

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 11 September 2017 — NK, liquidator in the bankruptcies of OJ B.V. and PI v BNP Paribas Fortis N.V.

(Case C-535/17)

(2017/C 412/24)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: NK, liquidator in the bankruptcies of OJ B.V. and PI

Defendant: BNP Paribas Fortis N.V.

Questions referred

1. Is a claim for damages against a third party brought by the liquidator pursuant to the task assigned to him in Article 68 (1) of the Faillissementswet of administering and liquidating the bankrupt estate on behalf of the joint creditors, on the grounds that that third party behaved wrongfully towards the creditors, and the proceeds of which, if the claim succeeds, are added to the estate, covered by the exception of Article 1(2)(b) of Council Regulation (EC) No 44/2001 ⁽¹⁾ of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters?
2. If question 1 is answered in the affirmative and the claim concerned is therefore covered by Council Regulation (EC) No 1346/2000 ⁽²⁾ of 29 May 2000 on insolvency proceedings, is that claim then governed by the law of the Member State where the insolvency proceedings were opened under Article 4(1) of that regulation, both as regards the power of the liquidator to bring that claim and as regards the substantive law applicable to that claim?
3. If question 2 is answered in the affirmative, should the courts of the Member State where the insolvency proceedings were opened then take account, whether or not by analogy, of:
 - (a) the provisions of Article 13 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, in the sense that the defendant can defend itself against a claim brought by the liquidator for the benefit of the joint creditors by proving that its conduct did not result in it being liable, if assessed on the basis of the law which would have been applicable to the claim if it had not been brought by the liquidator, but by an individual creditor as a result of a wrongful act;
 - (b) the provisions of Article 17 of Regulation (EC) No 864/2007 ⁽³⁾ of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ('Rome II'), in conjunction with Article 13 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, that is to say, with the security regulations and codes of conduct applicable at the site of the alleged wrongful act, such as financial rules of conduct for banks?

⁽¹⁾ OJ 2001 L 12, p. 1.

⁽²⁾ OJ 2000 L 160, p. 1.

⁽³⁾ OJ 2007 L 199, p. 40.

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 18 September 2017 — DISA Gas SAU v Administración del Estado, Redexis Gas, S.L., Repsol Butano, S.A.

(Case C-546/17)

(2017/C 412/25)

Language of the case: Spanish

Referring court

Tribunal Supremo