, in which two vehicles collided. The person responsible for the accident had, before that time, taken out a contract for motor liability insurance with Gefion.

18 On 1 March 2018 the injured party paid to lease a replacement vehicle from the repair workshop to which his damaged vehicle had been entrusted. By way of payment for that lease service arrangement, that person transferred the claim against Gefion to the repair workshop pursuant to a contract for assignment of the claim. On 25 June 2018 pursuant to a new contract for the assignment of claims, the repair workshop assigned that claim to CNP.

19 By letter of 25 June 2018, CNP requested Gefion to pay it the amount invoiced for the lease of the replacement vehicle. That request was sent to the address of Polins spółka z ograniczoną odpowiedzialnością ('Polins'), a limited liability company established in Żychlin (Poland) and, as is apparent from the order for reference, which represented Gefion's interests in Poland.

20 By letter of 16 August 2018, Crawford Polska sp. z o.o., a company established in Poland and entrusted by Gefion with loss adjustment, validated the invoice relating to the leasing of the replacement vehicle in part and granted CNP part of the amount invoiced for such lease.

21 In the final part of that letter, Crawford Polska referred to the possibility of making a claim against it as the entity authorised by Gefion, or directly against Gefion, 'either under the general provisions on jurisdiction or before the court with jurisdiction for the place where the policyholder, the insured person, the beneficiary or any other person entitled under the insurance contract is resident or established'.

22 On 20 August 2018, CNP brought an action against Gefion before the Sąd Rejonowy w Białymstoku (District Court, Białystok, Poland). With respect to the international jurisdiction of that court, CNP cited the information published by Gefion according to which Polins was its principal representative in Poland. CNP asked for service of documents intended for Gefion to be effected at Polins' address.

23 On 11 December 2018, an order for payment was issued by that court.

24 Gefion lodged a statement of opposition to the order for payment, disputing the jurisdiction of the Polish courts to hear the case. After stating that CNP was carrying on the business of purchasing claims arising from insurance contracts, Gefion submitted that CNP was not a policyholder, insured person or beneficiary within the meaning of Article 11(1)(b) of Regulation No 1215/2012 and that it was therefore not able to bring an action before the court of a Member State other than that where the insurer is established.

25 Gefion also relied on the judgment of 31 January 2018, *Hofsoe* (C-106/17, EU:C:2018:50), to assert that, in the light of the protective function of Article 13(2) of Regulation No 1215/2012, a person who carries out a professional activity recovering insurance indemnity claims against insurance companies as contractual assignee of such claims cannot benefit from the special protection constituted by the ability to use the rules of special jurisdiction laid down in Section 3 of Chapter II of that regulation.

26 CNP submitted in reply that Gefion was on the list of insurance undertakings from Member States and European Free Trade Association (EFTA) States notified in Poland to the Komisja Nadzoru Finansowego (Financial Supervision Committee, Poland); that it sold policies in Poland and that it is unacceptable that someone subrogated to the injured party's claim should not be able to seek reimbursement of the repair costs in question before the court for the place where the harmful event and the repair took place.

27 The referring court has doubts as to whether, in the present case, CNP may validly rely on the rules on jurisdiction laid down in Section 3 of Chapter II of Regulation No 1215/2012. The referring court asks, more specifically, whether CNP, which is an undertaking which has acquired a claim from an injured party against an insurance undertaking arising from civil liability insurance, is entitled to the protection afforded by the provisions of that section to weaker parties in legal relationships. According to that court, it is instead appropriate to consider the application of the provisions of Section 2 of Chapter II of that regulation, in particular Article 7(2) or Article 7(5) of that regulation. Lastly, the referring court has doubts as to the interpretation of the concept of 'branch', 'agency' or 'other establishment' within the meaning of Article 7(5) of the regulation.

28 In those circumstances, the Sąd Rejonowy w Białymstoku (District Court, Białystok) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Should Article 13(2), read in conjunction with Article 10, of Regulation [No 1215/2012] be interpreted as meaning that, in a dispute between a trader and an insurance undertaking, the former having acquired from an injured party a claim arising from civil liability insurance against that [civil liability] insurance undertaking, the establishment of court jurisdiction on the basis of Article 7(2) or Article 7(5) of the regulation is not precluded?

(2) If Question 1 is answered in the affirmative, should Article 7(5) of Regulation [No 1215/2012] be interpreted as meaning that a commercial undertaking operating in a Member State which adjusts losses under compulsory insurance against civil liability in respect of the use of motor vehicles pursuant to a contract with an insurance undertaking established in another Member State is a branch, agency or other establishment of that insurance undertaking?

(3) If Question 1 is answered in the affirmative, should Article 7(2) of Regulation [No 1215/2012] be interpreted as meaning that it constitutes an independent basis for the jurisdiction of the court of the Member State in which the harmful event occurred, before which court the creditor who has acquired the claim from the injured party under compulsory insurance against civil liability brings an action against an insurance undertaking established in another Member State?'

Consideration of the questions referred

The first and third questions

29 By its first and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 13(2) of Regulation No 1215/2012, read in conjunction with Article 10 thereof, must be interpreted as precluding jurisdiction being founded independently under Article 7(2) or Article 7(5) of that regulation, as appropriate, in the case of a dispute between, on the one hand, a business which has acquired a claim originally held by an injured party against a civil liability insurance undertaking and, on the other hand, that same civil liability insurance undertaking.

30 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 Regulation (No 44/2001, which itself replaced the Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters, 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' (judgment of 9 July 2020, *Verein für Konsumenteninformation*, C-343/19, EU:C:2020:534, paragraph 22 and the case-law cited).

31 In accordance with Article 4(1) of Regulation No 1215/2012, persons domiciled in a Member State are, as a rule, to be sued in the courts of that Member State. Article 5(1) of that regulation provides, however, by way of derogation, that such persons may be sued in the courts of another Member State pursuant to the rules set out in Sections 2 to 7 of Chapter II of that regulation.

32 As regards, more particularly, Section 3 of Chapter II of that regulation, entitled 'Jurisdiction in matters relating to insurance', that section establishes an autonomous system for the conferral of jurisdiction in matters of insurance (see, by analogy, judgment of 12 May 2005, *Société financière et industrielle de Peloux*, C-112/03, EU:C:2005:280, paragraph 29).

33 Article 10 of Regulation No 1215/2012 states that, in matters relating to insurance, jurisdiction is to be determined by the provisions of Section 3, which contains Articles 10 to 16 of that regulation, without prejudice to Article 6 and Article 7(5) of the regulation.

34 It follows that Section 3 of Chapter II of Regulation No 1215/2012 governs jurisdiction independently in matters relating to insurance, so that, apart from the grounds of jurisdiction provided for in Section 3 itself, grounds of jurisdiction other than those to which Article 10 of that regulation expressly refers are excluded, namely, the grounds of jurisdiction referred to in Article 6 and Article 7(5) of that regulation.

35 Accordingly, in so far as Article 10 of Regulation No 1215/2012 does not refer to Article 7(2) of that regulation, the latter provision cannot apply where a dispute falls, as regards jurisdiction, within the scope of Section 3 of Chapter II of that regulation.

36 Such an interpretation is supported by the wording of Article 11(1)(a) and of Article 12 of Regulation No 1215/2012, which lay down rules of jurisdiction comparable to those set out in Article 4(1) and Article 7(2) of that regulation respectively.

37 Furthermore, it must be stated that, under Article 13(2) of Regulation No 1215/2012, Articles 10 to 12 of that regulation are to apply to actions brought by the injured party directly against the insurer, where direct actions are permitted.

38 In that regard, the purpose of the reference in Article 13(2) of Regulation No 1215/2012 is to add injured parties to the list of claimants contained in Article 11(1)(b) of that regulation, without restricting the category of persons having suffered damage to those suffering it directly (see, by analogy, as regards Regulation No 44/2001, judgment of 20 July 2017, *MMA IARD*, C-340/16, EU:C:2017:576, paragraph 33 and the case-law cited).

39 Nevertheless, it should be recalled that the aim of Section 3 of Chapter II of Regulation No 1215/2012 is, according to recital 18 of that regulation, to protect the weaker party to a contract by means of rules of jurisdiction which are more favourable to his or her interests than the general rules of law, and that such an aim means that the special rules of jurisdiction laid down in that section are not to be extended to persons for whom that protection is not justified (see, to that effect, judgment of 27 February 2020, *Balta*, C-803/18, EU:C:2020:123, paragraphs 27 and 44 and the case-law cited).

40 Although an assignee of the rights of the injured party, who may himself or herself be regarded as a weak party, must be able to benefit from the special rules on the jurisdiction of courts laid down in the combined provisions of Article 11(1)(b) and of Article 13(2) of Regulation No 1215/2012, no special protection is justified where the parties concerned are professionals in the insurance sector, neither of whom may be presumed to be in a weaker position than the other (see, to that effect, judgment of 31 January 2018, *Hofsoe*, C-106/17, EU:C:2018:50, paragraphs 39 and 42 and the case-law cited).

41 The Court thus held that a social security institution, acting as statutory assignee of the rights of the directly injured party in a motor accident, cannot rely on the combined provisions of Article 9(1)(b) and Article 11(2) of Regulation No 44/2001, which correspond to Article 11(1)(b) and Article 13(2) of Regulation No 1215/2012, in order to bring a direct action before the courts of its Member State of establishment against the insurer of the person allegedly responsible for the accident, where that insurer is established in another Member State (see, to that effect, judgment of 17 September 2009, *Vorarlberger Gebietskrankenkasse*, C-347/08, EU:C:2009:561, paragraph 43 and the case-law cited).

42 The Court has also held that a person who carries out a professional activity recovering insurance indemnity claims against insurance companies, in his or her capacity as contractual assignee of such claims, should not benefit from the special protection constituted by the *forum actoris* (judgment of 31 January 2018, *Hofsoe*, C-106/17, EU:C:2018:50, paragraph 43).

43 In the present case, it is apparent from the order for reference that CNP recovers claims from insurance undertakings. That fact, which it is for the referring court to verify, precludes that undertaking from being regarded as a party in a weaker position than the other party, within the meaning of the case-law referred to in paragraphs 40 to 42 of the present judgment, so that it cannot benefit from the special rules on jurisdiction laid down in Articles 10 to 16 of Regulation No 1215/2012.

44 It is necessary to examine whether, in the light of that finding, the jurisdiction of a court before which a dispute is brought between, on the one hand, a business which has acquired a claim against an insurance undertaking, originally held by an injured party, and, on the other hand, that same insurance undertaking, may be founded on Article 7(2) or Article 7(5) of Regulation No 1215/2012.

45 In that regard, the Court has previously held that, in so far as an action brought by an insurer against another insurer does not come within the scope of Section 3 of Chapter II of Regulation No 44/2001, Article 6(2) of that regulation, which falls within Section 2 of Chapter II, could apply to such an action provided that the latter falls within the situation referred to in that provision (see, to that effect, judgment of 21 January 2016, *SOVAG*, C-521/14, EU:C:2016:41, paragraph 31).

46 By analogy, it must be held that, where Section 3 of Chapter II of Regulation No 1215/2012 does not apply to an action because there is no party in a weaker position than the other party, that action is capable of falling within the scope of the provisions of Section 2 of that chapter, in particular Article 7(2) or Article 7(5) of that regulation, even in the case of a dispute concerning insurance, provided that the conditions laid down in those provisions are satisfied.

47 In the light of the foregoing considerations, the answer to the first and third questions is that Article 13(2) of Regulation No 1215/2012, read in conjunction with Article 10 thereof, must be interpreted as not applying in the case of a dispute between, on the one hand, a business which has acquired a claim originally held by an injured party against a civil liability insurance undertaking and, on the other hand, that same civil liability insurance undertaking, so that it does not preclude jurisdiction to hear and determine such a dispute from being founded on Article 7(2) or Article 7(5) of that regulation, as appropriate.

The second question

48 By its second question, the referring court asks, in essence, whether Article 7(5) of Regulation No 1215/2012 must be interpreted as meaning that an undertaking which adjusts losses in the context of motor liability insurance in one Member State pursuant to a contract concluded with an insurance undertaking established in another Member State, in the name and on behalf of that undertaking, must be regarded as being a branch, agency or other establishment within the meaning of that provision.

49 In order to answer that question, it should be recalled that it is only by way of derogation from the general principle laid down in Article 4(1) of Regulation No 1215/2012, which attributes jurisdiction to the courts of the Member State in which the defendant is domiciled, that Section 2 of Chapter II of that regulation lays down certain special jurisdictional rules, which include that referred to in Article 7(5) of that regulation. In so far as the jurisdiction of the courts for the place in which a branch, agency or other establishment is situated, as regards disputes arising out of their operations, within the meaning of that provision, constitutes a rule of special jurisdiction, it must be interpreted in an independent and strict manner, which does not permit an

interpretation going beyond the cases expressly envisaged by that regulation (see, by analogy with Article 5(5) of Regulation No 44/2001, judgment of 5 July 2018, *flyLAL-Lithuanian Airline*s, C-27/17, EU:C:2018:533, paragraph 26 and the case-law cited).

50 The rule of special jurisdiction thereby laid down in Article 7(5) of Regulation No 1215/2012 is based on the existence of a particularly close linking factor between the dispute and the courts that may be called upon to hear and determine the case, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings (see, by analogy with Article 5(5) of Regulation No 44/2001, judgment of 5 July 2018, *flyLAL-Lithuanian Airline*s, C-27/17, EU:C:2018:533, paragraph 27 and the case-law cited).

51 In that regard, according to the case-law of the Court, two criteria make it possible to determine whether a dispute relates to the operations of a branch, agency or other establishment within the meaning of Article 7(5) of Regulation No 1215/2012.

52 First, the concept of 'branch', 'agency' or 'other establishment' within the meaning of that provision, implies a centre of operations which has the appearance of permanency, such as the extension of a parent body. It must have a management and be materially equipped to negotiate business with third parties, so that they do not have to deal directly with the parent body. Secondly, the dispute must concern either acts relating to the management of a branch, or commitments entered into by such a branch on behalf of the parent body, if those commitments are to be performed in the State in which the entities are situated (see, to that effect, judgments of 19 July 2012, *Mahamdia*, C-154/11, EU:C:2012:491, paragraph 48; of 5 July 2018, *flyLAL-Lithuanian Airlines*, C-27/17, EU:C:2018:533, paragraph 59; and of 11 April 2019, *Ryanair*, C-464/18, EU:C:2019:311, paragraph 33).

53 In the present case, it follows from the information in the order for reference that, although two companies represent Gefion's interests in Poland, namely Polins and Crawford Polska, it is Crawford Polska which was instructed by Gefion to adjust the claim at issue in the main proceedings. The referring court is therefore seeking guidance from the Court about the scope of Article 7(5) of Regulation No 1215/2012 in the light of the activity of Crawford Polska.

54 As regards the first criterion identified by the case-law referred to in paragraph 52 above, it is apparent from the order for reference that, subject to the assessment of the facts which it is for the referring court to make, Crawford Polska is a limited liability company incorporated under Polish law, so that it is, as a legal person, an independent legal entity and has a management.

55 Furthermore, under the terms of the authorisation received from Gefion, Crawford Polska is empowered to undertake the 'entire processing of claims', and the referring court additionally states that Crawford Polska has every power to act with binding effect on the insurance undertaking and to act in the name and on behalf of Gefion.

56 Therefore, as the Advocate General observed, in essence, in point 63 of his Opinion, under that authorisation, it appears that Crawford Polska has every power to carry out activities involving the loss adjustment and settlement of claims which are binding on the insurer, meaning that Crawford Polska must be regarded as a centre of operations which has the appearance of permanency, such as the extension of a parent body.

57 By contrast, it is for the referring court to determine whether that centre is materially equipped to negotiate business with third parties, so that they do not have to deal directly with the parent body.

58 As regards the second criterion identified by the case-law referred to in paragraph 52 of the present judgment, it should be noted, first of all, that the dispute in the main proceedings cannot be regarded as concerning acts relating to the management of Crawford Polska, since it does not relate to rights and contractual or non-contractual obligations concerning the management, itself, of that undertaking (see, to that effect, judgment of 22 November 1978, *Somafer*, 33/78, EU:C:1978:205, paragraph 13).

59 As regards, next, the question whether the dispute in the main proceedings concerns commitments entered into by Crawford Polska on behalf of Gefion, it has been pointed out in paragraph 53 above that Gefion authorised Crawford Polska to adjust the loss and settle the claim in the main proceedings. In addition, it is apparent from the order for reference that it was Crawford Polska itself which took, in the name and on behalf of Gefion, the decision to award CNP only part of the amount claimed. As the Advocate General observed in point 66 of his Opinion, if that fact were confirmed by the referring court, it would follow that Crawford Polska was not a mere intermediary responsible for passing on information without further consideration, but an active contributor to the legal situation that led to the dispute in the main proceedings. That dispute ought then to be regarded, in view of Crawford Polska's involvement in the legal relationship between the parties in the main proceedings, as concerning commitments given by Crawford Polska on behalf of Gefion (see, to that effect, judgment of 11 April 2019, *Ryanair*, C-464/18, EU:C:2019:311, paragraphs 34 and 35).

60 Lastly, as regards the argument indirectly put forward by the referring court, and by Gefion and the European Commission, that the concept of 'branch', 'agency' and 'other establishment' within the meaning of Article 7(5) of Regulation No 1215/2012 ought to be understood in the light of Directive 2009/138, in particular the concepts of 'permanent presence' and 'representative' contained in Articles 145 and 152 of that directive, suffice it to state that Article 7(5) of Regulation No 1215/2012 must, according to the scheme and objectives of that provision, be interpreted independently, as the Advocate General observed in point 72 of his Opinion, and in accordance with the specific criteria identified in the case-law concerning that provision.

61 In the light of the foregoing considerations, the answer to the second question is that Article 7(5) of Regulation No 1215/2012 must be interpreted as meaning that an undertaking which adjusts losses in the context of motor liability insurance in one Member State pursuant to a contract concluded with an insurance undertaking established in another Member State, in the name and on behalf of that undertaking, must be regarded as being a branch, agency or other establishment, within the meaning of that provision, where that undertaking:

– has the appearance of permanency, such as an extension of the insurance undertaking; and

– has a management and is materially equipped to negotiate business with third parties, so that they do not have to deal directly with the insurance undertaking.

Costs

62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Third Chamber) hereby rules:

1. **Article 13(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, read in conjunction with Article 10 thereof, must be interpreted as not applying in the case of a dispute between, on the one hand, a business which has acquired a claim originally held by an injured party against a civil liability insurance undertaking and, on the other hand, that same civil liability insurance undertaking, so that it does not preclude jurisdiction to hear and determine such a dispute from being founded on Article 7(2) or Article 7(5) of that regulation, as appropriate.**

2. **Article 7(5) of Regulation No 1215/2012 must be interpreted as meaning that an undertaking which adjusts losses in the context of motor liability insurance in one Member State pursuant to a contract concluded with an insurance undertaking established in another Member State, in the name and on behalf of that undertaking, must be regarded as being a branch, agency or other establishment, within the meaning of that provision, where that undertaking:**

   – **has the appearance of permanency, such as an extension of the insurance undertaking; and**

   – **has a management and is materially equipped to negotiate business with third parties, so that they do not have to deal directly with the insurance undertaking.**

[Signatures]