Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

9 December 2021 *

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EC) No 44/2001 – Article 5(3) – Concept of 'matters relating to tort, delict or quasi-delict' – Judicial enforcement proceedings – Action for recovery of sums unduly paid based on unjust enrichment – Article 22(5) – Enforcement of judgments – Exclusive jurisdiction)

In Case C-242/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Visoki trgovački sud (Commercial Court of Appeal, Croatia), made by decision of 6 May 2020, received at the Court on 8 June 2020, in the proceedings

HRVATSKE ŠUME d.o.o., Zagreb, successor in title to HRVATSKE ŠUME javno poduzeće za gospodarenje šumama i šumskim zemljištima u Republici Hrvatskoj p.o., Zagreb

v

BP Europa SE, successor in title to Deutsche BP AG, in turn successor in title to The Burmah Oil (Deutschland) GmbH,

THE COURT (Fourth Chamber),

composed of K. Jürimäe (Rapporteur), President of the Third Chamber, acting as President of the Fourth Chamber, S. Rodin, President of the Chamber, and N. Piçarra, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Croatian Government, by G. Vidović Mesarek, acting as Agent,

– the Czech Government, by M. Smolek, J. Vláčil and I. Gavrilova, acting as Agents,

– the European Commission, by M. Heller and M. Mataija, acting as Agents,

* Language of the case: Croatian.

after hearing the Opinion of the Advocate General at the sitting on 9 September 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 5(3) and Article 22(5) 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 request has been made in proceedings between, on the one hand, HRVATSKE ŠUME d.o.o., Zagreb, a company established in Croatia, successor in title to HRVATSKE ŠUME javno poduzeće za gospodarenje šumama i šumskim zemljištima u Republici Hrvatskoj p.o., Zagreb, and, on the other, BP Europa SE Hamburg, a company established in Germany, successor in title to Deutsche BP AG, in turn successor in title to The Burmah Oil (Deutschland) GmbH, concerning the recovery, on the basis of unjust enrichment, of an amount unduly paid in enforcement proceedings which were subsequently declared invalid.

Legal context

Regulation No 44/2001

3 Recitals 2, 8, 11 and 12 of 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.

…

(8) There must be a link between proceedings to which this Regulation applies and the territory of the Member States bound by this Regulation. Accordingly common rules on jurisdiction should, in principle, apply when the defendant is domiciled in one of those Member States.

…

(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.’

4 Under Article 2(1) of that regulation:

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

5 Article 3 of that regulation provides:

‘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 that regulation, which appears in Section 2 thereof, entitled ‘Special jurisdiction’, states:

‘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;
   (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

   – in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

   – in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,
   (c) if subparagraph (b) does not apply then subparagraph (a) applies;

…

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

…’

7 Article 22 of Regulation No 44/2001, which appears in Section 6 thereof, entitled ‘Exclusive jurisdiction’, provides:

‘The following courts shall have exclusive jurisdiction, regardless of domicile:

…

5. in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.’

Regulation (EU) No 1215/2012

8 Recital 34 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1) states:

'Continuity between the [Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 304, p. 36), as amended by the conventions relating to the accession of new Member States to that convention ("the Brussels Convention")], Regulation [No 44/2001] 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 by the Court of Justice of the European Union of [the Brussels Convention] and of the Regulations replacing it.'

9 Under Article 66 of Regulation No 1215/2012:

'1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015.

2. Notwithstanding Article 80, Regulation [No 44/2001] shall continue to apply to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded before 10 January 2015 which fall within the scope of that Regulation.'

10 The first sentence of Article 80 of Regulation No 1215/2012 provides:

'This Regulation shall repeal Regulation [No 44/2001]. …'

Regulation (EC) No 864/2007

11 Recital 7 of 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) states:

'The substantive scope and the provisions of this Regulation should be consistent with Regulation [No 44/2001] and the instruments dealing with the law applicable to contractual obligations.'

12 Article 2 of Regulation No 864/2007, entitled 'Non-contractual obligations', provides, in paragraph 1 thereof:

'For the purposes of this Regulation, damage shall cover any consequence arising out of tort/delict, unjust enrichment, *negotiorum gestio* or *culpa in contrahendo*.'

13 Article 10 of that regulation, entitled 'Unjust enrichment', provides:

'1. If a non-contractual obligation arising out of unjust enrichment, including payment of amounts wrongly received, concerns a relationship existing between the parties, such as one arising out of a contract or a tort/delict, that is closely connected with that unjust enrichment, it shall be governed by the law that governs that relationship.

2. Where the law applicable cannot be determined on the basis of paragraph 1 and the parties have their habitual residence in the same country when the event giving rise to unjust enrichment occurs, the law of that country shall apply.

3. Where the law applicable cannot be determined on the basis of paragraphs 1 or 2, it shall be the law of the country in which the unjust enrichment took place.

4. Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of unjust enrichment is manifestly more closely connected with a country other than that indicated in paragraphs 1, 2 and 3, the law of that other country shall apply.'

14 Article 12 of that regulation, entitled '*Culpa in contrahendo*', states, in paragraph 1 thereof:

'The law applicable to a non-contractual obligation arising out of dealings prior to the conclusion of a contract, regardless of whether the contract was actually concluded or not, shall be the law that applies to the contract or that would have been applicable to it had it been entered into.'

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

15 In accordance with an order for enforcement made by the Trgovački sud u Zagrebu (Commercial Court, Zagreb, Croatia), the respondent in the main proceedings obtained, on 11 March 2003, enforced recovery of a debt of 3 792 600.87 kuna (HRK) (approximately EUR 500 000) by way of a charge on the account of the appellant in the main proceedings. The latter then brought proceedings seeking a declaration that the judicial enforcement was invalid. In those proceedings, on 21 May 2009, the Vrhovni sud (Supreme Court, Croatia) delivered a final judgment, in which it held that that enforcement was invalid. The respondent in the main proceedings, the beneficiary of unjust enrichment, was therefore required to restore to the appellant in the main proceedings the sums unduly paid together with statutory interest.

16 Following that judgment, the appellant in the main proceedings was unable, under national procedural rules, to submit a claim for restitution in the same enforcement proceedings, since the period of one year from the date of enforcement, laid down for making such a claim, had expired. Thus, on 1 October 2014, it brought separate contentious proceedings before the Trgovački sud u Zagrebu (Commercial Court, Zagreb, Croatia), which stated that it did not have jurisdiction under the provisions of Regulation No 1215/2012. That court considered that, in the alleged absence of a specific rule conferring jurisdiction, the general rule conferring international jurisdiction should apply and that, accordingly, the courts of the Member State in which the respondent in the main proceedings is domiciled, namely the German courts, had international jurisdiction.

17 The appellant in the main proceedings lodged an appeal against the order of the Trgovački sud u Zagrebu (Commercial Court, Zagreb) before the Visoki trgovački sud (Commercial Court of Appeal, Croatia), the referring court in the present case. That court takes the view that the first-instance court wrongly applied Regulation No 1215/2012 in so far as, under Article 66(1) thereof, that regulation is to apply only to legal proceedings instituted on or after 10 January 2015, whereas the main proceedings had been brought prior to that date. According to that court, Regulation No 44/2001 is therefore applicable *ratione temporis*.

18 That said, the referring court is uncertain, first, as to the correct interpretation of the concept of 'quasi-delict' and has doubts in respect of the interpretation of Article 5(3) of Regulation No 44/2001. In its view, unjust enrichment is a form of quasi-delict, which justifies, in principle, the application of that provision in the case in the main proceedings and confers international jurisdiction on the Croatian courts. The application of that provision is, however, made difficult by the fact that the linking factor under that provision is the harmful event and, in the case of unjust enrichment, there is no harmful event.

19 According to the referring court, the case-law of the Court does not provide an answer to that question, although certain aspects may be relevant. That court notes that, in particular, according to the judgment of 28 January 2015, *Kolassa* (C-375/13, EU:C:2015:37), the concept of 'matters relating to tort, delict or quasi-delict' 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) of that regulation. Similarly, the Court held, in the judgment of 21 April 2016, *Austro-Mechana* (C-572/14, EU:C:2016:286), that Article 5(3) of that regulation must be interpreted as meaning that a claim for the payment of 'fair compensation' within the meaning of Article 5(2)(b) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) falls within matters relating to tort, delict or quasi-delict. By contrast, in his Opinion in *Siemens Aktiengesellschaft Österreich* (C-102/15, EU:C:2016:225), Advocate General Wahl proposed that the Court interpret Article 5(3) of Regulation No 44/2001 as meaning that an action for recovery of sums unduly paid on the ground of unjust enrichment does not amount to a matter relating to tort, delict or quasi-delict.

20 Second, the referring court raises the issue of the interpretation of Article 22(5) of Regulation No 44/2001, applicable to the enforcement of judgments, since the present action for recovery of sums unduly paid arose in the context of enforcement proceedings. The referring court states in that regard that, although the appellant in the main proceedings has brought separate contentious proceedings, it did so only because the time limit laid down by national law for making a claim for restitution in enforcement proceedings had expired.

21 In those circumstances, the Visoki trgovački sud (Commercial Court of Appeal) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do actions for recovery of sums unduly paid by way of unjust enrichment fall within the scope of the ground of jurisdiction established in Regulation [No 44/2001] in respect of "quasi-delicts" since Article 5(3) thereof provides inter alia: "A person domiciled in a Member State may, in another Member State, be sued … in matters relating to … *quasi-delict*, in the courts for the place where the harmful event occurred or may occur"?

(2) Do civil proceedings brought as a result of a time limit within which sums unduly paid in enforcement proceedings may be recovered in the context of the same judicial enforcement proceedings fall within the scope of the exclusive jurisdiction under Article 22(5) of Regulation [No 44/2001] which provides that in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced are to have exclusive jurisdiction, regardless of domicile?'

Consideration of the questions referred

Preliminary observations

22 As a preliminary point, it must be noted, first, that, in accordance with the first sentence of Article 80 of Regulation No 1215/2012, that regulation repeals and replaces Regulation No 44/2001, which in turn replaced the Brussels Convention referred to in paragraph 9 above. Consequently, the Court's interpretation of the provisions of Regulation No 1215/2012 or of that convention also applies to those of Regulation No 44/2001 whenever those provisions may be regarded as 'equivalent'. That is the case, inter alia, with Article 5(3) of the Brussels Convention and Regulation No 44/2001, on the one hand, and with Article 7(2) of Regulation No 1215/2012, on the other (see, to that effect, judgment of 24 November 2020, *Wikingerhof*, C-59/19, EU:C:2020:950, paragraph 20 and the case-law cited).

23 As regards, second, the determination of the legislation applicable *ratione temporis* to the dispute in the main proceedings, it must be noted that Article 66(2) of Regulation No 1215/2012 provides that Regulation No 44/2001 is to continue to apply to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded before 10 January 2015 which fall within the scope of the latter regulation.

24 In the present case, it is apparent from the order for reference that the main proceedings for recovery of sums unduly paid were brought before the Croatian courts on 1 October 2014.

25 It follows, as, moreover, the referring court has stated, that Regulation No 44/2001 is applicable *ratione temporis* to the dispute in the main proceedings.

The second question

26 By its second question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 22(5) of Regulation No 44/2001 must be interpreted as meaning that an action for restitution based on unjust enrichment comes within the exclusive jurisdiction provided for by that provision where that action was brought on account of the expiry of the time limit within which restitution of sums unduly paid in enforcement proceedings may be claimed in the context of the same enforcement proceedings.

27 In that regard, it should be noted that, while Regulation No 44/2001 establishes, in Article 2(1) thereof, as a general rule, the jurisdiction of the courts of the Member State in which the defendant is domiciled, that regulation also lays down special rules allowing the applicant, in certain circumstances, to sue the defendant in the courts of another Member State.

28 The special jurisdictional rules must be interpreted restrictively and cannot give rise to an interpretation going beyond the cases expressly envisaged by that regulation (judgment of 4 October 2018, *Feniks*, C-337/17, EU:C:2018:805, paragraph 37 and the case-law cited).

29 It is therefore only by way of derogation from the general rule that Article 22(5) of Regulation No 44/2001 provides that the courts of the Member State in which the judgment has been or is to be enforced are to have exclusive jurisdiction, regardless of domicile. As an exception to the general rule governing the attribution of jurisdiction, that provision must not be given an

interpretation broader than that which is required by its objective (see, to that effect, judgment of 7 March 2018, *E.ON Czech Holding*, C-560/16, EU:C:2018:167, paragraphs 26 and 27 and the case-law cited).

30 It is apparent from recitals 2 and 11 of that regulation that it seeks to unify the rules on conflict of jurisdiction in civil and commercial matters by way of rules of jurisdiction which are highly predictable. That regulation thus pursues an objective of legal certainty which consists in strengthening the legal protection of persons established in the European Union, by enabling the applicant easily to identify the court in which he or she may sue and the defendant reasonably to foresee before which court he or she may be sued (judgment of 7 March 2018, *E.ON Czech Holding*, C-560/16, EU:C:2018:167, paragraph 28 and the case-law cited).

31 In that context, actions intended to obtain a decision in proceedings relating to recourse to force, constraint or distrain on movable or immovable property in order to ensure the effective implementation of judgments and authentic instruments come within the scope of Article 22(5) of Regulation No 44/2001 (see, by analogy, judgment of 3 September 2020, *Supreme Site Services and Others*, C-186/19, EU:C:2020:638, paragraph 72 and the case-law cited).

32 By contrast, an action the subject matter of which is a claim for restitution based on unjust enrichment is not intended to obtain a decision in proceedings relating to recourse to force, constraint or distrain on movable or immovable property in order to ensure the effective implementation of a judgment or authentic instrument, within the meaning of the case-law cited in the preceding paragraph. It is an independent action which does not constitute, as such, either enforcement proceedings or a remedy against such proceedings. It follows that such an action does not come within the scope of Article 22(5) of Regulation No 44/2001, even if that unjust enrichment arises from the fact that enforcement has been annulled.

33 In the present case, the Croatian Government submits, in essence, that there is a close link between the main proceedings for recovery of sums unduly paid based on unjust enrichment and the enforcement proceedings, given that, first, the invalidity of the judicial decision contested in the context of the enforcement proceedings is the basis for that unjust enrichment and, second, restitution of the sum wrongly received could have been claimed in the enforcement proceedings if the time limit laid down for that purpose had not expired, without the latter circumstance in any way resulting from negligence on the part of the appellant in the main proceedings.

34 It should be noted, however, that both the general scheme of Regulation No 44/2001, which leads to a restrictive interpretation of the provisions of Article 22 thereof, and the requirement to interpret the rules of that regulation in a highly predictable manner, as is apparent from recital 11 of that regulation, lead to exclusion from the scope of Article 22(5) of that regulation of an action for restitution based on unjust enrichment, brought on account of the expiry of the time limit within which restitution of sums unduly paid in enforcement proceedings could be claimed in the context of the same enforcement proceedings.

35 Furthermore, the Court has held, with regard to Article 16(5) of the Brussels Convention, the wording of which was reproduced in Article 22(5) of Regulation No 44/2001, that the essential purpose of the exclusive jurisdiction of the courts of the place in which the judgment has been or is to be enforced is that it is only for the courts of the Member State on whose territory enforcement is sought to apply the rules concerning the action on that territory of the authorities responsible for enforcement (see, to that effect, judgment of 26 March 1992, *Reichert and Kockler*, C-261/90, EU:C:1992:149, paragraph 26).

36 In the absence of any application for enforcement, an action for restitution based on unjust enrichment does not come within the scope of Article 22(5) of Regulation No 44/2001.

37 Therefore, in the light of all the foregoing considerations, the answer to the second question is that Article 22(5) of Regulation No 44/2001 must be interpreted as meaning that an action for restitution based on unjust enrichment does not come within the exclusive jurisdiction provided for by that provision, even though it was brought on account of the expiry of the time limit within which restitution of sums unduly paid in enforcement proceedings may be claimed in the context of the same enforcement proceedings.

The first question

38 By its first question, the referring court asks, in essence, whether Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that an action for restitution based on unjust enrichment falls within the scope of the ground of jurisdiction laid down in that provision.

39 In that regard, it must be borne in mind that, while Article 2(1) of Regulation No 44/2001 establishes the general jurisdiction of the courts of the Member State of the defendant, Article 5(1)(a) and Article 5(3) of that regulation provide for special jurisdiction rules, respectively, in matters relating to a contract and in matters relating to tort, delict or quasi-delict, allowing the applicant to bring an action before the courts of other Member States. Those special jurisdiction rules must be interpreted restrictively, as has been noted in paragraph 28 above.

40 Furthermore, the two rules of special jurisdiction laid down in those provisions must be interpreted independently, by reference to the scheme and purpose of Regulation No 44/2001, in order to ensure that that regulation is applied uniformly in all the Member States. That requirement, which applies in particular to the definition of the respective scopes of those two rules, means that the concepts of 'matters relating to a contract' and of 'matters relating to tort, delict or quasi-delict' cannot be taken to refer to the way in which the legal relationship at issue before the national court is classified by the applicable national law (see, by analogy, judgment of 24 November 2020, *Wikingerhof*, C-59/19, EU:C:2020:950, paragraph 25 and the case-law cited).

41 Thus, for actions coming within matters relating to a contract, Article 5(1)(a) of that regulation allows the applicant to bring proceedings before the courts for the place of performance of the obligation in question, while, for actions coming within matters relating to tort, delict or quasi-delict, Article 5(3) of that regulation provides that they may be brought before the courts for the place where the harmful event occurred or may occur.

42 As regards, more specifically, actions coming within matters relating to tort, delict or quasi-delict, it must be noted that, according to the Court's settled 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, by analogy, judgment of 24 November 2020, *Wikingerhof*, C-59/19, EU:C:2020:950, paragraph 23 and the case-law cited).

43 It follows that, in order to determine whether an action for restitution based on unjust enrichment falls within the scope of matters relating to tort, delict or quasi-delict within the meaning of Article 5(3) of that regulation, it is necessary to ascertain whether two conditions are satisfied,

namely, first, that that action does not concern matters relating to a contract within the meaning of Article 5(1)(a) of that regulation and, second, that it seeks to establish the liability of a defendant.

44 As regards the first condition, matters relating to a contract, within the meaning of that article, covers any claim based on an obligation freely consented to by one person towards another (see, to that effect, judgment of 11 November 2020, *Ellmes Property Services*, C-433/19, EU:C:2020:900, paragraph 37 and the case-law cited).

45 It must be observed, as the Advocate General noted in point 45 of his Opinion, that, in a claim for restitution based on unjust enrichment, the restitutionary obligation relied on by the applicant does not generally arise from a voluntary commitment made by the defendant to the applicant but rather arises independently of the defendant's intention. It follows that such a claim for restitution does not, in principle, come within matters relating to a contract within the meaning of Article 5(1)(a) of Regulation No 44/2001.

46 That interpretation is supported by a joint reading of Article 5(3) of Regulation No 44/2001 and Article 2 of Regulation No 864/2007, which is, in the field of conflict of laws, the counterpart of Article 5(3) in the field of conflicts of jurisdiction, bearing in mind that those two regulations must, so far as possible, be interpreted consistently. Article 2(1) of Regulation No 864/2007 provides that the restitutionary obligation which derives from unjust enrichment is considered to be a non-contractual obligation, falling within the scope of that regulation and being subject, in accordance with Article 10 thereof, to special conflict-of-law rules (see, to that effect, judgment of 21 January 2016, *ERGO Insurance and Gjensidige Baltic*, C-359/14 and C-475/14, EU:C:2016:40, paragraphs 45 and 46).

47 However, in order to give a full answer to the referring court, it should be added that, as the Advocate General observed in points 48 to 52 of his Opinion, a claim for restitution based on unjust enrichment may, in certain circumstances, be closely linked to a contractual relationship between the parties to the dispute and, consequently, be regarded as coming within 'matters relating to a contract' within the meaning of Article 5(1)(a) of that regulation.

48 Those circumstances include the situation in which the claim for restitution based on unjust enrichment relates to a pre-existing contractual relationship between the parties. That is the case, for example, as the Advocate General observed, in essence, in point 50 of his Opinion, where the applicant relies on unjust enrichment closely linked to a contractual obligation which he or she regards as invalid, which has not been performed by the defendant, or which the applicant considers he or she has 'over-performed', as the basis of his or her right to restitution.

49 In that regard, the Court has previously held that a claim for restitution as regards benefits provided under an invalid contract falls within the scope of such matters (see, to that effect, judgment of 20 April 2016, *Profit Investment SIM*, C-366/13, EU:C:2016:282, paragraphs 55 and 58).

50 Moreover, such a connection is consistent with the objectives of proximity and sound administration of justice pursued by Article 5(1)(a) of Regulation No 44/2001, which require the court hearing the dispute on the contract to rule on the effects of its invalidity, non-performance or 'over-performance' and, therefore, on any restitution that might arise from it, where there is a particularly close link between the claim and the court for the place of performance of the obligation in question, within the meaning of that provision.

51 It follows from the foregoing that an action for restitution based on unjust enrichment does not come within matters relating to a contract and as a result satisfies the first condition referred to in paragraph 43 above, unless that action is closely linked to a pre-existing contractual relationship between the parties.

52 As regards the second condition set out in paragraph 43 above, it must be ascertained whether an action for restitution based on unjust enrichment seeks to establish the liability of a defendant.

53 In that regard, the Court has held that such is the case where a harmful event, within the meaning of Article 5(3) of Regulation No 44/2001, may be imputed to the defendant, in that he or she is alleged to have committed an act or omission contrary to a duty or prohibition imposed by law. Liability in tort, delict or quasi-delict can only arise provided that a causal connection can be established between the damage and the event in which that damage originates (see, to that effect, judgment of 21 April 2016, *Austro-Mechana*, C-572/14, EU:C:2016:286, paragraphs 40, 41 and 50 and the case-law cited).

54 It should be added, as the Advocate General observed in point 61 of his Opinion, that those statements apply equally to all matters relating to tort, delict or quasi-delict, and it is not necessary to draw any specific distinction as regards matters relating to quasi-delict. Besides the fact that the term 'quasi-delict' does not appear in the Danish-, Estonian-, Dutch-, Portuguese-, Slovak-, Finnish- and Swedish-language versions of Article 5(3) of Regulation No 44/2001, the concept of 'quasi-delict' refers not so much to situations characterised by the absence of a harmful event but rather to situations in which the harmful event is committed by carelessness or negligence. A claim cannot therefore come within matters relating to tort, delict or quasi-delict where the defendant's liability that it seeks to establish is not based on the existence of a harmful event, within the meaning set out in the preceding paragraph.

55 A claim for restitution based on unjust enrichment is based on an obligation which does not originate in a harmful event. That obligation arises irrespective of the defendant's conduct, with the result that there is no causal link that can be established between the damage and any unlawful act or omission committed by the defendant.

56 Accordingly, a claim for restitution based on unjust enrichment cannot come within matters relating to tort, delict or quasi-delict, within the meaning of Article 5(3) of Regulation No 44/2001.

57 That conclusion is not undermined by the judgment of 21 April 2016, *Austro-Mechana* (C-572/14, EU:C:2016:286), in which the Court held that an action brought by a copyright-collecting society relating to the obligation to pay 'fair compensation', within the meaning of Article 5(2)(b) of Directive 2001/29, which, pursuant to the national law, is imposed on undertakings that are the first to place recording material on the domestic market on a commercial basis and for consideration, falls within matters relating to tort, delict or quasi-delict, within the meaning of Article 5(3) of Regulation No 44/2001. As the Advocate General observed in point 72 of his Opinion, the obligation on which that claim is based originates in a harmful event, namely the damage suffered by copyright holders linked to the making of private copies on the recording material placed on the market.

58 It should also be noted that it is possible that a claim for restitution based on unjust enrichment comes neither within matters relating to a contract within the meaning of Article 5(1)(a) of Regulation No 44/2001 nor within matters relating to tort, delict or quasi-delict within the meaning of Article 5(3) of that regulation. That is the case where that claim is not closely linked to a pre-existing contractual relationship between the parties to the dispute concerned.

59 In such a situation, a claim for restitution based on unjust enrichment comes within the jurisdiction of the courts of the Member State in which the defendant is domiciled, in accordance with the general rule laid down in Article 2(1) of Regulation No 44/2001.

60 In the light of all 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 an action for restitution based on unjust enrichment does not fall within the scope of the ground of jurisdiction laid down in that provision.

Costs

61 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 (Fourth Chamber) hereby rules:

1. **Article 22(5) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action for restitution based on unjust enrichment does not come within the exclusive jurisdiction provided for by that provision, even though it was brought on account of the expiry of the time limit within which restitution of sums unduly paid in enforcement proceedings may be claimed in the context of the same enforcement proceedings.**

2. **Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that an action for restitution based on unjust enrichment does not fall within the scope of the ground of jurisdiction laid down in that provision.**

[Signatures]