Court of Justice EU, 16 June 2016, Universal Music

UNIVERSAL MUSIC GROUP

LITIGATION – PRIVATE INTERNATIONAL LAW

'Place where the harmful event occured' is not the domicile and place where applicant's assests are concentrated for the sole reason that applicant has suffered financial damage, when this damage is a direct cause of an unlawful act in another Member State

- **In the present case, the place in a Member state where the damage occured, cannot be regarded as 'place where the harmful event occured', when the damage consists exclusively of financial damages that materialises directly in the bank account of the applicant and is the direct result of an unlawful act committed in another Member State.**

34. In that context, it should be noted that the term 'place where the harmful event occurred' may not be construed so extensively as to encompass any place where the adverse consequences of an event, which has already caused damage actually arising elsewhere, can be felt (judgment of 19 September 1995 in Marinari, C‑364/93, EU:C:1995:289, paragraph 14).

35. In the wake of that case-law, the Court has also held that that expression does not refer to the place where the applicant is domiciled and where his assets are concentrated by reason only of the fact that he has suffered financial damage there resulting from the loss of part of his assets which arose and was incurred in another Member State (judgment of 10 June 2004 in Kronhofer, C‑168/02, EU:C:2004:364, paragraph 21).

38. Consequently, purely financial damage which occurs directly in the applicant's bank account cannot, in itself, be qualified as a 'relevant connecting factor', pursuant to Article 5(3) of Regulation No 44/2001. In that respect, it should also be noted that a company such as Universal Music may have had the choice of several bank accounts from which to pay the settlement amount, so that the place where that account is situated does not necessarily constitute a reliable connecting factor.

39. It is only where the other circumstances specific to the case also contribute to attributing jurisdiction to the courts for the place where a purely financial damage occurred, that such damage could, justifiably, entitle the applicant to bring the proceedings before the courts for that place.

The Court seised must assess all the evidence available when determining its jurisdiction based on Regulation No 44/2001

- **The Court must include the arguments put forward by the defendant**

44. In the particular context of Article 5(3) of Regulation No 44/2001, the Court has held that, at the stage at which jurisdiction is determined, the court seised does not examine either the admissibility or the substance of the application in the light of national law, but identifies only those points of connection with the State in which that court is sitting that support its claim to jurisdiction under that provision. Thus, the court seised may regard as established, solely for the purpose of ascertaining whether it has jurisdiction under that provision, the applicant's claims as regards the conditions for liability in tort, delict or quasi-delict (see, to that effect, judgments of 25 October 2012 in Folien Fischer and Fofitec, C‑133/11, EU:C:2012:664, paragraph 50 and of 28 January 2015 in Kolassa, C‑375/13, EU:C:2015:37, paragraph 62 and case-law cited).

45. Although the national court seised is not obliged, if the defendant contests the applicant's claims, to conduct a comprehensive taking of evidence at the stage of determining jurisdiction, the Court has held that both the objective of the sound administration of justice, which underlies Regulation No 44/2001, and respect for the independence of the national court in the exercise of its functions require the national court seised to be able to examine its international jurisdiction in the light of all the information available to it, including, where appropriate, the defendant's arguments (judgement of 28 January 2015 in Kolassa, C‑375/13, EU:C:2015:37, paragraph 64).

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Court of Justice EU, 16 June 2016

(M. Ilešič, C. Toader (Rapporteur), A. Rosas, A. Prechal, E. Jarašiūnas)

JUDGMENT OF THE COURT (Second Chamber)

16 June 2016 (*)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Special jurisdiction — Article 5(3) — Tort, delict or quasi-delict — Harmful event — Lawyer's negligence in drafting the contract — Place where the harmful event occurred)

In Case C‑12/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), made by decision of 9 January 2015, received at the Court on 14 January 2015, in the proceedings

Universal Music International Holding BV

v

Michael Tétreault Schilling,

Irwin Schwartz,

Josef Brož,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, C. Toader (Rapporteur), A. Rosas, A. Prechal and E. Jarašiūnas, Judges,
Advocate General: M. Szpunar,
Registrar: M. Ferreira, Principal Administrator,
having regard to the written procedure and further to the hearing on 25 November 2015,
after considering the observations submitted on behalf of
– Universal Music International Holding BV, by C. Kroes and S. Janssen, advocaten,
– Michael Tétreault Schilling, by A. Knigge, P.A. Fruytier and L. Parret, advocaten,
– Josef Brož, by F. Vermeulen and B. Schim, advocaten,
– the Greek Government, by A. Dimitrakopoulou, S. Lekkou and S. Papaïoannou, acting as Agents,
– the European Commission, by M. Wilderspin and G. Wils, acting as Agents,
after hearing **the Opinion of the Advocate General** at the sitting on 10 March 2016,
gives the following

Judgment

1. This reference for a preliminary ruling concerns the interpretation of Article 5(3) 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 proceedings between Universal Music International Holding BV ('Universal Music'), established in the Netherlands, and Michael Schilling, Irwin Schwartz and Josef Brož, all three lawyers, residing in Romania, Canada and the Czech Republic respectively, concerning negligence on the part of Mr Brož in drafting, in the Czech Republic, a contract for the purchase of shares.

Legal context

The Brussels Convention

3. Article 5 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32), as amended by the successive conventions on the accession of new Member States to that Convention, ('the Brussels Convention') reads as follows:

'A person domiciled in a Contracting State may, in another Contracting State, be sued:

...

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;

...'

Regulation No 44/2001

4. Recitals 11, 12, 15 and 19 in the preamble to Regulation No 44/2001 provide as follows:

'(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. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

(12) In addition to the defendant's 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.

...

(19) Continuity between the Brussels Convention and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation of the provisions of the Brussels Convention by the Court of Justice [of the European Union] and the Protocol [of 3 June 1971 on the interpretation by the Court of Justice of the Brussels Convention] should remain applicable also to cases already pending when this Regulation enters into force.'

5. Article 2(1) of that regulation, conferring general jurisdiction upon the courts of the Member State in which the defendant is domiciled, is worded as follows:

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

6. Article 5 of the regulation provides:

'A person domiciled in a Member State may, in another Member State, be sued:

...

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

...'

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

7. Universal Music is a record company, part of Universal Music Group. Universal Music International Ltd is a sister company of Universal Music, belonging to the same group.

8. In the course of 1998, Universal Music International Ltd agreed with its Czech partners, in particular the record company B&M spol. s r. o. ('B&M') and its shareholders, that one or more companies to be determined within Universal Music Group would acquire 70% of B&M's shares. The parties also agreed that, in the course of 2003, the purchaser would acquire the remaining shares, at a price to be agreed during that final purchase. An advance on the sale price had already been paid. The agreement and the main points of that proposed transaction were set out in a letter of intent fixing the target sale price at five times B&M's average annual profit.

9. The parties then negotiated a contract for the sale and delivery of 70% of B&M's shares as well as a

contract for the option to purchase the remaining 30% of the shares ('the share purchase option').
10. At the request of the legal department of Universal Music Group, the share purchase option agreement was drawn up by the Czech law firm Burns Schwartz International. Several versions of that contract were exchanged between that firm, the legal department of Universal Music Group and B&M's shareholders.
11. During those negotiations, Universal Music was designated as the buyer under the contract for the share purchase option. It was signed on 5 November 1998 by Universal Music, B&M and its shareholders.
12. According to the referring court, the contract shows that an amendment suggested by the legal department of Universal Music Group was not fully reproduced by Mr Brož, associate at the law firm Burns Schwartz International, which led to a fivefold increase in the sale price compared with the price originally intended, a sale price which then had to be multiplied by the number of shareholders.
13. In the course of August 2003, Universal Music, in order to meet its contractual obligation to buy the remaining shares, calculated the price of those shares according to the method it had planned, and came up with a sum of CZK 10 180 281 (approximately EUR 313 770). Relying on the calculation method laid down in the contract, B&M's shareholders were claiming a sum of CZK 1 003 605 620 (approximately EUR 30 932 520).
14. The dispute was brought before an arbitration board in the Czech Republic, the parties having agreed a settlement on 31 January 2005. In order to implement the settlement, Universal Music paid the sum of EUR 2 654 280.03 ('the settlement amount') for the remaining 30% of the shares by transfer from an account it held in the Netherlands. The transfer was made in favour of an account that B&M's shareholders held in the Czech Republic.
15. Universal Music brought proceedings before the Rechtbank Utrecht (Utrecht District Court, Netherlands), pursuant to Article 5(3) of Regulation No 44/2001, seeking to hold jointly and severally liable Mr Schilling and Mr Schwartz, as previous partners of the law firm Burns Schwartz International, as well as Mr Brož, for the payment of EUR 2 767 861.25, together with interest and costs, damage which it claims to have suffered further to the negligence of Mr Brož in the course of the drafting of the contract for the share purchase option. The damage is alleged to have occurred as a result of the difference stemming from that negligence between the sale price initially intended and the settlement amount and also the costs Universal Music had to incur in the context of the arbitration procedure.
16. In support of its application, Universal Music claimed that it suffered the damage in Baarn (Netherlands), where it was established.
17. By decision of 27 May 2009, the Rechtbank Utrecht (Utrecht District Court) declined jurisdiction to deal with the dispute before it on the ground that the place where the damage Universal Music claims it suffered occurred, described by it as 'purely direct financial damage' arising in Baarn, could not be considered the place where the 'harmful event' occurred, within the meaning of Article 5(3) of Regulation No 44/2001, because of the lack of a sufficient connection to attribute jurisdiction to the courts of the Netherlands.
18. Universal Music appealed against that decision before the Gerechtshof Arnhem-Leeuwarden (Regional Court of Appeal of Arnhem-Leeuwarden, Netherlands) which, by a judgment of 15 January 2013, upheld the judgment given at first instance. That court considered that the very close connection between the request and the court seised of the dispute, which constitutes a criterion for the application of Article 5(3) of Regulation No 44/2001, was lacking in the case in point. Therefore, the mere fact that the settlement amount had to be paid by a company established in the Netherlands is insufficient to justify the attribution of jurisdiction to the courts of the Netherlands.
19. Universal Music brought an appeal in cassation against the judgment of the Gerechtshof Arnhem-Leeuwarden (Regional Court of Appeal of Arnhem-Leeuwarden, Netherlands) before the referring court. Mr Schilling and Mr Brož each separately brought a cross-appeal.
20. In those circumstances, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
'1) Must Article 5(3) of Regulation No 44/2001 be interpreted as meaning that the 'place where the harmful event occurred' can be construed as being the place in a Member State where the damage occurred, if that damage consists exclusively of financial damage which is the direct result of unlawful conduct which occurred in another Member State?
2) If the answer to the first question is in the affirmative:
a) What criterion or what perspectives should the national court apply, when assessing its jurisdiction on the basis of Article 5(3) of Regulation No 44/2001, in order to determine whether in the present case there has been financial damage which is the direct result of unlawful conduct ('initial financial damage' or 'direct financial damage') or whether there has been financial damage which is the result of initial damage which occurred elsewhere or damage which has resulted from damage which occurred elsewhere ('consequential damage' or 'derived financial damage')?
b) What criterion or what perspectives should the national court apply, when assessing its jurisdiction on the basis of Article 5(3) of Regulation No 44/2001, in order to determine where, in the present case, the financial damage — whether it be direct or derived financial damage — occurred or is deemed to have occurred?
3) If the answer to the first question is in the affirmative, must Regulation No 44/2001 be interpreted as meaning that the national court which is required to

determine whether it has jurisdiction pursuant to that regulation in the present case is obliged, when making its determination, to proceed on the basis of the relevant submissions of the claimant or applicant in that regard, or is it obliged also to take into account the arguments put forward by the defendant to refute those submissions?'

Consideration of the questions referred for a preliminary ruling

The first question

21. By its first question, the referring court asks, in essence, whether Article 5(3) of Regulation No 44/2001 must be interpreted as meaning, in circumstances such as those in the main proceedings, that the 'place where the harmful event occurred' can be construed as being the place, in a Member State, where the damage occurred, if that damage consists exclusively of financial damage which is the direct result of an unlawful act committed in another Member State.

22. In order to answer that question, it should be noted that, inasmuch as Regulation No 44/2001 replaces the Brussels Convention, the interpretation provided by the Court in respect of the provisions of that convention is valid also for those of that regulation, whenever the provisions of those Union instruments may be regarded as equivalent (judgments of 16 July 2009 in Zuid-Chemie, C‑189/08, EU:C:2009:475, paragraph 18, and of 10 September 2015 in Holterman Ferho Exploitatie and Others, C‑47/14, EU:C:2015:574, paragraph 38).

23. It should be observed that the provisions of Regulation No 44/2001 relevant to the present case are drafted in nearly identical terms to those of the Brussels Convention. In the light of such similarity, it is necessary to ensure, in accordance with recital 19 in the preamble to Regulation No 44/2001, continuity in the interpretation of those two instruments (see, inter alia, judgment in Zuid-Chemie, C‑189/08, EU:C:2009:475, paragraph 19).

24. According to the Court's case-law, the concept of 'matters relating to tort, delict or quasi-delict' within the meaning of Article 5(3) of Regulation No 44/2001 covers all actions which seek to establish the liability of a defendant and do not concern 'matters relating to a contract' within the meaning of Article 5(1)(a) of that regulation (see judgment in Kolassa, C‑375/13, EU:C:2015:37, paragraph 44). In that regard, failing any evidence in the order for reference tending to show that a contractual relationship existed between the parties in the main proceedings, which it is nevertheless a matter for the referring court to verify, the Court must restrict its analysis to Article 5(3) of Regulation No 44/2001, to which the questions referred by the national court relate.

25. As the Advocate General noted at **point 27 of his Opinion**, it is only by way of derogation from the general principle laid down in Article 2(1) of Regulation No 44/2001, attributing jurisdiction to the courts of the Member State in which the defendant is domiciled, that Section 2 of Chapter II of that regulation makes provision for certain special jurisdictional rules, such as the rule laid down in Article 5(3) of that regulation. Insofar as the jurisdiction of the courts for the place where the harmful event occurred constitutes a rule of special jurisdiction, it must be interpreted independently and strictly, which does not permit an interpretation going beyond the cases expressly envisaged by that regulation (see, to that effect, **judgments of 5 June 2014 in Coty Germany, C‑360/12, EU:C:2014:1318, paragraphs 43 to 45** and of 10 September 2015 in Holterman Ferho Exploitatie and Others, C‑47/14, EU:C:2015:574, paragraphs 72 and case-law cited).

26. According to settled case-law, the rule of special jurisdiction laid down in Article 5(3) of that regulation is based on the existence of a particularly close connecting factor between the dispute and the courts for the place where the harmful event occurred or may occur, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings (**judgments of 5 June 2014 in Coty Germany, C‑360/12, EU:C:2014:1318, paragraphs 47** and of 10 September 2015 in Holterman Ferho Exploitatie and Others, C‑47/14, EU:C:2015:574, paragraph 73 and case-law cited).

27. In matters relating to tort, delict or quasi-delict, the courts for the place where the harmful event occurred or may occur are usually the most appropriate for deciding the case, in particular on the grounds of proximity of the dispute and ease of taking evidence (judgments of 21 May 2015 in CDC Hydrogen Peroxide, C‑352/13, EU:C:2015:335, paragraph 40 and of 10 September 2015 in Holterman Ferho Exploitatie and Others, C‑47/14, EU:C:2015:574, paragraph 74).

28. As for the notion of 'place where the harmful event occurred or may occur' in Article 5(3) of Regulation No 44/2001, as the Court has already held, those words are intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the applicant, in the courts for either of those places (see in relation to pollution, **judgment of 30 November 1976 in Bier, 21/76, EU:C:1976:166, paragraphs 24 and 25**; in relation to counterfeiting, **judgment of 5 June 2014 in Coty Germany, C‑360/12, EU:C:2014:1318, paragraphs 46**; in relation to company directors' contracts, judgment of 10 September 2015 in Holterman Ferho Exploitatie and Others, C‑47/14, EU:C:2015:574, paragraph 72).

29. Although it is common ground between the parties to the main proceedings that the Czech Republic is the place of the event giving rise to the damage, they disagree as regards the determination of the place where the damage occurred.

30. It is clear from the request for a preliminary ruling that the contract entered into on 5 November 1998 between B&M and its shareholders, on the one hand, and Universal Music, on the other hand, was negotiated and signed in the Czech Republic. The rights and obligations of the parties were established in that

Member State, including the obligation for Universal Music to pay a greater amount than originally provided for for the remaining 30% of shares. That contractual obligation, which the parties to the contract did not intend to create, arose in the Czech Republic.

31. The damage for Universal Music resulting from the difference between the intended sale price and the price mentioned in that contract became certain in the course of the settlement agreed between the parties before the arbitration board, in the Czech Republic, on 31 January 2005, the date on which the actual sale price was fixed. Therefore, the obligation to pay placed an irreversible burden on Universal Music's assets.

32. Accordingly, the loss of some assets happened in the Czech Republic, the damage having occurred there. The mere fact that, to implement the settlement agreed before the arbitration board, in the Czech Republic, Universal Music paid the financial settlement by a transfer from a bank account it held in the Netherlands, is not such as to invalidate that finding.

33. The solution thereby stemming from the findings made in paragraphs 30 to 32 of the present judgment satisfies the requirements of predictability and certainty laid down by Regulation No 44/2001, since the conferral of jurisdiction on the Czech courts is justified for reasons of the sound administration of justice and the efficacious conduct of the proceedings.

34. In that context, it should be noted that the term 'place where the harmful event occurred' may not be construed so extensively as to encompass any place where the adverse consequences of an event, which has already caused damage actually arising elsewhere, can be felt (judgment of 19 September 1995 in Marinari, C‑364/93, EU:C:1995:289, paragraph 14).

35. In the wake of that case-law, the Court has also held that that expression does not refer to the place where the applicant is domiciled and where his assets are concentrated by reason only of the fact that he has suffered financial damage there resulting from the loss of part of his assets which arose and was incurred in another Member State (judgment of 10 June 2004 in Kronhofer, C‑168/02, EU:C:2004:364, paragraph 21).

36. It is true that in the case which gave rise to the judgment of 28 January 2015 in Kolassa (C‑375/13, EU:C:2015:37), the Court found, in paragraph 55 of its reasoning, jurisdiction in favour of the courts for the place of domicile of the applicant by virtue of where the damage occurred, if that damage materialises directly in the applicant's bank account held with a bank established within the area of jurisdiction of those courts.

37. However, as the Advocate General stated in essence in **points 44 and 45 of his Opinion** in the present case, that finding is made within the specific context of the case which gave rise to that judgment, a distinctive feature of which was the existence of circumstances contributing to attributing jurisdiction to those courts.

38. Consequently, purely financial damage which occurs directly in the applicant's bank account cannot, in itself, be qualified as a 'relevant connecting factor', pursuant to Article 5(3) of Regulation No 44/2001. In that respect, it should also be noted that a company such as Universal Music may have had the choice of several bank accounts from which to pay the settlement amount, so that the place where that account is situated does not necessarily constitute a reliable connecting factor.

39. It is only where the other circumstances specific to the case also contribute to attributing jurisdiction to the courts for the place where a purely financial damage occurred, that such damage could, justifiably, entitle the applicant to bring the proceedings before the courts for that place.

40. In the light of the foregoing considerations, the answer to the first question is that Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, in a situation such as that in the main proceedings, the 'place where the harmful event occurred' may not be construed as being, failing any other connecting factors, the place in a Member State where the damage occurred, when that damage consists exclusively of financial damage which materialises directly in the bank account of the applicant and is the direct result of an unlawful act committed in another Member State.

41. In view of the reply given to the first question, there is no need to answer the second question.

The third question

42. By its third question, the referring court asks, in essence, whether, in the context of the determination of jurisdiction under Regulation No 44/2001, the court seised must assess all the evidence available to it, including, where appropriate, the arguments put forward by the defendant.

43. As the Advocate General stated in **paragraph 52 of his Opinion**, notwithstanding the fact that the referring court asked that question only if the answer to the first question were in the affirmative, there is an interest in answering it, given that that question relates to the general assessment of jurisdiction and not only to the question of whether financial damage is sufficient to determine jurisdiction.

44. In the particular context of Article 5(3) of Regulation No 44/2001, the Court has held that, at the stage at which jurisdiction is determined, the court seised does not examine either the admissibility or the substance of the application in the light of national law, but identifies only those points of connection with the State in which that court is sitting that support its claim to jurisdiction under that provision. Thus, the court seised may regard as established, solely for the purpose of ascertaining whether it has jurisdiction under that provision, the applicant's claims as regards the conditions for liability in tort, delict or quasi-delict (see, to that effect, judgments of 25 October 2012 in Folien Fischer and Fofitec, C‑133/11, EU:C:2012:664, paragraph 50 and of 28 January 2015 in Kolassa, C‑375/13, EU:C:2015:37, paragraph 62 and case-law cited).

45. Although the national court seised is not obliged, if the defendant contests the applicant's claims, to conduct a comprehensive taking of evidence at the stage of determining jurisdiction, the Court has held

that both the objective of the sound administration of justice, which underlies Regulation No 44/2001, and respect for the independence of the national court in the exercise of its functions require the national court seised to be able to examine its international jurisdiction in the light of all the information available to it, including, where appropriate, the defendant's arguments (judgement of 28 January 2015 in Kolassa, C‑375/13, EU:C:2015:37, paragraph 64).

46. On the basis of the foregoing, the answer to the third question asked is that, in the context of the determination of jurisdiction under Regulation No 44/2001, the court seised must assess all the evidence available to it, including, where appropriate, the arguments put forward by the defendant.

Costs

47. 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 (Second Chamber) hereby rules:

1. Article 5(3) of Regulation No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in a situation such as that in the main proceedings, the 'place where the harmful event occurred' may not be construed as being, failing any other connecting factors, the place in a Member State where the damage occurred, when that damage consists exclusively of financial damage which materialises directly in the applicant's bank account and is the direct result of an unlawful act committed in another Member State.

2. In the context of the determination of jurisdiction under Regulation No 44/2001, the court seised must assess all the evidence available to it, including, where appropriate, the arguments put forward by the defendant.

[Signatures]

* Language of the case: Dutch.

OPINION OF ADVOCATE GENERAL SZPUNAR

delivered on 10 March 2016 (1)

Case C‑12/15

Universal Music International Holding BV

v

Michael Tétreault Schilling,

Irwin Schwartz,

Josef Brož

(Request for a preliminary ruling from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands))

(Area of freedom, security and justice — Jurisdiction in civil and commercial matters — Regulation (EC) No 44/2001 — Article 5(3) — Tort, delict or quasi-delict — Place where the harmful event occurred — Purely financial damage)

I – Introduction

1. It is well known that the system of conferring jurisdiction in civil and commercial matters, established by Regulation (EC) No 44/2001, (2) is based on the general rule in Article 2(1) of that regulation, according to which persons domiciled in a Member State are to be sued in the courts of that Member State, and that one of the derogations from that rule is found in Article 5(3) of Regulation No 44/2001, under which, in matters relating to tort, delict or quasi-delict, a person domiciled in a Member State may be sued in another Member State before the court for the place where the harmful event occurred.

2. The key question in the present case is whether financial loss suffered in a Member State as a result of an unlawful act in another Member State may, on its own, found jurisdiction under Article 5(3) of Regulation No 44/2001.

II – Legal framework

3. Article 2(1) of Regulation No 44/2001 states:

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

4. Article 5 of the regulation provides:

'A person domiciled in a Member State may, in another Member State, be sued:

...

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

...'

III – The facts in the main proceedings and the questions referred for a preliminary ruling

5. Universal Music International Holding BV ('Universal Music') is a record company established in Baarn (Netherlands), which is part of Universal Music Group, established in the United States. Universal Music International Ltd ('Universal Ltd') is a sister company of Universal Music and also part of Universal Music group.

6. In 1998, Universal Ltd, B&M spol. s.r.o. ('B&M'), a company established in the Czech Republic, and the shareholders of B&M agreed that, as the company ultimately designated for that purpose within Universal Music Group, one or more companies in that group would buy first of all 70% of the shares in B&M, and then the remaining shares in 2003. The price of the shares was to be set in 2003 at the time of the acquisition of the remaining 30%. Those agreements were recorded in a Letter of Intent which set as an objective a sale price equal to five times the average annual profit of B&M.

7. The parties negotiated the sale and delivery of 70% of the shares in B&M and a share-option agreement for the remaining 30%. On the instructions of the legal department of Universal Music Group, the share-option agreement was drawn up by the Czech law firm Burns Schwartz International. From the end of August 1998, eight draft agreements were exchanged between the Legal Department of Universal Music Group, Burns Schwartz International and B&M's shareholders.

Universal Music was designated as purchaser during those negotiations.
8. On 5 November 1998, Universal Music, B&M and B&M's shareholders concluded the share-option agreement.
9. It is apparent from the documents before the Court that an amendment proposed by the Legal Department of Universal Music Group was not wholly taken up by an employee of Burns Schwartz International; the result was that the sale price was five times greater than the price that had been envisaged, a sale price that had then to be multiplied by the number of shareholders.
10. When, in August 2003, Universal Music fulfilled its obligation to purchase the 30% of remaining shares of the B&M shareholders, and calculated the intended selling price, which was CZK 10 180 281 (approximately EUR 313 770.41), the B&M shareholders claimed the amount resulting from the formula in the share option agreement, which was CZK 1 003 605 620 (approximately EUR 30 932 520.27).
11. Universal Musical and the B&M shareholders decided to take their dispute to an arbitration board, before which they reached an agreement on 31 January 2005. Pursuant to that compromise settlement, Universal Musical paid the sum of EUR 2 654 280.03 for the remaining 30% of the shares ('the settlement amount'). It paid the settlement amount by transfer from a bank account it holds in the Netherlands. The transfer was made to an account held in the Czech Republic by the shareholders selling the B&M shares.
12. Universal Music brought an action before the Rechtbank Utrecht (District Court, Utrecht) seeking an order requiring the defendants jointly and severally to pay EUR 2 767 861.25, plus interest and costs, by reason of their quasi-delictual liability. That claim relates to the damage which Universal Music alleges it suffered as a result of the negligence of an employee of Burns Schwartz International when the text of the share-option agreement was being drafted. The damages claimed correspond to the difference between, on the one hand, the intended selling price and, on the other hand, the settlement amount and the costs incurred by Universal Music in connection with the arbitration and settlement.
13. Universal Music contended that, as a result of the conduct attributed to the defendants, it suffered 'initial financial damage' in the Netherlands, on the grounds that it paid the settlement amount and the costs associated with the arbitration and settlement out of its assets in the Netherlands, where it is established.
14. Mr Schilling and Mr Brož, domiciled in Romania and the Czech Republic respectively, disputed the jurisdiction of the Netherlands court, arguing that the payment of the settlement amount and of the costs borne by the assets of Universal Music cannot be regarded as initial financial damage occurring in the Netherlands as a result of actions that took place in the Czech Republic.
15. By judgment of 27 May 2009, the Rechtbank Utrecht (District Court, Utrecht) declared that it had no jurisdiction to hear and determine the claim brought by Universal Music. It held that the damage alleged by Universal Music was purely financial damage which was the direct result of the harmful event. The question arose whether the place where that damage occurred, in the present case Baarn, where Universal Music is established, could be considered to be the place where the harmful event occurred within the meaning of Article 5(3) of Regulation No 44/2001. The Rechtbank Utrecht (District Court, Utrecht) took the view that it could not, for there are insufficient connecting factors for the Netherlands courts to assume jurisdiction on the basis of Article 5(3) of that regulation.
16. Hearing the appeal brought by Universal Music, the Gerechtshof Arnhem-Leeuwarden (Regional Court of Appeal, Arnhem-Leeuwarden), by judgment of 15 January 2013, confirmed the decision of the Rechtbank Utrecht (District Court, Utrecht).With regard to Article 5(3), that court held that the particularly close connecting factor between the claim and the court seised, which constitutes a criterion for the application of Article 5(3) of Regulation No 44/2001, was wanting in the present case. The mere fact that the settlement amount was payable by a company established in the Netherlands is insufficient to justify conferring jurisdiction on the Netherlands courts.
17. Universal Music has brought an appeal in cassation before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) against the judgment of the Gerechtshof (Regional Court of Appeal). Mr Schilling and Mr Brož have each separately brought a conditional cross-appeal in cassation.
18. The referring court states that the Court has had occasion to hold, in the judgment in Marinari, (3) that the place where the victim claims to have suffered financial damage following upon initial damage arising in another Member State cannot be construed as being the place where the harmful event occurred, in accordance with Article 5(3) of Regulation No 44/2001.
19. However, the Court has not yet specified the criterion or the aspect on the basis of which the national courts could determine whether the damage in question is initial financial damage, also called basic or direct financial damage, or rather financial damage which is the result of the latter or consequent upon it, also called consequential or indirect damage.
20. Nor has the Court stated the criterion or aspect on the basis of which the national courts must determine the place in which the financial damage, whether direct or indirect, occurred or is deemed to have occurred.
21. In the view of the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), the question also arises whether, and, if so, to what extent, the national court that must assess whether it has jurisdiction pursuant to Regulation No 44/2001 in the present case is obliged, when making its assessment, to base its assessment on the relevant statements of the claimant or applicant in that regard, or whether it is obliged also to take into account the arguments put forward by the defendant to challenge those statements.

22. In those circumstances, the referring court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
‘(1) Must Article 5(3) of Regulation No 44/2001 be interpreted as meaning that the “place where the harmful event occurred” can be construed as being the place in a Member State where the damage occurred, if that damage consists exclusively of financial damage which is the direct result of unlawful conduct which occurred in another Member State?
(2) If the answer to Question 1 is in the affirmative:
(a) What criterion or what perspectives should the national court apply, when assessing its jurisdiction on the basis of Article 5(3) of Regulation No 44/2001, in order to determine whether in the present case there has been financial damage which is the direct result of unlawful conduct (“initial financial damage” or “direct financial damage”) or whether there has been financial damage which is the result of initial damage which occurred elsewhere or damage which has resulted from damage which occurred elsewhere (“consequential damage” or “derived financial damage”)?
(b) What criterion or what perspectives should the national court apply, when assessing its jurisdiction on the basis of Article 5(3) of Regulation No 44/2001, in order to determine where, in the present case, the financial damage — whether it be direct or derived financial damage — occurred or is deemed to have occurred?
(3) If the answer to Question 1 is in the affirmative, must Regulation No 44/2001 be interpreted as meaning that the national court which is required to determine whether it has jurisdiction pursuant to that regulation in the present case is obliged, when making its determination, to proceed on the basis of the relevant submissions of the claimant or applicant in that regard, or is it obliged also to take into account the arguments put forward by the defendant to refute those submissions?
23. The appellant in the main proceedings, Mr Schilling, Mr Brož, the Greek Government and the European Commission have submitted observations and stated their views at the hearing held on 25 November 2015.

IV – Assessment

A – Preliminary observations

24. In this Opinion, I cite the Court’s case-law concerning the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, (4) as amended by the successive conventions relating to the accession of new Member States to that convention (‘the Brussels Convention’), given that, in so far as Regulation No 44/2001 replaces the Brussels Convention, the interpretation provided by the Court in respect of the provisions of the Brussels Convention is also valid for those of that regulation whenever the provisions of those instruments may be regarded as equivalent. (5) Indeed, the key provision in the present case, namely, Article 5(3) of Regulation No 44/2001 is drafted in almost identical terms to those of its counterpart in the Brussels Convention, whose system it has adopted. In the light of such similarity, it is necessary to ensure, in accordance with Recital 19 of Regulation No 44/2001, continuity in the interpretation of those two instruments. (6)

B – Question 1

25. By its first question, the referring court asks whether Article 5(3) of Regulation No 44/2001 is to be interpreted as meaning that the place, situated in a Member State, where the damage (7) occurred may be regarded as the ‘place where the harmful event occurred’ if that damage consists solely of financial damage that is the direct result of an unlawful act committed in another Member State.
26. The referring court therefore wishes, in essence, to know whether financial damage suffered in a Member State is a sufficient connecting factor for determining the court with jurisdiction under Article 5(3) of Regulation No 44/2001.
27. It is only by way of derogation from the fundamental principle laid down in Article 2(1) of Regulation No 44/2001, conferring jurisdiction on the courts of the Member State in which the defendant is domiciled, that Section 2 of Chapter II thereof makes provision for certain special cases of conferral of jurisdiction, among them the case in Article 5(3) of that regulation. (8) In so far as the jurisdiction of the courts of the place where the harmful event occurred or may occur constitutes a rule of special jurisdiction, it must be interpreted independently and strictly, (9) which does not admit an interpretation going beyond the cases expressly envisaged by that regulation. (10)
28. The main reason for the rule of special jurisdiction laid down in Article 5(3) of Regulation No 44/2001 is, according to the Court’s settled case-law, based on the existence of a particularly close connecting factor between the dispute and the courts of the place where the harmful event occurred, which justifies the conferring of jurisdiction on those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings. (11) The courts for the place where the harmful event occurred are usually the most appropriate for deciding the case, in particular on the grounds of proximity and ease of taking evidence. (12)
29. Article 5(3) of Regulation No 44/2001 therefore provides that a person domiciled in one Member State may be sued in another Member State ‘in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur’.
30. I note that that provision makes no mention whatever of harm or damage, but of a harmful event. It is therefore not the harm which is primarily referred to by the wording of Article 5(3) of Regulation No 44/2001, but the event giving rise to harm. The logic of that provision seems clear to me: a court will usually be best placed to gather the facts, to hear the witnesses and to undertake any procedural measure in the place where harm has in fact been caused.

31. Nonetheless, it is well known that the Court, since the landmark case which led to the judgment in Bier, 'Mines de potasse d'Alsace', (13) interprets the words 'place where the harmful event occurred' as covering two different places, namely, the place where the damage occurred (14) and the place of the causal event (15) giving rise to that damage. (16)
32. As regards financial damage, the Court held in the judgment in Marinari (17) that the term 'place where the harmful event occurred' did not cover the place where the victim claimed to have suffered financial damage following upon initial damage arising and suffered by him in another Member State. (18) In that case, the applicant had lodged, with a branch of a bank in the United Kingdom, a bundle of promissory notes which the bank staff had refused to return, while advising the police of their existence and stating them to be of dubious origin, which led to the applicant's arrest and the sequestration of the promissory notes. Having been released by the English authorities, the applicant brought an action before an Italian court seeking compensation from the bank for the damage caused by its staff. The claim was for payment of the face value of the promissory notes and compensation for the damage he suffered as a result of his arrest, and for the breach of several contracts and damage to his reputation as well.
33. In the case in the main proceedings, the agreement containing the incorrect clause was negotiated and signed in the Czech Republic. The rights and obligations of the parties were defined in that Member State, including Universal Music's obligation to pay a higher amount than initially planned for the 30% remaining shares. That contractual obligation, which the parties to the contract had not intended to create, arose in the Czech Republic. It is therefore in that Member State that the obligation to pay a higher price than planned became irreversible and unavoidable and, in my view, that the harm occurred.
34. That finding means that the first two questions become hypothetical, in so far as, according to settled case-law the 'place where the harmful event occurred' is in the Czech Republic.
35. The referring court states, however, that it has not found an answer, in the Court's case-law, to the question of whether financial damage alone may constitute an 'Erfolgsort' and, therefore, establish jurisdiction under Article 5(3) of Regulation No 44/2001. In other words, it wonders whether there is jurisdiction under that provision when there is not already initial damage, as in the case which gave rise to the judgment in Marinari. (19)
36. Alternatively, and in such a hypothesis, the key question in the present proceedings is therefore whether the Court's statement in the judgment in Mines de potasse d'Alsace (20) judgment that the words 'place where the harmful event occurred' covers both places also applies when damage is purely financial.
37. I think not.
38. When there is financial damage, namely, damage which consists only in a reduction in financial assets, (21) I think that the term 'Erfolgsort' is not wholly relevant. (22) In certain situations, it is impossible to distinguish between 'Handlungsort' and 'Erfolgsort'. In order to determine whether there is an 'Erfolgsort', it all depends, in such a situation, on where the financial assets are situated, which is usually the same as the place of residence or, in the case of a legal person, the place in which it has its registered office. That matter is often uncertain and connected with considerations which are unrelated to the events at issue.
39. I am therefore wary of transposing to the letter the decision in Mines de potasse d'Alsace (23) to a situation in which the damage is financial. As the Commission rightly points out in its observations, it was not in order to extend the derogation from the general rule of jurisdiction that the Court acknowledged, in the Mines de potasse d'Alsace judgment, (24) the applicant might choose between the place where the damage occurred and the place where the event which initially caused the damage took place. The reason for that choice lies in the necessity of staying as close as possible to the facts of the case and of designating the court aptest for settling the case and, in that context, of conducting proceedings efficiently, for example by taking evidence and hearing witnesses.
40. As we have seen above, all the factors enabling a court to conduct proceedings efficiently are therefore to be found in the Czech Republic.
41. In other words, for reasons of good administration of justice and procedural organisation, the mere fact that a settlement amount has been paid by a company established in the Netherlands is not enough to establish the jurisdiction of the Netherlands court.
42. Analysis of the Court's case-law does not seem to me to invalidate this view.
43. In the case which gave rise to the judgment in Kronhofer, (25) the person harmed, who was established in Austria, had responded to an offer to open an account in Germany, to which he had transferred funds. The Court ruled that Article 5(3) of the Brussels Convention must be interpreted as meaning that the expression 'place where the harmful event occurred' does not refer to the place where the claimant is domiciled or where 'his assets are concentrated' by reason only of the fact that he has suffered financial damage there resulting from the loss of part of his assets which arose and was incurred in another Contracting State. (26) That finding is persuasive, given that that place is rather fortuitous and is not necessarily a reliable connecting factor.
44. In the case which gave rise to the judgment in Kolassa, (27) an investor had, in his own country, Austria, invested a certain sum with a bank. For the Court, the damage occurred in the place in which the investor suffered it, (28) namely, Austria. According to the Court, jurisdiction pursuant to Article 5(3) of Regulation No 44/2001 was established. (29)
45. I think, however, that a general rule cannot be deduced from that case to the effect that financial damage suffices as a connecting factor for the purposes of that provision. The facts in the case leading to the

judgment in Kolassa (30) were specific. The defendant in that case, a British bank, had published a prospectus concerning the financial certificates in question in Austria (31) and it was an Austrian bank that had sold those certificates.

46. In the case which gave rise to the judgment in CDC Hydrogen Peroxide, concerning competition law, in which the victims were in several Member States, the Court recognised that those different places could serve as linking factors. (32) The Court held that 'as for loss consisting in additional costs incurred because of artificially high prices, … that place is identifiable only for each alleged victim taken individually and is located, in general, at that victim's registered office'. (33)

47. I do not think that that statement can be the basis for a general rule that the registered office of a harmed undertaking constitutes the place where damage has occurred. On the contrary, that statement too is explained by the particular features of that case, in which a large number of persons had been harmed. No one place could, in consequence, be identified as the place where the cartel agreement had been concluded or, therefore, the place of the causal event. Furthermore, it seems to me that the registered office of an undertaking tends to be the same as the site of its economic activities.

48. In short, I cannot see how Article 5(3) of Regulation No 44/2001 can establish the jurisdiction of a court situated in a Member State with which the case is connected only by the fact that the person harmed has suffered financial damage there.

49. I therefore propose that the reply to Question 1 should be that, on a proper construction of Article 5(3) of Regulation No 44/2001, the place, in one Member State, where the damage occurred is not, failing any other connecting factors, to be considered to be the 'place where the harmful event occurred', if that damage consists exclusively of financial damage that is the result of an unlawful act committed in another Member State.

50. In the light of this proposal, there is no need to examine the second question.

C – Question 3

51. By its third question, the referring court asks, in essence, whether Article 5(3) it is to be interpreted as meaning that the national court called upon to determine whether it has jurisdiction pursuant to that provision is obliged to base its determination on the asseverations of the applicant, or whether it is obliged also to take into account the arguments put forward by the defendant to challenge those asseverations.

52. Even though the referring court asks this question only if the answer to Question 1 should be in the affirmative, I consider that there is an interest in replying, for this question is of general scope and relates to the determination of jurisdiction, and not only to the question whether financial damage is sufficient for establishing jurisdiction.

53. It should be noted as a preliminary point (34) that the jurisdiction of the court is determined by the autonomous rules of Regulation No 44/2001, whilst the merits of the case are decided according to the national law applicable, determined by the rules of private international law on contractual (35) or non-contractual (36) obligations.

54. It seems to me that the existing case-law already provides us with several paths that help to find the answer to this question.

55. Regulation No 44/2001 does not specify the extent of the national court's duties of review when assessing whether it has jurisdiction. It is settled case-law that the object of the Brussels Convention was not to unify the rules of procedure of the Contracting States, but to determine which court has jurisdiction in disputes relating to civil and commercial matters in relations between the Contracting States and to facilitate the enforcement of judgments. (37) The Court has also consistently held that, as regards procedural rules, reference must be made to the national rules applicable by the national court, provided that the application of those rules does not impair the effectiveness of the Brussels Convention. (38)

56. Thus, the Court has ruled that an applicant might invoke the jurisdiction of the courts of the place of performance in accordance with Article 5(1) of the Brussels Convention, even when the existence of the contract on which the claim was based was in dispute between the parties. (39) It has also stated that it was consonant with the aim of legal certainty that the national court seised should be able readily to decide whether it had jurisdiction on the basis of the rules of the Convention, without having to consider the substance of the case. (40)

57. The Court has held too that, at the stage at which international jurisdiction is determined, the court seised examines neither the admissibility nor the substance of the application for a negative declaration according to the rules of national law, but identifies only the points of connection with the State in which that court is situated that support its claim to jurisdiction under Article 5(3) of Regulation No 44/2001. (41) It has also taken the view that, for the application of Article 5(3) of Regulation No 44/2001, the court seised may regard as established, solely for the purpose of ascertaining whether it has jurisdiction under that provision, the applicant's assertions as regards the conditions for liability in tort, delict or quasi-delict. (42) Finally, it has also held that, in the context of the determination of international jurisdiction under Regulation No 44/2001, it is not necessary to conduct a comprehensive taking of evidence in relation to disputed facts that are relevant both to the question of jurisdiction and to the existence of the claim, and that it is, however, permissible for the court seised to examine its international jurisdiction in the light of all the information available to it, including, where appropriate, the allegations made by the defendant. (43)

58. I therefore propose that the reply to Question 3 should be that, in order to determine its jurisdiction under the provisions of Regulation No 44/2001, the court seised of a case must assess all the elements

available to it, including, where appropriate, the elements put forward by the defendant.

V – Conclusion

59. In the light of the foregoing considerations, I propose that the Court answer the questions asked by the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) as follows:

(1) On a proper construction of Article 5(3) 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, the place, in one Member State, where the damage occurred is not, failing any other connecting factors, to be considered to be the 'place where the harmful event occurred', if that damage consists exclusively of financial damage that is the result of an unlawful act committed in another Member State.

(2) In order to determine whether it has jurisdiction under the provisions of Regulation No 44/2001, the court seised must assess all the elements available to it, including, where appropriate, the elements put forward by the defendant.

1 – Original language: French.

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

3 – C‑364/93, EU:C:1995:289.

4 – OJ 1978, L 304, p. 36.

5 – Judgment in TNT Express Nederland (C‑533/08, EU:C:2010:243, paragraph 36 and the case-law cited).

6 – See also, with regard specifically to Article 5(3) of Regulation No 44/2001, the judgment in Zuid-Chemie (C‑189/08, EU:C:2009:475, paragraph 19).

7 – In order to avoid any risk of confusion, I should point out that the terms 'damage' and 'harm' are used indiscriminately in this Opinion.

8 – See, inter alia, the judgments in Coty Germany (C‑360/12, EU:C:2014:1318, paragraph 44), and Melzer (C‑228/11, EU:C:2013:305, paragraph 23).

9 – According to settled case-law. See, by way of example, the judgments in Holterman Ferho Exploitatie and Others (C‑47/14, EU:C:2015:574, paragraph 72); CDC Hydrogen Peroxide (C‑352/13, EU:C:2015:335, paragraph 37); and Kolassa (C‑375/13, EU:C:2015:37, paragraph 43).

10 – See, inter alia, the judgments in Coty Germany (C‑360/12, EU:C:2014:1318, paragraph 45), and Melzer (C‑228/11, EU:C:2013:305, paragraph 24).

11 – See the judgment in Zuid-Chemie (C‑189/08, EU:C:2009:475, paragraph 24 and the case-law cited).

12 – Judgment in Zuid-Chemie (C‑189/08, EU:C:2009:475, paragraph 24 and the case-law cited).

13 – 21/76, EU:C:1976:166.

14 – Called 'Erfolgsort' according to German academic lawyers.

15 – Called 'Handlungsort' according to German academic lawyers.

16 – 21/76, EU:C:1976:166, paragraph 24; see also the judgments in Zuid-Chemie (C‑189/08, EU:C:2009:475, paragraph 23), and Kainz (C‑45/13, EU:C:2014:7, paragraph 23).

17 – C‑364/93, EU:C:1995:289.

18 – See the judgment in Marinari (C‑364/93, EU:C:1995:289, paragraph 21).

19 – C‑364/93, EU:C:1995:289.

20 – 21/76, EU:C:1976:166.

21 – 'Vermogensschade' in the terminology of the referring court.

22 – Obviously it is different if it is the assets themselves that are the object of the unlawful act. In such a situation it is clear to me that the 'Erfolgsort' may very well be the place where the financial damage is suffered. See also, to that effect, Mankowski, P., in Magnus,U., and Mankowski, P., Brussels Ibis Regulation Commentary, Verlag Dr. Otto Schmidt, Cologne, 2016, Article 7, paragraph 328.

23 – 21/76, EU:C:1976:166.

24 – 21/76, EU:C:1976:166.

25 – C‑168/02, EU:C:2004:364.

26 – Judgment in Kronhofer (C‑168/02, EU:C:2004:364, paragraph 21).

27 – C‑375/13, EU:C:2015:37.

28 – Judgment in Kolassa (C‑375/13, EU:C:2015:37, paragraph 54).

29 – Judgment in Kolassa (C‑375/13, EU:C:2015:37, paragraph 57).

30 – C‑375/13, EU:C:2015:37.

31 – See also my opinion in Kolassa (C‑375/13, EU:C:2014:2135, point 64).

32 – C‑352/13, EU:C:2015:335, paragraph 52.

33 – Judgment in CDC Hydrogen Peroxide (C‑352/13, EU:C:2015:335, paragraph 52).

34 – See also my Opinion in Kolassa (C‑375/13, EU:C:2014:2135, point 69).

35 – Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6).

36 – Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 40).

37 – See, in that regard, the judgments in Shevill and Others (C‑68/93, EU:C:1995:61, paragraph 35); Italian Leather (C‑80/00, EU:C:2002:342, paragraph 43); and DFDS Torline (C‑18/02, EU:C:2004:74, paragraph 23).

38 – Judgments in Hagen (C‑365/88, EU:C:1990:203, paragraphs 19 and 20), and Shevill and Others (EU:C:1995:61, paragraph 36).

39 – Judgment in Effer (38/81, EU:C:1982:79, paragraph 8).

40 – Judgment in Benincasa (C‑269/95, EU:C:1997:337, paragraph 27).

41 – Judgment in Folien Fischer and Fofitec (C‑133/11, EU:C:2012:664, paragraph 50).

42 – Judgment in Hi Hotel HCF (C‑387/12, EU:C:2014:215, paragraph 20).
43 – Judgment in Kolassa (C‑375/13, EU:C:2015:37, paragraph 65).