Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 14 January 2021 [1]

Case C-913/19

CNP spółka z ograniczoną odpowiedzialnością
v
Gefion Insurance A/S

(Request for a preliminary ruling
from the Sąd Rejonowy w Białymstoku (District Court, Białystok, Poland))

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction in civil and commercial matters – Special jurisdiction – Insurance against civil liability – Assignment of claims – Concept of branch, agency or establishment)

1. In the dispute giving rise to these proceedings, an issue has arisen as to whether a Polish court has international jurisdiction to rule on a dispute between, on the one hand, a company to which a person injured in a road traffic accident that occurred in Poland had assigned his rights, and, on the other, the insurance undertaking, established in Denmark, which insures the risks of the person who caused the accident.

2. In its request for a preliminary ruling, the Polish court asks the Court of Justice to interpret the special jurisdictional rules in matters relating to insurance contained in Section 3 of Chapter II of Regulation (EU) No 1215/2012, [2] in conjunction with Article 7(2) and (5) of that regulation. In accordance with the latter provisions, jurisdiction lies with the courts for the place where the harmful event occurred (paragraph 2), and with the courts for the place where a branch, agency or other establishment of the principal undertaking is situated, in the case of proceedings brought against the principal undertaking on grounds of activities involving the branch, agency or establishment (paragraph 5).

3. In the judgment to be delivered (which will supplement those previously given on the section dealing with insurance), [3] the Court will also be able to look at the relationship between Article 7(5) of the Regulation and Directive 2009/138/EC. [4]

1 Original language: Spanish.

2 Regulation 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; 'the Regulation').

3 See, most recently, the judgments of 27 February 2020, *BALTA* (C-803/18, EU:C:2020:123); of 31 January 2018, *Hofsoe* (C-106/17, EU:C:2018:50); and of 21 January 2016, *SOVAG* (C-521/14, EU:C:2016:41).

4 Directive 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; 'the Solvency II Directive').

I. Legal framework

A. Regulation No 1215/2012[5]

4. Recital 16 reads:

'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. …'.

5. Article 4(1) states:

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

6. Article 5(1) provides:

'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. Article 7 provides:

'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. The rules for determining jurisdiction in matters of insurance, which form the subject of Chapter II, Section 3, of the Regulation, are found in Articles 10 to 16 thereof.

9. Article 10 provides:

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

5 In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark did not take part in the adoption of the Regulation and is not bound by that regulation or subject to its application; however, it notified to the Commission its decision to apply the content of the Regulation by note of 20 December 2012 (OJ 2013 L 79, p. 4).

B. Directive 2009/138

10. In accordance with Article 145 ('Conditions for branch establishment'):

'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.

…'.

11. Article 151 ('Non-discrimination of persons pursuing claims') provides:

'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'.

12. Article 152 ('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.

…'.

II. Facts and questions referred

13. CNP spółka z ograniczoną odpowiedzialnością ('CNP') is a limited liability company established in Poland.

14. Gefion Insurance A/S ('Gefion') is an insurance undertaking established in Denmark.

15. Crawford Polska sp. z o.o. ('Crawford Polska'), established in Poland, is the undertaking authorised by Gefion [6] to 'settle claims in full', as well as to 'represent Gefion in all proceedings … before the courts and other public authorities'.

16. Polins spółka z ograniczoną odpowiedzialnością ('Polins'), a second undertaking located in Żychlin (Poland), also represents Gefion in Poland. [7]

6 Under a power of attorney of 31 May 2016, granted by the authorised members of Gefion's management body to Crawford Polska.

7 It acts as an insurance agent, in accordance with the Polish legislation transposing Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ 2016 L 26, p. 19).

17. On 28 February 2018 a road traffic accident occurred in Poland, involving a collision between the vehicle belonging to the injured party and the vehicle belonging to the party responsible for the accident. At that time, the latter had taken out with Gefion a contract of insurance against the civil liability of the owner of the motor vehicle.

18. On 1 March 2018, while the car was being repaired, the injured party concluded with the repair workshop a contract for the rental of a replacement vehicle.

19. By way of payment for the rental service, that person assigned his claim against Gefion to the repair workshop. At the end of the rental, the workshop issued a VAT invoice for the service.

20. On 25 June 2018, CNP acquired from the repair workshop, by way of a contract for the assignment of claims, the right to pursue against Gefion the claim for reimbursement of the costs of renting the replacement vehicle.

21. On the same date, CNP requested Gefion to pay the amount on the invoice. It sent the request to Polins' address.

22. Gefion instructed Crawford Polska to assume responsibility for payment of the claim. Acting for and on behalf of Gefion, Crawford Polska validated the invoice in part and accepted part of the amount claimed.

23. In the same document relating to the aforementioned matters, Crawford Polska referred to the possibility of making a claim against it as the entity authorised by the insurance undertaking. It also included information on the possibility of claiming 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.

24. 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 to the effect that its principal representative in Poland is Polins. It asked for service of documents intended for Gefion to be effected at Polins' address.

25. Gefion, as defendant, opposed the grant of the application on the ground that the Polish court lacked jurisdiction. It cited, as the provision applicable to jurisdiction, Article 5(1) of the Regulation. After arguing that CNP is a business entity engaged in the purchase of claims arising from insurance contracts, it submitted that CNP is not a policyholder, insured person or beneficiary and that, consequently, it does not have the capacity to bring an action before the court of a Member State other than that where the insured person is established.

26. CNP submitted in reply that the defendant is on the list of insurance undertakings from EU/EFTA Member States notified in Poland and supervised by the Komisja Nadzoru Finansowego (Financial Supervision Committee, Poland); that it sells policies in Polish territory; 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. In those circumstances, the Sąd Rejonowy w Białymstoku (District Court, Białystok) has referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Should Article 13(2), in conjunction with Article 10, of [Regulation No 1215/2012] be interpreted as meaning that, in a dispute between a trader and an insurance company, the former having acquired from an injured party a claim arising from civil liability insurance against that insurance company, 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 (EU) No 1215/2012] be interpreted as meaning that a commercial company 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 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?'

III. Procedure

28. This reference for a preliminary ruling was received at the Court on 13 December 2019.

29. Written observations have been lodged by CNP, Gefion, the Government of the Republic of Poland and the European Commission. It was not considered necessary to hold a hearing.

IV. Analysis

30. As directed by the Court, I shall confine myself to giving my opinion on the second question referred. By this question, as produced, the referring court seeks an interpretation of the concept of 'branch, agency or other establishment', contained in Article 7(5) of the Regulation, in circumstances such as those of this dispute.

31. In my view, the answer to this question may be inferred from the case-law of the Court in relation to that concept since it was included in the 1968 Brussels Convention,[8] as I shall explain below.

32. In so far as the referring court and some of the parties which have intervened in the preliminary ruling proceedings suggest, tangentially or otherwise, that the debate should be extended to other provisions on insurance (the Solvency II Directive), I shall refer also to those provisions.

A. Preliminary observations

33. Article 7(5) of the Regulation has its immediate predecessor in Article 5(5) of Regulation (EC) No 44/2001,[9] which, in turn, has its immediate predecessor in the 1968 Brussels Convention. The wording of that provision has remained unchanged.

8 Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36; consolidated text in OJ 1998 C 27, p. 1).

9 Council Regulation of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

34. The Court has interpreted those three texts in judgments forming a settled line of case-law [10] with which the reply to the present reference for a preliminary ruling should, of course, be consistent. This will ensure continuity in the interpretation of the present instrument and those that precede it, in accordance with recital 34 of the Regulation.

35. Article 7(5) of the Regulation is located in Section 2 ('Special jurisdiction') of Chapter II thereof. It is, moreover, the provision that governs disputes relating to insurance, or, more specifically, disputes falling within the scope of Section 3 ('Jurisdiction in matters relating to insurance') of that chapter, where these meet the prescribed conditions. [11] This follows by inference from the proviso contained in Article 10 of the Regulation. [12]

36. The criteria for interpreting Article 7(5) of the Regulation, which I shall set out below, do not vary depending on whether a dispute involves one party that is 'weaker' than the other: this fact does not affect the way in which the provision must be understood or applied. [13]

37. My view will be the same, therefore, whether the Court answers the first question referred in the affirmative or reaches the contrary conclusion and decides in favour of the application of Section 3 of Chapter II of the Regulation to the dispute in the main proceedings. In the second scenario, the ground of jurisdiction provided for in Article 7(5) of the Regulation is available to the applicant by virtue of the internal reference thereto contained in Article 10 of the same text.

B. Article 7(5) of the Regulation

1. The Court's case-law

38. Article 7(5) of the Regulation contains a special jurisdictional rule which derogates from the principle that international jurisdiction lies, in the first place, with the courts of the defendant's domicile.

39. That special jurisdictional rule must, as such, be interpreted restrictively, so as not to apply it in cases other than those expressly envisaged by the Regulation. [14]

40. The interpretation of that provision must, moreover, be autonomous. [15]

10 In some of these judgments, the operative part clearly flows from the circumstances of the case in question: see the judgments of 18 March 1981, *Blanckaert & Willems* (139/80, EU:C:1981:70; 'the judgment in *Blanckaert & Willems*'); and of 9 December 1987, *SAR Schotte* (218/86, EU:C:1987:536; 'the judgment in *SAR Schotte*'). This has not precluded the establishment of general criteria that lay emphasis, first, on the relationship between the foreign and local entities and its perception by third parties, and, secondly, on the proximity between the matter in issue and the ground of jurisdiction (see point 38 et seq. of this Opinion).

11 Those conditions are not met by disputes in which the applicant is a professional in the [insurance] sector: judgment of 31 January 2018, *Hofsoe* (C-106/17, EU:C:2018:50).

12 Articles 17(1) and 20 of the Regulation also retain the application of Article 7(5) in the case of disputes concerning certain consumer contracts and individual employment contracts respectively.

13 This is confirmed by the judgment of 19 July 2012, *Mahamdia* (C-154/11, EU:C:2012:491), concerning Article 18 of Regulation No 44/2001 (now Article 20 of the Regulation).

14 Judgment of 5 July 2018, *flyLAL-Lithuanian Airlines* (C-27/17, EU:C:2018:533; 'judgment in *flyLAL-Lithuanian Airlines*'), paragraphs 26 and 62.

15 Judgment of 22 November 1978, *Somafer* (33/78, EU:C:1978:205; 'judgment in *Somafer*'), paragraph 8.

41. Like all the special jurisdictional rules laid down in Article 7 of the Regulation, the one contained in paragraph 5 is based on the existence of a particularly close connection between the dispute and the courts that may be called upon to hear and determine it. That proximity justifies the conferral of jurisdiction on grounds of the sound administration of justice and the efficacious conduct of proceedings. [16]

42. The Court's case-law requires that the question of whether a legal action relating to the operation of a branch, agency or other establishment of an undertaking situated in a Member State has a sufficient connection with another State [17] must be determined by reference to two criteria: a) one, which I shall call the 'subjective criterion', concerns the entities in question; and b) the other, which I shall describe as the 'objective criterion', relates to the activity giving rise to the dispute.

43. Ascertaining whether there is a branch, agency or other establishment (within the meaning of Article 7(5) of the Regulation) is a task that calls for a specific assessment of the facts, [18] an exercise which is also essential for the purposes of evaluating the adequacy of the link between the dispute and the activities of the branch, agency or establishment.

44. That task of establishing the facts, inasmuch as it entails an assessment specific to the case in question, falls not to the Court of Justice but to the national court.

(a) The subjective criterion

45. The concepts of 'branch', 'agency' or 'other establishment' [19] presuppose the existence of a centre of operations, or 'unity of action', which has the appearance of permanency, such as the extension of a parent body. [20]

46. That centre of operations must have a management body and have the material facilities to negotiate business with third parties, so that the latter, 'although knowing that there will if necessary be a legal link with the parent body, … do not have to deal directly with such parent body'. [21]

47. The activities of an entity operating as a 'branch', 'agency' or 'establishment' of the parent body may be split into two spheres, one internal and the other external.

48. The Court, which recognises the relevance of both spheres, [22] attaches particular importance to the appearance created by the two entities through their conduct as a factor that may establish a close relationship between subsequent disputes and the court hearing and determining them. [23]

16 See the Jenard Report on the 1968 Brussels Convention (OJ 1979 C 59, p. 22) and recital 16 of the Regulation. This refers to 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'. It further emphasises that that close connection 'should ensure legal certainty and avoid […] the defendant being sued in a court of a Member State which he could not reasonably have foreseen'.

17 The State where the branch, agency or establishment is located.

18 This was recalled by Advocate General Bobek in his Opinion in *flyLAL-Lithuanian Airlines* (C-27/17, EU:C:2018:136, point 134).

19 In the context of Article 7(5) of the Regulation, the Court does not differentiate between those three concepts: judgment of 6 October 1976, *De Bloos* (14/76, EU:C:1976:134, paragraph 21).

20 Judgments in *Somafer*, paragraphs 11 and 12; *Blanckaert & Willems*, paragraph 11; *flyLAL-Lithuanian Airlines*, paragraph 59; and order of 19 November 2019, *INA and Others* (C-200/19, not published, EU:C:2019:985, paragraph 35).

21 Judgments in *Somafer*, paragraph 12; *SAR Schotte*, paragraph 10; and of 6 April 1995, *Lloyd's Register of Shipping* (C-439/93, EU:C:1995:104, paragraph 18).

22 Judgment in *SAR Schotte*, paragraph 16: 'the close connection between the dispute and the court called upon to hear it must be assessed not only on the basis of the legal relations between legal entities established in different Contracting States but also by reference to the way in which these two undertakings behave in their business relations and present themselves *vis-à-vis* third parties in their commercial dealings'.

23 Judgment of 6 April 1995, *Lloyd's Register of Shipping* (C-439/93, EU:C:1995:104, paragraph 19): 'a branch, agency or another ancillary establishment […] is therefore an entity capable of being the principal, or even exclusive, interlocutor for third parties in the negotiation of contracts'.

49. In accordance with that criterion, and so far as concerns the interpretation of Article 7(5) of the Regulation:

– 'An independent 'commercial agent …[Handelsvertreter (Vermittlungsvertreter)] …who [is] free to arrange his own work and decide what proportion of his time to devote to the interests of that undertaking which he agrees to represent and whom that undertaking may not prevent from representing at the same time several firms competing in the same …sector, and who, moreover, merely transmits orders to the parent undertaking without being involved in either their terms or their execution' is not to be classified as a branch, agency or establishment. [24]

– Conversely, that provision *is* to be applied to an undertaking located in a Member State which 'maintains no dependent branch, agency or establishment in another Contracting State but nevertheless pursues its activities [in the latter State] through an independent company with the same name and identical management which negotiates and conducts business in its name and which it uses as an extension of itself'. [25]

(b) The objective criterion

50. In the context of Article 7(5) of the Regulation, the dispute must concern legal acts relating to the management of the branch, agency or other establishment of the parent body or the obligations entered into by them on behalf of the parent body. [26]

51. In the Court's view, this is the case where the dispute is the consequence of operations carried on by the branch, agency or establishment. Article 7(5) of the Regulation does not apply, on the other hand, where there is no evidence serving to establish the involvement of those entities in the legal relationship between the parties to the main proceedings. [27]

52. The Court went on to say, in particular, that a dispute based on tortious liability [28] may arise from the operations of a branch if that branch 'has actually participated in some of the actions constituting the tort'. [29]

2. Application of that case-law to the dispute

(a) Relevant entity for the purposes of Article 7(5) of the Regulation

53. It follows from the documents before the Court that Gefion is represented by two companies in Poland: Polins and Crawford Polska.

24 Judgment in *Blanckaert & Willems*, paragraphs 12 and 13.

25 Judgment in *SAR Schotte*, paragraph 17. I do not see any contradiction between that judgment and the judgment in *Blanckaert & Willems*, but, rather, two specific applications of the same rule. In the case culminating in the second judgment, the commercial agent did not maintain a relationship of dependence on the other undertaking within the internal sphere, and did not give the appearance of doing so within the external sphere either, unlike in the situation in the judgment in *SAR Schotte*.

26 Judgments in *Somafer*, paragraphs 11 and 13; of 19 July 2012, *Mahamdia* (C-154/11, EU:C:2012:491, paragraph 48); *flyLAL-Lithuanian Airlines*, paragraph 59; or order of 19 November 2019, *INA and Others* (C-200/19, not published, EU:C:2019:985, paragraph 35).

27 Judgment of 11 April 2019, *Ryanair* (C-464/18, EU:C:2019:311, paragraphs 34 and 35).

28 The classification of CNP's action against Gefion as 'tortious' within the meaning of the Regulation is not in dispute.

29 Judgment in *flyLAL-Lithuanian Airlines*, paragraph 63.

54. According to the order for reference, this leads to difficulties when it comes to determining exactly which entity is to be responsible for processing the claim and as regards the judicial proceedings in respect of the insurer. [30]

55. Legitimate as those concerns may be, they do not fall to be addressed in the Opinion to be given here, which must be confined to an interpretation of Article 7(5) the Regulation. [31]

56. It *is* important, however, to know for certain which of the entities representing the insurer in Poland is to be regarded as being responsible for the activity giving rise to the dispute. The presence of the factors defining a branch, agency or other establishment within the meaning of Article 7(5) of the Regulation must be determined by reference to that entity.

57. The order for reference is not quite as clear as one might wish in this regard. However, I incline to the view that that undertaking is Crawford Polska, an inference that might be supported by that order, which states, moreover, that the dispute has its origin in the insurance claim settlement made by Crawford Polska itself. [32]

58. Subject to the verification that will ultimately fall to the referring court, I shall therefore proceed on the premise that Crawford Polska is the relevant entity for the purposes of Article 7(5) of the Regulation.

(b) Classification of Crawford Polska and assessment of its conduct

59. In order to answer the second question referred, it is necessary to determine, on the one hand, whether Crawford Polska meets the conditions for classification as a branch, agency or other establishment under Article 7(5) of the Regulation, and, on the other hand, to what extent it was actively involved in the facts that gave rise to the dispute in the main proceedings.

60. Both are distinctly factual criteria the presence of which the referring court alone is in an ideal position to determine by reason of its proximity to the events in question. I shall therefore confine myself to providing a few clarifications.

61. The first concerns Gefion's opposition to the notion of classifying Crawford Polska as a branch, agency or other establishment on the ground that it is an independent entity and handles claims on behalf of further insurers and other entities. [33]

62. To my mind, neither of those factors (independence and non-exclusivity) would render Article 7(5) of the Regulation inapplicable where other considerations, taken together, create the appearance characteristic of the entities referred to in that provision and the secondary entity in question is, moreover, materially equipped to transact business with third parties.

30 Paragraph 24 of the order for reference. The Sąd Rejonowy w Białymstoku (District Court, Białystok) refers, by way of evidence of those difficulties, to the reference for a preliminary ruling made in another set of proceedings, also against Gefion, which culminated in the judgment of 27 February 2020, *Corporis* (C-25/19, EU:C:2020:126; 'judgment in *Corporis*').

31 I recognise that disaggregating insurance activities in the way that Gefion appears to do might have a bearing on the applicability of the provision in question, because, for example, it makes it difficult for the public to perceive a local undertaking as an extension of the parent body. However, the interpretation of Article 7(5) of the Regulation must be strict. Indeed, the very wording of that provision limits the criteria governing its application to ones that are relevant to the dispute in question. In other words, for the purposes of, and in keeping with, its raison d'être (the existence of a close connection between the dispute and the ground of jurisdiction), the mere fact that the defendant is present in a Member State does not count; what matters is that the entity involved in the activity giving rise to the dispute should be present there.

32 According to the Commission, which starts from the same assumption, that is the entity which the referring court has in mind in its question. I find this plausible, in the light, in particular, of paragraphs 26 and 28 of the order for reference.

33 Gefion's observations, paragraphs 20 and 21. In this context, Gefion sets out its own thoughts on Article 152 of the Solvency II Directive, suggesting that, in accordance with that provision, such an entity is never a branch, agency or other establishment within the meaning of Article 7(5) of the Regulation. I shall address this matter later.

63. I therefore concur with the assessment arrived at by the referring court and the Commission,[34] on the basis of the following information concerning the status and activities of Crawford Polska:

– It takes the form of a limited company, which means, under Polish law, that it has a board of directors (it therefore has a management).

– It represents Gefion's interests in Poland and emphasises in its correspondence that it acts on behalf of Gefion, in its capacity as the latter's agent.

– Under powers of attorney granted in 2016, it has full competence to carry out activities involving the handling and processing of claims which produce legal effects for the insurer, meaning that third parties do not need to approach Gefion directly in connection with matters relating to those activities.

64. It is logical to assume, moreover, that Crawford Polska has the material resources necessary to perform those activities. It is this criterion that is essential to its classification as a 'centre of operations which has the appearance of permanency, such as the extension of a parent body' for the purposes of Article 7(5) of the Regulation. The referring court must satisfy itself that this is the case and, if so, gather any relevant information to that effect that is required by its legal order.

65. My second observation has to do with Crawford Polska's involvement in the activity that gave rise to the dispute, that is to say the handling and settlement of the claim in question, and in the decision to award only part of the amount claimed.

66. According to the referring court's account of the facts, it was Crawford Polska (not Gefion) that took that decision, which was key to the genesis of the dispute.[35] If this is confirmed, Crawford Polska was not a mere intermediary passing on information without further consideration, but an active contributor to the legal situation that led to the dispute.

67. By the same token, Crawford Polska met the conditions conferring on the courts of the State where it is located international jurisdiction to hear and determine an action brought by the insured person (or his successors in title) against Gefion.

68. The foregoing provides a sufficient basis on which to answer the second question referred, as it is worded. There would be no need for any further consideration of the bearing on the matter of the Solvency II Directive, which I shall address only for reasons of completeness and in order not to fail to respond to those who have lodged written observations in the course of this reference.

C. Bearing of the Solvency II Directive on the interpretation of Article 7(5) of the Regulation

69. The referring court (in passing), Gefion and the Commission refer to Articles 145 and 152 of the Solvency II Directive as provisions which might have a bearing on the outcome of the dispute.

34 Order for reference, paragraph 26, and Commission's observations, paragraphs 56, 58 and 60. In that same context, the referring court and the Commission refer to Article 145 of the Solvency II Directive, which I shall address later.

35 Paragraph 5 of the order for reference.

70. The observations lodged by Gefion and the Commission point to a relationship between those provisions and Article 7(5) of the Regulation. More precisely:

– The Commission's arguments appear to show [36] that, in its opinion, where an insurer carries on its economic activity in another Member State through a 'permanent presence' within the meaning of Article 145 of the Solvency II Directive, [37] there is a branch, agency or other establishment for the purposes of Article 7(5) of the Regulation. [38]

– Gefion argues that the appointment of a representative under Article 152 of the Solvency II Directive does not confer capacity to sue the insurer under Article 7(5) of the Regulation. It states that Article 152(3) itself precludes the representative's classification as a 'branch' within the meaning of Article 145 of the Solvency II Directive. [39]

71. For its part, the referring court suggests that an entity's classification under the Solvency II Directive supports the inference that 'Crawford Polska […] must be treated as '[an]other establishment' of the defendant [Gefion] within the meaning of Article 7(5) of the Regulation […]'. [40]

72. I shall examine these arguments below, but would recall that I have already commented on the interpretation of Article 7(5) of the Regulation, which must be independent, in the light of the scheme and the objectives of that regulation.

1. 'Permanent presence' and 'representative' in the Solvency II Directive

73. Under the Solvency II Directive, the exercise of the activity of insurance by an undertaking established in a Member State that wishes to carry on that activity in another Member State is subject to certain controls [41] which differ depending on the legal form chosen by that undertaking.

74. An insurer wishing to expand its activities under the *freedom of establishment* must notify the supervisory authorities of the home Member State of its intention to establish itself in another Member State and provide them with the information required by Article 145 of the Directive. [42]

75. On that basis, the supervisory authorities of the home Member State analyse the viability of the planned establishment. If the evaluation is positive, they communicate the information described in Article 146(1) of the Directive. [43] The insurance undertaking can then begin its cross-border activities in the host Member State, through a branch or a permanent presence treated as such.

36 I say 'appear to show' because the Commission does not, in fact, expressly state that there is an automatic correlation between the two situations.

37 This provides that an insurance undertaking intending to establish a branch within the territory of another Member State must notify the supervisory authorities of the home Member State of its intention to do so and provide them with certain information. Paragraph 1 states that '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'.

38 Paragraph 61 of the Commission's observations.

39 Gefion's observations, paragraph 21. Gefion submits that its activities in Poland are carried on in exercise of the freedom to provide services, that those activities have met the conditions laid down in the Solvency II Directive and that neither the Danish nor the Polish supervisory authorities have expressed any reservations in this regard. This argument, Gefion goes on to say, is sufficient to render Article 7(5) of the Regulation inapplicable.

40 Paragraph 28 of the order for reference, *in fine*.

41 According to recital 11 of the Solvency II Directive, that directive brings about the 'harmonisation […] necessary and sufficient to achieve the mutual recognition of authorisations and supervisory systems, and thus a single authorisation which is valid throughout the Community and which allows the supervision of an undertaking to be carried out by the home Member State'.

42 This information includes, inter alia, the type of business envisaged, the structural organisation of the branch and the name of the person within it who is empowered to bind the insurer in relation to third parties.

43 To the supervisory authorities of the host Member State and to the undertaking itself. They must also certify that the undertaking meets the solvency capital and minimum capital requirements.

76. If the insurance undertaking chooses to carry on its activities outside the home Member State under the *freedom to provide services*, it must also notify its intention to do so to the supervisory authorities of that State. [44]

77. In the specific field of insurance against civil liability in respect of the use of motor vehicles, the Directive also requires the 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' (Article 152).

78. Thus, persons who bring a claim based on events having taken place in the territory of the host Member State which relate to insurance against civil liability in respect of the use of motor vehicles are not in a less favourable situation depending on the legal form chosen by the insurance undertaking.

79. For these particular purposes, therefore, it is irrelevant whether the insurance undertaking acts by way of provision of services or through an establishment (branch or permanent presence treated as such) in the host Member State where the harmful event occurred. [45]

80. The Solvency II Directive is not too explicit in relation to 'permanent presence' and does not lay down detailed rules of law governing the insurance undertaking's representative, [46] beyond stating that the latter must have sufficient powers to represent the undertaking in relation to persons suffering damage who could pursue claims against the undertaking, or before the courts and other authorities in connection with those claims.

81. Indirectly, however, that is to say via Articles 145 (in the case of permanent presence) and 152 (in the case of the representative), that directive provides certain details that assist in defining those concepts:

– The permanent presence does not necessarily have to take the form of a branch. It may be treated as such, inasmuch as it manifests itself as an office managed by staff from the parent body or by an independent person with permanent authority to act for the undertaking as an agency would. It must, in both cases, have the power to bind the insurance undertaking in relation to third parties.

– The representative's functions preclude him from being automatically treated as a branch: in accordance with Article 152(3) of the Solvency II Directive, 'the appointment of the representative shall not in itself constitute the opening of a branch for the purpose of Article 145'. [47]

82. The foregoing details are supplemented by those which the Court has set out over the course of various references for a preliminary ruling. I shall spell these out below, inasmuch as they serve to support my view that the aforementioned concepts are different from those referred to in Article 7(5) of the Regulation.

44 Article 148(1) of the Solvency II Directive provides that the supervisory authorities of the home Member State must, in those circumstances, communicate certain information to the Member State in the territory of which the undertaking intends to operate.

45 Article 151 of the Solvency II Directive. See the judgment in *Corporis*, paragraph 35.

46 See, to that effect, the judgment in *Corporis*, paragraph 37: 'that provision [first subparagraph of Article 152(1) of the Solvency II Directive] does not specify the exact scope of the powers conferred for that purpose on the insurance undertaking's representative'.

47 According to Article 152(2), 'the host Member State shall not require that representative to undertake activities on behalf of the […] undertaking which appointed him other than those set out in paragraph 1'.

2. Relationship between a branch or permanent presence treated as such and a representative, on the one hand, and Article 7(5) of the Regulation, on the other

(a) A 'permanent presence' as a 'branch, agency or other establishment'

83. For the purposes of Article 7(5) of the Regulation, a branch, agency or establishment is a centre of operations which has a management body, has the material facilities to transact business with third parties, binds the parent body and has the appearance of permanency, such as an extension of that permanent body.

84. It may be simpler to show that those conditions are met if, in order to expand its activities to Member States other than the home Member State, the insurance undertaking operates under the freedom of establishment, after completing the appropriate formalities, and sets up a branch or a permanent presence treated as such within the meaning of Article 145 of the Solvency II Directive.

85. Where matters giving rise to legal proceedings against an insurer established in a Member State have involved a *branch*, acting for and on behalf of the insurer, which is situated in another Member State and meets the conditions laid down in Article 145 of the Solvency II Directive, there will usually, in fact, be a 'branch', an 'agency' or an 'establishment' within the meaning of Article 7(5) of the Regulation. [48]

86. This will also be the case, in the light of the content of Article 145 of the Solvency II Directive, if the insurance undertaking chooses to have, as the form for exercising its freedom of establishment, a *permanent presence* such as to warrant its treatment as a branch. [49]

87. If that permanent presence 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' (Article 145(1) of the Solvency II Directive), it can without too much difficulty be regarded as also meeting the condition laid down in Article7(5) of the Regulation:

– The Court's case-law with respect to 'permanent presence' in the context of the freedom of establishment, recognised by Article 43 TFEU, requires that it must be possible to establish the existence of that permanent presence 'on the basis of objective factors which are ascertainable having regard, in particular, to the extent of its physical existence in terms of premises, staff and equipment'. [50]

– Article 145(2) of the Solvency II Directive requires an insurance undertaking wishing to establish itself in another Member State to inform the supervisory authorities of the home Member of the name of the person within the branch or the permanent presence who is empowered to bind it in relation to third parties.

48 This case is not concerned with the automatic equivalence between the concepts of 'branch' in Article 7(5) of the Regulation and the Solvency II Directive respectively. Although, intuitively, the answer to that question must be in the affirmative, I should recall that, in that directive, 'branch' is used in different senses: a general one, in Article 13(11), under the heading 'Definitions'; it is used in another, specific sense, for the purposes of Chapter IX of Title I, in Article 162(2); and in another sense, for the purposes of Title IV, in Article 268(1)(b). Any analysis of whether all those meanings are by definition compliant with the requirements of the Regulation falls outside the subject matter of this Opinion.

49 The like treatment of branches and permanent presences dates back to the judgment of 4 December 1986, *Commission* v *Germany* (205/84, EU:C:1986:463). It was later enshrined by the legislature in the form, first, of Article 3 of Council Directive 88/357/EEC of 22 June 1988, Second Council Directive on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC (OJ 1988 L 172, p. 1).

50 Judgment of 26 October 2010, *Schmelz* (C-97/09, EU:C:2010:632, paragraph 38).

88. The debate as to whether the permanent presence would have to demonstrate compliance with other conditions in order to be classified as an 'establishment' remains open: this is true in particular of the question whether the permanent presence must be subject to the management and control of the insurance undertaking and whether, in the performance of its activities, it must be exclusively or predominantly linked to that undertaking. [51]

89. This is not a debate that needs to be settled here. Those two criteria are not decisive with respect to the application of Article 7(5) of the Regulation.

90. Criteria that *are* decisive, on the other hand, and crucially so, are whether a permanent presence treated as a branch has the resources (management, premises, staff, equipment) necessary to be able to operate and whether it has been involved in the legal relationship giving rise to the dispute, in the manner identified by the Court in the case-law cited above. [52]

91. As I have recalled, that case-law states the proximity between the dispute and the court called upon to hear and determine it is not assessed by exclusive reference to the legal relationships in existence between entities established in different Member States but on the basis also of how they conduct themselves in corporate life and deal with third parties in their commercial dealings.

92. It will therefore be the combination of those factors in a particular case (and not the level of control exercised by the insurance undertaking over the entities situated in the host State or the extent to which the latter are exclusively linked to the former) which will determine whether there is a close relationship between a dispute and the court called upon to hear and determine it.

(b) The 'representative' under Articles 151 and 152 of the Solvency II Directive

93. Where an insurance undertaking extends its business activities to another Member State in exercise of the freedom to provide services, it may be [53] that the material signs warranting recognition of the existence of a branch, agency or other establishment for the purposes of Article 7(5) of the Regulation are lacking.

94. In the specific context of insurance against civil liability arising from the use of motor vehicles, it will be difficult for the representative to be appointed by the insurer in the host State to give rise to a dispute 'arising out of the operations of a branch, agency or other establishment', within the meaning of Article 7(5) of the Regulation, if he restricts his activities to the tasks listed in Article 152 of the Solvency II Directive.

51 In its Interpretative Communication – Freedom to provide services and the general good in the insurance sector (OJ 2000 C 43, p. 5), pp. 9 to 12, the Commission states that both conditions must be met.

52 Points 38 to 52 of this Opinion.

53 Since the exercise of that freedom does not mean that the service provider may not maintain some degree of stable infrastructure in the State of destination (judgment of 30 November 1995, *Gebhard*, C-55/94, EU:C:1995:411), I do not rule out the possibility that certain operators will give the appearance required in order for the provision in question to apply. In those circumstances, a third party would be able to pursue his claim against the insurer in the jurisdiction in which that infrastructure is located in the case of disputes linked to the operation of that infrastructure.

95. Article 152(4) of the Solvency II Directive authorises Member States [54] to entrust to a single representative the functions of handling and settling claims which are set out in that self-same article, as well as those provided for in Article 21 of Directive 2009/103/EC. [55] It thus implicitly recognises a correspondence between the functions of the respective representatives which the Court too has confirmed. [56]

96. The like treatment of those two forms of representative means that the role of the representative provided for in Article 152 of the Solvency II Directive is generally confined to receiving and forwarding information to facilitate the settlement of a claim, and paying the compensation granted by the insurance undertaking. [57] What is more, the representative's function in those processes is merely passive.

97. The Court has stated that the representative's powers as provided for in Article 4 of Directive 2000/26 (which corresponds to Article 21 of Directive 2009/103) are those of a mere representative, inasmuch as offers of compensation come from the insurer alone. [58]

98. That separation of functions is consistent with Article 21(6) of Directive 2009/103, which states that the claims representative 'shall not be regarded as an establishment within the meaning of …Regulation (EC) No 44/2001'.

99. I would recall that the appointment of a representative provided for in Article 152 of the Solvency II Directive, which is required 'for the purposes of Article 151', arises from the duty to ensure that the insurance undertaking treats all claimants equally, it being for the host Member State to ensure that that duty is discharged. Claimants must not find themselves in a less favourable situation on account of the fact that that undertaking covers a risk by way of provision of services rather than through an establishment.

100. However, equal treatment does not stretch to imposing an interpretation of Article 7(5) of the Regulation which automatically gives cover to claims pursued against an insurer in a Member State in which that insurer has not established itself on the sole ground that it has a claims representative there.

101. In the abstract, therefore, there is not a sufficient basis on which to extend the application of Article 7(5) of the Regulation to a representative appointed under Article 152 of the Solvency II Directive, whose role is confined to performing the functions set out in that provision in the context of the vicissitudes of insurance against civil liability arising from the use of motor vehicles.

102. In order for Article 7(5) of the Regulation to be applicable in the case where the insurance undertaking has only a representative performing in the host State the functions provided for in Article 152 of the Solvency II Directive, there must be other grounds present that warrant the conferral of international jurisdiction on courts other than those of the defendant's domicile. [59]

54 In the event that the undertaking itself has failed to do so.

55 Directive of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11). Article 152 of the Solvency II Directive continues to refer by name to Article 4 of Directive 2000/26/EC, now reproduced, with the exception of paragraph 7, in Article 21 of Directive 2009/103.

56 Judgments of 10 October 2013, *Spedition Welter* (C-306/12, EU:C:2013:650, paragraphs 21 and 23); and of 15 December 2016, *Vieira de Azevedo and Others* (C-558/15, EU:C:2016:957, paragraph 33), concerning the representative provided for in Article 21 of Directive 2009/103 (then Article 4 of Directive 2000/26); and judgment in *Corporis*, concerning the representative envisaged in Article 152 of the Solvency II Directive.

57 This includes the power to take receipt of a document bringing against an insurer located in another Member State a claim seeking compensation for a road traffic accident such as that under analysis in the judgment in *Corporis*.

58 Judgment of 15 December 2016, *Vieira de Azevedo and Others* (C-558/15, EU:C:2016:957, paragraphs 25 and 26).

59 See recital 16 of the Regulation.

103. This will be the case if the representative meets the conditions for classification as a branch, agency or other establishment of the insurance undertaking and has taken an active part in the activity giving rise to the third party's claim against that undertaking.

104. Furthermore, the possibility cannot be ruled out that the exercise of the activity of insurance outside the home State by way of provision of services may give rise to claims against an insurer which ought reasonably (from the point of view of international jurisdiction) to be capable of being disposed of in a State other than the insurer's domicile.

105. Although the balance between the respective rights of the parties and the sound administration of justice is reflected first and foremost in the rule that the defendant is subject to the courts for the place where he is domiciled, the Regulation offers the applicant alternatives, such as bringing the action in the place where the events occurred. [60]

106. Furthermore, the Regulation protects a defendant who is the 'weaker party' to the insurance relationship through specific provisions on international jurisdiction (contained in Section 3 of Chapter II) unconnected with the type of presence which the insurance undertaking has in a territory. The same treatment is available to an injured party who is able to bring a direct action.

(c) Application to the case at issue

107. Gefion submits that it carries on its activities in Poland in exercise of the freedom to provide services, with the consent of the supervisory authorities of the home and host States.

108. It follows from the Commission's observations, however, that Crawford Polska's activities actually fall within the scope of the freedom of establishment. The referring court appears to be (implicitly) of the same opinion.

109. As I have tried to explain, in the context of Article 7(5) of the Regulation, the basis on which an insurance undertaking carries on its activities in a Member State may reveal either that the conditions requiring the application of that article are in fact present (which will usually be the case in the event that the undertaking is operating under the freedom of establishment), or that the opposite is true (which will generally be the case where it is operating under the freedom to provide services).

110. That basis of operation, as I have said, does not predetermine one way or the other the application of Article 7(5) of the Regulation, which will be determined in the light of the criteria for its interpretation that follow from the Court's case-law.

111. In accordance with those criteria, the activities which Gefion carries on in Poland through Crawford Polska may justify the exercise of international jurisdiction by the Polish courts, on the basis which I have already set out, in the case of an action brought by third parties against Gefion as a result of a decision by Crawford Polska which is binding on that insurance undertaking.

112. The fact that Gefion operated under Article 147 et seq. of the Solvency II Directive would not therefore be decisive.

60 In the case of a claim such as that at issue here, which is presented as being non-contractual in nature.

V. Conclusion

113. In the light of the foregoing, I propose that the Court's answer to the second question referred for a preliminary ruling by the Sąd Rejonowy w Białymstoku (District Court, Białystok, Poland) should be as follows:

'Article 7(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 must be interpreted as meaning that a commercial company established in a Member State which operates under a contract with an insurance undertaking established in another Member State may be classified as a 'branch, agency or other establishment' of that undertaking if, cumulatively:

– it operates in a Member State by providing compensation for material damage on the basis of insurance against civil liability arising from the use of motor vehicles the risks connected with which are covered by the insurance undertaking;

– it has the appearance of an extension of the insurance undertaking; and

– it has a management body and material facilities such as to enable it to transact business with third parties, so that the latter, although knowing that there will if necessary be a legal link with the insurance undertaking, do not have to deal directly with that undertaking.'