

JUDGMENT OF THE COURT (Grand Chamber)

4 May 2010 *

In Case C-533/08,

REFERENCE for a preliminary ruling under Articles 68 EC and 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 28 November 2008, received at the Court on 3 December 2008, in the proceedings

TNT Express Nederland BV

v

AXA Versicherung AG,

* Language of the case: Dutch.

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot, R. Silva de Lapuerta and C. Toader, Presidents of Chambers, K. Schiemann, P. Kūris, E. Juhász, M. Ilešič (Rapporteur), J.-J. Kasel and M. Safjan, Judges,

Advocate General: J. Kokott,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 17 November 2009,

after considering the observations submitted on behalf of:

— TNT Express Nederland BV, by J.H.J. Teunissen, advocaat,

— the Netherlands Government, by C. Wissels and Y. de Vries, acting as Agents,

— the Czech Government, by M. Smolek, acting as Agent,

— the German Government, by M. Lumma and J. Kemper, acting as Agents,

— the Commission of the European Communities, by A.-M. Rouchaud-Joët and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 January 2010,

gives the following

Judgment

- ¹ This reference for a preliminary ruling relates to the interpretation of Article 71 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) and Article 31 of the Convention on the Contract for the International Carriage of Goods by Road, signed at Geneva on 19 May 1956, as amended by the Protocol signed at Geneva on 5 July 1978 ('the CMR').
- ² The reference has been made in proceedings between TNT Express Nederland BV ('TNT') and AXA Versicherung AG ('AXA') concerning the enforcement in the

Netherlands of judgments of a German court ordering TNT to pay compensation in respect of the loss of goods in the course of international carriage by road.

Legal context

Regulation No 44/2001

- 3 Recital 1 in the preamble to Regulation No 44/2001 states:

‘The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. In order to establish progressively such an area, the Community should adopt, amongst other things, the measures relating to judicial cooperation in civil matters which are necessary for the sound operation of the internal market.’

- 4 Recital 6 in the preamble to the regulation is worded as follows:

‘In order to attain the objective of free movement of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and

the recognition and enforcement of judgments be governed by a Community legal instrument which is binding and directly applicable.'

5 Recitals 11, 12 and 15 in the preamble state:

'(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 ...

(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. ...'

6 Recitals 16 and 17 state:

‘(16) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.

(17) By virtue of the same principle of mutual trust, the procedure for making enforceable in one Member State a judgment given in another must be efficient and rapid. ...’

7 According to recital 25:

‘Respect for international commitments entered into by the Member States means that this Regulation should not affect conventions relating to specific matters to which the Member States are parties.’

8 Article 1(1) and (2) of Regulation No 44/2001 states:

‘1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

2. The Regulation shall not apply to:

- (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
- (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- (c) social security;
- (d) arbitration.’

- 9 Article 27 of Regulation No 44/2001, which appears in Section 9 (*‘Lis pendens – related actions’*) of Chapter II (*‘Jurisdiction’*), provides:

‘1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.’

10 Article 34, which appears in Section 1 ('Recognition') of Chapter III ('Recognition and enforcement') of the regulation, provides:

'A judgment shall not be recognised:

1. if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;

...'

11 Article 35 of the regulation, which appears in the same section, is worded as follows:

'1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.

2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.

3. Subject to ... paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.’

¹² According to Article 36 of the regulation, which also appears in Section 1 of Chapter III, ‘a foreign judgment [may not] be reviewed as to its substance’.

¹³ Article 38(1) of the regulation, which appears in section 2 (‘Enforcement’) of Chapter III, provides:

‘A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.’

¹⁴ Article 43(1) of the regulation adds that ‘the decision on the application for a declaration of enforceability may be appealed against by either party’.

¹⁵ Article 45 of the regulation further provides:

‘1. The court with which an appeal is lodged under Article 43 ... shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. ...

2. Under no circumstances may the foreign judgment be reviewed as to its substance.’

¹⁶ Article 71 of the regulation, which appears in Chapter VII (‘Relations with other instruments’), provides:

‘1. This Regulation shall not affect any conventions to which the Member States are parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

2. With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner:

- (a) this Regulation shall not prevent a court of a Member State, which is a party to a convention on a particular matter, from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Member State which is not a party to that convention. The court hearing the action shall, in any event, apply Article 26 of this Regulation;
- (b) judgments given in a Member State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Member States in accordance with this Regulation.

Where a convention on a particular matter to which both the Member State of origin and the Member State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any

event, the provisions of this Regulation which concern the procedure for recognition and enforcement of judgments may be applied.'

The CMR

- ¹⁷ The CMR applies, in accordance with Article 1 thereof, 'to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery ... are situated in two different countries, of which at least one is a contracting country, irrespective of the place of residence and the nationality of the parties.'
- ¹⁸ The CMR was negotiated under the auspices of the United Nations Economic Commission for Europe. More than 50 States, including all the Member States of the European Union, have acceded to the CMR.
- ¹⁹ Article 23 of the CMR provides:
- '1. When, under the provisions of this Convention, a carrier is liable for compensation in respect of total or partial loss of goods, such compensation shall be calculated by reference to the value of the goods at the place and time at which they were accepted for carriage.

...

3. Compensation shall not, however, exceed 8.33 units of account per kilogram of gross weight short.

4. In addition, the carriage charges, customs duties and other charges incurred in respect of the carriage of the goods shall be refunded in full in case of total loss and in proportion to the loss sustained in case of partial loss, but no further damages shall be payable.

...

7. The unit of account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amount mentioned in paragraph 3 of this article shall be converted into the national currency of the State of the court seised of the case ...

...'

²⁰ Article 31 of the CMR states:

‘In legal proceedings arising out of carriage under this Convention, the plaintiff may bring an action in any court or tribunal of a contracting country designated by

agreement between the parties and, in addition, in the courts or tribunals of a country within whose territory:

- (a) the defendant is ordinarily resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made, or
- (b) the place where the goods were taken over by the carrier or the place designated for delivery is situated,

and in no other courts or tribunals.

2. Where in respect of a claim referred to in paragraph 1 of this article an action is pending before a court or tribunal competent under that paragraph, or where in respect of such a claim a judgment has been entered by such a court or tribunal no new action shall be started between the same parties on the same grounds unless the judgment of the court or tribunal before which the first action was brought is not enforceable in the country in which the fresh proceedings are brought.

3. When a judgment entered by a court or tribunal of a contracting country in any such action as is referred to in paragraph 1 of this article has become enforceable in that country, it shall also become enforceable in each of the other contracting States, as soon as the formalities required in the country concerned have been complied with. These formalities shall not permit the merits of the case to be re-opened.

4. The provisions of paragraph 3 of this article shall apply to judgments after trial, judgments by default and settlements confirmed by an order of the court, but shall not apply to interim judgments or to awards of damages, in addition to costs against a plaintiff who wholly or partly fails in his action.

...

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

²¹ In April 2001, Siemens Nederland NV ('Siemens') and TNT entered into a contract for the carriage of goods by road from Zoetermeer (Netherlands) to Unterschleissheim (Germany). The goods' value was DEM 103 540 (EUR 52 939) and they weighed 12 kg.

²² However, the goods were not delivered to their destination.

²³ In May 2002 TNT instituted proceedings before the Rechtbank te Rotterdam (Rotterdam Court) (Netherlands) against Siemens' insurer, AXA, for a declaration that TNT was not liable to AXA for any damage resulting from the loss of the goods with the exception of an amount of EUR 11.50 per kg, making a total of EUR 138, in accordance with Article 23 of the CMR, which lays down the rules applicable to the amount of compensation that can be claimed. The Rechtbank te Rotterdam dismissed the action by judgment of 4 May 2005. TNT appealed against that judgment to the Gerechtshof te 's-Gravenhage (Regional Court of Appeal, The Hague) (Netherlands).

- 24 In August 2004 AXA brought an action against TNT before the Landgericht München (Regional Court, Munich) (Germany) for compensation in respect of the loss suffered by Siemens on account of the loss of the goods. Given that proceedings between the same parties and concerning the same carriage were already pending in the Netherlands, TNT contended that, under the *lis pendens* rule laid down in Article 31(2) of the CMR, the Landgericht München could not hear AXA's action.
- 25 By judgments of 4 April and 7 September 2006 ('the judgments of the Landgericht München'), the Landgericht München rejected TNT's line of argument founded on Article 31(2) of the CMR and ordered it to pay compensation.
- 26 On 6 March 2007 AXA requested the Rechtbank te Utrecht (Utrecht Court) (Netherlands) to declare the judgments of the Landgericht München enforceable in the Netherlands pursuant to Regulation No 44/2001. After the judge of the Rechtbank te Utrecht responsible for granting interim measures had allowed that application by order of 28 March 2007, TNT requested the Rechtbank te Utrecht on 4 May 2007 to set aside the order and to refuse enforcement of the judgments or, at least, to defer a decision on the application for their enforcement until the Gerechtshof te 's-Gravenhage had ruled on the appeal lodged against the judgment of the Rechtbank te Rotterdam of 4 May 2005.
- 27 TNT based its appeal before the Rechtbank te Utrecht on the ground that recognition of the judgments of the Landgericht München was manifestly contrary to public policy in the Netherlands. It stated that, by virtue of the *lis pendens* rule laid down in Article 31(2) of the CMR, the Landgericht München lacked jurisdiction to hear AXA's action.
- 28 On the other hand, AXA submitted that, by virtue of Article 35(3) of Regulation No 44/2001, the Netherlands court could not review the German court's jurisdiction, the public policy test referred to in Article 34(1) of the regulation not being capable of application to the rules relating to jurisdiction.

29 The Rechtbank te Utrecht dismissed TNT's appeal by order of 18 July 2007. As at that date, the Gerechtshof te 's-Gravenhage had not yet ruled on the appeal which TNT had brought before it.

30 The Rechtbank te Utrecht held that TNT could not rely on the ground for refusal of recognition set out in Article 34(1) of Regulation No 44/2001 to contest the jurisdiction of the German court, given that the test of public policy referred to in that provision is inapplicable to the rules relating to jurisdiction, as Article 35(3) of the regulation makes clear.

31 TNT appealed on a point of law against the order of the Rechtbank te Utrecht of 18 July 2007. In its submission, that court failed to have regard to the fact that, by virtue of the second subparagraph of Article 71(2)(b) of Regulation No 44/2001, Article 31 of the CMR derogates from the prohibition, laid down in Article 35(3) of the regulation, on reviewing the jurisdiction of the court of the Member State of origin.

32 In those circumstances, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must the second subparagraph of Article 71(2)(b) of Regulation No 44/2001 be interpreted as meaning:

(a) that the rules on recognition and enforcement laid down in Regulation No 44/2001 yield to those of a specialised convention only if the rules of the specialised convention claim exclusivity, or

(b) that, in the event of the simultaneous applicability of the conditions for recognition and enforcement laid down in the specialised convention and those laid down in Regulation No 44/2001, the conditions laid down in the specialised convention must always be applied and those laid down in Regulation No 44/2001 are not to be applied, even though the specialised convention makes no claim to exclusive effect vis-à-vis other international rules on recognition and enforcement?

(2) Does the Court of Justice have jurisdiction, with a view to forestalling divergent judgments with regard to the concurrence [of rules] referred to in the first question, to interpret – in a manner binding on the courts of the Member States – the ... CMR ..., in so far as the matters governed by Article 31 of that convention are concerned?

(3) If the answer to the second question is in the affirmative and the answer to part (a) of the first question is likewise in the affirmative, must the rules on recognition and enforcement laid down in Article 31(3) and (4) of the CMR be interpreted as meaning that that convention does not claim exclusivity and leaves room for the application of other international enforcement rules making recognition or enforcement possible, such as Regulation No 44/2001?

Should the Court of Justice answer part (b) of the first question in the affirmative and likewise answer the second question in the affirmative, the Hoge Raad also refers the following three questions ...:

(4) In the event of an application for a declaration of enforceability, does Article 31(3) and (4) of the CMR permit the court of the State addressed to examine whether the court of the State of origin had international jurisdiction to hear the dispute?

- (5) Must Article 71(1) of Regulation No 44/2001 be interpreted as meaning that, in the event of the concurrence of the *lis pendens* rules of the CMR and those of Regulation No 44/2001, the *lis pendens* rules of the CMR take precedence over those of Regulation No 44/2001?
- (6) Do the declaration applied for in the present case in the Netherlands and the compensation in respect of damage sought in Germany relate to “the same grounds” within the meaning of Article 31(2) of the CMR?

Consideration of the questions

Preliminary points

- ³³ It must be stated at the outset that the dispute between TNT and AXA falls within the scope of both the CMR and Regulation No 44/2001.
- ³⁴ The dispute relates to a contract for the carriage of goods by road which specifies an address in the Netherlands as the place of taking over of the goods and an address in Germany as the place designated for their delivery. The conditions for application of the CMR, set out in Article 1 thereof, are thus fulfilled.

- 35 Also, disputes connected with the carriage of goods by road between Member States fall under ‘civil and commercial matters’ within the meaning of Article 1(1) of Regulation No 44/2001. Furthermore, the carriage of goods by road does not appear among the fields, exhaustively listed in that article, that are excluded from the regulation’s scope.
- 36 A second preliminary point is that, in so far as Regulation No 44/2001 replaces the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), as amended by the successive conventions relating to the accession of new Member States to that convention (‘the Brussels Convention’), interpretation provided by the Court in respect of the provisions of the Brussels Convention is also valid for those of Regulation No 44/2001 whenever the provisions of those instruments may be regarded as equivalent (Case C-180/06 *Ilse* [2009] ECR I-3961, paragraph 41, and Case C-189/08 *Zuid-Chemie* [2009] ECR I-6917, paragraph 18).
- 37 Article 71 of Regulation No 44/2001, whose interpretation is sought in the present case, replaces Article 57 of the Brussels Convention, which contained the following provisions in respect of conventions on particular matters (‘specialised conventions’):

‘1. This Convention shall not affect any conventions to which the Contracting States are or will be parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

2. With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner:

- (a) this Convention shall not prevent a court of a Contracting State which is a party to a convention on a particular matter from assuming jurisdiction in accordance with that Convention, even where the defendant is domiciled in another Contracting State which is not a party to that Convention ...;
- (b) judgments given in a Contracting State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Contracting State in accordance with this Convention.

Where a convention on a particular matter to which both the State of origin and the State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. ...

...'

³⁸ By use of the words 'or will be', Article 57(1) of the Brussels Convention made it clear that the rules contained in that convention did not preclude the application of different rules to which the Contracting States would agree in the future through the conclusion of specialised conventions. Those words were not reproduced in Article 71(1) of Regulation No 44/2001. Accordingly, that provision does not enable the Member States to introduce, by concluding new specialised conventions or amending conventions already in force, rules which would prevail over those of Regulation No 44/2001. This finding is confirmed by the case-law stating that, as and when common rules

come into being, the Member States no longer have the right to conclude international agreements affecting those rules (see, *inter alia*, Case 22/70 *Commission v Council* (ERTA) [1971] ECR 263, paragraphs 17 to 19, and Case C-467/98 *Commission v Denmark* (Open Skies) [2002] ECR I-9519, paragraph 77).

- 39 On the other hand, in the case of provisions, such as Article 31 of the CMR, which already bound the Member States when Regulation No 44/2001 entered into force, Article 71 of that regulation reflects the same system as Article 57 of the Brussels Convention and is couched in almost identical terms. Consequently, account is to be taken of interpretation already provided by the Court in the context of the Brussels Convention.
- 40 In light of those preliminary points and having regard to the connections between the various questions referred, the first and fifth questions, relating to the interpretation of Article 71 of Regulation No 44/2001, will be examined together first. Then the questions relating to the interpretation of the CMR will be addressed.

Interpretation of Article 71 of Regulation No 44/2001

- 41 By its first and fifth questions, the national court essentially asks whether, in a case such as the main proceedings, Article 71 of Regulation No 44/2001 must be interpreted as meaning that the rules governing jurisdiction, recognition and enforcement that are laid down by a specialised convention, such as the *lis pendens* rule set out in Article 31(2) of the CMR and the rule relating to enforceability set out in Article 31(3) of that convention, apply.

- 42 As is set out in the order for reference, this issue arises, first, because the *lis pendens* rule laid down by the CMR and by Regulation No 44/2001, although expressed in each in similar terms, is liable to have a different effect depending on whether the CMR and the national case-law relating to it, or Regulation No 44/2001 and the Court's case-law concerning the regulation, are applied and, second, because the Netherlands court hearing AXA's application for a declaration of enforceability in respect of the judgments of the Landgericht München needs to ascertain if it may review whether the Landgericht München had jurisdiction to rule on the action for compensation brought before it by AXA.
- 43 In the latter respect, TNT asserts that Article 31(3) of the CMR permits such review, whereas AXA submits that review of the jurisdiction of the Landgericht München is precluded by Article 35(3) of Regulation No 44/2001. In support of this proposition, AXA has argued before the Netherlands courts that the recognition and enforcement of judgments concerning the international carriage of goods by road are governed by Regulation No 44/2001 and not by the CMR.
- 44 According to settled case-law, in interpreting a provision of European Union law it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, inter alia, Case C-301/98 *KVS International* [2000] ECR I-3583, paragraph 21; Case C-298/07 *Bundesverband der Verbraucherzentralen und Verbraucherverbände* [2008] ECR I-7841, paragraph 15; and Case C-403/09 *PPU Detiček* [2009] ECR I-12193, paragraph 33). Account should therefore be taken, for the purposes of answering the first and fifth questions referred for a preliminary ruling, both of the wording of Article 71 of Regulation No 44/2001 and that particular article's objective and of the context in which Article 71 occurs and the objectives pursued by the regulation.
- 45 According to the wording of Article 71 of Regulation No 44/2001, where the dispute falls within the scope of a specialised convention the rules set out in that convention and not those laid down by Regulation No 44/2001 should in principle be applied.

- 46 As the Netherlands and Czech Governments in particular have submitted, it is apparent from the wording of Article 71(1) of Regulation No 44/2001, according to which the regulation ‘shall not affect’ specialised conventions, that the Community legislature provided for the application of those conventions in the event of there being concurrent rules.
- 47 This interpretation is borne out by Article 71(2) of the regulation which states that, where the specialised convention to which both the Member State of origin and the Member State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions are to be applied. Article 71(2) expressly relates to situations which are confined entirely within the European Union. It follows that, notwithstanding the explanation given in recital 25 in the preamble to the regulation that specialised conventions are not affected in order to enable the Member States to observe their international commitments vis-à-vis non-member countries, the legislature also sought to impose, by Article 71 of the regulation, the application of specialised conventions within the European Union itself.
- 48 Therefore, Article 71 of Regulation No 44/2001 is intended to ensure compliance with rules in whose enactment account was taken of the specific features of a particular matter (see, with regard to Article 57 of the Brussels Convention, Case C-406/92 *Tatry* [1994] ECR I-5439, paragraph 24, and Case C-148/03 *Nürnberger Allgemeine Versicherung* [2004] ECR I-10327, point 14). In the light of that objective, the Court has held that the rules laid down in specialised conventions have the effect of precluding the application of the provisions of the Brussels Convention relating to the same question (see, to this effect, *Tatry*, paragraph 25).
- 49 While it is apparent from the foregoing considerations that Article 71 of Regulation No 44/2001 provides, in relation to matters governed by specialised conventions, for the application of those conventions, the fact remains that their application cannot compromise the principles which underlie judicial cooperation in civil and commercial matters in the European Union, such as the principles, recalled in recitals 6, 11, 12 and 15 to 17 in the preamble to Regulation No 44/2001, of free movement of judgments in civil and commercial matters, predictability as to the courts having jurisdiction and therefore legal certainty for litigants, sound administration of justice, minimisation of the risk of concurrent proceedings, and mutual trust in the administration of justice in the European Union.

- 50 Observance of each of those principles is necessary for the sound operation of the internal market, which, as is apparent from recital 1 in the preamble, constitutes the *raison d'être* of Regulation No 44/2001.
- 51 Article 71 of Regulation No 44/2001 cannot have a purport that conflicts with the principles underlying the legislation of which it is part. Accordingly, that article cannot be interpreted as meaning that, in a field covered by the regulation, such as the carriage of goods by road, a specialised convention, such as the CMR, may lead to results which are less favourable for achieving sound operation of the internal market than the results to which the regulation's provisions lead.
- 52 This finding is consistent with settled case-law that conventions concluded by Member States with non-member countries cannot, in relations between the Member States, be applied to the detriment of the objectives of European Union law (see, to this effect, Case 286/86 *Deserbais* [1988] ECR 4907, paragraph 18; Joined Cases C-241/91 P and C-242/91 P *RTE and ITP v Commission* [1995] ECR I-743, paragraph 84; and Case C-301/08 *Bogiatzi* [2009] ECR I-10185, paragraph 19).
- 53 It follows that the rules governing jurisdiction, including the *lis pendens* rules, set out in specialised conventions referred to in Article 71 of Regulation No 44/2001 can be applied in the European Union only to the extent that, as is called for by recitals 11, 12 and 15 in the preamble to the regulation, they are highly predictable, facilitate the sound administration of justice and enable the risk of concurrent proceedings to be minimised.
- 54 In the case of the recognition and enforcement of judgments, the relevant principles are those, specified in recital 6 and recitals 16 and 17 in the preamble to Regulation No 44/2001, of free movement of judgments and mutual trust in the administration of justice (*favor executionis*) (see, in particular, Case C-283/05 *ASML* [2006] ECR

I-12041, paragraph 23; Case C-185/07 *Allianz and Generali Assicurazioni Generali* [2009] ECR I-663, paragraph 24; and Case C-420/07 *Apostolides* [2009] ECR I-3571, paragraph 73). Rules governing recognition and enforcement laid down by specialised conventions referred to in Article 71 of Regulation No 44/2001 can be applied within the European Union only to the extent that those principles are observed.

55 Having regard to the principle of mutual trust referred to above, the Court has stated that the court of the State addressed is never in a better position than the court of the State of origin to determine whether the latter has jurisdiction. Accordingly, Regulation No 44/2001, apart from a few limited exceptions, does not authorise the jurisdiction of a court of a Member State to be reviewed by a court in another Member State (*Allianz and Generali Assicurazioni Generali*, paragraph 29 and the case-law cited). Therefore, Article 31(3) of the CMR can be applied in the European Union only if it enables the objectives of the free movement of judgments in civil and commercial matters and of mutual trust in the administration of justice in the European Union to be achieved under conditions at least as favourable as those resulting from the application of Regulation No 44/2001.

56 In light of all the foregoing, the answer to the first and fifth questions is that Article 71 of Regulation No 44/2001 must be interpreted as meaning that, in a case such as the main proceedings, the rules governing jurisdiction, recognition and enforcement that are laid down by a specialised convention, such as the *lis pendens* rule set out in Article 31(2) of the CMR and the rule relating to enforceability set out in Article 31(3) of that convention, apply provided that they are highly predictable, facilitate the sound administration of justice and enable the risk of concurrent proceedings to be minimised and that they ensure, under conditions at least as favourable as those provided for by the regulation, the free movement of judgments in civil and commercial matters and mutual trust in the administration of justice in the European Union (*favor executionis*).

Interpretation of Article 31 of the CMR

57 By its second question, the national court asks whether the Court of Justice has jurisdiction to interpret Article 31 of the CMR. Should that question require an answer in the affirmative, the national court requests specific interpretation of Article 31 in its third, fourth and sixth questions.

The second question

58 In light of the fact that the CMR does not contain a clause under which the Court is conferred jurisdiction, the Court can interpret Article 31 of the CMR as requested only if the performance by it of such tasks is covered by Article 267 TFEU.

59 It is settled case-law that the power, as resulting from that provision, to provide interpretations by way of preliminary rulings extends only to rules which are part of European Union law (see to this effect, *inter alia*, Case C-130/95 *Giloy* [1997] ECR I-4291, paragraph 21; Case C-222/04 *Cassa di Risparmio di Firenze and Others* [2006] ECR I-289, paragraph 63; and Case C-453/04 *innoventif* [2006] ECR I-4929, paragraph 29).

60 In the case of international agreements, it is settled that such agreements concluded by the European Union form an integral part of its legal order and can therefore be the subject of a request for a preliminary ruling (see to this effect, *inter alia*, Case 181/73 *Haegeman* [1974] ECR 449, paragraphs 4 to 6; Case 12/86 *Demirel* [1987] ECR 3719, paragraph 7; and Case C-431/05 *Merck Genéricos - Produtos Farmacêuticos* [2006] ECR I-7001, paragraph 31).

- 61 On the other hand, the Court does not, in principle, have jurisdiction to interpret, in preliminary ruling proceedings, international agreements concluded between Member States and non-member countries (see, to this effect, Case 130/73 *Vandeweghe and Others* [1973] ECR 1329, paragraph 2; order in Case C-162/98 *Hartmann* [1998] ECR I-7083, paragraph 9; and *Bogiatzi*, paragraph 24).
- 62 It is only where and in so far as the European Union has assumed the powers previously exercised by the Member States in the field to which an international convention not concluded by the European Union applies and, therefore, the provisions of the convention have the effect of binding the European Union that the Court has jurisdiction to interpret such a convention (see, inter alia, Joined Cases 21/72 to 24/72 *International Fruit Company and Others* [1972] ECR 1219, paragraph 18; Case C-308/06 *Intertanko and Others* [2008] ECR I-4057, paragraph 48; and *Bogiatzi*, paragraph 25). In the present instance, however, it cannot be asserted that the rules governing jurisdiction, recognition and enforcement laid down by the CMR bind the European Union. On the contrary, it is apparent from the interpretation of Article 71 of Regulation No 44/2001 provided in the present judgment that those rules laid down by the CMR can be applied in the European Union only if the principles underlying that regulation are observed.
- 63 In light of the foregoing, the answer to the second question is that the Court does not have jurisdiction to interpret Article 31 of the CMR.

The third, fourth and sixth questions

- 64 In view of the answer given to the second question, there is no need for the Court to answer the third, fourth and sixth questions.

Costs

- ⁶⁵ 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 (Grand Chamber) hereby rules:

- 1. Article 71 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, in a case such as the main proceedings, the rules governing jurisdiction, recognition and enforcement that are laid down by a convention on a particular matter, such as the *lis pendens* rule set out in Article 31(2) of the Convention on the Contract for the International Carriage of Goods by Road, signed at Geneva on 19 May 1956, as amended by the Protocol signed at Geneva on 5 July 1978, and the rule relating to enforceability set out in Article 31(3) of that convention, apply provided that they are highly predictable, facilitate the sound administration of justice and enable the risk of concurrent proceedings to be minimised and that they ensure, under conditions at least as favourable as those provided for by the regulation, the free movement of judgments in civil and commercial matters and mutual trust in the administration of justice in the European Union (*favor executionis*).**
- 2. The Court of Justice of the European Union does not have jurisdiction to interpret Article 31 of the Convention on the Contract for the International Carriage of Goods by Road, as amended.**

[Signatures]