Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

27 April 2023*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 1215/2012 – Rules of jurisdiction in matters relating to insurance – Article 15(5) – Possibility of departing from those jurisdictional rules by agreement – Article 16(5) – Directive 2009/138/EC – Article 13(27) – Concept of 'large risks' – Hull insurance contract – Jurisdiction clause between the insurer and the insured – Enforceability of that clause against the insured – Pleasure craft not used for commercial purposes)

In Case C-352/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Østre Landsret (High Court of Eastern Denmark, Denmark), made by decision of 27 April 2021, received at the Court on 28 May 2021, in the proceedings

A1,

A2

v

I,

THE COURT (Sixth Chamber),

composed of T. von Danwitz, acting as President of the Sixth Chamber, A. Kumin (Rapporteur) and I. Ziemele, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the European Commission, by S. Noë, H. Tserepa-Lacombe and C. Vang, acting as Agents,

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

* Language of the case: Danish.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 15(5) and Article 16(5) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

2 The request has been made in proceedings between A1 and A2, two natural persons domiciled in Denmark, and I, an insurance company established in the Netherlands ('the insurance company I') concerning the validity of a jurisdiction clause in a hull insurance contract for a sailing boat.

Legal context

Regulation No 1215/2012

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

'(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. …

…

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

4 The rules of jurisdiction in matters relating to insurance, which are the subject of Section 3 of Chapter II of Regulation No 1215/2012, are set out in Articles 10 to 16 thereof.

5 Article 10 of that regulation is worded as follows:

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

6 Article 11(1) of that regulation provides:

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

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

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

…'

7 Article 15 of Regulation No 1215/2012 provides:

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

…

(5) which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 16.’

8 Article 16 of that regulation provides:

‘The following are the risks referred to in point 5 of Article 15:

(1) any loss of or damage to:
   (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;
   (b) goods in transit other than passengers’ baggage where the transit consists of or includes carriage by such ships or aircraft;

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

(3) any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire;

(4) any risk or interest connected with any of those referred to in points 1 to 3;

(5) notwithstanding points 1 to 4, all “large risks” as defined in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) [(OJ 2009 L 335, p. 1)].’

9 As is clear from recital 41 of Regulation No 1215/2012, in accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark annexed to the TEU and the TFEU, the Kingdom of Denmark did not participate in the adoption of that regulation and was not bound by it or subject to its application. However, under Article 3(2) of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2005 L 299, p. 62), that Member State notified the European Commission by letter of 20 December 2012 of its decision to implement the contents of that regulation, with the result that the provisions of the regulation are to be applied to the relations between the European Union and Denmark. In accordance with Article 3(6) of that agreement, the Danish notification creates mutual obligations between Denmark and the European Union (OJ 2013 L 79, p. 4).

Directive 2009/138

10 Article 13 of Directive 2009/138 provides:

'For the purpose of this Directive:

…

(27) "large risks" means:
(a) risks classified under classes 4, 5, 6, 7, 11 and 12 in Part A of Annex I;
(b) risks classified under classes 14 and 15 in Part A of Annex I, where the policy holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to such activity;
(c) risks classified under classes 3, 8, 9, 10, 13 and 16 in Part A of Annex I in so far as the policy holder exceeds the limits of at least two of the following criteria:
(i) a balance-sheet total of EUR 6.2 million;
(ii) a net turnover … of EUR 12.8 million;
(iii) an average number of 250 employees during the financial year.

…

…'

11 Class 6, entitled 'Ships (sea, lake and river and canal vessels)' in Part A of Annex I to that directive is worded as follows:

'All damage to or loss of:

– river and canal vessels,

– lake vessels,

– sea vessels.'

Council Decision 2014/887/EU

12 Recital 7 of Council Decision 2014/887/EU of 4 December 2014 on the approval, on behalf of the European Union, of the Hague Convention of 30 June 2005 on Choice of Court Agreements (OJ 2014 L 353, p. 5) states:

'The Union should, when approving the Convention [on choice of court agreements concluded on 30 June 2005 under the auspices of the Hague Conference on international private law], in addition make the declaration allowed under Article 21 excluding from the scope of the Convention insurance contracts in general, subject to certain well-defined exceptions. The objective of the declaration is to preserve the protective jurisdiction rules available to the policyholder, the insured party or a beneficiary in matters relating to insurance under [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)]. The exclusion should be limited to what is necessary to protect the interests of the weaker parties in insurance contracts. It should therefore not cover reinsurance contracts nor contracts relating to large

risks. The Union should at the same time make a unilateral declaration stating that it may, at a later stage in light of the experience acquired in the application of the Convention, reassess the need to maintain its declaration under Article 21.'

13 Under the 'Declaration by the European Union at the time of approval of the Hague Convention of 30 June 2005 on Choice of Court Agreements … in accordance with Article 21 thereof', contained in Annex I to Decision 2014/887:

'The objective of this declaration which excludes certain types of insurance contracts from the scope of the Convention is to protect certain policyholders, insured parties and beneficiaries who, according to internal EU law, receive special protection.

1. The European Union declares, in accordance with Article 21 of the Convention, that it will not apply the Convention to insurance contracts, except as provided for in paragraph 2 below.

2. The European Union will apply the Convention to insurance contracts in the following cases:

…

(d) where the choice of court agreement relates to a contract of insurance which covers one or more of the following risks considered to be large risks:
  (i) any loss or damage arising from perils which relate to their use for commercial purposes, of, or to:
    (a) seagoing ships, installations situated offshore or on the high seas or river, canal and lake vessels;

    …

…'

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

14 On 15 October 2013, A1 and A2 concluded a contract for the purchase of a second-hand sailing boat for EUR 315 000 from a dealer in Ijmuiden (Netherlands).

15 A1 and A2 also took out liability and hull insurance in respect of that sailing boat with the insurance company I. When concluding that insurance contract, which took effect on 1 November 2013, A1 and A2 stated on the insurance application form provided by that company, entitled 'Application form yacht insurance', that the sailing boat would have its home port in Denmark and that it would only be used privately and for recreation and would not be let out or chartered.

16 By virtue of a provision of the insurance conditions in the contract, the holder of the insurance policy could bring any dispute before a competent court in the Netherlands.

17 In May 2018, A1 and A2 ran aground in Finland. During the spring of the following year, they discovered damage to the keel and hull of the sailing boat. In May 2019, A1 and A2 reported the grounding to the insurance company I which, following an assessor's inspection, refused to cover the reported damage, citing the nature thereof.

18 At a later stage, A1 and A2 brought an action against that company before the Retten i Helsingør (District Court, Elsinore, Denmark) claiming that it should be ordered to cover the costs relating to the repair of the damage, which was calculated at 300 000 Danish crowns (DKK) (approximately EUR 40 300). In the context of that action, that company raised a plea of inadmissibility on the ground that, under the jurisdiction clause in the insurance contract in question, the action should have been brought before a Netherlands court.

19 By a judgment of 19 May 2020, the Retten i Helsingør (District Court, Elsinore) upheld that plea of inadmissibility.

20 A1 and A2 appealed against that judgment to the referring court, the Østre Landsret (High Court of Eastern Denmark, Denmark), requesting, primarily, that the case be referred back to the Retten i Helsingør (District Court, Elsinore) and, in the alternative, that the referring court consider the merits of the appeal, on the ground that, as a pleasure boat, the sailing boat at issue in the main proceedings is not covered by the scope of Article 16(5) of Regulation No 1215/2012 and that, consequently, A1 and A2 were fully entitled to bring their action at first instance before a Danish court.

21 More specifically, A1 and A2 argue that only damage to an insured vessel used for commercial purposes and occurring in the course of that use should be classified as 'large risks' within the meaning of that provision. The interpretation of that provision, according to which all damage suffered by any vessel, whatever its size and use, including pleasure craft used for private purposes, is considered 'large risks', would be contrary to the objectives pursued by Regulation No 1215/2012 and, in particular, the aim of protecting the weaker party in a contractual relationship.

22 The insurance company I disputes the arguments put forward by A1 and A2. According to that company, although A1 and A2 qualify as consumers, they had concluded an insurance contract with a binding jurisdiction clause under which the competent court is a Netherlands court. Such a clause is permitted under Article 15(5) of Regulation No 1215/2012, where hull insurance, such as that at issue in the main proceedings, comes within the concept of 'large risks' within the meaning of Article 16(5) of that regulation, in conjunction with Article 13(27) of Directive 2009/138.

23 In those circumstances, the Østre Landsret (High Court of Eastern Denmark) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 15(5) of … Regulation [No 1215/2012], in conjunction with Article 16(5) thereof, be interpreted as meaning that hull insurance for pleasure craft that are not used for commercial purposes falls within the exception laid down in Article 16(5) of that regulation, and is, therefore, an insurance contract which contains a choice of court agreement departing from the rule laid down in Article 11 of that regulation valid under Article 15(5) of that regulation?'

Consideration of the question referred

24 By its question, the national court asks, in essence, whether Article 15(5) of Regulation No 1215/2012, read in conjunction with Article 16(5) of that regulation, is to be interpreted as meaning that a hull insurance contract relating to a pleasure craft that is not used for commercial purposes comes within the scope of Article 15(5).

25 As a preliminary point, for the purposes of answering that question, it should be borne in mind that Section 3 of Chapter II of Regulation No 1215/2012 lays down special rules on jurisdiction in matters relating to insurance.

26 Accordingly, Article 11(1)(b) of Regulation No 1215/2012 provides that an insurer domiciled in a Member State may be sued in another Member State, in the courts for the place where the claimant is domiciled, in the case of actions brought by the policyholder, the insured or a beneficiary.

27 Nevertheless, in certain cases, Regulation No 1215/2012 makes it possible to depart from the special rules on jurisdiction in insurance matters by agreement, and in particular, pursuant to Article 15(5) of that regulation, by an agreement which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 16 of that regulation.

28 In the present case, it is common ground that, with regard to the insurance contract at issue in the main proceedings and the risks it covers, only Article 16(5) of Regulation No 1215/2012, which refers to 'large risks' within the meaning of Directive 2009/138, can be relevant.

29 It must also be recalled that, according to the settled case-law of the Court, the interpretation of a provision of EU law requires account to be taken not only of its wording, but also of its context, and the objectives and purpose pursued by the act of which it forms part. The legislative history of a provision of EU law may also reveal elements that are relevant to its interpretation (judgment of 25 June 2020, *A and Others (Wind turbines at Aalter and Nevele)*, C-24/19, EU:C:2020:503, paragraph 37 and the case-law cited).

30 Therefore, in order to ascertain whether, in the case of a hull insurance contract relating to a pleasure craft not used for commercial purposes, the rules on jurisdiction in matters of insurance laid down in Regulation No 1215/2012 may be departed from, reference must be made to the wording of Article 15(5) and Article 16(5) of Regulation No 1215/2012, to the wording of the relevant provisions of Directive 2009/138, to which Article 16(5) refers, and to the scheme of those rules, their origin and the objectives underlying them (see, to that effect, judgment of 27 February 2020, *Balta*, C-803/18, EU:C:2020:123, paragraph 32 and the case-law cited).

31 As regards a literal interpretation of the provisions in question, it follows from Article 15(5), read in conjunction with Article 16(5) of Regulation No 1215/2012, that 'all "large risks" as defined in Directive 2009/138' are among the risks referred to in Article 15(5).

32 The concept of 'large risks' is defined in Article 13(27) of that directive.

33 Accordingly, first, under Article 13(27)(a) of Directive 2009/138, the risks classified under classes 4 to 7, 11 and 12 in Part A of Annex I to that directive constitute 'large risks'.

34 Second, pursuant to Article 13(27)(b), 'large risks' include risks classified under classes 14 and 15 in Part A of Annex I, where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to such activity.

35 Third, Article 13(27)(c) applies to risks classified under classes 3, 8 to 10, 13 and 16 in Part A of Annex I in so far as the policyholder exceeds the limits of at least two of the criteria set out in paragraph 27(c).

36 In the present case, it is not in dispute that, of the classes in Part A of Annex I to Directive 2009/138 to which reference is made in Article 13(27)(a) to (c) of that directive, only class 6, which is mentioned in Article 13(27)(a), could be relevant. That class covers all damage to or loss of river and canal vessels, lake vessels and sea vessels.

37 Neither class 6 nor Article 13(27)(a) of Directive 2009/138 contains further details, in particular as regards the use of those vessels, unlike Article 13(27)(b) and (c), which contain details as to the activity pursued by the policyholder or the balance sheet, turnover or number of employees of his or her undertaking.

38 It therefore follows from a literal interpretation of Article 13(27) of Directive 2009/138 and Article 16(5) of Regulation No 1215/2012 that those provisions are capable of being interpreted as meaning that all damage to or loss of river and canal vessels, lake vessels and sea vessels, whether used for commercial or non-commercial purposes, comes within the scope of 'large risks' referred to in those provisions.

39 With regard to the context of Article 16(5) of Regulation No 1215/2012, it should be noted, first, that that provision starts with the words 'notwithstanding points 1 to 4', which leads to the conclusion that paragraphs 1 to 4 of Article 16 constitute a *lex specialis* in relation to Article 16(5) and that, consequently, in situations which paragraphs 1 to 4 are specifically intended to regulate, they are to take precedence over paragraph 5.

40 Second, Article 16(1)(a) of Regulation No 1215/2012 covers, inter alia, any loss of or damage to seagoing ships, arising from perils which relate to their use for commercial purposes.

41 However, as the Commission has correctly observed, it must be noted that, if all damage to sea vessels, irrespective of their use, were regarded as 'large risks' within the meaning of Article 16(5) of Regulation No 1215/2012, Article 16(1)(a) would be deprived of its substance regarding seagoing ships. The same would apply to paragraphs 2 to 4 of Article 16, since those paragraphs concern risks arising from the use or operation of ships under Article 16(1)(a), and risks connected with any of those referred to in Article 16(1) to (3) of that regulation.

42 Such a result would be contrary to the intention of the EU legislature to give its own particular meaning to paragraphs 1 to 4 of Article 16 of Regulation No 1215/2012.

43 The wording of Article 16 of Regulation No 1215/2012 reproduces, in essence, that of Article 14 of Regulation No 44/2001. However, paragraphs 1 to 4 of Article 14 of Regulation No 44/2001, now paragraphs 1 to 4 of Article 16 of Regulation No 1215/2012, were not included in the Commission's proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348 final), which gave rise to Regulation No 44/2001, and were only introduced into that regulation in the course of the legislative procedure, thus clarifying the concept of 'risks', referred to in Article 15(5) of Regulation No 1215/2012.

44 The observations set out in paragraphs 39 to 43 above therefore support a narrow interpretation of Article 16(5) of Regulation No 1215/2012, according to which loss of or damage to vehicles not used for commercial purposes is not covered by that provision, with the result that a hull insurance contract relating to a pleasure craft not used for commercial purposes does not fall under Article 15(5) of that regulation.

45 Other contextual considerations support that interpretation. First, derogations from the rules on jurisdiction in matters of insurance, such as that permitted by Article 15(5) of Regulation No 1215/2012, must be interpreted strictly (see, by analogy, judgment of 12 May 2005, *Société financière et industrielle du Peloux*, C-112/03, EU:C:2005:280, paragraph 31).

46 Second, the interpretation set out in paragraph 44 above ensures consistency with the application by the European Union of the Hague Convention on Choice of Court Agreements concluded on 30 June 2005.

47 In accordance with paragraph 2(d)(i)(a) of the declaration cited in paragraph 13 above, the European Union is to apply that convention to insurance contracts if the choice of court agreement concerns an insurance contract covering one or more of the risks considered to be large risks, namely, inter alia, any loss or damage to seagoing ships, arising from perils which relate to their use for commercial purposes. It follows, by contrast, that the European Union is not to apply that convention with regard to insurance contracts covering risks which relate to the non-commercial use of seagoing ships.

48 Lastly, as regards the objectives pursued by Regulation No 1215/2012, it is apparent from recital 18 of that regulation that actions in insurance matters are characterised by a certain imbalance between the parties, which the provisions of Section 3 of Chapter II of that regulation are intended to correct by giving the weaker party the benefit of rules of jurisdiction more favourable to his or her interests than the general rules (judgment of 9 December 2021, *BT (Action against the insured)*, C-708/20, EU:C:2021:986, paragraph 32 and the case-law cited).

49 Accordingly, the rules in Section 3 are designed to ensure that a weaker party who intends to bring an action against a stronger party can do so before a court of a Member State which is easily accessible (see, to that effect, judgment of 30 June 2022, *Allianz Elementar Versicherung*, C-652/20, EU:C:2022:514, paragraph 50 and the case-law cited).

50 While the parties of an insurance contract covering a ‘large risk’ may, under Article 15(5) of Regulation No 1215/2012, read in conjunction with Article 16(5) thereof, depart from the rules on jurisdiction laid down in Section 3 by agreement, such a possibility has been introduced to take account of the fact that the parties to the insurance contract are on an equal footing (see, to that effect, judgment of 27 February 2020, *Balta*, C-803/18, EU:C:2020:123, paragraph 39).

51 No special protection is justified, in particular, where the parties concerned are insurance professionals, neither of which may be presumed to be in a weaker position than the other (see, to that effect, judgment of 27 February 2020, *Balta*, C-803/18, EU:C:2020:123, paragraph 45 and the case-law cited).

52 In the present case, the situation is different as regards policyholders, such as the applicants in the main proceedings, who, not acting in a professional capacity, have concluded a hull insurance contract relating to a pleasure craft used for private and recreational purposes and not for commercial purposes.

53 In that respect, there is no need to make a case-by-case assessment of whether a person may be regarded as a ‘weaker party’. As the Court has previously pointed out, such an assessment would give rise to the risk of legal uncertainty and would be contrary to the objective of Regulation

No 1215/2012, set out in recital 15 thereof, which is that the rules of jurisdiction must be highly predictable (judgment of 27 Feburary 2020, *Balta*, C-803/18, EU:C:2020:123, paragraph 42 and the case-law cited).

54 Therefore, the interpretation set out in paragraph 44 above, according to which a hull insurance contract relating to a pleasure craft not used for commercial purposes does not fall under Article 15(5) of Regulation No 1215/2012, is consistent with the objectives pursued by that regulation since, with regard to such insurance contracts, special protection of the policyholder is justified and the predictability of the rules of jurisdiction is ensured.

55 In the light of all the foregoing considerations, the answer to the question raised is that Article 15(5) of Regulation No 1215/2012, read in conjunction with Article 16(5) thereof must be interpreted as meaning that a hull insurance contract relating to a pleasure craft not used for commercial purposes does not fall under Article 15(5) of that regulation.

Costs

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

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

Article 15(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, read in conjunction with Article 16(5) thereof,

must be interpreted as meaning that a hull insurance contract relating to a pleasure craft not used for commercial purposes does not fall under Article 15(5) of that regulation.

[Signatures]