Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

15 November 2012*

(Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Articles 32 and 33 — Recognition of judgments — Concept of 'judgment' — Effects of a judgment on international jurisdiction — Jurisdiction clause)

In Case C-456/11,

REFERENCE for a preliminary ruling pursuant to Article 267 TFEU from the Landgericht Bremen (Germany), made by decision of 25 August 2011, received at the Court on 2 September 2011, in the proceedings

Gothaer Allgemeine Versicherung AG,

ERGO Versicherung AG,

Versicherungskammer Bayern-Versicherungsanstalt des öffentlichen Rechts,

Nürnberger Allgemeine Versicherungs-AG,

Krones AG

v

Samskip GmbH,

THE COURT (Third Chamber),

composed of K. Lenaerts (Rapporteur), acting President of the Third Chamber, E. Juhász, G. Arestis, J. Malenovský and T. von Danwitz, Judges,

Advocate General: Y. Bot,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 4 July 2012,

after considering the observations submitted on behalf of:

— Gothaer Allgemeine Versicherung AG, ERGO Versicherung AG, Versicherungskammer Bayern-Versicherungsanstalt des öffentlichen Rechts, Nürnberger Allgemeine Versicherungs-AG, by K. Ramming, Rechtsanwalt,

* Language of the case: German.

— Krones AG, by A. Nerz and M. Theisen, Rechtsanwälte, assisted by R. Geimer, Professor, and C. Wagner, Justiziar,

— Samskip GmbH, by O. Hartenstein, Rechtsanwalt,

— the German Government, by T. Henze and F. Wannek, acting as Agents,

— the Belgian Government, by J.-C. Halleux and T. Materne, acting as Agents,

— the Austrian Government, by A. Posch, acting as Agent,

— the Swiss Government, by D. Klingele, acting as Agent,

— the European Commission, by W. Bogensberger and A.-M. Rouchaud-Joët, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 September 2012,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Articles 32 and 33 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

2 That reference was made in the context of proceedings involving four German insurance companies, namely Gothaer Allgemeine Versicherung AG, ERGO Versicherung AG, Versicherungskammer Bayern-Versicherungsanstalt des öffentlichen Rechts and Nürnberger Allgemeine Versicherungs-AG ('the insurers'), and also Krones AG ('Krones'), a German company insured by them, against Samskip GmbH ('Samskip'), a German subsidiary of the company Samskip Holding BV, a transport and logistics undertaking founded in Iceland and established in the Netherlands, concerning the delivery by Samskip of a brewing installation to a purchaser, Cerveceria Cuauthemoc Monezum ('the recipient'), a Mexican undertaking.

3 The dispute involves an action for compensation brought before the German courts by the insurers and Krones concerning damage allegedly caused to that installation during transport. The Belgian courts, including the Hof van beroep te Antwerpen (Court of Appeal, Antwerp, Belgium), had dismissed as inadmissible similar actions brought before them on the ground that the bill of lading, drawn up on 13 August 2006, the date on which Samskip took delivery of the installation in Antwerp (Belgium), contained a contractual clause ('jurisdiction clause') stating that any dispute arising thereunder was to be decided by Icelandic courts according to Icelandic law.

Legal context

International law

4 The Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007 and approved on behalf of the Community by Council Decision 2009/430/EC of 27 November 2008 (OJ 2009 L 147, p. 1) ('the Lugano Convention'),

states in Article 23(1), the wording of which is largely similar to that of Article 17 of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, done at Lugano on 16 September 1988 (OJ 1988 L 319, p. 9), which it replaced:

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

(a) in writing or evidenced in writing, or

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

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

European Union law

5 Recitals 2, 6 and 15 to 17 in the preamble to Regulation No 44/2001 read as follows:

'(2) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation are essential.

...

(6) In order to attain the objective of free movement of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a Community legal instrument which is binding and directly applicable.

...

(15) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. There must be a clear and effective mechanism for resolving cases of *lis pendens* and related actions and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation that time should be defined autonomously.

(16) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.

(17) By virtue of the same principle of mutual trust, the procedure for making enforceable in one Member State a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable should be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds for non-enforcement provided for by this Regulation.'

6 Under Article 23(1) of that regulation, the wording of which is in essence identical to that of Article 23(1) of the Lugano Convention, referred to in paragraph 4 above:

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

(a) in writing or evidenced in writing, or

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

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

7 Article 32 of the same regulation provides:

'For the purposes of this Regulation, "judgment" means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.'

8 Article 33 of Regulation No 44/2001 provides:

'1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in sections 2 and 3 of this Chapter, apply for a decision that the judgment be recognised.

3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.'

9 According to Article 34 of that regulation:

'A judgment shall not be recognised:

1. if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;

2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

3. if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;

4. if it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.'

10 Article 35 of Regulation No 44/2001 provides:

'1. Moreover, a judgment shall not be recognised if it conflicts with sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.

2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.

3. Subject to the paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.'

11 Under Article 36 of Regulation No 44/2001:

'Under no circumstances may a foreign judgment be reviewed as to its substance.'

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

12 In 2006, Krones sold a brewing installation to the recipient. It charged Samskip with the task of organising and providing the transport of that installation from Antwerp to Guadalajara (Mexico), via Altamira, another city in Mexico.

13 The consignment, which consisted of containers and transport frames, was delivered to Samskip on 13 August 2006. On that same day Samskip drew up the bill of lading designating Krones as the shipper, the recipient as the consignee, Antwerp as the port of loading and Altamira as the port of destination. Point 2 of the terms and conditions ('Endorsements') set out on the reverse side of that document stipulates:

'Jurisdiction. Any dispute arising under this Bill of Lading to be decided in Iceland according to Icelandic law.'

14 The applicants in the main proceedings claim that the consignment was damaged during the transport by sea and that part of it was also damaged during the transport by land from Altamira to Guadalajara. Krones assigned its claims in respect of the maximum insurable amount of two special drawing rights (valued at the time of assignment at EUR 235 666.46) to the insurers in proportion to their percentage share of the risk. The recipient likewise assigned its claims under the bill of lading to the insurers in proportion to their percentage share of the risk.

15 The recipient and the insurers brought the matter before the Belgian courts by an action lodged on 30 August 2007 and requested that Samskip appear before the Rechtbank van koophandel te Antwerpen (Antwerp Commercial Court) on 16 October 2007. That court ruled in favour of the insurers and the recipient, but the Hof van beroep te Antwerpen revised that judgment by its judgment of 5 October 2009, by which it declared itself 'to have no authority to hear and decide the case'.

16 In its reasons for judgment, the Hof van beroep te Antwerpen held that the recipient was not entitled to bring proceedings on the basis of the contract of carriage. The insurers did have the right to institute proceedings as successors in title to Krones, but they were bound by the jurisdiction clause contained in the bill of lading. Under point 2 of the clauses therein, the Icelandic courts have exclusive jurisdiction, and for that reason the Belgian courts have no authority to hear and decide the case. That judgment has become final.

17 In September 2010, the insurers brought an action for compensation against Samskip before the Landgericht Bremen (Regional Court, Bremen), whilst Krones brought an action for compensation against Samskip before the Landgericht Landshut (Regional Court, Landshut). That court referred the latter proceedings to the referring court by order of 3 June 2011.

18 The Landgericht Bremen observes that, in Samskip's submission, the actions are inadmissible inasmuch as the judgment of the Hof van beroep te Antwerpen of 5 October 2009 produces legal effects not only as regards the Belgian courts' lack of jurisdiction but also as regards the finding that jurisdiction lies with the Icelandic courts, as stated in the grounds of that judgment. Samskip states that that judgment has binding effect on the referring court in accordance with Articles 32 and 33 of Regulation No 44/2001.

19 The insurers and Krones argue that, at most, binding effect extends to that part of the judgment of the Hof van beroep te Antwerpen of 5 October 2009 which finds that the Belgian courts have no jurisdiction. The effect of that judgment extends no further, however, and certainly not so far as to mean that, as a result of the asserted jurisdiction of the Icelandic courts, courts of Member States other than the Kingdom of Belgium have no jurisdiction.

20 The referring court, citing German legal doctrine, observes that the judgment of the Hof van beroep te Antwerpen of 5 October 2009 is a 'judgment on a procedural matter' ('Prozessurteil') which dismisses the action as inadmissible by reason of its failure to satisfy the requirements for a judgment on the merits of the case. Such judgments given by foreign courts are for the most part not regarded as being capable of recognition under German law. It therefore wonders whether it is bound to recognise that judgment and, if so, whether the scope of such recognition extends to the reasons for judgment contained therein as well.

21 In those circumstances, the Landgericht Bremen decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Are Articles 32 and 33 of Regulation No 44/2001 to be interpreted as meaning that the term "judgment" also covers in principle those judgments which are restricted to the finding that the procedural requirements for admissibility are not satisfied (so-called "procedural judgments")?

2. Are Articles 32 and 33 of Regulation No 44/2001 to be interpreted as meaning that the term "judgment" also covers a judgment ending proceedings by which a court declines international jurisdiction on the basis of a jurisdiction clause?

3. Having regard to the case-law of the Court of Justice on the principle of extended effect (Case 145/86 *Hoffmann* [1988] ECR 645), are Articles 32 and 33 of Regulation No 44/2001 to be interpreted as meaning that each Member State is required to recognise the judgments of a court of another Member State on the effectiveness of a jurisdiction clause agreed on by the parties, where the finding as to the effectiveness of the jurisdiction clause has become final under the national law of that court – even where the decision on the point forms part of a procedural judgment dismissing the action?'

The question referred for a preliminary ruling

The first and second questions

22 By its first and second questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 32 of Regulation No 44/2001 must be interpreted as meaning that it also covers a judgment by which a court of a Member State declines jurisdiction on the basis of a jurisdiction clause, even though that judgment is classified as a 'procedural judgment' by the law of another Member State.

23 It should be noted at the outset that, in accordance with the wording of Article 32 of Regulation No 44/2001, the concept of 'judgment' covers 'any' judgment given by a court of a Member State, without any distinction being drawn according to the content of the judgment in question, which means that, in principle, that concept also comprises a judgment by which a court of a Member State declines jurisdiction on the basis of a jurisdiction clause.

24 The Court has held that Article 25 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32), the Court's interpretation of which also holds true, in principle, for the corresponding provision of Regulation No 44/2001 (see, to that effect, Case C-406/09 *Realchemie Nederland* [2011] ECR I-9773, paragraph 38), namely Article 32 of that regulation, is not limited to decisions which terminate a dispute in whole or in part, but also applies to provisional or interlocutory decisions (Case C-39/02 *Mærsk Olie & Gas* [2004] ECR I-9657, paragraph 46).

25 Moreover, according to the Court's settled case-law, the provisions of Regulation No 44/2001 must be interpreted independently, by reference to its scheme and purpose (see, to that effect, Case C-103/05 *Reisch Montage* [2006] ECR I-6827, paragraph 29; Case C-167/08 *Draka NK Cables and Others* [2009] ECR I-3477, paragraph 19; and Case C-189/08 *Zuid-Chemie* [2009] ECR I-6917, paragraph 17).

26 One of the objectives of Regulation No 44/2001, as evidenced by recital 2 in the preamble thereto, is to 'simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from [the] Member States' bound by that regulation, which also tends to support an interpretation of the concept of 'judgment' which does not take into account the categorisation under a Member State's law of a decision by a court of that Member State, be it the law of the Member State of origin or that of the Member State in which recognition is sought. An interpretation of that concept based on the particularities of each national legal order would give rise to considerable obstacles in the achievement of that objective.

27 Moreover, recital 6 in the preamble to Regulation No 44/2001 refers to 'the objective of free movement of judgments in civil and commercial matters'. That objective supports the position that the concept of 'judgment' for the purposes of Article 32 of Regulation No 44/2001 must be interpreted as encompassing judgments by which a court of a Member State declines jurisdiction on the basis of a jurisdiction clause. A failure to recognise such judgments could seriously undermine the free movement of judgments.

28 As regards the system introduced by Regulation No 44/2001, recitals 16 and 17 in the preamble thereto underline the importance of the principle of mutual trust between the courts of the Member States in the recognition and enforcement of judgments, which also implies that that concept is not to be interpreted restrictively, in order to avoid, inter alia, disputes as to what constitutes a 'judgment'.

29 That mutual trust would be undermined if a court of a Member State could refuse to recognise a judgment by which a court of another Member State declined jurisdiction on the basis of a jurisdiction clause. To allow a court of a Member State to refuse to recognise such a judgment would run counter

to the system introduced by Regulation No 44/2001, because such a refusal would be liable to compromise the effective operation of the rules set out in Chapter II of that regulation on the distribution of jurisdiction as between the courts of the Member States.

30 As observed by the Advocate General in points 49 and 50 of his Opinion, Articles 33 to 35 of Regulation No 44/2001 also militate against a restrictive interpretation of the concept of 'judgment' for the purposes of Article 32 thereof. Article 33 sets out the principle that judgments are to be recognised, whilst Articles 34 and 35 provide for exceptions to that principle, which must be interpreted restrictively. Moreover, Article 35(3) provides that the jurisdiction of the court of the Member State of origin may not be reviewed and that the test of public policy may not be applied to the rules relating to jurisdiction.

31 A restrictive interpretation of the concept of judgment would give rise to a category of judicial decisions which are not among the exhaustively-listed exceptions set out in Articles 34 and 35 of Regulation No 44/2001, which could not be categorised as 'judgments' for the purposes of Article 32 and which the courts of other Member States would accordingly not be obliged to recognise. It is clear that such a category of decisions, including in particular those by which a court in another Member State declined jurisdiction on the basis of a jurisdiction clause, would be incompatible with the system established by Articles 33 to 35 of Regulation No 44/2001, which favours the unimpeded recognition of judgments and rules out the possibility of review of the jurisdiction of the court of the Member State of origin by the courts of the Member State in which recognition is sought.

32 In the light of all the considerations set out above, the answer to the first and second questions is that Article 32 of Regulation No 44/2001 must be interpreted as meaning that it also covers a judgment by which the court of a Member State declines jurisdiction on the basis of a jurisdiction clause, irrespective of how that judgment is categorised under the law of another Member State.

The third question

33 By its third question the referring court asks, in essence, whether Articles 32 and 33 of Regulation No 44/2001 must be interpreted as meaning that the court before which recognition is sought of a judgment by which a court of another Member State has declined jurisdiction on the basis of a jurisdiction clause is bound by the finding – made in the grounds of a judgment, which has since become final, declaring the action inadmissible – regarding the validity of that clause.

34 As the Court has observed, referring to the Report of 27 September 1968 on the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, drawn up by Mr Jenard (OJ 1979 C 59, p. 1), recognition must 'have the result of conferring on judgments the authority and effectiveness accorded to them in the State in which they were given' (*Hoffmann*, paragraph 10). Accordingly, a foreign judgment which has been recognised under Article 33 of Regulation No 44/2001 must in principle have the same effects in the State in which recognition is sought as it does in the State of origin (see, to that effect, *Hoffmann*, paragraph 11).

35 Moreover, as observed in paragraph 28 above, the principle of mutual trust between courts underlies the system established by Regulation No 44/2001. As observed by the Advocate General in point 73 of his Opinion, a high degree of mutual trust is all the more necessary where the courts of the Member States are called on to apply common rules of direct jurisdiction. Thus, those rules and the rules on the recognition and enforcement of judgments in that regulation do not constitute distinct and autonomous systems but are closely linked (Case C-514/10 *Wolf Naturprodukte* [2012] ECR, paragraph 25). It is on that link that rests the simplified mechanism of recognition and enforcement set out in Article 33(1) of that regulation, under which a judgment given in a Member State is in

principle to be recognised in the other Member States and which leads, pursuant to Article 35(3) of that regulation, to there being no review of the jurisdiction of the courts of the Member State of origin (see, to that effect, Opinion 1/03 [2006] ECR I-1145, paragraph 163).

36 Article 23 of Regulation No 44/2001, relating to contractual agreements as to jurisdiction, does not apply in the main proceedings because the jurisdiction clause at issue here confers jurisdiction on the courts in the Republic of Iceland, which is not a Member State. However, as observed by the Advocate General in point 76 of his Opinion, the Lugano Convention, to which the Republic of Iceland is a party, contains in Article 23 a provision corresponding to Article 23 of that regulation. If a court of the Member State of origin, in the assessment of its own jurisdiction, has held such a jurisdiction clause to be valid, it would in principle be contrary to the principle of mutual trust between the courts of the European Union to allow a court of the Member State in which recognition is sought to review that very same issue of validity.

37 It is, moreover, apparent from Article 36 of Regulation No 44/2001 that, in accordance with the principle of mutual trust, the judgment of the court of the Member State of origin may '[u]nder no circumstances … be reviewed as to its substance'. It is stated on page 46 of the report drawn up by Mr Jenard that '[t]he absence of any review of the substance of the case implies complete confidence in the court of the State in which judgment was given; it is similarly to be assumed that that court correctly applied the [harmonised] rules of jurisdiction'.

38 To allow a court of the Member State in which recognition is sought to disregard, as devoid of effect, the jurisdiction clause which a court of the Member State of origin has held to be valid would run counter to that prohibition of a review as to the merits, particularly in circumstances where the latter might well have ruled, but for that clause, that it had jurisdiction. In the latter situation, such a finding on the part of the court of the Member State in which recognition is sought would call into question not only the intermediate finding made by the court of the Member State of origin as to the validity of the jurisdiction clause, but also the very decision of that court to decline its own jurisdiction.

39 As observed by the Advocate General in point 82 of his Opinion, the exclusion of review of the jurisdiction of the court of the Member State of origin implies, as a correlation, a restriction of the power of the court of the Member State in which recognition is sought to ascertain its own jurisdiction because the latter is bound by what was decided by the court of the Member State of origin. The requirement of the uniform application of European Union law means that the specific scope of that restriction must be defined at European Union level rather than vary according to different national rules on *res judicata*.

40 Moreover, the concept of *res judicata* under European Union law does not attach only to the operative part of the judgment in question, but also attaches to the *ratio decidendi* of that judgment, which provides the necessary underpinning for the operative part and is inseparable from it (see, inter alia, Joined Cases C-442/03 P and C-471/03 P *P & O European Ferries (Vizcaya) and Diputación Foral de Vizcaya* v *Commission* [2006] ECR I-4845, paragraph 44, and Case C-221/10 P *Artegodan* v *Commission* [2012] ECR, paragraph 87). As observed in paragraph 35 above, given that the common rules of jurisdiction applied by the courts of the Member States have their source in European Union law, more specifically in Regulation No 44/2001, and given the requirement of uniform application referred to in paragraph 39 above, the concept of *res judicata* under European Union law is relevant for determining the effects produced by a judgment by which a court of a Member State has declined jurisdiction on the basis of a jurisdiction clause.

41 Thus, a judgment by which a court of a Member State has declined jurisdiction on the basis of a jurisdiction clause, on the ground that that clause is valid, binds the courts of the other Member States both as regards that court's decision to decline jurisdiction, contained in the operative part of the judgment, and as regards the finding on the validity of that clause, contained in the *ratio decidendi* which provides the necessary underpinning for that operative part.

42 This approach is not called into question by the argument put forward by the Federal Republic of Germany, based inter alia on paragraph 66 of the judgment in Case C-420/07 *Apostolides* [2009] ECR I-3571, according to which there is no reason for granting to a judgment, when it is enforced, rights which it does not have in the Member States in question. The recognition of judgments, handed down by courts of Member States, declining jurisdiction under Regulation No 44/2001 which are delivered – as observed in paragraph 35 above – pursuant to common rules of jurisdiction provided for by European Union law, is governed by its own *sui generis* system, as described in paragraphs 39 to 41 above.

43 It follows from all the foregoing that the answer to third question is that Articles 32 and 33 of Regulation No 44/2001 must be interpreted as meaning that the court before which recognition is sought of a judgment by which a court of another Member State has declined jurisdiction on the basis of a jurisdiction clause is bound by the finding – made in the grounds of a judgment, which has since become final, declaring the action inadmissible – regarding the validity of that clause.

Costs

44 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Article 32 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it also covers a judgment by which the court of a Member State declines jurisdiction on the basis of a jurisdiction clause, irrespective of how that judgment is categorised under the law of another Member State.**

2. **Articles 32 and 33 of Regulation No 44/2001 must be interpreted as meaning that the court before which recognition is sought of a judgment by which a court of another Member State has declined jurisdiction on the basis of a jurisdiction clause is bound by the finding – made in the grounds of a judgment, which has since become final, declaring the action inadmissible – regarding the validity of that clause.**

[Signatures]