JUDGMENT OF THE COURT
14 OCTOBER 1976 [1]

LTU Lufttransportunternehmen GmbH & Co. KG v Eurocontrol (preliminary ruling requested by the Oberlandesgericht Düsseldorf)

Case 29/76

Summary

1. *Convention of 27 September 1968 — Area of application — Civil and commercial matters — Interpretation*
   (Convention of 27 September 1968, Article 1)

2. *Convention of 27 September 1968 — Area of application — Action between a public authority and a person governed by private law — Exercise of the powers of the public authority — Judgment — Exclusion.*
   (Convention of 27 September 1968, Article 1)

1. In the interpretation of the concept 'civil and commercial matters' for the purposes of the application of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters, in particular Title III thereof, reference must be made not to the law of one of the States concerned but, first, to the objectives and scheme of the Convention and, secondly, to the general principles which stem from the corpus of the national legal systems.
2. Although certain judgments given in actions between a public authority and a person governed by private law may fall within the area of application of the Convention, this is not so where the public authority acts in the exercise of its powers. Such is the case in a dispute which concerns the recovery of charges payable by a person governed by private law to a national or international body governed by public law for the use of equipment and services provided by such body, in particular where such use is obligatory and exclusive. This applies in particular where the rate of charges, the methods of calculation and the procedures for collection are fixed unilaterally in relation to the users.

In Case 29/76

Reference to the Court under Article 1 of the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September

1 — Language of the Case: German.

1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters by the Oberlandesgericht Düsseldorf for a preliminary ruling in the action pending before that court between

FIRMA LTU LUFTTRANSPORTUNTERNEHMEN GMBH & CO. KG, Düsseldorf,

and

EUROPEAN ORGANIZATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL), Brüssel,

on the interpretation of the concept 'civil and commercial matters' within the meaning of the first paragraph of Article 1 of the Convention of 27 September 1968,

THE COURT

composed of: H. Kutscher, President, A. M. Donner and P. Pescatore, Presidents of Chambers, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart and A. O'Keefe, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts, the procedure and the observations presented under Article 5 of the Protocol of 3 June 1971 may be summarized as follows:

I — Facts and procedure

The main action concerns route charges imposed by the European Organization for the Safety of Air Navigation (hereinafter referred to as 'Eurocontrol') on owners of aircraft for the use of air safety services.

In September 1972 Eurocontrol brought an action against the Firma Lufttransportunternehmen GmbH & Co. KG (hereinafter referred to as 'LTU') before the Tribunal de Commerce of Brussels, in respect of charges amounting to US$42 756·01, and in doing so referred to a clause contained in its 'Conditions for the payment of charges by users' conferring jurisdiction to the Belgian courts. In these proceedings LTU contested the jurisdiction *ratione loci* and *ratione materiae* of the court before which the matter was brought and

maintained, in particular, that the charges claimed were governed by public law. In its judgment of 7 March 1974 the Tribunal de commerce of Brussels dismissed these arguments. It declared that it had material jurisdiction on the ground that the payment of the charges in dispute arose out of an activity of the defendant which was deemed to be commercial and it ordered LTU to pay the sum of US$42 756·01, plus interest.

This judgment was served on LTU at the request of the Procureur du Roi of Brussels on 24 June 1974 and a certificate of service was drawn up by the competent official of the Amtsgericht Düsseldorf on 26 June 1974.

In a judgment of 16 December 1974 the Cour d'Appel of Brussels dismissed the appeal brought by LTU as inadmissible on the ground that it had failed to observe the prescribed time-limit. The appeal in cassation against this judgment was also unsuccessful.

By an order dated 13 August 1974 the Landgericht Düsseldorf granted the application by Eurocontrol for the authorization of enforcement and the issue of an order for enforcement under the Convention on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters (hereinafter referred to as the 'Convention'). LTU appealed against this decision but, before the appeal was heard, the certificate of service issued by the Amtsgericht was annulled by order of 5 February 1975 on the ground that it erroneously referred to the service of a document instituting proceedings.

The court hearing the appeal by LTU then annulled the judgment of the Landgericht in an order dated 24 March 1975 and dismissed the application for the authorization of enforcement on the ground that the judgment of the Belgian court had been served.

Eurocontrol then appealed to the Bundesgerichtshof which, by order of 26 November 1975, annulled the decision of the Oberlandesgericht Düsseldorf and referred the case back to that court for a fresh decision to be taken.

By order of 16 February 1976 the 19th Civil Chamber of the Oberlandesgericht Düsseldorf stayed the proceedings and, in accordance with Article 2 (3) and Article 3 of the Protocol of 3 June 1971 on the Interpretation of the Convention of 27 September 1968, requested the Court of Justice of the European Communities to give a preliminary ruling on the question 'whether, in the interpretation of the concept "civil and commercial matters" within the meaning of the first paragraph of Article 1 of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters the law to be applied is the law of the State in which judgment was given (in this instance Belgium) or the law of the State in which the order for enforcement is to be issued.'

The order from the Oberlandesgericht Düsseldorf referring the question was received at the Court Registry on 18 March 1976.

In accordance with Article 5 of the Protocol of 3 June 1971 and with Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities written observations were submitted by LTU, represented by Günther B. Krause-Ablass, Advocate of Hamburg, Eurocontrol, represented by Hans Achtnich, Advocate of Stuttgart, the Government of the Federal Republic of Germany, represented by Erich Bülow, acting as Agent, the Government of the Italian Republic, represented by its Ambassador, Adolfo Maresca, assisted by Arturo Marzano, State Advocate-General, and the Commission of the European Communities, represented by its Legal Adviser, Peter Karpenstein.

Upon hearing the report of the Judge-Rapporteur and the views of the

Advocate-General the Court decided to open the oral procedure without holding any preparatory inquiry.

II — Written observations submitted to the Court

LTU maintains that in order to interpret the concept 'civil and commercial matters' within the meaning of the first part of the first paragraph of Article 1 of the Convention, reference must be made to the law of the State in which enforcement is sought. As it constitutes a treaty governed by the law of nations the Convention must, in cases of doubt, be interpreted in the light of the public international law principle of sovereignty, that is, restrictively, so as to encroach as little as possible on the sovereignty of the Contracting States.

The basis for interpretation is the treaty law established by the Convention. As the first part of Article 1 gives no indication concerning the interpretation of the concept in dispute, this provision must be taken to refer to interpretation according to national law. The answer to the question which national law is applicable must be sought in the law laid down by the Convention on the basis of public international law. Enforcement in foreign territory constitutes an encroachment on the sovereignty of the State in which enforcement is sought, with the result that — in the absence of any clear definition in the Convention itself — the power to define the concept in question can only lie with the national law of that State.

Furthermore the enforcement of a judgment in a case concerning public law is a particularly serious encroachment on the sovereignty of the State in which enforcement is sought and it is in principle not permissible in matters governed by public law for foreign decisions to be enforced. For this reason alone only the law of the State in which enforcement is sought can be relevant for the purposes of establishing the definition of this term within the meaning of the Convention.

Eurocontrol puts forward, first of all, certain doubts concerning the admissiblity of the reference.

Under Article 3 (2) and Article 2 (3) of the Protocol, a reference for a preliminary ruling is admissible 'in the cases provided for in Article 37 of the Convention'. This article refers to the case in which a debtor contests before the Oberlandesgericht a decision authorizing enforcement. In fact, for the purposes of this provision the appeal proceedings were brought to an end by the judgment of the Oberlandesgericht of 24 March 1975.

The Bundesgerichtshof subsequently examined the question of a possible reference in its order of 26 November 1975 and considered that a preliminary ruling by the Court of Justice was unnecessary. The case was referred back to the Oberlandesgericht for the sole reason that it was still necessary to establish whether the judgment of the Tribunal de Commerce of Brussels had in the meantime acquired the force of *res judicata*. Thus, the proceedings pending before the Oberlandesgericht do not constitute appeal proceedings within the meaning of Article 37 of the Convention. Furthermore, the question raised in the order making the reference is of no importance as regards the finding of fact which alone remains to be made.

This conclusion is also justified in objective terms. The Bundesgerichtshof has expressly considered the question contained in the reference and has made a ruling on this point. This distinguishes the present case from Case 166/73, *Rheinmühlen-Düsseldorf* v *Einfuhr- und Vorratsstelle für Getreide und Futtermittel* (Judgment of the Court of Justice of 16 February 1974, [1974] ECR 33), in which the question of a reference was never raised, In that case the

Bundesgerichtshof acted on the basis of the view that it had to apply German law and gave no consideration at all to the question of a reference.

In the present case, on the other hand, the Bundesgerichtshof has based its decision on Community law — in this instance the Convention — and has expressly ruled out any duty to refer the case. The Oberlandesgericht is bound by this. Any other result would mean an unreasonable delay in the proceedings to enforce a foreign judgment which, by their nature, must take place rapidly.

As regards the question referred, Eurocontrol submits that the Bundesgerichtshof has rightly decided that the law of the State in which judgment was given is alone applicable in interpreting the concept 'civil and commercial matters' within the meaning of Article 1 of the Convention. It declared rightly and in accordance with legal doctrine that the classification made by the courts of the State in which judgment given is binding on the State in which enforcement is sought.

The Oberlandesgerichte of Munich and Frankfurt have also given rulings to this effect and it is only this view of the law which can lead to the widest possible application of the Convention. In this respect the Oberlandesgericht Munich made the striking observation that a different point of view would lead to an applicant's 'falling between two stools'. At all events, in a case in which the parties are on an equal footing the condition set out in the first paragraph of Article 1 of the Convention, which must be fulfilled in order to obtain authorization for the enforcement of a judgment given in another Contracting State, is satisfied even where only one of the two States classifies the case as an action concerning 'civil and commercial matters'.

Moreover, this view corresponds to the opinion of most German writers. In addition, as regards the first paragraph of Article 1 of the Convention, the report of the Committee of Experts (set out in Zöller, ZPO, 11th edition, p. 1380 *et seq.)* states specifically that the phrase 'civil and commercial matters' must be given a wide interpretation. For these reasons it is impossible to apply here the rule that conventions governed by international law which limit the sovereign powers of a State must, in cases of doubt, be given a restrictive interpretation.

The Tribunal de commerce of Brussels has examined its jurisdiction *ratione materiae* and has classified the action as a commercial matter for the purposes of Belgian law. The German courts are bound by this classification in proceedings for the authorization of enforcement (Article 34 (3) of the Convention; Grunsky JZ 1973, 641).

Finally, it is to be observed that the express aim, intention and purpose of the Convention is to facilitate the prosecution of legal remedies across the frontiers of the Member States, to enable proceedings to take place quickly and to ensure the rapid enforcement of judgments. It is one of the fundamental principles of the Convention that a decision adopted in one Member State may no longer be called into question in another Member State during proceedings for the recognition and enforcement of that judgment. The answer to the question raised in the order making the reference must therefore be that in interpreting the concept 'civil and commercial matters' within the meaning of Article 1 of the Convention the law of the State in which the judgment was given is applicable.

The *Government of the Federal Republic of Germany* observes that the concept 'civil and commercial matters' appearing in Article 1 of the Convention is important in relation not only to the enforcement of foreign judgments, but also directly to those provisions of the Convention which concern jurisdiction.

This distinguishes this Convention from most of the previous conventions and agreements on the recognition and enforcement of judgments, which generally only regulate the jurisdiction of the courts indirectly, that is, in the context of reviewing the question of recognition. This fact alone is sufficient reason to require a uniform interpretation of the concept in qustion to be applied both in the review of its jurisdiction by the court adjudicating on the substance of the case and in the recognition and declaration of enforceability by the court of the State in which recognition is sought.

The Federal Government proceeds from the premise that in one and the same case the concept 'civil and commercial matters' must be understood in the same way as regards both questions of jurisdiction and those of recognition and therefore considers that in defining this concept two solutions are possible:

(a) Evaluation of the concept solely on the basis of the law of the State in which judgment was given, without any review by the courts adjudicating upon recognition and enforcement. However, at least where the judgement of the court adjudicating on the substance of the case does not show whether that court regarded the case as a civil and commercial action according to its national law, the court asked to recognize the judgment must undertake a review of the law of the State in which the judgment was given. According to this solution the area of application of the Convention would be determined on the basis of the legislation of each Member State. Logically, it would then be necessary to remove from the law of the State in which judgment was given the question of the definition of the matters excluded from the area of application of the Convention (second paragraph of Article 1).

(b) A uniform international interpretation of the concept 'civil and commercial matters' without reference to any national law. In such a case it would be for the courts responsible for applying the Convention and for the Court of Justice of the European Communities to develop, starting with the fundamental ideas common to the Member States on the content of this concept, the various elements of the distinction to be made between those relationships between the parties which are governed by private law and those governed by public law. Certain areas could immediately be excluded and the task of delimitation in an individual case could be left to the courts and to the Court of Justice of the European Communities.

The Federal Government is inclined towards the second solution, since in its view this is the only way in which it is possible to ensure the uniform application of the Convention throughout the whole of the Community. Matters which are excluded from the area of application of the Convention (second paragraph of Article 1) could then be interpreted without reference to any national law.

Such an international interpretation would prove to be advantageous above all within the context of the accession to the Convention of the new Member States of the Community, since the Common Law does not draw such a sharp distinction between civil law and public law as do the countries of the European continent.

If the solution proposed by the Federal Government is accepted in principle the question whether the claims formulated in the main action are governed, according to an international interpretation, by civil or public law need not be resolved, at least not now, provided that this solution is supplemented by an essential element of the first solution, namely that in so far as the court adjudicating on the substance of the case

has, for reasons which are at least defensible, classified the case as an action involving civil and commercial matters, the court in which recognition is requested should not review that decision. Only where the latter court has serious reasons for doubting the correctness of the decision from the point of view of a uniform interpretation should a fresh examination — involving, if appropriate, a reference to the Court of Justice of the European Communities — be considered.

Such a solution is, moreover, in accordance with the rule laid down in the third paragraph of Article 28 of the Convention, according to which the jurisdiction of the court of the State in which the judgment was given may not be reviewed. The comprehensive standardization of the interpretation of the concept 'civil and commerical matters' would thus be complemented, as regards the entire area of material application of the Convention, by a uniform understanding of the concept during the two specific stages of the proceedings, that is, in the State in which the judgment was given and in the State in which enforcement is sought.

If the Court rules that the order making the reference is admissible, the Federal Government submits that the reply to the question put should be as follows:

'The concept "civil and commercial matters" which appears in the first paragraph of Article 1 of the Convention on jurisdiction must be given a uniform interpretation in respect of the whole area of application of the Convention and is therefore not to be understood as referring to the individual laws of the Member States. However, a court which is required to recognize a judgment given in another Member State or to declare such a judgment enforceable is bound by the interpretation of this concept applied by the court in the State in which the judgment was given, to the extent to which such interpretation may still be reconciled with a uniform understanding of the concept of civil and commercial matters within the meaning of the first paragraph of Article 1 of the Convention on jurisdiction.'

The *Government of the Italian Republic* observes first that the extreme brevity of the order making the reference makes it impossible to grasp the real significance of the question raised. Whilst reserving its right to put forward further observations the Italian Government considers that the concept in question must in principle be defined according to Community law even if useful aids to interpretation may be found in the general principles of law common to the legal systems of the Member States and the international conventions listed in Article 55 of the Convention. This view arises out of the basic requirement of ensuring that the Convention is applied uniformly throughout the whole of the Community and that the obligations undertaken by the Contracting States are equivalent.

On the basis of this premise, air navigation (and sea navigation) must be excluded from the area of application of the Convention. This conclusion is confirmed both by the express exceptions provided for in the second paragraph of Article 1 of the Convention and by the provisions of the EEC Treaty concerning transport (Article 84 (1)).

As regards the admissibility of the order making the reference the *Commission* observes that, as a court sitting in an appellate capacity, the Oberlandesgericht is empowered by Article 3 (2) of the Protocol together with Article 2 (2) to request the Court of Justice to give rulings on questions concerning the interpretation of the Convention.

If, nevertheless, doubts exist as to admissibility, on the grounds that the Bundesgerichtshof has already ruled on the question of a reference in its judgment of 26 November 1975 and that,

under national procedural law the Oberlandesgericht is bound by the interpretation given in the same case by the court hearing the appeal in 'cassation', reference may be made to the Court of Justice in Cases 166/73 and 146/73 *(Rheinmühlen-Düsseldorf* v *Einfuhr- und Vorratsstelle für Getreide und Futtermittel,* Judgments of 16 January 1974, [1974] ECR 33 and 12 February 1974 [1974] ECR 139).

The Protocol which is presently at issue is based so closely upon the procedure provided for in Article 177 of the EEC Treaty that the considerations concerning this article which were developed in these judgments may apply to the present procedure for a preliminary ruling.

As regards the question raised, the Commission states that considerations of practicability and, in particular, the aims of the Convention require the second court to be in principle bound by the substantive classification given by the first court.

The aim of the Convention is to bring about the recognition of the greatest possible number of judicial decisions in the signatory States. The very liberal nature of the terms of the Convention on the recognition and enforcement of Judgments in Civil and Commercial Matters is shown by the fact that its authors dispensed with any separate procedure for recognition (first paragraph of Article 26). Furthermore, the Convention contains an exhaustive list of the grounds on which the recognition of a judgment given in a Member State may be refused (Articles 27 and 28). The second paragraph of Article 34 provides expressly that enforcement may only be refused for one of the reasons specified in these articles. Furthermore, under no circumstances may a foreign judgment be reviewed as to its substance (Article 29 and the third paragraph of Article 34) and, finally, under the third paragraph of Article 28 the test of public policy may not be applied to the rules relating to the jurisdiction of the courts of the State in which the judgment was given. Thus, a judgment cannot be refused recognition under Article 27 (1) on the ground that the rules concerning jurisdiction have been disregarded.

In the light of these rules many authors speak of a presumption in favour of the recognition of judgments and, as regards the question of the classification of matters as civil and commercial within the meaning of the first paragraph of Article 1, the prevailing tendency is to accept without question the classification of the court in which judgment was given, in order to create the most favourable conditions for the free circulation of judicial decisions.

On the other hand, having regard to the terms of the Convention itself, it undoubtedly applies only to judgments in 'civil and commercial matters'. In the interests of an effective application of the Convention this concept must be given a wide interpretation and, in addition to jurisdiction in non-contentious proceedings, it is generally held to cover civil proceedings for compensation brought before the criminal courts, proceedings under civil law brought before the administrative courts and actions concerning labour law (cf. Jenard Report, Chapter 3, under heading III).

Nevertheless, in accordance with the declared intention of its authors, the Convention does not apply to disputes concerning public law (cf. for example, Jenard Report, Chapter 5, under heading 7). As, even in relation to the classification of a dispute from the point of view of the rules governing the substance of the action, the Convention contains no express provision stipulating that the courts of the State in which enforcement is sought are bound by the view of the law taken by the courts of the State in which judgment was given, it is understandable that a minority advocates the application of the principle of the *lex*

fori. According to this argument, the court of the State in which enforcement is sought must consider on its own initiative in each case whether the judgment in question must be classified as given in a civil or commercial matter. In view of the differences existing between the Contracting States as regards the legal classification of disputes such an interpretation of the first paragraph of Article 1 would deprive the Convention of effectiveness in numerous cases. In particular, an interpretation of the concept from the point of view of the *lex fori* would limit the possibility of enforcing judgments under the Convention, mainly in the case of debtors who residing in Germany and France where at the moment the distinction made between public law and private law is carried furthest. The discrimination which might result from a possible lack of uniformity in the matter of enforcement within the Contracting States would constitute a direct obstacle to the aims of the Convention.

Furthermore, even if the unlawful nature of the foreign judgment cannot constitute a reason for refusing an order for its enforcement (Articles 29 and the third paragraph of Article 34), there are good reasons for maintaining that mere differences over the substantive classification of an action should not *a fortiori* lead to a refusal of recognition.

The view that the court of the State in which enforcement is sought is bound by the classification made by the court in which judgment was given is in accordance with the spirit and aim of the Convention as well as with the need for it to be effective. As, however, if taken to its logical extreme, unforeseen results may be produced by binding the courts of the State in which enforcement is sought, it remains to be considered whether — following the argument put forward by Bellet (L'élaboration d'une Convention sur la reconnaissance des jugements dans le cadre du marché commun, Journal du droit international — Clunet 1965, p. 833 *et seq.)* — it would not be appropriate during a first stage of application of the Convention to limit this principle to those cases in which the question at issue has been expressly classified as a 'civil and commercial matter' by the court of the State in which judgment was given.

The Commission suggests that the following answer be given to the question referred:

'The first paragraph of Article 1 of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that the courts of the State in which enforcement is sought shall be bound by the ruling given on the substance of the case by the court of the State in which the judgment was given, at least where the latter has expressly classified the action in question as a civil or commercial matter.'

III — Oral Procedure

At the hearing on 14 July 1976 LTU, represented by Mr Krause-Ablass, Advocate of Hamburg, Eurocontrol, represented by Mr Achtnich, Advocate of Stuttgart, and by Mr Czech, member of the Legal Department of Eurocontrol, the Government of the Federal Republic of Germany, represented by Mr Holtgrave, and the Commission of the European Communities, represented by Mr Karpenstein, presented oral argument.

The *Commission* stated, in particular, that the most favourable and most correct solution was undoubtedly for the concept of 'civil and commercial matters' to be given a uniform interpretation throughout the Community. It would of course be very difficult to draw up an abstract and general definition but it should nevertheless be possible to find common criteria in the legal systems of

the Member States in order to define this concept, at least in those Member States on the continent of Europe which are at present bound by the Convention.

However, in the light of the practical difficulties presented by such a European solution the Commission considers that at the present stage of development of the Convention a solution such as that put forward in its written observations would also be acceptable.

The Advocate-General delivered his opinion at the hearing on 15 September 1976.

Law

1 By order dated 16 February 1976 received at the Court Registry on the following 18 March, the Oberlandesgericht Düsseldorf referred to the Court of Justice pursuant to the Protocol of 3 June 1971 on the interpretation of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters (hereinafter referred to as 'the Convention') the question whether, for the purposes of interpreting the concept 'civil and commercial matters' within the meaning of the first paragraph of Article 1 of the Convention, the law to be applied is the law of the State in which judgment was given or the law of the State in which proceedings for an order for enforcement were issued.

2 The file shows that the question arose within the context of proceedings under Title III, Section 2, of the Convention in which Eurocontrol asked the competent German courts to authorize the enforcement of an order by the Belgian courts that LTU pay to it certain sums by way of charges imposed by Eurocontrol for the use of its equipment and services.

3 Under Article 1, the Convention 'shall apply in civil and commercial matters whatever the nature of the court or tribunal'. The second paragraph of Article 1 states that it shall not apply to '(1) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession; (2) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; (3) social security; (4) arbitration'.

Apart from providing that the Convention shall apply whatever the nature of the court or tribunal to which the matter is referred and excluding certain matters from its area of application, Article 1 gives no further details as to the meaning of the concept in question.

As Article 1 serves to indicate the area of application of the Convention it is necessary, in order to ensure, as far as possible, that the rights and obligations which derive from it for the Contracting States and the persons to whom it applies are equal and uniform, that the terms of that provision should not be interpreted as a mere reference to the internal law of one or other of the States concerned.

By providing that the Convention shall apply 'whatever the nature of the court or tribunal' Article 1 shows that the concept 'civil and commercial matters' cannot be interpreted solely in the light of the division of jurisdiction between the various types of courts existing in certain States.

The concept in question must therefore be regarded as independent and must be interpreted by reference, first, to the objectives and scheme of the Convention and, secondly, to the general principles which stem from the corpus of the national legal systems.

4 If the interpretation of the concept is approached in this way, in particular for the purpose of applying the provisions of Title III of the Convention, certain types of judicial decision must be regarded as excluded from the area of application of the Convention, either by reason of the legal relationships between the parties to the action or of the subject-matter of the action.

Although certain judgments given in actions between a public authority and a person governed by private law may fall within the area of application of the Convention, this is not so where the public authority acts in the exercise of its powers.

Such is the case in a dispute which, like that between the parties to the main action, concerns the recovery of charges payable by a person governed by private law to a national or international body governed by public law for the use of equipment and services provided by such body, in particular where such use is obligatory and exclusive.

This applies in particular where the rate of charges, the methods of calculation and the procedures for collection are fixed unilaterally in relation to the users, as is the position in the present case where the body in question unilaterally fixed the place of performance of the obligation at its registered office and selected the national courts with jurisdiction to adjudicate upon the performance of the obligation.

5 The answer to be given to the question referred must therefore be that in the interpretation of the concept 'civil and commercial matters' for the purposes of the application of the Convention and in particular of Title III thereof, reference must not be made to the law of one of the States concerned but, first, to the objectives and scheme of the Convention and, secondly, to the general principles which stem from the corpus of the national legal systems.

On the basis of these criteria, a judgment given in an action between a public authority and a person governed by private law, in which a public authority has acted in the exercise of its powers, is excluded from the area of application of the Convention.

Costs

6 The costs incurred by the Government of the Federal Republic of Germany, the Government of the Italian Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Oberlandesgericht Düsseldorf, the decision as to costs is a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Oberlandesgericht Düsseldorf, by order dated 16 February 1976, hereby rules:

1. **In the interpretation of the concept 'civil and commercial matters' for the purposes of the application of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters, in particular Title III thereof, reference must not be made to the law of one of the States concerned but, first, to the objectives and scheme of the Convention and, secondly, to the general principles which stem from the corpus of the national legal systems;**

2. A judgment given in an action between a public authority and a person governed by private law, in which the public authority has acted in the exercise of its powers, is excluded from the area of application of the Convention.

Kutscher Donner Pescatore

Mertens de Wilmars Sørensen Mackenzie Stuart O'Keeffe

Delivered in open court in Luxembourg on 14 October 1976.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 15 SEPTEMBER 1976 [1]

Mr President,
Members of the Court,

The question referred for a preliminary ruling, on which I am giving opinion today, relates to the expression 'civil and commercial matters', which appears in Article 1 of the Convention on jurisdiction and the enforcement of Judgments in Civil and Commercial matters — in short the Convention on Jurisdiction — and which defines the Convention's field of application. In this connexion the Oberlandsgericht, Düsseldorf, pursuant to the Protocol on the interpretation of the said Convention, has raised the question whether the interpretation of the said expression is governed by the law of the State in which the judgment on the claim was given (in this case Belgium) or the law of the State in which the order for its enforcement has to be issued (in this case the Federal Republic of Germany).

I must first of all make some preliminary observations on the facts underlying this question.

On 13 November 1960 an international agreement for cooperation in connexion with the safety of air navigation was concluded by several States, *inter alia* the Member States of the Community except for Denmark and Italy. It set up the European Organization for the Safety of Air Navigation — Eurocontrol — an international organization having a legal personality and its seat in Brussels.

So called route charges are levied on aircraft owners who wish to make use of the air safety services provided by Eurocontrol. The levying of these charges

1 — Translated from the German.