Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

13 July 2017*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Jurisdiction in insurance matters — National legislation providing, on certain conditions, for an injured person's right to bring legal proceedings directly against the insurer of the person responsible for an accident — Agreement on jurisdiction concluded between the insurer and the party which caused the damage)

In Case C-368/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Højesteret (Supreme Court, Denmark), made by decision of 20 June 2016, received at the Court on 6 July 2016, in the proceedings

**Assens Havn**

v

**Navigators Management (UK) Limited**

THE COURT (Eighth Chamber),

composed of M. Vilaras, President of the Chamber, M. Safjan (Rapporteur) and D. Šváby, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Navigators Management (UK) Limited, by H. Nissen, advokat,

– the Belgian Government, by L. Van den Broeck and J. Van Holm, acting as Agents,

– the Spanish Government, by A. Rubio González and A. Gavela Llopis, acting as Agents,

– the European Commission, by M. Heller and L. Grønfeldt, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Danish.

## Judgment

1 This request for a preliminary ruling concerns the interpretation of point 5 of Article 13 and point 2(a) of Article 14 of 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 The request has been made in proceedings between Assens Havn (the Port of Assens, Denmark) and Navigators Management (UK) Limited, an insurance company ('Navigators') concerning reparation for damage caused to the port installations of Assens Havn by a tug insured by Navigators.

## Legal context

### *EU law*

#### *Regulation No 44/2001*

3 Recitals 11 and 13 of Regulation No 44/2001 read as follows:

'(11)

The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject matter of the litigation or the autonomy of the parties warrants a different linking factor. …

…

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

4 Articles 8 to 14 of that regulation, in Section 3, headed 'Jurisdiction in matters relating to insurance', of Chapter II, set out the rules on jurisdiction in matters relating to insurance.

5 In accordance with Article 8 of that regulation:

'In matters relating to insurance, jurisdiction shall be determined by this section, without prejudice to Article 4 and point 5 of Article 5.'

6 Article 9(1) of Regulation No 44/2001 provides:

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

(a) in the courts of the Member State where he is domiciled, or

(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 plaintiff is domiciled …

…'

7 Article 10 of that regulation provides:

‘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.’

8 Article 11(2) of that regulation provides:

‘Articles 8, 9 and 10 apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.’

9 Article 13 of the regulation provides:

‘The provisions of this section may be departed from only by an agreement:

…

(2) which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this section, or

(3) which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or

…

(5) which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 14.’

10 Under Article 14 of Regulation No 44/2001:

‘The following are the risks referred to in Article 13, point 5:

(1) any loss of or damage to:
(a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;

…

(2) any liability, other than for bodily injury to passengers or loss of or damage to their baggage:
(a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) in so far as, in respect of the latter, the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;

…’

11 Article 23 of that regulation, in Section 7 of Chapter II, entitled 'Prorogation of jurisdiction', provides in paragraphs (1) and (5):

'1. If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:

(a) in writing or evidenced in writing, or

(b) in a form which accords with practices which the parties have established between themselves, or

(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

…

5. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 13, 17 or 21, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.'

12 Regulation No 44/2001 has been repealed by Article 80 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). By virtue of the second paragraph of Article 81 of that regulation, it is applicable only from 10 January 2015.

### *The EC-Denmark Agreement*

13 The Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Brussels on 19 October 2005 (OJ 2005 L 299, p. 62; 'the EC-Denmark Agreement'), approved, on behalf of the European Union, by Council Decision 2006/325/EC of 27 April 2006 (OJ 2006 L 120, p. 22), is intended to apply Regulation No 44/2001 and its implementing provisions to relations between the European Union and the Kingdom of Denmark. That agreement entered into force on 1 July 2007, in accordance with Article 12(2) thereof (OJ 2007 L 94, p. 70).

14 The preamble to the EC-Denmark Agreement reads as follows:

'…

Considering that the Court of Justice [of the European Union] should have jurisdiction under the same conditions to give preliminary rulings on questions concerning the validity and interpretation of this agreement which are raised by a Danish court or tribunal, and that Danish courts and tribunals should therefore request preliminary rulings under the same conditions as courts and tribunals of other Member States in respect of the interpretation of [Regulation No 44/2001] and its implementing measures,

…'

15 Article 2 of the EC-Denmark Agreement, entitled 'Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters', states, in paragraph 1:

'The provisions of [Regulation No 44/2001], which is annexed to this agreement and forms part thereof, together with its implementing measures adopted pursuant to Article 74(2) of the regulation and, in respect of implementing measures adopted after the entry into force of this agreement, implemented by [the Kingdom of] Denmark as referred to in Article 4 of this agreement, and the measures adopted pursuant to Article 74(1) of the regulation, shall under international law apply to the relations between the [Union and the Kingdom of Denmark].'

16 Article 6 of the EC-Denmark Agreement, entitled 'Jurisdiction of the Court of Justice [of the European Union] in relation to the interpretation of the Agreement', provides, in paragraph 1:

'Where a question on the validity or interpretation of this agreement is raised in a case pending before a Danish court or tribunal, that court or tribunal shall request the Court of Justice to give a ruling thereon whenever under the same circumstances a court or tribunal of another Member State of the European Union would be required to do so in respect of [Regulation No 44/2001] and its implementing measures referred to in Article 2(1) of this agreement.'

### *Danish law*

17 Article 95 of the forsikringsaftaleloven (Law on insurance contracts) provides:

'1. When the insured party's liability towards the injured party has been established and the amount of compensation has been determined, the injured party shall be subrogated to the rights which the insured party has against the company, in so far as his claim has not been satisfied.

2. The injured party shall also be subrogated to the insured party's claim against the company if the injured party's claim for compensation is affected by the liquidation, bankruptcy, composition with creditors or debt rescheduling of the insured party. To the extent to which the injured party's claim remains unsatisfied, the full demand for compensation may be directed against the company. In the situations described in the first sentence the company must, without undue delay, inform the insured party that it has been notified of a claim for compensation.'

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

18 In the autumn of 2007, Skåne Entreprenad Service AB ('Skåne Entreprenad'), a Swedish company, was in charge of the transportation of sugar beet to a factory in Nykøbing Falster (Denmark). Part of the transportation was carried out by ship from Assens (Denmark) to Nakskov (Denmark). For that voyage, Skåne Entreprenad chartered a number of tugs and lighters, including the tug *Sea Endeavour I*, and took out liability insurance with Navigators in that regard.

19 The insurance policy contained, inter alia, the following clause:

***'Choice of law and jurisdiction This insurance shall be governed by and construed in accordance with the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.'***

20 Furthermore, Navigators' conditions of insurance contain the following clause:

***'(7) Law, practice and dispute resolution This insurance shall be governed by and construed in accordance with English law and, in particular, be subject to and incorporate the terms of the Marine Insurance Act 1906 and any statutory modification thereto. This insurance, including any dispute arising under or in connection with it, shall also be subject to the exclusive jurisdiction of the High Court in London [United Kingdom].'***

21 On 24 November 2007, when the tug *Sea Endeavour I* arrived in Assens Havn, some damage was caused to the quay installations. The parties to the main proceedings are in disagreement as to how that damage arose and who is liable for it.

22 Since Skåne Entreprenad had in the meantime gone into liquidation, Assens Havn brought an action directly against Navigators, as the liability insurer of the party which allegedly caused the harm, before the Sø- og Handelsret (Maritime and Commercial Court, Denmark), seeking an order that that company pay it compensation for the damage in question in the sum of 1 310 536 Danish crowns (DKK) (approximately EUR 176 270).

23 After dealing with the question of jurisdiction under a special procedure, that court, by judgment of 22 December 2014, dismissed the action on the ground that the Danish courts did not have jurisdiction, since the agreement on jurisdiction concluded between the parties to the insurance contract was binding on the injured party. Assens Havn has appealed against that judgment to the referring court.

24 In the view of the referring court, the main question is whether Assens Havn which, pursuant to Article 95(2) of the Law on insurance contracts, is entitled to act directly against the insurance company of the party which caused the harm, is bound by the agreement on jurisdiction in the insurance contract between Skåne Entreprenad and Navigators, by virtue of Article 13, point 5, of Regulation No 44/2001, considered in conjunction with Article 14, point 2(a), of that regulation. If that is the case, the Sø- og Handelsrett (Maritime and Commercial Court) was correct to dismiss the action brought by Assens Havn.

25 The referring court points out that although, under Danish law, an injured party cannot, in principle, bring an action directly against a company providing insurance cover for the party which has caused the harm, Article 95 of the Law on insurance contracts does provide for this where, for example, the policyholder has gone into liquidation, as is the case here.

26 It is in those circumstances that the Højesteret (Supreme Court, Denmark) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 13, point 5, read in conjunction with Article 14, point 2(a), of Regulation No 44/2001 be interpreted as meaning that an injured party who is permitted under national law to bring an action directly against the company providing insurance cover for the party which caused the harm is bound by an agreement on jurisdiction validly concluded between the insurer and the policyholder in accordance with Article 13, point 5, read in conjunction with Article 14, point 2(a), of that regulation?'

**Consideration of the question referred**

27 By its question, the referring court asks, in essence, whether Article 13, point 5, of Regulation No 44/2001, considered in conjunction with Article 14, point 2(a), thereof, must be interpreted as meaning that a victim entitled to bring a direct action against the insurer of the party which caused the harm which he has suffered may be bound by an agreement on jurisdiction concluded between the insurer and that party.

28 In order to answer that question, it is necessary to refer to the scheme of the provisions of Chapter II, Section 3, of Regulation No 44/2001 and their underlying objectives.

29 In that regard, it must be borne in mind that Chapter II, Section 3, of Regulation No 44/2001 establishes an autonomous system for the conferral of jurisdiction in matters of insurance (see, to that effect, judgment of 12 May 2005, *Société financière et industrielle du Peloux*, C-112/03, EU:C:2005:280, paragraph 29).

30 As in cases involving workers and consumers, actions involving insurance are characterised by an imbalance between the parties (see, to that effect, judgment of 26 May 2005, *GIE Réunion européenne and Others*, C-77/04, EU:C:2005:327, paragraph 22), an imbalance which the rules laid down in Article 8 of Chapter II, Section 3, of Regulation No 44/2001 seek to correct by giving the weaker party the benefit of rules of jurisdiction more favourable to his interests than the general rules provide for (see, to that effect, judgment of 17 September 2009, *Vorarlberger Gebietskrankenkasse*, C-347/08, EU:C:2009:561, paragraph 40).

31 In particular, those provisions ease the situation of a victim of insured damage by enabling him, in particular, to sue the insurer in question before the courts for the place where the harmful event occurred, provided that the national law permits such a direct action.

32 In the present case, as is apparent from paragraphs 24 and 25 of this judgment, the referring court, which is responsible for interpreting its own national law, is of the view that Article 95(2) of the Law on insurance contracts, applicable to the dispute in the main proceedings, institutes, in favour of the victim, the right to bring a direct action, within the meaning of Article 11(2) of Regulation No 44/2001, against the insurer.

33 As regards whether an agreement on jurisdiction may be invoked against the victim of damage, it is apparent, firstly, that, under Article 13, point 5, of Regulation No 44/2001, read in conjunction with Article 14, point 2(a), thereof, it is possible to derogate by such an agreement from the provisions of Section 3 of that regulation, in particular in the case of insurance contracts covering all liabilities arising from the use or operation of vessels.

34 Secondly, it is not in dispute that Article 11(2) of Regulation No 44/2001, pursuant to which Articles 8, 9 and 10 of that regulation apply to direct actions brought by a victim against an insurer, does not refer to Articles 13 and 14 of that regulation and, accordingly, agreements of prorogation of jurisdiction.

35 It is therefore not apparent from the scheme of the provisions of Chapter II, Section 3, of Regulation No 44/2001 that an agreement on jurisdiction may be invoked against a victim.

36 In that regard, the Court has previously noted that, in matters of insurance, prorogation of jurisdiction is strictly circumscribed by the aim of protecting the economically weaker party (see, to that effect, judgment of 12 May 2005, *Société financière et industrielle du Peloux*, C-112/03, EU:C:2005:280, paragraph 31).

37 Thus, Article 13 of Regulation No 44/2001 lists exhaustively the cases in which the parties may derogate from the rules laid down in its Chapter II, Section 3.

38 Moreover, under Article 23(5) of that regulation, agreements on jurisdiction have no legal force if they are contrary to Article 13. It follows from those provisions that that regulation establishes a system in which derogations from the jurisdictional rules in matters of insurance must be interpreted strictly (see, by analogy, judgment of 12 May 2005, *Société financière et industrielle du Peloux*, C-112/03, EU:C:2005:280, paragraph 31).

39 Moreover, it is clear that the situation of a third party victim of insured damage is even farther removed from the contractual relationship involving an agreement on jurisdiction than an insured beneficiary who did not expressly consent to that agreement, as referred to in the judgment of 12 May 2005, *Société financière et industrielle du Peloux* (C-112/03, EU:C:2005:280).

40 The view must therefore be taken that an agreement on jurisdiction made between an insurer and an insured party cannot be invoked against a victim of insured damage who wishes to bring an action directly against the insurer before the courts for the place where the harmful event occurred, as recalled in paragraph 31 of this judgment, or before the courts for the place where the victim is domiciled, a possibility accepted by the Court in its judgment of 13 December 2007, *FBTO Schadeverzekeringen* (C-463/06, EU:C:2007:792, paragraph 31).

41 The extension to victims of the constraints of agreements on jurisdiction based on the combined provisions of Articles 13 and 14 of Regulation No 44/2001 could compromise the objective pursued by Chapter II, Section 3, thereof, namely to protect the economically and legally weaker party (see, to that effect, judgment of 17 September 2009, *Vorarlberger Gebietskrankenkasse*, C-347/08, EU:C:2009:561, paragraph 40).

42 In the light of the foregoing, Article 13, point 5, of Regulation No 44/2001, considered in conjunction with Article 14, point 2(a), thereof, must be interpreted as meaning that a victim entitled to bring a direct action against the insurer of the party which caused the harm which he has suffered is not bound by an agreement on jurisdiction concluded between the insurer and that party.

## Costs

43 Since these proceedings are, for the parties to the main proceedings, a step in the action 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 (Eighth Chamber) hereby rules:

**Point 5 of Article 13 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, considered in conjunction with Article 14, point 2(a), thereof, must be interpreted as meaning that a victim entitled to bring a direct action against the insurer of the party which caused the harm which he has suffered is not bound by an agreement on jurisdiction concluded between the insurer and that party.**

[Signatures]