Court of Justice EU, 11 October 2007, Freeport v Arnoldsson

LITIGATION – PRIVATE INTERNATIONAL LAW

International jurisdiction in case of connected claims; different legal bases does not preclude application

- **Article 6(1) of Regulation No 44/2001 is to be interpreted as meaning that the fact that claims brought against a number of defendants have different legal bases does not preclude application of that provision.**
- **There is no need to establish separately that the claims were not brought with the sole object of ousting the jurisdiction of the courts of the Member State where one of the defendants is domiciled.**

Article 6(1) of Regulation No 44/2001 applies where claims brought against different defendants are connected when the proceedings are instituted, that is to say, where it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings, without there being any further need to establish separately that the claims were not brought with the sole object of ousting the jurisdiction of the courts of the Member State where one of the defendants is domiciled.

Source: **curia.europa.eu**

Court of Justice EU, 11 October 2007

(A. Rosas, U. Lõhmus, J. Klucka (Rapporteur), P. Lindh and A. Arabadjiev)

JUDGMENT OF THE COURT (Third Chamber)

11 October 2007 (*)

(Regulation (EC) No 44/2001 – Article 6(1) – Special jurisdiction – More than one defendant – Legal bases of the actions – Abuse – Likelihood of success of an action brought in the courts for the place where one of the defendants is domiciled)

In Case C-98/06,

REFERENCE for a preliminary ruling under Articles 68 EC and 234 EC from the Högsta domstolen (Sweden), made by decision of 8 February 2006, received at the Court on 20 February 2006, in the proceedings

Freeport plc,

v

Olle Arnoldsson,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, U. Lõhmus, J. Klucka (Rapporteur), P. Lindh and A. Arabadjiev, Judges,

* Language of the case: Swedish.

Advocate General: P. Mengozzi,

Registrar: R. Grass,

after considering the observations submitted on behalf of:

— Freeport plc, by M. Tagaeus and C Björndal, advokater,

— Mr Arnoldsson, by A. Bengtsson, advokat,

— the Commission of the European Communities, by L. Párpala, V. Bottka and

A.-M. Rouchaud-Joët, acting as Agents,

After hearing the **Opinion of the Advocate General at the sitting on 24 May 2007**,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 6(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

2 The reference has been made in the context of proceedings between a company incorporated under English law, Freeport plc ('Freeport'), and Mr Arnoldsson, who has sued the company before a court other than that for the place where it has its head office.

Legal context

3 Recitals 2, 11, 12 and 15 in the preamble to Regulation No 44/2001 state:

'(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.*

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

(12)In addition to the defendants domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.

(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. ...'

4 Article 2(1) of the Regulation, which forms part of Chapter II, Section 1 thereof, under the heading 'General provisions', provides:

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

5 Pursuant to Article 3 of the Regulation, which also forms part of Chapter II, Section 1 thereof:

'1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.

2. In particular the rules of national jurisdiction set out in Annex I shall not be applicable as against them.'

6 Article 5 of Regulation No 44/2001, which forms part of Chapter II, Section 2, headed 'Special jurisdiction', provides that a person domiciled in a Member State may be sued in another Member State on certain conditions.

7 In addition, Article 6(1) and (2) of that regulation, which also forms part of Section 2 thereof, provides:

A person domiciled in a Member State may also be sued:

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case'.

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

8 A company with which Mr Arnoldsson worked has, since 1996, carried out, 'factory shop' retail centre development projects in various places in Europe. Freeport acquired a number of those projects from that company, in particular the most advanced of them, in Kungsbacka (Sweden).

9 At a meeting on 11 August 1999 between Mr Arnoldsson and the managing director of Freeport, an oral agreement was concluded between them that the former would personally receive a GBP 500 000 success fee when the Kungsbacka factory shop opened.

10 By a written undertaking of 27 August 1999, Freeport confirmed that oral agreement but added three conditions to payment of the fee. Mr Arnoldsson accepted those conditions, one of which provided for the payment which he would receive to be made by the company which was to become the owner of the Kungsbacka site. After fresh negotiations, on 13 September 1999 Freeport sent Mr Arnoldsson written confirmation of the agreement concluded with him ('the agreement').

11 Inaugurated on 15 November 2001, the Kungsbacka factory shop is owned by a company incorporated under Swedish law, Freeport Leisure (Sweden) AB (Freeport AB'), which manages it. The company is held by one of Freeport's subsidiaries, of which Freeport AB is a wholly owned subsidiary.

12 Mr Arnoldsson has asked both Freeport AB and Freeport to pay the fee on which he agreed with Freeport. Freeport AB refused the request on the ground that it is not a party to the agreement and that, furthermore, it did not exist when the agreement was concluded.

13 Since he had still not received payment, on 5 February 2003 Mr Arnoldsson brought an action before the Göteborgs tingsrätt (Göteborg District Court) seeking an order against both companies jointly to pay him the sum of GBP 500 000 or its equivalent in Swedish currency, together with interest.

14 To establish that that court had jurisdiction with regard to Freeport, Mr Arnoldsson based his action on Article 6(1) of Regulation No 44/2001.

15 Freeport pleaded that it was not established in Sweden and that the claims were not so closely connected as to confer jurisdiction on the Göteborgs tingsrätt pursuant to that provision. In that regard, Freeport maintained that the action against it had a contractual basis, whereas the action against Freeport AB was based in tort, delict or quasi-delict, since there was no contractual relationship between Mr Arnoldsson and that company. The difference in the legal bases of the actions against Freeport AB and Freeport was such as to exclude application of Article 6(1) of Regulation No 44/2001, since it could not be shown that the two actions were connected.

16 The plea of inadmissibility was rejected by the Göteborgs tingsrätt.

17 Freeport appealed before the Hovrätten för Västra Sverige (Western Sweden Court of Appeal), which dismissed its appeal.

18 The company then took the case to the Högsta domstolen (Supreme Court), which points out, in its decision for reference, that the Court of Justice held **in Case 189/87 Kalfelis [1988] ECR 5565** that a court which has jurisdiction under Article 5(3) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36; 'the Brussels Convention') over an action in so far as it is based on tort or delict does not have jurisdiction over that action in so far as it is not so based. According to the national court, the Court of Justice concluded therefrom, in **Case C-51/97 Réunion Européenne and Others [1998] ECR I-6511, paragraph 50**, that two claims in one action for compensation, directed against different defendants and based in one instance on contractual liability and in the other on liability in tort or delict cannot be regarded as connected. Thus, the national court wishes to ascertain whether the claim against Freeport AB is contractual in nature despite the fact that the undertaking was not given by either the company's legal representative or its agent.

19 Furthermore, that court points out that, **in paragraphs 8 and 9 of the judgments in Kalfelis**, the Court held that the exception laid down in Article 6(1) of the Brussels Convention, derogating from the principle that the courts of the State of domicile of the defendant have jurisdiction, must be interpreted in such a

way that it cannot call into question the very existence of that principle, inter alia by allowing the plaintiff to make a claim against a number of defendants with the sole object of ousting the jurisdiction of the courts of the State where one of the defendants is domiciled. However, the national court observes that, although Article 6(2) of Regulation No 44/2001 expressly envisages such a situation, that is not true of Article 6(1). It asks how Article 6(1) should be interpreted in that regard.

20 In addition, the national court has doubts as to whether the question of the probability of the action brought against the defendant before the courts of the Member State where he is domiciled succeeding must be assessed differently when examining the question of the likelihood of irreconcilable judgments referred to in Article 6(1) of Regulation No 44/2001. Before that court, Freeport submitted that there was no likelihood of irreconcilable judgments. In its view, under Swedish law agreements cannot require a third party, in the present case Freeport AB, to make a payment Freeport concluded therefrom that the action brought against Freeport AB was devoid of legal basis and was brought solely for the purpose of suing Freeport before a Swedish court.

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

'*(1) Is an action based on an alleged obligation on the part of a joint-stock company to make a payment as a consequence of an undertaking given to be regarded as being based on contract for the application of Article 6(1) of ... Regulation [No 44/2001], even though the party which gave the undertaking was neither a representative nor an agent of the company at the relevant time?*

(2) If the answer to the first question is in the affirmative: is it a precondition for jurisdiction under Article 6(1), in addition to the conditions expressly laid down therein, that the action against a defendant before the courts of the State where he is domiciled was not brought solely in order to have a claim against another defendant heard by a court other than that which would otherwise have had jurisdiction to hear the case?

(3) If the answer to the second question is in the negative: should the likelihood of success of an action against a party before the courts of the State where he is domiciled otherwise be taken into account in the determination of whether there is a risk of irreconcilable judgments for the purposes of Article 6(1)?'

The questions referred for a preliminary ruling

The first question

22 By its first question, the national court asks whether an action based on an alleged obligation on the part of a joint-stock company to make a payment, as a consequence of an undertaking given, is contractual in nature as regards application of Article 6(1) of Regulation No 44/2001, even though the party which gave the undertaking was neither a representative nor an agent of the company.

Observations submitted to the Court

23 Both the parties to the main proceedings and the Commission of the European Communities note that the expression 'matters relating to contract' is not to be understood as covering a situation in which there is no obligation freely assumed by one party towards another. In that regard, they refer to the case-law of the Court relating to Article 5(1) of the Brussels Convention, the provisions of which are essentially identical to those of Regulation No 44/2001 (see, inter alia, **Case C-26/91 Handte [1992] ECR I-3967, paragraph 15; Réunion Européenne and Others, paragraph 17; and C-334/00 Tacconi [2002] ECR I-7357, paragraph 23**).

24 On the basis of that observation, Freeport pleads that there was no contractual relationship between Freeport AB and Mr Arnoldsson, the former having given no undertaking to the latter. It submits that no legal representative or agent of Freeport AB gave any undertaking to him and nor did the company ratify the agreement for payment of the sum due.

25 Mr Arnoldsson agrees that, at the date of conclusion of the agreement, no company owned the Kungsbacka factory shop, which was not yet open. He states that on that date there could have been no legal representative or agent in a position to represent Freeport AB. However, he submits, firstly, that Freeport concluded the agreement both on its own account and for the company which would own that shop in the future and, secondly, that under such an agreement Freeport gave instructions to the future company, that is to say Freeport AB, to pay Mr Arnoldsson the sum due. Furthermore, by joining the Freeport group, Freeport AB accepted its obligation to make the payment.

26 Accordingly, Mr Arnoldsson takes the view that the obligation set out in the agreement, freely accepted by Freeport AB, is not, it is true, non-contractual in nature but, nevertheless, forms part of a contractual relationship. Thus he pleads that, for the purposes of application of Article 6(1) of Regulation No 44/2001, the action brought against both Freeport AB and Freeport is an action to establish contractual liability.

27 The Commission takes the view that it is for the national court to examine the legal relationship between Freeport AB and Mr Arnoldsson in order to determine whether it may be regarded as contractual. That court could have regard to all the factual and legal circumstances of the case in the main proceedings in order to establish whether Freeport was, when the agreement was concluded, the legal representative or agent of Freeport AB.

28 However, the Commission takes the view that the first question referred is not relevant to an interpretation of Article 6(1) of Regulation No 44/2001, so that an answer to that question is redundant.

29 In its view, the first question seeks to ascertain whether Article 6(1) of Regulation No 44/2001 may be interpreted in the light of the considerations in paragraph 50 **of the judgment in Réunion Européenne and Others**. The factual and legal context of the dispute in the main proceedings is completely different from of that of that judgment. Unlike the latter case, where the main proceedings had been brought before a

court of a Member State in which none of the defendants was domiciled, the dispute in the main proceedings concerns the application of Article 6(1) of Regulation No 44/2001, since Mr Arnoldsson brought his action before a Swedish court in whose jurisdiction Freeport AB has its head office. According to the Commission, **paragraph 50 of the judgment in Réunion Européenne and Others** constitutes merely a reminder of the general rule that an exception to the principle of jurisdiction based on the defendants domicile must be interpreted strictly.

30 In the event that the Court should consider it necessary to answer the first question referred, the Commission submits that the difference between a claim based on contract and a claim based on tort or delict does not exclude application of Article 6(1) of Regulation No 44/2001, but may be taken into consideration by the national court in the context of its assessment of the condition that there be a degree of connection between the claims that justifies their being heard and determined together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Answer of the Court

31 It is established case-law that, in the procedure laid down by Article 234 EC providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to determine the case before it. To that end the Court of Justice may have to reformulate the questions referred to it (Case C-210/04 FCE Bank [2006] ECR I-2803, paragraph 21, and the case-law cited).

32 The national court asks whether an action such as that brought by Mr Arnoldsson against Freeport AB is contractual in nature, since that court takes as its premise that Article 6(1) of Regulation No 44/2001 applies only where actions brought against different defendants before the courts for the place where any one of them is domiciled have identical legal bases.

33 Consequently, it is appropriate to consider whether that premise is in accordance with Regulation No 44/2001 by examining, essentially, whether Article 6(1) of that regulation applies where actions brought against a number of defendants before the courts for the place where any one of them is domiciled have different legal bases.

34 In that regard, the jurisdiction provided for in Article 2 of Regulation No 44/2001, namely that the courts of the Member State in which the defendant is domiciled are to have jurisdiction, constitutes the general principle and it is only by way of derogation from that principle that that regulation provides for special rules of jurisdiction for cases, which are exhaustively listed, in which the defendant may or must, depending on the case, be sued in the courts of another Member State (see, Case C-103/05 Reisch Montage [2006] ECR I-6827, paragraph 22, and the case-law cited).

35 Moreover, it is settled case-law that those special rules on jurisdiction must be strictly interpreted and cannot be given an interpretation going beyond the cases expressly envisaged by Regulation No 44/2001 (Reisch Montage, paragraph 23, and the case-law cited).

36 As stated in recital 11 in the preamble to Regulation No 44/2001, the rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendants domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor.

37 With regard to the special jurisdiction laid down in Article 6(1) of Regulation No 44/2001, that provision states that a defendant may be sued, where there are a number of defendants, in the courts for the place where any one of them is domiciled, provided 'the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings'.

38 It is not apparent from the wording of Article 6(1) of Regulation No 44/2001 that the conditions laid down for application of that provision include a requirement that the actions brought against different defendants should have identical legal bases.

39 As the Court has already held, for Article 6(1) of the Brussels Convention to apply, it must be ascertained whether, between various claims brought by the same plaintiff against different defendants, there is a connection of such a kind that it is expedient to determine those actions together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings (**Kalfelis, paragraph 13**).

40 The Court has had occasion to point out that, in order that decisions may be regarded as contradictory, it is not sufficient that there be a divergence in the outcome of the dispute, but that divergence must also arise in the context of the same situation of law and fact **(Case C-539/03 Roche Nederland and Others [2006] ECR I-6535, paragraph 26).**

41 It is for the national court to assess whether there is a connection between the different claims brought before it, that is to say, a risk of irreconcilable judgments if those claims were determined separately and, in that regard, to take account of all the necessary factors in the case-file, which may, if appropriate yet without its being necessary for the assessment, lead it to take into consideration the legal bases of the actions brought before that court

42 That interpretation cannot be called into question by **paragraph 50 of the judgment in Réunion Européenne and Others.**

43 As the Commission has rightly pointed out, **that judgment** has a factual and legal context different from that of the dispute in the present main proceedings. Firstly, it was the application of Article 5(1) and (3) of the Brussels Convention which was at issue in that judgment and not that of Article 6(1) of the Convention.

44 Secondly, **that judgment**, unlike the present case, concerned overlapping special jurisdiction based on Article 5(3) of the Brussels Convention to hear an action in tort or delict and special jurisdiction to hear an

action based in contract, on the ground that there was a connection between the two actions. In other words, **the judgment in Réunion Européenne and Others** relates to an action brought before a court in a Member State where none of the defendants to the main proceedings was domiciled, whereas in the present case the action was brought, in application of Article 6(1) of Regulation No 44/2001, before the court for the place where one of the defendants in the main proceedings has its head office.

45 It was in the context of Article 5(3) of the Brussels Convention that the Court of Justice was able to conclude that two claims in one action, directed against different defendants and based in one instance on contractual liability and in the other on liability in tort or delict cannot be regarded as connected (**Réunion Européenne and Others, paragraph 50**).

46 To accept that jurisdiction based on Article 5 of Regulation No 44/2001, which constitutes special jurisdiction limited to an exhaustive list of cases, could serve as the basis on which to hear other actions would undermine the scheme of the Regulation. Conversely, where a courts jurisdiction is based on Article 2 of that regulation, as is the case in the main proceedings, application of Article 6(1) of the Regulation becomes possible if the conditions set out in that provision and referred to in paragraphs 39 and 40 of this judgment are met, without there being any need for the actions brought to have identical legal bases.

47 Having regard to the foregoing considerations, the answer to the first question must be that Article 6(1) of Regulation No 44/2001 is to be interpreted as meaning that the fact that claims brought against a number of defendants have different legal bases does not preclude application of that provision.

The second question

48 By its second question, the national court asks essentially whether application of Article 6(1) of Regulation No 44/2001 presupposes that the action was not brought against a number of defendants with the sole object of ousting the jurisdiction of the courts of the Member State where one of the defendants is domiciled.

Observations submitted to the Court

49 Mr Arnoldsson and the Commission are of the opinion that the special jurisdiction laid down in Article 6(1) of Regulation No 44/2001, unlike that laid down in Article 6(2), is not subject to the condition that the action must not have been brought for the sole purpose of ousting the jurisdiction of the courts for the place where one of the defendants is domiciled. They consider, essentially, that the condition referred to in Article 6(1) of Regulation No 44/2001 concerning the existence of a connection between the claims is sufficiently strict to avoid the risk of misuse of the rules on jurisdiction.

50 However, Freeport takes the view that that risk justifies application of Article 6(1) of Regulation No 44/2001 being subject to the same condition as that set out in Article 6(2). Firstly, the latter condition, prohibiting misuse of the rules on jurisdiction laid down by that regulation, is a general principle which must also be observed in the application of Article 6(1) of the Regulation. Secondly, application of such a condition is justified, inter alia, by the principle of legal certainty and by the requirement that the principle that a defendant may be sued only before the courts for the place where he is domiciled should not be undermined.

Answer of the Court

51 As the national court rightly pointed out, Article 6(1) of Regulation No 44/2001, unlike Article 6(2), does not expressly make provision for a case in which an action is brought solely in order to remove the party sued from the jurisdiction of the court which would be competent in his case. The Commission stated on that point that, when amending the Brussels Convention, the Member States had refused to include the proviso contained in Article 6(2) in Article 6(1), taking the view that the general condition that the claims be connected was more objective.

52 It should be recalled that, after mentioning the possibility that a plaintiff could bring a claim against a number of defendants with the sole object of ousting the jurisdiction of the courts of the Member State where one of the defendants was domiciled, the Court ruled, in **Kalfelis**, that it was necessary, in order to exclude such a possibility, for there to be a connection between the claims brought against each of the defendants. It held that the rule laid down in Article 6(1) of the Brussels Convention applies where claims brought against different defendants are connected when the proceedings are instituted, that is to say, where it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

53 Thus, that requirement of a connection did not derive from the wording of Article 6(1) of the Brussels Convention but was inferred from that provision by the Court in order to prevent the exception to the principle that jurisdiction is vested in the courts of the State of the defendants domicile laid down in Article 6(1) from calling into question the very existence of that principle (**Kalfelis, paragraph 8).** That requirement, subsequently confirmed by **the judgment in Réunion Européenne and Others, paragraph 48**, was expressly enshrined in the drafting of Article 6(1) of Regulation No 44/2001, the successor to the Brussels Convention **(Roche Nederland and Others, paragraph 21).**

54 In those circumstances, the answer to the question referred must be that Article 6(1) of Regulation No 44/2001 applies where claims brought against different defendants are connected when the proceedings are instituted, that is to say, where it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings, without there being any further need to establish separately that the claims were not brought with the sole object of ousting the jurisdiction of the courts of the Member State where one of the defendants is domiciled.

The third question

55 By its third question, the national court asks essentially whether the likelihood of success of an action against a party before the courts of the State where he is domiciled is relevant in the determination of whether there is a risk of irreconcilable judgments for the purposes of Article 6(1).
56 However, it is apparent from the account given by the national court that the question was referred on the premise that, for there to be connection between a number of claims, those claims should have the same legal basis. Such was the context in which Freeport submitted that there was no risk of irreconcilable judgments since, under Swedish law, agreements cannot oblige a third party to make a payment and, consequently, the action brought against Freeport AB was devoid of legal basis.
57 As has been stated in answer to the first question, Article 6(1) of Regulation No 44/2001 may apply where actions brought against different defendants have different legal bases.
58 In view of that answer, there is no need to give a reply to the third question.
Costs
59 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 6(1) 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 is to be interpreted as meaning that the fact that claims brought against a number of defendants have different legal bases does not preclude application of that provision.
2. Article 6(1) of Regulation No 44/2001 applies where claims brought against different defendants are connected when the proceedings are instituted, that is to say, where it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings, without there being any further need to establish separately that the claims were not brought with the sole object of ousting the jurisdiction of the courts of the Member State where one of the defendants is domiciled.

OPINION OF ADVOCATE GENERAL MENGOZZI
delivered on 24 May 2007 (1)
1. By the present reference for a preliminary ruling, the Högsta domstolen (Court of Cassation), Sweden, submits to the Court of Justice a series of questions concerning the interpretation of Article 6(1) 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 ('Regulation No 44/2001' or 'the regulation'). (2)
2. Those questions have been raised in the context of proceedings in which the Högsta domstolen has to determine whether the tingsrätt (Court of First Instance), Göteborg, has jurisdiction to hear the action brought before it by Olle Arnoldsson against Freeport Leisure plc (Treeport plc'), a company established under British law.
I — The legislative background
3. As we know, in extending the powers of the Community in the held of judicial cooperation in civil matters, the Treaty of Amsterdam provided a specific legal basis which was used for the 'Communitarisation' of the Brussels Convention of 27 September 1968 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('the Brussels Convention').
4. Adopted on the bases of Articles 61(c) and 67(1) EC, Regulation No 44/2001 ('Brussels I') establishes, in a spirit of continuity with the Brussels Convention, (3) the new Community rules on civil and commercial jurisdiction in disputes which have cross-border implications and on the movement of judgments taken in relation to those disputes. (4)
5. Chapter II of Regulation No 44/2001 lays down the Community rules on the attribution of jurisdiction. Section 1 of that Chapter is entitled 'General provisions' and consists of Articles 2 to 4 which define the persons covered by those rules.
6. According to Article 2(1):
'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'
7. According to Article 3(1):
'Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.'
8. Section 2 of Chapter II of Regulation No 44/2001, entitled 'Special jurisdiction', consists of Articles 5 to 7. For the purposes of this case, it is, in particular, necessary to call to mind some of the provisions of Articles 5 and 6, according to which a person domiciled in a Member State may, at the claimant's discretion, be sued before courts other than the general court of the defendant's domicile, if the dispute has specific links with such courts.
9. According to Article 5:
'A person domiciled in a Member State may, in another Member State, be sued:
1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
[…..]
3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;
[…..]".
10. According to Article 6:
Á person domiciled in a Member State may also be sued:
(1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that

it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;
(2) as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
[…..]".

II — The dispute in the main proceedings and the questions referred

11. The facts which gave rise to the dispute in the main proceedings, as they emerge from the order for reference and the casefile, may be summarised as follows.
12. Mr Arnoldsson, the respondent in the main proceedings, worked with Villages des Marques S.A. ('Villages des Marques'), a company which has been involved, since 1996, in identifying suitable locations in Europe in which to set up what are known as factory outlets and that in developing projects relating them.
13. Some of those projects and, in particular, the project concerning the Swedish site of Kungsbacka, were transferred to Freeport plc, a company with its registered office in the United Kingdom, in return for the payment of a percentage of the added value based on the difference between the market value of each site and the costs of developing the relevant project According to the documents annexed to the observations which Mr Arnoldsson has submitted to the Court, on 15 September 1999 Freeport plc and Trading Places Ltd, the parent company of Villages des Marques, concluded an agreement concerning, inter alia, the Kungsbacka site, in the form of a joint venture agreement. (5)
14. On 11 August 1999, in the context of negotiations concerning the transfer of the Kungsbacka site, the representative of Freeport plc and Mr Arnoldsson entered into an oral agreement under which Freeport plc undertook to pay Mr Arnoldsson GBP 500 000 as a success fee' ('the agreement') when the Kungsbacka facility opened. Freeport plc confirmed that agreement by fax of 13 September 1999, stating, among other things, that the payment would be made by the site-owning company.
15. The Kungsbacka facility was officially opened on 15 November 2001. It is owned by Freeport Leisure (Sweden) AB ('Freeport AB'), which is a wholly-owned subsidiary of Freeport plc, through its own — similarly wholly-owned — subsidiary Freeport Leisure (Netherlands) BV. Registered in Sweden under a different name on 13 September 1999, Freeport AB was acquired by the Freeport Group in spring 2000.
16. After the facility opened, Mr Arnoldsson requested payment of the commission under the agreement from Freeport AB and Freeport pic. No payment was made and, as a result, on 5 February 2003, Mr Arnoldsson brought a claim for payment against both companies before the tingsrätt, Göteborg, within whose jurisdiction the registered office of Freeport AB was located, claiming that they should be jointly and severally ordered to pay him the sum of GBP 500 000, or the equivalent sum in Swedish Kroner, plus interest.
17. Mr Arnoldsson relied on Article 6(1) of Regulation No 44/2001 to establish the jurisdiction of the tingsrätt, Göteborg, in relation to Freeport plc.
18. Freeport plc objected, first and foremost, that the Swedish court in question lacked jurisdiction and disputed whether the provision relied on by the claimant was applicable to the case.
19. In particular, according to the account which the national court has provided, Freeport plc maintained that the claim against it had a contractual basis, whereas the claim against Freeport AB could only be based on alleged liability in tort or delict, since not only was Freeport AB not a party to the agreement, the company did not even exist at the time when the agreement was concluded. According to Freeport plc, the claim against Freeport AB is entirely without foundation because, in Swedish law, a contract cannot give rise to obligations binding a third party. Consequently, there was no risk of irreconcilable judgments being handed down if the claim against Freeport plc and the claim against Freeport AB were heard by two different courts. The claim against Freeport AB had, therefore, been brought with the sole object of suing Freeport plc before a Swedish court.
20. Mr Arnoldsson replied that the claims brought against the two companies had the same contractual basis. According to Mr Arnoldsson, at the time when the agreement was entered into, the representatives of Freeport plc were acting on behalf of both Freeport plc and Freeport AB which, on becoming part of the Freeport group, had accepted the payment arrangement which Freeport plc had passed on to it on the basis of the agreement. According to Mr Arnoldsson, there was, consequently, at least a quasicontractual relationship between himself and Freeport AB.
21. The tingsrätt, Göteborg, dismissed the objection of lack of jurisdiction which Freeport plc had raised. The latter then appealed against that decision to the hovrätten för Västra Sverige (Court of Appeal for Western Sweden), which upheld it.
22. Freeport plc therefore referred the matter to the Högsta domstolen which took the view that, in order to resolve the dispute, it was necessary to refer the following questions to the Court for a preliminary ruling:
"1) Is an action based on an alleged obligation on the part of a joint-stock company to make a payment as a consequence of an undertaking given to be regarded as being based on contract for the application of Article 6(1) of... Regulation [No 44/2001], even though the party which gave the undertaking was neither a representative nor an agent of the company at the relevant time?
(2) If the answer to the first question is in the affirmative: is it a precondition for jurisdiction under Article 6(1), in addition to the conditions expressly laid down therein, that the action against a defendant before the courts of the State where he is domiciled was not brought solely in order to have a claim against another

defendant heard by a court other than that which would otherwise have had jurisdiction to hear the case?
(3) If the answer to the second question is in the negative: should the likelihood of success of an action against a party before the courts of the State where he is domiciled otherwise be taken into account in the determination of whether there is a risk of irreconcilable judgments for the purposes of Article 6(1)?"

III — Procedure before the Court

23. Pursuant to Article 23 of the Statute of the Court of Justice, Mr Arnoldsson, Freeport plc and the Commission submitted written observations to the Court.

IV — Analysis

A — The first question referred

24. By its first question, the national court is in essence asking the Court to clarify whether, in the light of the circumstances described in the order for reference, Mr Anderssons claim against Freeport AB has a contractual basis.
25. It is clear from the information which the order for reference contains that this question has arisen because the Högsta domstolen considers that, in order for Article 6(1) of Regulation No 44/2001 to apply, the claim brought against the defendant domiciled in the Member State of the court seised and the claim against the defendant domiciled outside that State must share the same basis. It is also clear from the order for reference that the national court bases that view on a reading of the Courts judgment in Réunion européenne and Others. (6)
26. Before I set out the reasons why I consider that the Högsta domstolen is relying on an incorrect interpretation of the abovementioned judgment, it is necessary to call to mind the rules governing connected claims under Article 6(1) of Regulation No 44/2001, as those rules emerge, in particular, from the clarification which the Courts caselaw provides.
27. As we know, the current wording of that article derives from the Courts interpretation of the corresponding provision of the Brussels Convention in its judgment in Kalfelis, (7) an interpretation which the Community legislature adopted when the provisions of the Brussels Convention were incorporated into Regulation No 44/2001.
28. In that judgment, the Court laid down as a condition for the application of Article 6(1) of the Brussels Convention that 'there must be a connection between the claims made against each of the defendants.' (8) When subsequently analysing the type of connection required, the Court first pointed out that Article 6(1) had the same purpose as Article 22 of the Convention in regard to situations in which related actions were brought before the courts of different contracting States, (9) and then went on to explain that Article 6(1) applies "where the actions brought against the various defendants are related when the proceedings are instituted, that is to say where it is expedient to hear and determine them together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings." (10) The Court also made clear that '[i]t is for the national court to verify in each individual case whether that condition is satisfied.' (11)
29. On the basis of Article 6(1) of Regulation No 44/2001, therefore, a number of defendants domiciled in various Member States may be jointly sued before the courts of the domicile of one of them, provided that the claims directed against them are appropriately and sufficiently connected. That a connection of that nature exists must be clear at the time when the proceedings are instituted (12) and must be assessed in the light of the need for a common decision in order to avoid judgments which may prove to be irreconcilable.
30. That connection exists, above all, where the claims against a number of individuals are so closely linked that they must be brought before the same court, as the subsequent judgment can be delivered only in relation to all of the parties involved. The provision at issue does not, however, necessarily require a similar degree of linkage; (13) it is sufficient that there should be a connection capable of establishing an interest that the claims be heard together to avert the risk of irreconcilable judgments. Consequently, situations in which the claims are connected in terms of the subject-matter or the basis of the claim are also caught by Article 6(1).
31. I should point out that, since neither Regulation No 44/2001 nor the Community courts when interpreting the regulation itself or the provisions of the Convention which preceded it, have provided a comprehensive definition of those situations in which Article 6(1) may apply, it is for national procedural law to incorporate the rules for which Article 6(1) provides. In other words and as, moreover, already stated in the abovementioned judgment in Kalfelis, (14) in the absence of Community rules, it is for the court seised of the case to assess, on the basis of its procedural law, whether it is necessary to concentrate jurisdiction in one court where there are a number of defendants.
32. Having made those preliminary points, I shall now consider the relevance, for the purposes of resolving the dispute pending before the Högsta domstolen, of that courts reference to the abovementioned judgment in Réunion européenne and Others. (15)
33. In that judgment, the Court handed down a preliminary ruling on a series of questions which had been submitted by the French Cour de Cassation and concerned the interpretation of Article 5(1) and (3) and Article 6(1) of the Brussels Convention. Those questions had been raised in the context of a dispute between a number of insurance companies — which had been subrogated to the rights of a French company that was the recipient of goods which had proved to be damaged on arrival, after being carried by sea and by land from Melbourne to Rungis — and the carrier under the contract, with its registered office in Sidney, the Dutch owner of the vessel that had made the sea voyage from Melbourne to Rotterdam and the Master of the vessel, who was domiciled in the Netherlands. The Tribunal de Commerce, Créteuil, in whose jurisdiction Rungis — the place where the goods were delivered — is situated, declared itself competent to hear the insurers' claim against the Australian carrier only, but de-

clined jurisdiction in regard to the other defendants in favour of the courts of Rotterdam, the place of performance of the Dutch ship-owner s obligation, or of Amsterdam in which the latter had its registered office or, indeed Sidney. Before the Cour de Cassation — which was seised of the case after the Cour d'appel, Paris, had upheld the judgment of the Tribunal de commerce, Créteuil — the insurers' main argument was that since no contractual relationship had been established between the recipient of the goods, on the one hand, and the ship owner and the Master of the vessel, on the other, the courts ruling on the merits ought to have applied the connecting factors which Article 5(3) of the Brussels Convention lays down in relation to liability in tort or delict, and not Article 5(1) which relates solely to matters of contract. In the alternative, the claimant companies pointed out that the claims directed against the various defendants related to the same transport operation and that the dispute was, therefore, indivisible.

34. The first three questions referred concerned the interpretation of Article 5(1) and (3) of the Brussels Convention. By those questions, the Court of Justice was, in essence, asked to rule on whether or not the claims the insurers were making against the Dutch ship-owner and the Master of the vessel were matters relating to a contract, as well as to provide an interpretation of the phrase 'place where the harmful event occurred', within the meaning of Article 5(3).

35. By its fourth question, however, the Cour de Cassation asked the Court whether a defendant domiciled in the territory of a Contracting State [may] be brought, in another Contracting State, before the court hearing an action against a co-defendant not domiciled in the territory of any Contracting State, on the ground that the dispute is indivisible, rather than merely displaying a connection.' (16)

36. In its answer to that question, the Court first ruled out that the conditions governing the applicability of Article 22 of the Brussels Convention were satisfied in the case in point, (17) and then drew attention to the wording of Article 6(1) thereof, stating that the condition governing the applicability of Article 6(1), is that 'it applies only if the proceedings in question are brought before the courts of the place where one of the defendants is domiciled,' (18) a condition that was not met in that case. (19)

37. Although that finding was of itself sufficient to preclude reliance on Article on 6(1) of the Brussels Convention in the main proceedings and to answer the national courts question, the Court continued with its line of reasoning and referred to the clarification which the abovementioned Kalfelis judgment (20) provides concerning the conditions under which Article 6(1) applies, (21) as well as the passage in that judgment according to which a court which has jurisdiction under Article 5(3) of the Convention over an action in so far as it is based on tort or delict does not have jurisdiction over that action in so far as it is not so based. (22) At paragraph 50 of the grounds, which the Högsta domstolen cites in the order for reference, the Court concluded that '[i]t follows that two claims in one action for compensation, directed against different defendants and based in one instance on contractual liability and in the other on liability in tort or delict cannot be regarded as connected.' (23)

38. Although it is possible to interpret the latter statement as meaning that the Court intended making the application of Article 6(1) of the Brussels Convention subject to a further condition, as compared with the position it had taken in Kalfelis — and that, in fact, is how it has been construed by the courts of some Contracting States — I consider that its scope should be reassessed in its proper context.

39. In actual fact, if we consider paragraphs 49 and 50 of that judgment in their logical context, it appears that they should instead be interpreted as confirming what the Court had already stated at paragraph 44, that is to say that, within the scheme of the Convention, the element of connection may act as a criterion for conferring jurisdiction solely in favour of the courts of the place of the defendants domicile. In particular, it seems to me that, in those passages, the Court intended explicitly to confirm that, for the purposes of hearing disputes involving several co-defendants together, the jurisdiction of courts other than those of the place of defendants domicile is irrelevant, by precluding the possibility that such jurisdiction could permit several related claims to be heard together, if that jurisdiction was justified in relation to one of those claims only.

40. A similar construction must be placed on the reference to the paragraph in the Kalfelis judgment in which the Court stated that the court which has jurisdiction under Article 5(3) may not be seised of matters other than matters relating to tort and delict, even if those matters are raised in the context of the same claim. In point of fact, it follows that if a court has been seised of two connected claims which have been brought against different defendants, and the first is based on delict and the second on contract, it may not order that the two claims be heard together because they are connected if it has jurisdiction on the basis of Article 5(3) 24 of the Convention to hear the first claim, but its own jurisdiction in relation to the second claim is not independently established (in a situation, for example, where the place of performance of the contractual obligation and the place in which the harmful event occurred are the same, or pursuant to the general criterion of the court of the defendants domicile). In those circumstances — namely where there is no link with the domicile of one of the co-defendants — the connection between the two claims is not, in fact, capable of acting as a criterion conferring jurisdiction, nor can jurisdiction be established on the basis that the jurisdiction pursuant to Article 5(3) exerts a power of attraction', case-law having expressly ruled out that possibility.

41. If that is the interpretation to be given to paragraphs 49 and 50 of the judgment in Réunion européenne, then, contrary to the view which the national court takes, that judgment does not preclude the applicability of Article 6(1) of the Brussels Convention in actions involving both contractual and noncontractual liability, provided that bringing the relevant proceedings togeth-

er has the effect of conferring jurisdiction on the courts of the domicile of one of the co-defendants.
42. The interpretation of paragraphs 49 and 50 of the judgment in Réunion européenne which I have suggested above, and which the Commission broadly shares, appears to be consistent with the approach which the Court had already taken in Kalfelis and, more generally, with the scheme of the Brussels Convention (now Regulation No 44/2001).
43. On the one hand, it continues the approach adopted in the judgment in Kalfelis, on the basis of which the existence of a connection between the claims, as set out in that judgment, constitutes the only objective requirement for the application of Article 6(1), whereas the interpretation which the national court is suggesting basically implies introducing a further requirement to the effect that the actions relating to the various defendants must have the same basis.
44. On the other hand, that interpretation is not incompatible with the objectives pursued by the scheme of, first, the Brussels Convention and, then, Regulation No 44/2001, which include achieving a balance between the sound administration of justice and the need to enhance the legal protection which the courts afford individuals within the European judicial area, whereas a different interpretation of that judgment, such as the interpretation which the national court suggests, risks unduly restricting the scope of Article 6(1), thus undermining the aims of procedural economy, without that being justified by the need to protect the pivotal position of the defendant's place of domicile as the general criterion for conferring jurisdiction or to ensure predictability in the establishment of jurisdiction.
45. In the light of the above considerations, it is my view that the first question submitted by the national court derives from an incorrect interpretation of the Courts caselaw and is not relevant for the purposes of resolving the dispute forming the subjectmatter of the main proceedings. If, in fact, Article 6(1) of Regulation No 44/2001 also applies in situations which involve both contractual and non-contractual liability, the solution to the dispute before the Högsta domstolen does not require that it first be established whether or not the claim underlying the Mr Anderssons action against Freeport AB is of a contractual nature.
46. I shall therefore move on to consider the second and third questions which the Högsta domstolen has submitted.

B — The second and third questions

47. By its second and third questions, which I consider it appropriate to examine together, the national court is in essence asking the Court, on the one hand, whether Article 6(1) of Regulation No 44/2001 applies only provided it is established that the action against a defendant domiciled in the Member State of the court seised has not been brought solely with the object of removing another defendant from the jurisdiction of the court which could be competent in this case (25) and, on the other, if that question is answered in the negative, whether the fact that the claimant is pursuing an objective of that nature affects the assessment of the likelihood of that action succeeding in the context of the analysis of the risk of irreconcilable judgments for which Article 6(1) of Regulation No 44/2001 provides. (26)
48. It seems to me that, albeit in terms which are confined to the sphere of application of the provision whose interpretation is sought, these questions raise the sensitive issue of the limits on the fraudulent or wrongful use of the bases for jurisdiction which Regulation No 44/2001 lays down. I do not intend, nor do I consider it necessary for the purposes of resolving the current dispute, to deal with that problem generally; I shall, therefore, confine myself to setting out the considerations that an analysis of the questions which the national court has submitted strictly demands, although I am aware of the sensitivity of the basic issue that forms the backdrop to those considerations.
49. As I have already had occasion to point out, within the scheme of Regulation No 44/2001 (and, similarly, the earlier Brussels Convention) the requirement that there should be a specific jurisdictional connection in the situations where cases may be heard together pursuant to Article 6(1) and (2), is justified because the objectives pursued are those of procedural economy and compatible judgments.
50. I have also pointed out that the applicability of that connection is circumscribed by the need to avoid either unduly restricting the scope of the general criterion of the court of the defendant's domicile — thereby jeopardising legal certainty in relation to the establishment of jurisdiction — or making it possible, indirectly and more or less systematically, to have the case heard by the courts of the place of the claimants domicile, to which the Community legislature has clearly been opposed (even prior to the Brussels Convention).
51. Consequently, it seems to me that in interpreting the provisions of Regulation No 44/2001 relating to the procedural connection, account must be taken of the dialectic between the interest in the sound administration of justice and respect for the pivotal position of the courts for the place of the defendants domicile as the general jurisdictional linking factor.
52. That said, it is necessary to begin by pointing out that since, in cases involving a number of defendants, actions on a warranty or guarantee or in any other third party proceedings, the linking factors provided for by Article 6(1) and (2) are alternatives to the criterion whereby jurisdiction is conferred on the court of the defendants domicile, the claimant has in that regard an option which he is likely to exercise in the light of his own interest in having the dispute heard by one court rather than another. This is inherent in the scheme of the regulation and is a consequence which it is difficult to counteract, since it is not possible to prevent a party wishing to bring proceedings within the 'European judicial area' from using the possibilities that system affords to select, in compliance with the rules which that system lays down, the court best-suited to him. (27)
53. However, as well as recognising that an option of that nature exists, the system of rules also establishes certain mechanisms which make it possible to curtail

the opportunities for using it in a fraudulent or wrongful manner.
54. The application of the provisions in question is, first of all, subject to a common condition — which also acts as the main limitation on the use of the alternative courts having jurisdiction for which they provide — namely that there must be a real and current interest in the disputes being heard together. The existence of that interest has to be determined on the basis of a comprehensive evaluation by the court seised, based on objective criteria for assessment inherent in the cases which that court is hearing, such as the degree of connection which characterises them and the degree of proximity in relation to the court.
55. In actions on a warranty or guarantee or in any other third party proceedings in which the connection with the original proceedings is usually inherent (28) and — in contrast to the position pursuant to Article 6(1) where there are a number of defendants — the proceedings are not necessarily concentrated before the courts of the defendants domicile or of the third party's domicile, a further limit on the applicability of the relevant emerges, since those cases in which the original proceedings prove to have been instituted solely with the object of removing the defendant from the jurisdiction of the court which would otherwise be competent in the case are specifically precluded. (29)
56. It should be pointed out that, as is clear from the wording of Article 6(2) of Regulation No 44/2001, that limitation precludes the applicability of the jurisdictional linking factor for which Article 6(2) provides, both in cases in which its use proves to be fraudulent and where it takes the form of abuse of the claimants right to choose, (30), that is to say for a purpose different from the purpose for which that right was conferred. (31)
57. The Högsta domstolen is asking the Court whether that limitation also applies to Article 6(1) of Regulation No 44/2001, even though that article does not specifically provide for it.
58. The Commission proposes that this question should be answered in the negative. It takes the view that Article 6(1) must be interpreted as meaning that if the claims are sufficiently connected, there can be no questioning of the objectives the claimant is pursuing. According to the Commission, that interpretation is confirmed by the abovementioned judgment in Kalfelis, (32) in which the condition that the claims should be connected was considered to have the effect of precluding the possibility that the option accorded to the claimant by Article 6(1) of the Brussels Convention could be exercised with the sole object of ousting the jurisdiction of the courts of one of the defendants. (33)
59. I do not consider that the interpretation which the Commission is proposing can be accepted.
60. First of all, I do not agree with the above interpretation of the judgment in Kalfelis. In my view, the only inference which may be drawn from that judgment is that it was the Courts intention to establish a presumption that there was neither fraud nor abuse if the specific connection which it requires exists. (34) Moreover, in a later judgment, the Court clearly demonstrated that it considers that this presumption may be overturned, if the circumstances make it possible to establish the fraudulent or wrongful use of the linking factor which Article 6(1) lays down. (35)
61. The interpretation which the Commission is suggesting then falls foul of the fact that while the existence of a connection between the claims, which Article 6(1) of Regulation No 44/2001 requires, ensures that the provision will be applied in accordance with the purpose for which it was introduced, it does not preclude the possibility of the claimant using the basis for jurisdiction under Article 6(1) with the sole object of ousting the jurisdiction of the court for the place of domicile of one of the defendants and, consequently, does not eliminate the risk of fraud or abuse. That could happen, for instance, if a person were sued before the courts of the domicile of a fictitious co-defendant, against whom proceedings are brought which, although objectively connected with the proceedings brought against the other defendant, are manifestly unfounded or are proceedings in which the claimant has no real interest. (36)
62. It is my opinion that the applicability of the uniform rules on conflict which Regulation No 44/2001 lays down is generally limited by 'fraud relating to the jurisdiction of the courts', and that fraud of that nature occurs if those rules have been applied as a result of manipulation on the part of the claimant which is designed to and has the effect of ousting the jurisdiction of the courts of a particular Member State over a legal relationship which is the subject of a dispute or of having the case heard by the courts of a Member State which would not have had jurisdiction had that manipulation not taken place. Moreover, the Court has already recognised that a limit of that nature applies, at least in cases in which the fraud is the result of the linking factors being manipulated in such a way that the basis for jurisdiction is artificially created. (37)
63. More delicate, however, is the question (38) whether it is possible to identify in the scheme of Regulation No 44/2001 a general prohibition on the abuse of the right to choose the court and whether, if that right is wrongfully exercised, it becomes impossible to determine jurisdiction, with the result that the uniform rules on conflict come into play, (39) or if its sole effect is on the admissibility of the claim, (40) and the attribution of jurisdiction under the provisions of the regulation remains unaffected.
64. As I mentioned, I do not intend analysing that question further at this time. In fact, as I have already had occasion to point out, although the prohibition to which the applicability of the linking factor is subject under Article 6(2) of Regulation No 44/2001 is worded in such a way as to catch both instances of fraud and abuse of the right to select the court, I see no reason — linked in particular to the need for a uniform application and independent interpretation of the regulations provisions — that would prevent it from applying to the cases regulated by Article 6(1) as well.

65. Extending the prohibition under Article 6(2) by analogy in that way — and this has, moreover, already been approved by implication by the Court — (41) makes it possible, in particular, to preclude Article 6(1) being applied to situations which do not fall within its natural scope as well as to prevent the basis for jurisdiction which it lays down being relied on if that is designed to serve interests which do not merit protection.
66. As regards ascertaining whether that prohibition has been respected, it will be for the court hearing the case to determine whether, although the claims made against the different defendants are objectively connected, Article 6(1) of Regulation No 44/2001 has been relied upon with the sole object of removing one of those defendants from the courts of his own domicile. However, I should add here that it does not seem to me to be sufficient ground to establish fraudulent or wrongful intent on the part of the claimant — likely unduly to restrict the scope of Article 6(1) — that the action brought against the defendant domiciled in the forum Member State appears to be unfounded, since that action must, at the time when it was lodged appear to be manifestly unfounded in all respects — to the point of proving to be contrived — or devoid of any real interest for the claimant.
67. On the basis of the information which the national court has provided, it does not seem to me that the claim which Mr Arnoldsson has brought against Freeport plc displays any of those features.
68. On the basis of all of the above considerations, I propose that the Court reply to the second question as follows:
'Article 6(1) of Regulation No 44/2001 must be interpreted as meaning that it does not permit a claimant to bring claims against more than one defendant with the sole object of ousting the jurisdiction of the courts of the Member State in which one of the defendants is domiciled, even if those claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.'
69. As regards the third question, since it was submitted in the event that the second question was answered in the negative and I am proposing that the Court reply to that question in the affirmative, I shall merely point out that the assessment of the risk of irreconcilable judgments, which Article 6(1) of Regulation No 44/2001 requires of the court seised, must be made taking account of all the relevant factors.
70. Like the Commission, I consider that that assessment may also include an evaluation of the likelihood that the claim brought against the defendant who is domiciled in the forum Member State will succeed. However, that evaluation will be of real practical relevance for the purpose of excluding the risk of irreconcilable judgments only if that claim proves to be manifestly inadmissible or unfounded in all respects.
71. I must emphasise, however, that the conclusion which the Court reached in Reisch Montage seems to contradict that view. In that judgment, the Court held that the manifest inadmissibility of the claim brought against a defendant domiciled in the forum Member State, as a result of a procedural bar under national law, did not preclude reliance on the basis for jurisdiction under Article 6(1) of Regulation No 44/2001 in relation to a defendant domiciled in another Member State. (42)

V — Conclusion

72. In the light of the above considerations, I propose that the Court reply to the questions referred by the Högsta domstolen as follows:
"Article 6(1) of Regulation No 44/2001 must be interpreted as meaning that it does not permit a claimant to bring claims against more than one defendant with the sole object of ousting the jurisdiction of the courts of the Member State in which one of the defendants is domiciled, even if those claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings."

1 — Original language: Italian.
2 — OJ 2001 L 12, p. 1.
3 — See, in particular, recitals 5 and 19 of the preamble to the regulation.
4 — Regulation No 44/2001 is binding on all of the Member States with the exception of Denmark, which did not exercise its 'opt in' right as regards measures adopted pursuant to Title IV of the Treaty, as provided for in Protocol 5, annexed to the Treaty on European Union and the EC Treaty. The Brussels Convention will, therefore, continue to apply to Denmark until 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 of 19 October 2005 enters into force (OJ 2005 L 299, p. 62); the agreement extends to Denmark the application of the provisions of Brussels I. However, as a result of their declarations of acceptance, the regulation has been binding from the outset on the United Kingdom and Ireland, which have the same right to opt in, pursuant to Protocol 4.
5 — A similar agreement concerning sites in France was concluded on the same day between Freeport plc, Trading Places Ltd and Villages des Marques.
6 — Case C-51/97 [1998] ECR I-6511.
7 — Case 189/87 Kalfelis [1988] ECR 5565.
8 — Paragraph 9. The Court arrived at that interpretation after making the point that Article 6(1) of the Brussels Convention is an exception to the principle that jurisdiction is vested in the courts of the State of the defendant's domicile and 'must be treated in such a manner that there is no possibility of the very existence of that principle being called in question', a possibility that 'might arise if a plaintiff were at liberty to make a claim against a number of defendants with the sole object of ousting the jurisdiction of the courts of the State where one of the defendants is domiciled'.
9 — Now Article 28 of Regulation No 44/2001.
10 — Paragraph 12.
11 — Paragraph 12.
12 — See paragraph 12 of the judgment in Kalfelis.

13 — See, to that effect, the Opinion of Advocate General Darmon in Kalfelis, cited above, at point 8.
14 — Paragraph 12.
15 — Footnote 6 above.
18 — Paragraph 44.
19 — Paragraph 45. The Court added that 'the objective of legal certainty pursued by the Convention would not be attained if the fact that a court in a Contracting State had accepted jurisdiction as regards one of the defendants not domiciled in a Contracting State made it possible to bring another defendant, domiciled in a Contracting State, before that same court in cases other than those envisaged by the Convention, thereby depriving him of the benefit of the protective rules laid down by it' (paragraph 46).
20 — Footnote 7 above.
21 — Paragraphs 47 and 48.
22 — Paragraph 49.
23 — Paragraph 50.
24 — However, that applies generally in all cases in which jurisdiction is attributed on the basis of linking factors which leave the defendant's domicile out of consideration.
25 — The Högsta domstolen dolmen refers, in that connection, to Article 6(2), which specifically lays down that condition.
26 — Setting aside the fact that the wording of that point in the order for reference is unclear, it seems to me that the substance of the third question and way in which it is linked to the second question may be accurately summarised as I have set out above.
27 — Within certain limits, 'forum shopping', interpreted according to the definition provided by Advocate General Colomer, as '[c] hosing a forum according to the advantages which may arise from the substantive (and even procedural) law applied there' (see the Opinion of 16 March 1999 in Case C-440/97 GIE Group Concord and Others [1999] ECR I-6307, in particular p. I-6309, footnote 10) is undoubtedly permitted.
28 — See Case C-77/04 GIE Reunion européenne and Others [2005] ECR I-4509, paragraph 30, and the Opinion of Advocate General Jacobs of 24 February 2005 in the same case, at point 32.
29 — In GIE Réunion européenne and Others, cited above, the Court seems to consider that this condition is met if there is a sufficient degree of connection between the original proceedings and the third party proceedings. However, as will become clearer below, the existence of a connection of that nature is not always enough to prevent fraud or an abuse of jurisdiction.
30 — Academic legal writers seem to accept that the choice between the various criteria of connection from which the claimant benefits under the provisions of Regulation No 44/2001 constitutes a genuine individual right, a corollary of the right to effective protection by the courts.
31 — That is to say, to allow the claimant better protection of his own rights by the courts as a result of the possibility of joining in a single action connected claims brought against various individuals.
32 — Footnote 7 above.
33 — Paragraphs 8 and 9.
34 — The same presumption appears to be accepted in the judgment in GIE Reunion européenne and Others, cited in footnote 28 above, at paragraphs 32 and 33.
35 — See Case C-103/05 Reisch Montage [2006] ECR I-6827. At paragraph 32 of that judgment, the Court calls to mind that 'the special rule on jurisdiction provided for in Article 6(1) of Regulation No 44/2001 cannot be interpreted in such a way as to allow a plaintiff to make a claim against a number of defendants for the sole purpose of removing one of them from the jurisdiction of the courts of the Member State in which that defendant is domiciled', but does not consider that to be the case in the main proceedings. The question for a preliminary ruling arose in the context of proceedings before an Austrian court which related to two separate disputes, the first concerning an individual domiciled in Austria against whom bankruptcy proceedings had previously been brought, and the second against the company that had stood security for him. Since the action brought against the first defendant had been declared to be inadmissible because of the procedural bar which bankruptcy gave rise to under the national law, the national court raised the question whether, in such circumstances, the claimant could legitimately rely on Article 6(1) to establish the jurisidiction of the court hearing the case of the second defendant. Although the two actions were clearly connected, the Court made it plain that the jurisdiction of the court seised within the meaning of Article 6(1) of Regulation No 44/2001 may be called into question if it has been relied on wrongfully. The fact which led the Court to rule out abuse of that nature in that case — and which emerges from the order for reference — was, probably, the lack of evidence that the claimant was aware of the state of bankruptcy and, consequently, that he was acting in bad faith.
36 — Thus, for example, reliance on the basis for jurisdiction in Article 6(1) of Regulation No 44/2001 could have been objected to in the national proceedings which gave rise to the Court's judgment in Reisch Montage, cited in footnote 35 above, had it been established that the claimant was acting in bad faith.
37 — See Case C-106/95 MSG [1997] ECR I-911 concerning the interpretation of Article 5(1) of the Brussels Convention. At paragraph 31, the Court points out that 'whilst the parties are free to agree on a place of performance for contractual obligations which differs from that which would be determined under the law applicable to the contract, without having to comply with specific conditions as to form, they are nevertheless not entitled, having regard to the system established by the Convention, to designate, with the sole aim of specifying the courts having jurisdiction, a place of performance having no real connection with the reality of the contract at which the obligations arising under the contract could not be performed in accordance with the terms of the contract'. See also Case 220/84 Malhé [1985] ECR 2267.
38 — That question falls within the more general context of the mechanisms which make it possible to iden-

tify and prevent misuse of the provisions of the regulation and, all in all, to prevent what has been described as the forum shopping malus. The need to guarantee the effectiveness and uniform application of, first, the Convention and, then, Regulation No 44/2001, by ensuring that the linking factors those instruments employ have objective value — as they must be in order to ensure that the basis for jurisdiction is predictable — has led the Court to adopt a particularly cautious approach to these matters, which has inevitably attracted criticism from academic legal writers. See, in particular, Case C-159/02 Turner [2004] ECR I-3565 on anti-suit injunctions and Case C-116/02 Gasser [2003] ECR I-14693 on lis alibi pendens.

39 — As in the case of Article 6(2) of Regulation No 44/2001 and, before that, the Brussels Convention.

40 — The Court has made clear that establishing the conditions governing the admissibility of an action is a matter for national procedural law, subject only to the proviso that that application of that law must not impair the effectiveness of the rules on jurisdiction laid down in the Convention (Case C-365/88 Hagen [1990] ECR I-1845, paragraphs 17 to 20).

41 — See the judgment in Reisch Montage, cited above in footnote 35.

42 — Advocate General Colomer took quite the opposite view in his Opinion in that case.