



Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 3 July 2014¹

Case C-302/13

flyLAL-Lithuanian Airlines AS, in liquidation
v
Starptautiskā lidosta Rīga VAS
and
Air Baltic Corporation AS

(Request for a preliminary ruling from the Augstākās tiesas Senāts (Latvia))

(Regulation (EC) No 44/2001 — Scope — Concept of a civil and commercial matter — Damages for infringement of European competition law — Recognition of provisional and protective measures — Public policy)

I – Introduction

1. This case provides the Court with the opportunity to give specific expression to two fundamental legal concepts — that is to say, ‘civil and commercial matter’ and ‘public policy’ — in the context 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.²

2. On the one hand, it raises the question whether the concept of a ‘civil and commercial matter’ covers the pursuit before the courts of claims arising from infringements of competition law which are directed against undertakings in which the State is the majority stakeholder. On the other hand, it seeks clarification as to whether and, if so, under which conditions the enforcement of protective measures may be refused in the interests of public policy.

II – Legal context

A – EU law

3. The primary law framework applicable to this case consists essentially of Articles 81 EC and 82 EC (now Articles 101 TFEU and 102 TFEU),³ the secondary law framework of Articles 1, 22, 34 and 35 of Regulation No 44/2001.

¹ — Original language: German.

² — OJ 2001 L 12, p. 1, in the version applicable here, as last amended by Regulation (EC) No 1103/2008 of the European Parliament and of the Council of 22 October 2008 (OJ 2008 L 304, p. 80).

³ — The alleged anti-competitive conduct at issue here took place prior to the entry into force of the Treaty of Lisbon. For the purposes of the response to be given to the request for a preliminary ruling, Articles 81 EC and 82 EC alone, therefore, are material. However, the following comments are also directly applicable to Articles 101 TFEU and 102 TFEU, the content of which is essentially identical.

4. Article 1(1) of Regulation No 44/2001 defines its material scope as follows:

‘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.’

5. Section 6 of Chapter II of Regulation No 44/2001 provides for certain heads of exclusive jurisdiction. Article 22 of that section reads:

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

...

2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or of the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. ...’

6. Article 34 of Regulation No 44/2001 governs the recognition of judgments from other Member States and reads, in extract:

‘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;

...’

7. Article 35(1) of Regulation No 44/2001, also relevant to recognition, provides:

‘Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II ...’

B – Latvian law

8. The legislation relevant to this case consists in particular of the Likums ‘Par aviāciju’ (Law on Aviation) and its implementing provisions.

9. Under the Latvian Law on Aviation, aircraft operators are required to pay charges, inter alia, for the use of airports.

10. Against that background, a number of decrees in force at the time of the dispute provided that carriers operating into or out of Riga airport were eligible for reductions on those charges. The amount of those reductions on charges was determined by the number of passengers flying out of Riga which the undertaking in question had carried over the course of a year.

III – Facts of the main proceedings and questions referred for a preliminary ruling

11. AB flyLAL Lithuanian Airlines (‘flyLAL’) is a Lithuanian airline, now insolvent, that considered itself to have been placed at a disadvantage in relation to a competitor, the Latvian airline AS Air Baltic Corporation (‘Air Baltic’), on the market in air transport services. FlyLAL took the view in particular that it had suffered economic damage on account of a situation involving unfair competition in Latvia and Lithuania.

12. Consequently, in 2008, flyLAL brought an action against Air Baltic and VAS Starptautiskā lidosta Rīga ('Lidosta Rīga'), a State-owned company limited by shares which manages Riga Airport, before the Vilniaus Apygardos Teismas (Regional Court, Vilnius) seeking, inter alia, the payment of damages in the amount of LTL 199 830 000.⁴ The applicant based its action on infringements of European competition law. It submitted in essence that Air Baltic had abused its dominant position in the context of Latvia's airport charge reductions policy. The reduction in airport charges made available in Latvia had enabled Air Baltic, inter alia, to base its operation at Vilnius airport (Republic of Lithuania) on dumping prices. Furthermore, the systematic grant of reductions in airport charges had to be regarded as a prohibited agreement between the defendants.

13. Before final judgment had been given on the substance of the case, the Lietuvos Apeliacinis Teismas (Lithuanian Court of Appeal), by judgment of 31 December 2008, made an order for the provisional sequestration of assets belonging to Air Baltic and Lidosta Rīga in the amount of the sum claimed ('the provisional and protective measures').

14. FlyLAL then applied to the Rīgas pilsētas priekšpilsētas tiesa (District Court of Vidzeme of the City of Riga) to have the judgment of 31 December 2008 recognised and enforced in Latvia. By decision of 19 January 2012, that application was largely granted at first instance, the judgment of 31 December 2008 having been recognised and declared enforceable in the Republic of Latvia.

15. On appeal by Air Baltic and Lidosta Rīga, the referring court, the Augstākās tiesas Senāts (Supreme Court of the Republic of Latvia), now has to rule on the recognition and enforcement of the judgment of 31 December 2008 in Latvia.

16. The referring court asks, first, whether the Lithuanian action for damages — more specifically, the judgment of 31 December 2008 — constitutes a civil and commercial matter within the meaning of Article 1 of Regulation No 44/2001. If that is the case, then, secondly, it must be clarified whether the Latvian courts should have been found to have exclusive jurisdiction under Article 22 of Regulation No 44/2001 back at the stage of the proceedings for damages. If that is so, then, thirdly, the further question arises as to whether the Augstākās tiesas Senāts must refuse to recognise the judgment of 31 December 2008 pursuant to Article 35(1) of Regulation No 44/2001 because Article 22 of that regulation has been infringed. Fourthly, the Augstākās tiesas Senāts asks, finally, whether the recognition of the judgment in question is compatible with the public policy of the Republic of Latvia within the meaning of Article 34(1) of Regulation No 44/2001. On the one hand, the judgment of 31 December 2008 contains only scant reference to the calculation of the amount claimed, which is considerable. On the other hand, since insolvency proceedings have since been opened in respect of the Lithuanian applicant's assets, the defendants would have no realistic prospect of obtaining compensation for the damage caused to them by the adoption of the provisional and protective measures if the action were subsequently dismissed. In that event, the Republic of Latvia, which holds 100% of the shares in one of the defendants and 52.6% of the shares in the other, could suffer considerable damage that would affect the economic interests of the State and jeopardise State security.

17. In those circumstances, the Augstākās tiesas Senāts staid the proceedings and referred the following questions to the Court for a preliminary ruling:

'(1) Is it appropriate to regard as a civil or commercial matter, within the meaning of [Regulation No 44/2001] ("the Regulation", a case in which the applicant seeks compensation for damage and a declaration of the unlawfulness of the defendants' conduct consisting in an unlawful agreement and abuse of a dominant position, and which is based on the application of legislative acts of general scope of another Member State, bearing in mind that unlawful

⁴ — This is equivalent to approximately EUR 58 000 000.

agreements are void from the moment they are concluded, and that, on the other hand, the adoption of a rule of law is an act of the State in the sphere of public law (*acta iure imperii*), to which the rules of public international law relating to the immunity of a State from the jurisdiction of other States apply?

- (2) In the event that the reply to Question 1 is in the affirmative (the case is a civil or commercial matter, within the meaning of the Regulation), are the compensation proceedings to be regarded as an action having as its object the validity of the decisions of the organs of companies, within the meaning of Article 22(2) of the Regulation, in which case the judgment need not be recognised, in accordance with Article 35(1) of the Regulation?
- (3) If the object of the action in the compensation proceedings falls within the scope of Article 22(2) of the Regulation (exclusive jurisdiction), is the court of the State in which recognition is sought required to verify the presence of the circumstances listed in Article 35(1) of the Regulation in relation to the recognition of a judgment adopting provisional protective measures?
- (4) May the public-policy clause contained in Article 34(1) of the Regulation be interpreted as meaning that recognition of a judgment adopting provisional protective measures is contrary to the public policy of a Member State if, first, the principal ground for the adoption of the provisional protective measures is the considerable size of the amount requested without a well-founded and substantiated calculation having been made and, second, if the recognition and enforcement of that judgment may cause the defendants damage for which the applicant, a company which is in liquidation, will not be able to compensate in the event that the claim for compensation is dismissed, which might affect the economic interests of the State in which recognition is sought, and thereby jeopardise the security of the State, in view of the fact that the Republic of Latvia holds 100% of the shares in Lidosta Riga and 52.6% of the shares in Air Baltic?

IV – Legal analysis

A – *The first question referred*

18. By its first question, the Augstākās tiesas Senāts wishes, in essence, to ascertain whether the Lithuanian proceedings for damages, more specifically the judgment of 31 December 2008, constitute a civil and commercial matter within the meaning of Article 1(1) of Regulation No 44/2001.

19. In order to answer this question, it is first necessary to clarify the meaning of ‘civil and commercial matters’ for the purposes of Regulation No 44/2001. In that connection, regard must be had to the Court’s case-law on that classification (see section 1) and the lessons learned from that case-law must be applied to the facts of the main proceedings (section 2).

1. The criteria that can be inferred from case-law

20. It is clear from the Court's settled case-law⁵ that 'civil and commercial matters' must be regarded as an independent concept within the European Union to be interpreted by reference to the objectives and scheme of Regulation No 44/2001 and to the general legal principles which stem from the corpus of the national legal systems.⁶

21. In so far as Regulation No 44/2001 replaces the Brussels Convention⁷ in relations between the Member States,⁸ an interpretation of that convention by the Court continues to apply to the corresponding provisions of Regulation No 44/2001.⁹ This is true of Article 1(1) of Regulation No 44/2001, which has the same position and performs the same function as Article 1(1) of the Brussels Convention.¹⁰

22. It follows from the settled case-law relating to the aforementioned provisions that judicial decisions may be excluded from the scope of Regulation No 44/2001 on account of the *nature of the legal relationships between the parties* or by reason of the *subject-matter of the dispute*.¹¹

23. In order to determine whether a dispute constitutes a civil and commercial matter, it is therefore necessary to ascertain first of all the factors that shape the legal relationships between the parties to the main proceedings (section 2a) and then — with a view to determining the subject-matter of the dispute in the main proceedings (section 2b) — the facts behind the claim in question, and also to examine the basis of the action brought and the detailed rules governing the bringing of it.¹²

2. Application of the criteria laid down by case-law to the facts of the main proceedings

24. Consideration must be given first of all to the legal relationships between the applicant and the defendants in the main proceedings that formed the background to the commission of the alleged infringement of European competition law on account of which damages are being sought.

a) Nature of the legal relationships between the parties

25. As is clear from the order for reference, two of the parties to the dispute in the main proceedings, Lidosta Rīga and Air Baltic, are undertakings in which the Republic of Latvia holds 100% and 52.6% of the shares respectively.

5 — See in this regard the overview provided in the Opinion of Advocate General Trstenjak in *Sapir and Others*, C-645/11, EU:C:2012:757, points 47 to 69.

6 — See, inter alia, judgments in *LTU v Eurocontrol*, 29/76, EU:C:1976:137, paragraph 3; *Rüffer*, 814/79, EU:C:1980:291, paragraph 7; *Sonntag*, C-172/91, EU:C:1993:144, paragraph 18; *Baten*, C-271/00, EU:C:2002:656, paragraph 28; *Préservatrice Foncière TIARD*, C-266/01, EU:C:2003:282, paragraph 20; *Blijdenstein*, C-433/01, EU:C:2004:21, paragraph 24; *Lechouritou and Others*, C-292/05, EU:C:2007:102, paragraph 29; and *Apostolides*, C-420/07, EU:C:2009:271, paragraph 41.

7 — Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 27 September 1968 (OJ 1978 L 304, p. 36).

8 — See Article 68(1) of Regulation (EC) No 44/2001.

9 — Judgments in *Draka NK Cables and Others*, C-167/08, EU:C:2009:263, paragraph 20; *SCT Industri*, C-111/08, EU:C:2009:419, paragraph 22; *German Graphics Graphische Maschinen*, C-292/08, EU:C:2009:544, paragraph 27; *Realchemie Nederland*, C-406/09, EU:C:2011:668, paragraph 38; *Sapir and Others*, C-645/11, EU:C:2013:228, paragraph 31; and *Sunico and Others*, C-49/12, EU:C:2013:545, paragraph 32.

10 — See to that effect, in relation to Article 1(2)(b), judgment in *SCT Industri*, EU:C:2009:419, paragraph 23.

11 — See, inter alia, judgments in *LTU v Eurocontrol*, EU:C:1976:137, paragraph 4; *Baten*, EU:C:2002:656, paragraph 29; *Préservatrice Foncière TIARD*, EU:C:2003:282, paragraph 21; *Lechouritou and Others*, EU:C:2007:102, paragraph 30; *Apostolides*, EU:C:2009:271, paragraph 42; *Realchemie Nederland*, EU:C:2011:668, paragraph 39; *Sapir and Others*, EU:C:2013:228, paragraph 32; *Sunico and Others*, EU:C:2013:545, paragraph 33; and *Schneider*, C-386/12, EU:C:2013:633, paragraph 18.

12 — Judgments in *Baten*, EU:C:2002:656, paragraph 31; *Préservatrice Foncière TIARD*, EU:C:2003:282, paragraph 23; *Frauhtil*, C-265/02, EU:C:2004:77, paragraph 20; *Sapir and Others*, EU:C:2013:228, paragraph 34; and *Sunico and Others*, EU:C:2013:545, paragraph 35.

26. That fact alone does not, however, preclude the application of Regulation No 44/2001. On the contrary, the decisive factor is whether the legal relationship in question is connected with the exercise of public powers.¹³ If that is *not* the case, Regulation No 44/2001 may be applicable.

27. For the purposes of the legal relationships between the individual parties to the main proceedings, that question will be considered below.

i) Legal relationship between flyLAL and Air Baltic

28. As far as the legal relationship between flyLAL and Air Baltic is concerned, the question of the nature of the legal relationships does not require in-depth discussion.

29. The two undertakings are both suppliers on the market in air services and customers on the market in airport use. In that context, neither of the parties exercises public powers in relation to the other, since private individuals do not enjoy such powers.¹⁴

ii) Legal relationship between flyLAL and Lidosta Rīga

30. The legal relationship between flyLAL and Lidosta Rīga is also not shaped by the exercise of public powers.

31. That legal relationship centres on the use of Riga Airport by flyLAL in return for the payment of an airport charge. FlyLAL's use of the airport consists essentially in the handling of aircraft, passengers and freight. In relation to airport users, the Republic of Latvia, acting through its wholly-owned subsidiary Lidosta Rīga, thus operates at the level of private law, now that the market in airport services at Riga Airport has been opened up to competition.¹⁵ Any other private economic operator, such as a private airport operator, for example, could provide those services in the same way.¹⁶

32. Moreover, the foregoing is in no way altered by the fact that, so far as concerns the charging structure and, in particular, the grant or otherwise of discounts on charges, Lidosta Rīga is subject to statutory rules laid down by the Republic of Latvia. After all, the obligation to comply with those rules affects the relationship between the Republic of Latvia as the shareholder and Lidosta Rīga as its wholly-owned subsidiary, but has no bearing on the relationship between Lidosta Rīga and flyAL as an airport user.

33. Nor does it make any difference whether Lidosta Rīga is at liberty to use the remuneration it collects at its own discretion or whether it is subject to statutory rules in this regard. For this, too, is a matter which shapes not the nature of Ligosta Rīga's legal relationship with airport users such as flyLAL but the legal relationship, to be distinguished from the former, between Lidosta Rīga and its shareholder, the Republic of Latvia.

13 — Judgments in *LTU v Eurocontrol*, EU:C:1976:137, paragraph 4; *Rüffer*, EU:C:1980:291, paragraph 8; *Baten*, EU:C:2002:656, paragraph 30; *Préservatrice Foncière TIARD*, EU:C:2003:282, paragraph 22; *Lechouritou and Others*, EU:C:2007:102, paragraph 31; *Apostolides*, EU:C:2009:271, paragraph 43; *Mahamdia*, C-154/11, EU:C:2012:491, paragraph 56; *Sapir and Others*, EU:C:2013:228, paragraph 33; and *Sunico and Others*, EU:C:2013:545, paragraph 34.

14 — See, with regard to this criterion, *LTU v Eurocontrol*, EU:C:1976:137, paragraph 4; *Sonntag*, EU:C:1993:144, paragraph 22; *Préservatrice Foncière TIARD*, EU:C:2003:282, paragraph 30; *Lechouritou and Others*, EU:C:2007:102, paragraph 34; and *Apostolides*, EU:C:2009:271, paragraph 44.

15 — A distinction must be drawn in this regard between the role of the State as shareholder in an undertaking, on the one hand, and its role as a public authority, on the other hand; see also to this effect judgment in *Commission v EDF*, C-124/10 P, EU:C:2013:318, paragraph 80.

16 — Furthermore, Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ 1996 L 272, p. 36), in particular Article 2(d) and (g) thereof, also confirms that these services do not constitute activities of a public authority but services provided on a level playing field.

34. The starting point in the present case differs, therefore, from the facts which formed the basis of the judgment in *LTU*.¹⁷ While it is true that that case, too, concerned remuneration for services provided in connection with aviation, it did not relate specifically to remuneration for the use of airports for *economic* purposes. It had to do instead with en route charges made for the use of *air navigation services* by an international air surveillance organisation, in other words for matters originally governed by public law such as the control and supervision of air space.¹⁸

35. In *LTU*, the Court found, in relation to those en route charges alone, that that was a situation ‘where the public authority acts in the exercise of its powers’.¹⁹ In *LTU*, therefore, unlike in the present case, there were elements typically characteristic of a relationship of subordination which pointed to the exercise of public powers.

36. The distinction, drawn here for the purposes of defining the concept of a ‘civil and commercial matter’, between the provision of air navigation services connected with the discharge of public powers, on the one hand, and the opening up of a market in airport services, on the other hand, chimes, moreover, with similar findings by the Court in the field of competition law.

37. In this connection, the Court has already had occasion to consider the classification of activities carried on by an airport management body in a number of judgments. In those judgments, it consistently came to the conclusion that the offering of ‘airport services in return for remuneration gained from, inter alia, airport fees’ constitutes an economic activity and must therefore in principle be assessed in the light of the rules of European competition law.²⁰ The Court has held that, in this regard, it does not matter whether the body in question is governed by private or public law or how profitable the activity is.²¹

38. Between the distinction — relevant for the purposes of Article 1(1) of Regulation No 44/2001 — between legal relationships governed by *private law* and those shaped by the exercise of *public powers*, on the one hand, and the distinction between *economic* activities and the activities of a *public authority* in the context of competition law, on the other hand, there is, however, not just a terminological similarity but also a substantive interchangeability which justifies the application of identical assessment criteria. The Court, too, clearly takes the same approach, inasmuch as it refers to the judgment in *LTU* in its judgment in *SAT Fluggesellschaft*, concerning competition law.²² It may be inferred from the foregoing that the applicability of Regulation No 44/2001 is to be assessed in accordance with the same criteria as the Court has developed in relation to the economic activity test in the sphere of competition law. If that were not the case, situations in which an activity originally considered to be economic were denied the status of a civil and commercial matter would give rise to contradictory assessments that would be difficult to explain.

39. Accordingly, the nature of the legal relationship between Lidosta Rīga and the applicant in the main proceedings is also not shaped by the exercise of public powers, but, consisting essentially in the provision of airport services in return for remuneration, is in the nature of an economic activity governed by private law.

17 — *LTU v Eurocontrol*, EU:C:1976:137.

18 — On the public-law nature of the activities carried on by Eurocontrol, see also judgment in *SAT Fluggesellschaft*, C-364/92, EU:C:1994:7, paragraphs 27 to 29.

19 — *LTU v Eurocontrol*, EU:C:1976:137, paragraph 4.

20 — See judgments in *Aéroports de Paris v Commission*, C-82/01 P, EU:C:2002:617, paragraph 78; and *Mitteldeutsche Flughafen and Others*, C-288/11 P, EU:C:2012:821, paragraph 40.

21 — See *Aéroports de Paris v Commission*, EU:C:2002:617, paragraph 75; *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 21 and 22; *Selex Sistemi Integrati v Commission*, C-113/07 P, EU:C:2009:191, paragraph 69; and *Mitteldeutsche Flughafen and Others*, EU:C:2012:821, paragraph 50.

22 — *SAT Fluggesellschaft*, EU:C:1994:7, paragraph 28.

b) Subject-matter of the dispute

40. It must now be considered whether those conclusions as to the nature of the legal relationships between the parties are also confirmed by the subject-matter of the dispute.

41. It must be stated from the outset in this regard, as the Government of the Republic of Latvia and Lidosta Rīga point out, that, in the light of the information provided by the referring court, the existence of an anti-competitive agreement detrimental to the applicant in the main proceedings is unquestionably a matter of some uncertainty, and the existence of abuse of a dominant position by Lidosta Rīga as a result of its obligation to comply with statutory rules imposed by the Latvian State seems to be far from beyond doubt, too.²³ In the present case, however, the Court is not called upon to determine whether or not there has been an infringement of competition law, but rather to examine the subject-matter of the dispute in the main proceedings, at the centre of which is a claim for damages for infringement of Articles 81 EC and 82 EC, from the point of view of whether that dispute constitutes a civil and commercial matter.²⁴

42. For the purposes of assessing the subject-matter of the dispute from this point of view, it is the facts behind the claim in question which are decisive. If the claim being enforced stems from the exercise of public powers it is *not* a civil and commercial matter.²⁵ However, not every connection with the exercise of public powers is sufficient. Rather, the crucial factor is that the claim in question arises from an act in the exercise of public powers.²⁶

43. It is already apparent from the nature of the legal relationships between the parties — as examined above — that form the basis of the claim for damages being enforced that the present case does not concern the exercise of public powers. That conclusion is not called into question either by the fact that claims for damages for infringement of European competition law are genuinely covered by EU law (see in this regard section i) or by the particular circumstances of the present case, more specifically, the involvement of State agencies (see in this regard section ii).

i) Is Regulation No 44/2001 applicable to claims for damages under competition law?

44. Consideration must now be given, first of all in general terms, to the legal basis for, and legislative framework governing, claims for damages under competition law. It will then be necessary to analyse the subject-matter of the main proceedings in the light of that framework.

23 — In accordance with the case-law of the Court, Articles 81 EC and 82 EC apply only to anti-competitive conduct engaged in by undertakings on their own initiative. They are not applicable, however, if anti-competitive conduct is required of undertakings by national legislation or if the latter creates a legal framework which itself eliminates any possibility of competitive activity on their part; see *Commission and France v Ladbroke Racing*, C-359/95 P and C-379/95 P, EU:C:1997:531, paragraphs 33 and 34 and the case-law cited. If, on the other hand, that obligation to comply with statutory rules precludes an undertaking (governed by public law) from acting independently, the Member State may conceivably have adopted an anti-competitive measure that is capable of rendering the competition rules applicable to undertakings ineffective in practice and is likewise covered by Article 81 EC and/or Article 82 EC in conjunction with Article 10 EC (now Article 4(3) TEU), which establishes a duty of sincere cooperation. In those circumstances, however, any action for damages would probably have to be directed against the Member State itself and not against the undertaking 'bound [by statutory rules]', whose conduct vis-à-vis other economic operators is justified; see *CIF*, C-198/01, EU:C:2003:430, paragraph 54.

24 — In this regard, the first question referred reads: '... a case in which the applicant seeks compensation for damage and a declaration of the unlawfulness of the defendants' conduct consisting in an unlawful agreement and abuse of a dominant position ...'.

25 — *Rüffer*, EU:C:1980:291, paragraph 15; and *Lechouritou and Others*, EU:C:2007:102, paragraph 41.

26 — See *LTU v Eurocontrol*, EU:C:1976:137, paragraph 4; *Rüffer*, EU:C:1980:291, paragraph 15; and *Lechouritou and Others*, EU:C:2007:102, paragraph 41.

– Obligation on cartel members to provide compensation as a genuine principle of EU law

45. The obligation to provide compensation incumbent on members of a cartel or on undertakings which enjoy a dominant position on a market and have abused their market power is a principle of EU law which flows directly from primary law.²⁷

46. Thus, the Court has already held on numerous occasions that, in the light of the fact that Article 81 EC produces direct effects in relations between individuals and creates rights for the individuals concerned,²⁸ the practical effect of the prohibition laid down in that provision would be put at risk if it were not open to any individual to claim damages for loss caused to him by a contract or by conduct liable to restrict or distort competition.²⁹

47. Even though the Court has not thus far had an opportunity to rule on this point, there cannot be any serious doubt that the foregoing is also applicable to the other core provision of European competition law, that is to say, Article 82 EC.

– An action for damages of this kind is in principle a civil and commercial matter

48. From the point of view of European civil procedural law, actions for damages of this kind that are directed against undertakings which have infringed Article 81 EC and/or Article 82 EC are in principle civil and commercial matters within the meaning of Article 1(1) of Regulation No 44/2001.³⁰ The European Commission recently reaffirmed that principle in its proposal for an implementing directive in the field of competition law.³¹

ii) The particular circumstances of the present case do not support a different assessment

49. However, in the light of the particular circumstances of the present case, that is to say the fact that the undertakings against which the action for damages has been brought are in public ownership and, more specifically, the fact that the infringement of competition law was allegedly dictated by statutory rules imposed by the Latvian State, the question must be asked whether the aforementioned classification of such a matter as falling within the ambit of private law can be retained in the light of the particular circumstances of the present case, too.

50. I am of the view that that question must be answered in the affirmative. That view is supported by the following two factors.

– Uniformity of EU law

51. As I stated in point 38, the same criteria are to be applied to the distinction between legal relationships shaped by *private law* and those shaped by the exercise of *public powers* for the purposes of the applicability of Regulation No 44/2001 as are applied to the distinction between *economic* activities and the activities of a *public authority* carried on by undertakings for the purposes of Articles 81 EC and 82 EC.

27 — See, in connection with Article 81 EC, my Opinion in *Kone and Others*, C-557/12, EU:C:2014:45, points 25 to 30.

28 — *Manfredi and Others*, C-295/04 to C-298/04, EU:C:2006:461, paragraph 39.

29 — *Courage and Crehan*, C-453/99, EU:C:2001:465, paragraph 26.

30 — See also in this regard *CDC v Evonik Degussa and Others*, C-352/13, OJ 2013 C 298, p. 2, currently pending.

31 — See the Proposal for a Directive of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States (COM(2013) 404 final), page 6 of which refers to Regulation (EC) No 44/2001. See also the Commission Notice on the co-operation between the Commission and the courts of the EU Member States in the application of Articles 81 and 82 EC (OJ 2004 C 101, p. 54, paragraph 3 and footnote 4).

52. On that basis, in the present case, the question of classification in the context of the subject-matter of the dispute, which is ultimately concerned with whether the claim in question arises from an act in the exercise of public powers, must also be answered to the effect that the relationships at issue are not shaped by public law.³² For, first, the conduct comprising the infringement of competition law from which the claim arises, that is to say, in this case, the levying of airport charges of different amounts by Lidosta Riga, is directly linked to the economic activity of the undertaking concerned, that is to say the operation of an airport. Secondly, Articles 81 EC and 82 EC, which are relied upon in support of the claim in question, only apply at all if the activities of the undertaking required to pay compensation *are* economic, rather than being activities of a public authority.

53. It follows from this alone that the action for damages pending (and the provisional and protective measure) must constitute a civil and commercial matter within the meaning of Article 1(1) of Regulation No 44/2001.

54. Not even the fact that the circumstances which, in the applicant's view, gave rise to the claim not only have links to European Union competition law but are also embedded in the context of national aviation law lead to a different conclusion. After all, the action for damages at issue here is not directed against provisions of Latvian law, or, therefore, against '*acta iure imperii*', an issue which I shall address in conclusion below.

– Action for damages is not directed against *acta iure imperii*

55. As is apparent from its order for reference, the referring court clearly takes the view that, by its action for damages, the applicant in the main proceedings is objecting ultimately to the legal provisions of the Republic of Latvia.

56. In this regard, it must be pointed out first of all that a State's liability for *acta iure imperii* does not in fact fall within the scope of Regulation No 44/2001. The recast version of Regulation No 44/2001, binding as from 10 January 2015, now contains an explanatory provision supplementing the legal act to that effect.³³

57. In addition, it must be observed that, under the generally accepted principle of immunity from jurisdiction — *par in parem non habet imperium* –, a State cannot be subjected to the jurisdiction of another State on account of *acta iure imperii*.³⁴

58. Nevertheless, the concerns expressed by the referring court are, in my view, unfounded.

59. First, the purpose of the action pending in the main proceedings in Lithuania is not to obtain a review of the relevant legislation but simply to secure compensation for disadvantages suffered on account of an infringement of competition law. Even though, as the Court has already made clear on numerous occasions, the increasing number of actions for damages brought under antitrust law is making a significant contribution to the maintenance of effective competition in the European Union,³⁵ and therefore also operates in the general interest, this does not in itself mean that an action

32 — See *LTU v Eurocontrol*, EU:C:1976:137, paragraph 4; *Rüffer*, EU:C:1980:291, paragraph 15; and *Lechouritou and Others*, EU:C:2007:102, paragraph 41.

33 — 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 (recast) (OJ 2012 L 351, p. 1).

34 — See *Mahamdia*, EU:C:2012:491, paragraph 54.

35 — See to that effect judgments in *Courage and Crehan*, EU:C:2001:465, paragraphs 26 and 27; *Manfredi and Others*, EU:C:2006:461, paragraph 91; *Pfleiderer*, C-360/09, EU:C:2011:389, paragraph 28; and *Donau Chemie and Others*, C-536/11, EU:C:2013:366, paragraph 23.

for damages brought against one or more commercially active undertakings governed by public law constitutes a proceeding for the review of legal acts adopted by the State. That is so even where the infringement of competition law in question is in any event directly influenced by legal acts adopted by the State, such as the Latvian rules on airport charges at issue in the present case, for example.

60. Secondly, not even the consequence of automatic nullity provided for in Article 81(2) EC, as mentioned by the referring court, leads to a different assessment.

61. After all, the fact that, in accordance with Article 81(2) EC, an infringement of the prohibition on cartels also has the effect of rendering the unlawful agreement automatically void relates only to the specific agreement itself, that is to say the agreement governing the economic relationship between Lidosta Riga and Air Baltic, but certainly not to the Latvian legislation which is alleged to have indirectly influenced the agreement. It is true that, if that legislation were indeed incompatible with European Union competition law, the primacy of EU law could preclude its applicability. This would not, however, be a direct consequence of the action for damages.

62. The consequence of automatic nullity provided for in Article 81(2) EC does not in any event turn a subjective action for damages into objective proceedings for the review of State legislation.

3. Interim conclusion

63. The answer to the first question referred must therefore be that a dispute concerning provisional and protective measures such as that at issue in the main proceedings, in the course of the substantive proceedings relating to which a private airline seeks damages for alleged infringements of European Union competition law, inter alia, from an undertaking in public ownership which affords it the use of an airport in return for the payment of an airport charge, is a civil and commercial matter within the meaning of Article 1(1) of Regulation No 44/2001, even in the case where the airport charges and any reductions on those charges are governed by provisions of national law.

B – *The second and third questions referred*

64. By its second and third questions, which can be examined jointly, the referring court wishes, in essence, to ascertain first of all whether proceedings for damages under antitrust law, such as those at issue in the main proceedings, are to be regarded as a dispute having as its object the validity of the decisions of the organs of companies within the meaning of Article 22(2) of Regulation No 44/2001. If that is so, it would also like to know whether, where the proceedings relating to the substance of the case are being conducted before a court other than one having jurisdiction under Article 22(2) of Regulation No 44/2001, Article 35(1) in conjunction with Article 22(2) of Regulation No 44/2001 also precludes the recognition of a judgment given in proceedings for provisional and protective measures by that other court.

65. The second question referred must be answered in the negative, and there is therefore no need to examine the third question referred.

66. The subject-matter of the substantive action and of the proceedings for provisional and protective measures with which the main proceedings pending before the referring court are concerned is, after all, in essence, claim for damages by the applicant, not ‘the validity of the constitution, the nullity or the dissolution of companies ... or ... the validity of the decisions of their organs’ within the meaning of Article 22(2) of Regulation No 44/2001.

67. It is true that, by its action for damages, the applicant is also, indirectly, objecting to the charging policy operated by Lidosta Rīga, which, although pre-determined by statute, may also have eventually found its way into decisions adopted by Lidosta Rīga's shareholders or its board of management.

68. Article 22(2) of Regulation No 44/2001 is, however, in the nature of a derogation and must therefore be interpreted strictly. It seeks to concentrate jurisdiction in the place where the company has its seat only in the case of actions directly related to the subject areas exhaustively listed in that provision. Since the present case does not concern an action for rescission or annulment brought directly against a decision — indeed, no specific decision appears to have been mentioned or objected to at all in the substantive proceedings —, Article 22(2) of Regulation No 44/2001 is as irrelevant in the present case as Article 35 of that regulation, in so far as the latter provision refers to Article 22.

69. The answer to the second question referred must therefore be that an action for damages such as that in question in the proceedings on the substance of the case is not an action having as its object the validity of decisions of the organs of companies within the meaning of Article 22 of Regulation No 44/2001.

C – The fourth question referred

70. By its fourth question, the Augstākās tiesas Senāts wishes, in essence, to ascertain whether the recognition of a judgment granting provisional and protective measures is contrary to the public policy of a Member State in the case where, first, no reasons were given for the value of the significant sum secured by means of the provisional sequestration of assets and, secondly, there is a risk of non-compensable damage arising that will affect the economic interests of the State in which recognition is sought and might thereby seriously jeopardise the security of that State.

1. Public-policy clauses in the case-law of the Court

71. As a preliminary point, it should be recalled that, in accordance with settled case-law,³⁶ Article 34(1) of Regulation No 44/2001 must be interpreted strictly inasmuch as it constitutes an obstacle to the attainment of one of the fundamental objectives of that regulation.³⁷ The public-policy clause in that provision may therefore be relied on only in exceptional cases.³⁸

72. In that context, while the Member States remain in principle free, by virtue of the proviso in Article 34(1) of Regulation No 44/2001, to determine, according to their own conceptions, what public policy requires, the limits of that concept are a matter of interpretation of that regulation.³⁹ Consequently, while it is not for the Court to define the content of the public policy of a Member State, it is none the less required to review the limits within which the courts of a Member State may

36 — Although the case-law cited below relates to the predecessor provisions contained in the Brussels Convention, it is none the less transposable to the interpretation of Article 34(1) of Regulation (EC) No 44/2001; see in this regard, not least, my Opinion in judgment in *Trade Agency*, C-619/10, EU:C:2012:247, point 71.

37 — See to that effect judgments in *Solo Kleinmotoren*, C-414/92, EU:C:1994:221, paragraph 20; *Krombach*, C-7/98, EU:C:2000:164, paragraph 21; *Renault*, C-38/98, EU:C:2000:225, paragraph 26; *Apostolides*, C-420/07, EU:C:2009:271, paragraph 55; *Prism Investments*, C-139/10, EU:C:2010:653, paragraph 33; *Trade Agency*, EU:C:2012:531, paragraph 48; and *Salzgitter Mannesmann Handel*, C-157/12, EU:C:2013:597, paragraph 28.

38 — See to that effect judgments in *Hoffmann*, 145/86, EU:C:1988:61, paragraph 21; *Hendrikman and Feyen*, C-78/95, EU:C:1996:380, paragraph 23; *Krombach*, EU:C:2000:164, paragraph 21; *Renault*, EU:C:2000:225, paragraph 26; *Apostolides*, EU:C:2009:271, paragraph 55; and *Trade Agency*, EU:C:2012:531, paragraph 48.

39 — See *Krombach*, EU:C:2000:164, paragraph 22; *Renault*, EU:C:2000:225, paragraph 27; *Gambazzi*, C-394/07, EU:C:2009:219, paragraph 26; *Apostolides*, EU:C:2009:271, paragraph 56; and *Trade Agency*, EU:C:2012:531, paragraph 49.

have recourse to that concept for the purpose of refusing recognition to a judgment emanating from another Member State.⁴⁰ As a general rule, the court of the State in which enforcement is sought may not review the correctness of the findings of law or fact made by the court of the State of origin.⁴¹

73. Recourse to the public-policy clause in Article 34(1) of Regulation No 44/2001 can be envisaged only where recognition or enforcement of the judgment given in another Member State would be at variance to an unacceptable degree with the legal order of the State in which enforcement is sought inasmuch as it would infringe a fundamental principle. The infringement must constitute a *manifest breach of a rule of law regarded as essential* in the legal order of the State in which enforcement is sought or of a *right recognised as being fundamental* within that legal order.⁴²

74. A national court does not therefore exceed the limits imposed upon it with respect to the assumption that public policy has been infringed in any event where the refusal of enforcement prevents a clear breach of the fundamental rights recognised in the ECHR and in the European Union legal order.⁴³

75. In the present case, the referring court looks at two factors and asks whether they are relevant to a finding that the public policy of the Member State in which it is situated has been infringed: first, the failure to provide a detailed statement of reasons for the value of the assets ordered to be sequestered in the judgment for which recognition is sought (section 2) and, secondly, the financial consequences of its enforcement, which allegedly jeopardise the ‘security of the State’ (section 3).

2. Failure to provide detailed reasons for the calculation of the amount claimed

76. The first indication in support of the assumption of an infringement of public-policy on which the referring court relies is the failure to provide a detailed statement of reasons for the value of the assets ordered to be sequestered by the provisional and protective measure, which, according to the information provided by the referring court, the Lithuanian court based chiefly on unspecified ‘expert opinions’ entered in the case-file.

77. This raises, first, the fundamental question of compatibility with the principle of a fair trial, which is enshrined in Article 6 ECHR and Article 47(2) of the Charter of Fundamental Rights,⁴⁴ and, secondly, the question of the potential effects of a(n) — at least partial — failure to state reasons on the capacity to recognise a decision in civil and commercial matters from the point of view of the interests of public policy.

40 — See *Krombach*, EU:C:2000:164, paragraph 23; *Renault*, EU:C:2000:225, paragraph 28; *Apostolides*, EU:C:2009:271, paragraph 57; and *Trade Agency*, EU:C:2012:531, paragraph 49.

41 — See *Krombach*, EU:C:2000:164, paragraph 36; *Renault*, EU:C:2000:225, paragraph 29; *Apostolides*, EU:C:2009:271, paragraph 58; and *Trade Agency*, EU:C:2012:531, paragraph 50.

42 — See *Krombach*, EU:C:2000:164, paragraph 36; *Renault*, EU:C:2000:225, paragraph 29; *Gambazzi*, C-394/07, EU:C:2009:219, paragraph 27; *Apostolides*, EU:C:2009:271, paragraph 59; and *Trade Agency*, EU:C:2012:531, paragraph 51.

43 — See to that effect *Krombach*, EU:C:2000:164, paragraphs 38 and 39; and *Gambazzi*, EU:C:2009:219, paragraph 28.

44 — With regard to the requirement of homogeneity contained in Article 52(3) of the Charter, see, inter alia, judgments in *Varec*, C-450/06, EU:C:2008:91, paragraph 48; and *McB*, C-400/10 PPU, EU:C:2010:582, paragraph 53.

a) Principle of a fair trial and the obligation to give reasons

78. In this regard, it is the established case-law of the European Court of Human Rights that the right to a fair trial under Article 6(1) ECHR encompasses, in principle, the obligation on courts also to give reasons for their judgments.⁴⁵ The European Court of Human Rights has, however, also repeatedly held that excessive weight must not be attached to the obligation to give reasons for decisions and the extent to which it applies may vary according to the nature of the decision and in the light of the circumstances of each individual case.⁴⁶ It is also necessary in particular to take into account the type of decision and the differences existing in the legal systems of the Member States.

79. In this regard, it is recognised that the obligation to give reasons for court decisions serves a dual purpose. First, it is intended to ensure that the right to be heard is respected — that is to say, that the court sufficiently addresses the parties' submissions.⁴⁷ Secondly, the obligation to give reasons is intended to put the losing party in a position enabling it to see why it has been unsuccessful and, where appropriate, to lodge an appeal. Furthermore, without a sufficient statement of reasons, the scope of the substantive force of a judgment could not be ascertained and a claimant might therefore still be able to obtain another judgment based on the same claim.⁴⁸

b) Failure to give reasons and the capacity to recognise a judgment granting provisional and protective measures from the point of view of public policy

80. The application of those principles to the present case shows that, on the one hand, a calculation of the value of the assets to be sequestrated which has been plucked out of thin air and is not in any way comprehensible to the defendant is unlikely to be compatible with the principle of a fair trial, or, therefore, with public policy either. On the other hand, this was clearly not the case in the main proceedings, which were at least based on experts' findings, and, moreover, the requirements governing the statement of reasons must not in general be applied too rigorously. If, for example, certain legal systems operate methods for determining damages which, although broadly accepted, are not explicitly defined but adapted to the specific circumstances of the individual case in question, it would not make any sense in law for the use of those methods — as an integral part of an otherwise sufficiently reasoned and appealable judgment — to constitute an infringement of Article 6 ECHR and Article 47(2) of the Charter and to be problematic from the point of view of the public policy of a Member State.⁴⁹

81. Transposed to the question of the existence of an infringement of public policy, this effectively means that an insufficiently reasoned calculation of the value of assets to be placed in sequestration must not in any event be viewed in isolation. Regard must be had rather to the overall character of the judgment in question, including its annexes, and, in particular, to whether there was a reasonable opportunity for the addressee of the judgment to lodge an appeal in the State in which the judgment was given and, for example, to raise a complaint with respect to the alleged infringement.⁵⁰

45 — ECHR judgments *Van de Hurk v. Netherlands*, 19 April 1994, § 61, Series A no. 288; *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A; *Higgins and Others v. France*, 19 February, § 42, *Reports of Judgments and Decisions* 1998-I; and *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001. See also *Schröder and Others v. Commission*, C-221/97 P, EU:C:1998:597, paragraph 24.

46 — ECHR judgments *Ruiz Torija v. Spain* (§ 29) and *Van de Hurk v. Netherlands* (§ 61).

47 — ECHR judgments *Jokela v. Finland*, no. 28856/95, §§ 72 to 73, ECHR 2002-IV and *Nedzela v. France*, no. 73695/01, § 55, 27 July 2006.

48 — See my Opinion in *Trade Agency*, EU:C:2012:247, point 85.

49 — Thus, for example, the German Bundesgerichtshof (Federal Court of Justice) has held the use of fixed-rate damages in French law to be compatible with national public policy; see the judgment of the Bundesgerichtshof of 26 September 1979 (Case ref. VIII ZB 10/79, BGHZ 75, 167).

50 — This is true inter alia and in particular in the case where an alleged curtailment of the fair trial principle took place on account of the urgency for a ruling to be given. See in this regard *Eurofood IFSC*, C-341/04, EU:C:2006:281, paragraph 66.

82. In the present case, there are therefore good reasons to take the view that the fact that the calculation of the value of the assets to be placed in sequestration was inadequately reasoned is not sufficient to support a finding that there has been an infringement of public policy, particularly since that value was verifiable by reference to expert opinion and also formed the subject-matter of appeal proceedings in Lithuania. The fundamental principles of a fair trial therefore appear to have been guaranteed, even though a more detailed statement of reasons in the judgment itself would, ideally, have been desirable.

83. Now that the complaint of failure to state reasons has been found not to be sufficient to support a finding of infringement of public policy, we must look finally at the question of the extent to which the economic consequences of enforcement may be relevant from the point of view of public policy.

3. No remedy available on account of insolvency in the event that the action in the main proceedings is dismissed

84. As a preliminary point, it must be reiterated that the concept of public policy is intended to prevent a manifest breach of a *rule of law* regarded as essential in the *legal order* of the State in which enforcement is sought or of a *right* recognised as being fundamental within that legal order.⁵¹ It thus protects *legal interests*, or in any event *interests expressed in a rule of law*, connected with the political, economic, social or cultural order of the Member State concerned.

85. *Purely economic* interests, such as the threat of pecuniary damage — however high —, are not, however, sufficient. In principle, this is true even where the interests involved are those of a public authority, such as the Republic of Latvia in this case,⁵² which operates on the market via undertakings in public ownership and, in that connection, is at risk of sustaining damage.

86. In the view of the referring court, however, that economic interest develops into a legally relevant interest which must, as such, be taken into account in the context of Article 34(1) of Regulation No 44/2001 in any event in the case where impending economic loss represents a sufficiently specific threat to the legal order and ‘the security of the State’. The referring court does not, however, explain how exactly that is supposed to be the case given the facts of the main proceedings. In particular, it does not make any submission, as Lidosta Rīga, to the effect that the measures in question could do appreciable damage to the strategic military role performed by Rīga airport. This factor must therefore remain unaddressed in the answer to the question referred, the legal and factual context of which is defined by the request for a preliminary ruling made by the referring court,⁵³ which looks only at the ‘infringement of economic interests of the State’.

87. Whether such an infringement of public policy by reason of a risk of State impoverishment, on which there does not yet appear to be any relevant case-law, can be said to exist at all is highly questionable from a conceptual and a schematic point of view, because economic considerations, in principle, fall outside the ambit of public policy.

88. In the present case, however, that question may be regarded as hypothetical and remain unanswered, given that, contrary to the crystal-clear wording of the question referred, which all but assumes that there *is* a serious threat to the security of the State, it would seem, taking into account all of the facts of the present case as presented by the referring court, that, even on the basis of a potential economic shortfall of some EUR 58 million, there is no reason to assume that such an

51 — See *Krombach*, EU:C:2000:164, paragraph 36; *Renault*, EU:C:2000:225, paragraph 29; *Gambazzi*, EU:C:2009:219, paragraph 27; *Apostolides*, EU:C:2009:271, paragraph 59; and *Trade Agency*, EU:C:2012:531, paragraph 51. See also the definition of public policy in Article 26 of Council Regulation (EC) No 1346/2000 on insolvency proceedings (OJ 2000 L 160, p. 1), the sister regulation to Regulation (EC) No 44/2001 in the field of insolvency law.

52 — See, in relation to a similar situation, the ECHR judgment *De Luca v. Italy*, no. 43870/04, §§ 54 and 55, 24 September 2013.

53 — See in this regard Article 94 of the Rules of Procedure of the Court of Justice.

exceptional situation exists. As high as that amount is, it is in all likelihood not such as to trigger effects that would shake a State to its very foundations. This is particularly true given that the enforcement measures consist essentially of sequestration of assets and leave the integrity and ownership of those assets unaffected.

89. It is true that, on the question of the cushioning of economic risks, the Court has held in a different context that, so far as concerns interim relief, repayment of the sum awarded must always be guaranteed, too, if the applicant is unsuccessful as regards the substance of his claim.⁵⁴ However, that case-law relates to orders requiring the person to whom they are addressed to *make* a provisional *payment* to the applicant by way of interim relief. It cannot be extended to protective orders such as that at issue in the main proceedings in the form of the provisional seizure of assets.

90. In the light of all the foregoing, I can find no reliable grounds to support a finding as to the existence of an infringement of public policy for economic reasons either.

4. Interim conclusion

91. The answer to the fourth question referred must therefore be that a refusal to recognise a judgment on grounds of public policy cannot reliably be based either on a failure to state reasons on the part of the judgment to be enforced or on the economic consequences associated with its enforcement.

V – Conclusion

92. In the light of all the foregoing, I propose that the Court answer the questions referred as follows:

- (1) A dispute concerning provisional and protective measures such as that at issue in the main proceedings, in the course of the substantive proceedings relating to which an airline organised under private law seeks damages for alleged infringements of European Union competition law, inter alia, from an undertaking in public ownership which affords it the use of an airport in return for the payment of an airport charge, is a civil and commercial matter within the meaning of Article 1(1) 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, as amended by Regulation (EC) No 1103/2008 of the European Parliament and of the Council of 22 October 2008, even in the case where airport charges and any discounts on those charges are governed by provisions of national law.
- (2) Proceedings for damages such as those at issue in the proceedings on the substance of the case do not constitute an action on the validity of decisions of the organs of companies within the meaning of Article 22(2) of Regulation No 44/2001.
- (3) In the circumstances of the main proceedings, a refusal to recognise a judgment on grounds of public policy cannot reliably be based either on a failure to state reasons on the part of the judgment to be enforced or on the economic consequences associated with its enforcement.

⁵⁴ — See judgments in *Van Uden*, C-391/95, EU:C:1998:543, paragraph 47, on the ‘interim payment of a contractual consideration’, and *Mietz*, C-99/96, EU:C:1999:202, paragraph 42, both of which related to the corresponding provision of the Brussels Convention, Article 24.