

Case C-533/08

TNT Express Nederland BV

v

AXA Versicherung AG

(Reference for a preliminary ruling from the Hoge Raad
der Nederlanden (Netherlands))

(Judicial cooperation in civil and commercial matters — Jurisdiction and
recognition and enforcement of judgments — Regulation (EC) No 44/2001 —
Article 71 — Conventions concluded by the Member States in relation to particular
matters — Convention on the Contract for the International Carriage of Goods by
Road (CMR))

Opinion of Advocate General Kokott delivered on 28 January 2010 I - 4110

Judgment of the Court (Grand Chamber), 4 May 2010 I - 4137

Summary of the Judgment

1. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Relationship with conventions on a particular matter — Convention on the Contract for the International Carriage of Goods by Road*
(Council Regulation No 44/2001, recitals 6, 11, 12, 15 to 17 and Art. 71)
2. *Preliminary rulings — Jurisdiction of the Court — Limits — International convention not binding the Community — Convention on the Contract for the International Carriage of Goods by Road*
(Art. 267 TFEU; Council Regulation No 44/2001, Art. 71)

1. Article 71 of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that 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 (CMR), 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*).

which is necessary for the sound operation of the internal market, which constitutes the very *raison d'être* of Regulation No 44/2001. Article 71 cannot have a purport that conflicts with the principles underlying the legislation of which it is part. Accordingly, in a field covered by Regulation No 44/2001, such as the carriage of goods by road, the provisions of a specialised convention, such as the CMR, cannot be applied if their application leads to results which are less favourable for achieving sound operation of the internal market than the results to which the regulation's provisions lead.

(see paras 48-51, 56, operative part 1)

Whilst Article 71 of Regulation No 44/2001 is intended to ensure compliance with the rules enacted by a specialised convention on account of the specific features of a particular matter, the fact remains that the application of such rules cannot compromise the abovementioned principles which underlie judicial cooperation in civil and commercial matters in the European Union and the observance of

2. The Court of Justice does not have jurisdiction to interpret Article 31 of the Convention on the Contract for the International Carriage of Goods by Road (CMR), signed at Geneva on 19 May 1956, as amended by the Protocol signed at Geneva on 5 July 1978. 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. 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 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters that those rules can

be applied in the European Union only if the principles underlying that regulation are observed.

(see paras 62, 63, operative part 2)