Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

23 October 2014*

(Reference for a preliminary ruling — Regulation (EC) No 44/2001 — Article 31 — Request for recognition and enforcement of a judgment ordering provisional or protective measures — Article 1(1) — Scope — Civil and commercial matters — Concept — Claim for compensation in respect of damage resulting from alleged infringements of European Union competition law — Reductions in airport charges — Article 22(2) — Exclusive jurisdiction — Concept — Dispute in proceedings concerning companies or other legal persons or associations of natural or legal persons — Decision granting reductions — Article 34(1) — Grounds for refusal of recognition — Public policy in the State in which recognition is sought)

In Case C-302/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākās Tiesas Senāts (Latvia), made by decision of 15 May 2013, received at the Court on 3 June 2013, in the proceedings

flyLAL-Lithuanian Airlines AS, in liquidation,

v

Starptautiskā lidosta Rīga VAS,

Air Baltic Corporation AS,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh, C. Toader (Rapporteur), E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: J. Kokott,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 14 May 2014,

after considering the observations submitted on behalf of:

— flyLAL-Lithuanian Airlines AS, in liquidation, by R. Audzevičius, advokatas, and V. Skrastiņš and A. Guļajevs, advokāti,

— Starptautiskā lidosta Rīga VAS, by U. Zeltiņš, G. Lejiņš, M. Aljēns, S. Novicka and K. Zīle, advokāti,

* Language of the case: Latvian.

— Air Baltic Corporation AS, by J. Jerņeva, D. Pāvila, A. Lošmanis, advokāti, and J. Kubilis, advokāta palīgs,

— the Latvian Government, by I. Kalniņš and I. Ņesterova, acting as Agents,

— the Lithuanian Government, by A. Svinkūnaitė and D. Kriaučiūnas, acting as Agents,

— the Netherlands Government, by M. Bulterman, acting as Agent,

— the European Commission, by A. Sauka, A.-M. Rouchaud-Joët and I. Rubene, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 July 2014,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 1, 22(2), 34(1) and 35(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 (OJ 2001 L 12, p. 1).

2 The request has been made in proceedings between, on the one hand, flyLAL-Lithuanian Airlines AS, in liquidation ('flyLAL'), a company incorporated under Lithuanian law, and, on the other, Starptautiskā lidosta Rīga VAS ('Starptautiskā lidosta Rīga'), a company incorporated under Latvian law which manages the airport in Riga (Latvia), and Air Baltic Corporation AS ('Air Baltic'), a company incorporated under Latvian law, concerning a request for recognition and enforcement in Latvia of a judgment of a Lithuanian court ordering provisional measures or protective measures.

Legal context

EU law

3 Recitals 6, 7, 16, 17 and 19 in the preamble to Regulation No 44/2001 are worded as follows:

'(6) 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.

(7) The scope of this Regulation must cover all the main civil and commercial matters apart from certain well-defined matters.

…

(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. To that end, the declaration that a judgment is enforceable should be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds for non-enforcement provided for by this Regulation.

…

(19) Continuity between the Brussels Convention [Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36)] and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation of the Brussels Convention by the Court of Justice of the European Communities and the [first protocol on the interpretation by the Court of Justice of the Convention of 27 September 1968, in its revised and amended version (OJ 1998 C 27, p. 28)] should remain applicable also to cases already pending when this Regulation enters into force.'

4 Article 1(1) of Regulation No 44/2001 provides that the regulation is to apply to civil and commercial matters. It does not extend, in particular, to revenue, customs or administrative matters.

5 Under Article 5(3) and (4) of that regulation:

'A person domiciled in a Member State may, in another Member State, be sued:

…

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

4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings'.

6 The rules on jurisdiction are laid down in Chapter II of the regulation. The rules on exclusive jurisdiction are contained in Section 6 of that chapter. Article 22 of that regulation provides in particular as follows:

'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. In order to determine that seat, the court shall apply its rules of private international law'.

7 Article 31 of Regulation No 44/2001 provides that application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under that regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

8 Articles 33 to 37 of Regulation No 44/2001 deal with the recognition of judgments. Article 33 thereof establishes the principle that the judgments of the courts of another Member State are to be recognised without any special procedure being required. Articles 34 and 35 of that regulation lay down the grounds on which recognition may, in exceptional cases, be refused.

9 Article 34 of Regulation No 44/2001 provides:

'A decision shall not be recognised:

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

…'

10 Article 35(1) of that regulation is worded as follows:

'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.'

11 Articles 36 and 45(2) of Regulation No 44/2001 provide that, for the recognition and enforcement in one Member State of a judgment given in another Member State, that judgment cannot be reviewed as to its substance.

Latvian law

12 Under the Law on Aviation (Likums 'Par aviāciju'), in the version applicable to the facts in the main proceedings, the owners of aircraft are required to pay charges for, inter alia, the use of airports.

13 According to that law, the procedure for determining and allocating the charges is to be established by the Council of Ministers.

14 Paragraph 3.5 of Decree No 20 of the Council of Ministers of 3 January 2006 on the determination of the charges to be paid for air navigation services and for the services provided by Starptautiskā lidosta Rīga and the procedure for their allocation (*Latvijas Vēstnesis*, 2006, No 10) provides that any carrier flying into or out of Riga airport is to obtain a reduction in the charges corresponding to the number of passengers from that airport carried during one year.

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

15 As is apparent from the order for reference, the file lodged with the Court and the observations submitted during the written procedure and at the hearing, the present request for a preliminary ruling forms part of a wider dispute pending before the Lietuvos apeliacinis teismas (Lithuanian Court of Appeal). By that action, flyLAL seeks compensation for damage resulting, first, from the abuse of a dominant position by Air Baltic on the market for flights from or to Vilnius Airport (Lithuania) and, second, from an anti-competitive agreement between the co-defendants. To that end, the applicant in the main proceedings applied for provisional and protective measures.

16 By a judgment of 31 December 2008, the Lietuvos apeliacinis teismas granted that application and issued an order for sequestration, on a provisional and protective basis, of the moveable and/or immoveable assets and property rights of Air Baltic and Starptautiskā Lidosta Rīga in an amount equivalent to 199 830 000 Lithuanian Litai (LTL) or 40 765 320 Latvian Lats (LVL) (EUR 58 020 666.10).

17 By a decision of 19 January 2012, the Rīgas pilsētas Vidzemes priekšpilsētas tiesa (the District Court of Vidzeme in the City of Riga, Latvia) decided to recognise and enforce that judgment in Latvia, in so far as the recognition and enforcement related to the sequestration of the moveable and/or immoveable assets and property rights of Air Baltic and Starptautiskā Lidosta Rīga. The application by flyLAL for a guarantee of enforcement of that judgment was rejected. On appeal, that decision was confirmed by the Rīgas apgabaltiesas Civillietu tiesu kolēģija (Civil Division of the Riga Court of Appeal, Latvia).

18 Appeals were brought against the decision of the Rīgas apgabaltiesas Civillietu tiesu kolēģija before the referring court. Starptautiskā Lidosta Rīga and Air Baltic submit that the recognition and enforcement of the judgment of the Lietuvos apeliacinis teismas of 31 December 2008 are contrary to both the rules of public international law on immunity from jurisdiction and Regulation No 44/2001. They argue that the present case does not fall within the scope of that regulation. Since the dispute relates to airport charges set by State rules, it does not, they submit, concern a civil or commercial matter within the meaning of that regulation. That judgment should be neither recognised nor enforced in Latvia. In response, flyLAL takes the view that its action is a civil matter because it seeks compensation for damage resulting from the infringement of Articles 81 EC and 82 EC.

19 On account of the nature of the rules setting the levels of airport charges and reductions in those charges, the referring court doubts, first of all, that the case before it is a civil or commercial matter within the meaning of Article 1 of Regulation No 44/2001. By reference to the answer given in the judgment in *St. Paul Dairy* (C-104/03, EU:C:2005:255) it argues, in effect, that a judgment ordering provisional and protective measures may be recognised on the basis of that regulation only if the case in which those measures have been requested is a civil or commercial matter within the meaning of that regulation.

20 If the Court should take the view that the dispute in the main proceedings falls within the scope of Regulation No 44/2001, the question of exclusive jurisdiction will then arise. Article 22(2) of that regulation provides for such a rule of jurisdiction in proceedings which have as their object the validity of the decisions of the organs of companies or other legal persons in favour of the courts of the Member State concerned. The reduction in airport charges is applied by way of decisions taken by organs of commercial companies. Consequently, there is uncertainty, first, as regards the jurisdiction of the Lithuanian courts. Second, as Article 35(1) of Regulation No 44/2001 precludes recognition of judgments if they infringe rules of exclusive jurisdiction, the referring court is unsure whether it is appropriate to examine such a question.

21 Finally, Article 34(1) of Regulation No 44/2001 provides that a judgment is not to be recognised if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought. First, although the sum claimed is substantial, the judgment of the Lietuvos apeliacinis teismas of 31 December 2008 provides no explanations as to the method by which the amounts concerned were calculated. Second, the action is directed against commercial companies in which the State is a shareholder. Since FlyLAL is in liquidation, Starptautiskā Lidosta Rīga, Air Baltic and the Republic of Latvia would, if the substantive action were to be dismissed, have no means of recovering the losses sustained as a result of the application of the provisional and protective measures ordered by that judgment. Such circumstances thus raise doubts as to whether recognition of that judgment is compatible with the public policy of the State in which recognition is sought.

22 In those circumstances, the Augstākās Tiesas Senāts decided to stay the proceedings before it and to refer 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, 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 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 Regulation No 44/2001), 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 subject-matter of 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 and 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 and protective measures is contrary to the public policy of a Member State if, first, the principal ground for the adoption of the provisional and 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 provide compensation 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 Starptautiskā Lidosta Rīga and 52.6% of the shares in Air Baltic?'

The questions referred for a preliminary ruling

The first question

23 By its first question, the referring court asks, essentially, whether Article 1(1) of Regulation No 44/2001 must be interpreted as meaning that an action, such as that at issue in the main proceedings, seeking legal redress for damage resulting from alleged infringements of European Union competition law is covered by the concept of 'civil and commercial matters' within the meaning of that provision and, therefore, falls within the scope of that regulation.

24 First of all, it must be remembered that, according to settled case-law, in order to ensure, as far as possible, that the rights and obligations which derive from Regulation No 44/2001 for the Member States and the persons to whom it applies are equal and uniform, 'civil and commercial matters' should not be interpreted as a mere reference to the internal law of one or other of the States concerned. That concept must be regarded as an independent concept to be interpreted by referring, first, to the objectives and scheme of that regulation and, second, to the general principles which stem from the corpus of the national legal systems (see, to that effect, judgments in *Apostolides*, C-420/07, EU:C:2009:271, paragraph 41 and the case-law cited; *Cartier parfums-lunettes and Axa Corporate Solutions Assurance*, C-1/13, EU:C:2014:109, paragraph 32 and the case-law cited; and *Hi Hotel HCF*, C-387/12, EU:C:2014:215, paragraph 24 and the case-law cited).

25 Next, in so far as Regulation No 44/2001 now replaces the Brussels Convention in relations between Member States, the interpretation given by the Court concerning the provisions of that convention is also valid for those of that regulation in so far as the provisions of those instruments may be regarded

as equivalent (see, to that effect, judgments in *Sunico and Others*, C-49/12, EU:C:2013:545, paragraph 32 and the case-law cited, and *Brogsitter*, C-548/12, EU:C:2014:148, paragraph 19 and the case-law cited).

26 The scope of Regulation No 44/2001 is, like that of the Brussels Convention, limited to 'civil and commercial matters'. In order to determine whether a matter falls within the scope of Regulation No 44/2001, the elements which characterise the nature of the legal relationships between the parties to the dispute or the subject-matter thereof must be examined (see, to that effect, judgments in *Sapir and Others*, C-645/11, EU:C:2013:228, paragraphs 32 and 34 and the case-law cited, and in *Sunico and Others*, EU:C:2013:545, paragraphs 33 and 35 and the case-law cited).

27 It follows from Article 5(3) and (4) of Regulation No 44/2001 that, in principle, actions seeking legal redress for damage are civil and commercial matters and therefore come within the scope of that regulation. As stated in recital 7 in the preamble to that regulation, its scope must cover all the main civil and commercial matters apart from certain well-defined matters. Exclusions from the scope of Regulation No 44/2001 are exceptions which, like all exceptions, and in the light of the objective of that regulation, which is to maintain and develop an area of freedom, security and justice by facilitating the free movement of judgments, must be strictly interpreted.

28 The action brought by flyLAL seeks legal redress for damage relating to an alleged infringement of competition law. Thus, it comes within the law relating to tort, delict or quasi-delict (see, by analogy, judgment in *Sunico and Others*, EU:C:2013:545, paragraph 37).

29 Therefore, an action such as that at issue in the main proceedings, the subject-matter of which is legal redress for damage resulting from the infringement of rules of competition law, is civil and commercial in nature.

30 It is true that the Court has held that, although certain actions between a public authority and a person governed by private law may come within the scope of civil and commercial matters, the position is otherwise where the public authority is acting in the exercise of its public powers (judgments in *Sapir and Others*, EU:C:2013:228, paragraph 33 and the case-law cited, and in *Sunico and Others*, EU:C:2013:545, paragraph 34 and the case-law cited).

31 The exercise of public powers by one of the parties to the case, because it exercises powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals, excludes such a case from civil and commercial matters within the meaning of Article 1(1) of Regulation No 44/2001 (see, to that effect, judgment in *Apostolides*, EU:C:2009:271, paragraph 44 and the case-law cited).

32 Thus, so far as air navigation charges are concerned, the Court has held that the control and surveillance of air space are activities which in essence fall within the remit of the State and which, in order to be carried out, require the exercise of public powers (see, to that effect, judgment in *SAT Fluggesellschaft*, C-364/92, EU:C:1994:7, paragraph 28).

33 However, the Court has already held that the provision of airport facilities in return for payment of a fee constitutes an economic activity (see, to that effect, judgments in *Aéroports de Paris* v *Commission*, C-82/01 P, EU:C:2002:617, paragraph 78, and in *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle* v *Commission*, C-288/11 P, EU:C:2012:821, paragraph 40 and the case-law cited). Such legal relations therefore do indeed come within the scope of civil and commercial matters.

34 In circumstances such as those at issue in the main proceedings, such a conclusion is not contradicted by the fact that the alleged infringements of competition law resulted from provisions of Latvian law or by the fact that the State holds 100% and 52.6% of the shares in the defendants in the main proceedings.

35 First, it is irrelevant that Starptautiskā Lidosta Rīga is subject, as regards the determination of the rates of airport charges and reductions in those charges, to generally applicable statutory provisions of the Republic of Latvia. That fact, on the contrary, concerns the legal relations between that Member State and Starptautiskā Lidosta Rīga and does not affect the legal relationships between the latter and the airlines which benefit from its services.

36 As the Advocate General noted in point 61 of her Opinion, the non-application of the national legal provisions at issue in the main proceedings is not a direct consequence of the action for compensation but is, at the very most, an indirect consequence resulting from a review by way of exception.

37 Second, the Latvian State is not a party to the main proceedings and the mere fact that it is a shareholder in those entities does not in itself constitute a situation equivalent to that in which that Member State exercises public powers. This is even more true where those entities, the majority or sole shareholder in which is, admittedly, that State, behave like any economic operator, whether a natural or legal person, operating on a given market. The action is brought, not against conduct or procedures which involve an exercise of public powers by one of the parties to the case, but against acts carried out by individuals (see, to that effect, judgment in *Apostolides*, EU:C:2009:271, paragraph 45).

38 It follows from all of the foregoing that the answer to the first question is that Article 1(1) of Regulation No 44/2001 must be interpreted as meaning that an action such as that in the main proceedings, seeking legal redress for damage resulting from alleged infringements of European Union competition law, comes within the definition of 'civil and commercial matters' within the meaning of that provision and, therefore, falls within the scope of that regulation.

The second and third questions

39 By its second and third questions, which it is appropriate to examine together, the referring court asks, essentially, whether Article 22(2) of Regulation No 44/2001 must be interpreted as meaning that an action, such as that at issue in the main proceedings, seeking legal redress for damage resulting from alleged infringements of European Union competition law, must be regarded as constituting proceedings which have as their object the validity of the decisions of the organs of companies within the meaning of that provision. If the answer is in the affirmative, it wishes to know whether, in the case where the substantive proceedings are brought before a court other than that which has jurisdiction under Article 22(2), the combined provisions of that article and Article 35 thereof preclude recognition of a judgment of that other court ordering provisional and protective measures.

40 So far as Article 22(2) of Regulation No 44/2001 is concerned, the Court has already had the opportunity to rule that that provision must be interpreted as meaning that its scope covers only disputes in which a party is challenging the validity of a decision of an organ of a company under the company law applicable or under the provisions governing the functioning of its organs (judgment in *Hassett and Doherty*, C-372/07, EU:C:2008:534, paragraph 26).

41 Thus, as is clear from the answer to the first question, the subject-matter of the substance of the dispute in the main proceedings concerns a claim for compensation in respect of damage resulting from alleged infringements of European Union competition law, and not the validity, nullity or dissolution of companies or other legal persons or associations of natural or legal persons, or the validity of the decisions of their organs within the meaning of Article 22(2) of Regulation No 44/2001.

42 Therefore, the answer to the first part of the second and third questions is that Article 22(2) of Regulation No 44/2001 must be interpreted as meaning that an action such as that in the main proceedings, seeking compensation for damage resulting from alleged infringements of European Union competition law, does not constitute proceedings having as their object the validity of the decisions of organs of companies within the meaning of that provision.

43 In the light of the answer to the first part of the second and third questions, there is no need to answer the second part of those questions relating to Article 35(1) of that regulation.

The fourth question

44 By its fourth question, the referring court asks, essentially, whether Article 34(1) of Regulation No 44/2001 must be interpreted as meaning that the failure to give reasons regarding the determination of the amount of the sums which are the subject of the provisional and protective measures granted by a judgment in respect of which recognition and enforcement are sought or the invocation of serious economic consequences constitute grounds establishing the infringement of public policy of the Member State in which recognition is sought allowing refusal of the recognition and enforcement in that Member State of such a judgment delivered in another Member State.

45 First of all, it must be noted, as is stated in recitals 16 and 17 in the preamble to Regulation No 44/2001, that the rules on recognition and enforcement laid down by that regulation are based on mutual trust in the administration of justice in the European Union. Such trust requires that judicial decisions delivered in one Member State are not only recognised automatically in another Member State, but also that the procedure for making those decisions enforceable in that Member State is efficient and rapid. Such a procedure, according to the terms of recital 17 in the preamble to that regulation, must involve only a purely formal check of the documents required for enforceability in the Member State in which enforcement is sought (see, to that effect, judgment in *Prism Investments*, C-139/10, EU:C:2011:653, paragraphs 27 and 28).

46 Next, according to Article 34(1) of Regulation No 44/2001, a judgment is not to be recognised if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought. The grounds of challenge that may be relied upon are expressly set out in Articles 34 and 35 of Regulation No 44/2001, to which Article 45 thereof refers. That list, the items of which must, in accordance with settled case-law, be interpreted restrictively, is exhaustive in nature (see, to that effect, judgments in *Apostolides*, EU:C:2009:271, paragraph 55 and the case-law cited, and in *Prism Investments*, EU:C:2011:653, paragraph 33).

47 Finally, according to settled case-law, while the Member States in principle remain free, by virtue of the proviso in Article 34(1) of Regulation No 44/2001, to determine, according to their own national conceptions, what the requirements of their public policy are, the limits of that concept are a matter of interpretation of that regulation. 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 have recourse to that concept for the purpose of refusing recognition of a judgment emanating from a court in another Member State (see to that effect, judgments in *Krombach*, C-7/98, EU:C:2000:164, paragraphs 22 and 23, and in *Renault*, C-38/98, EU:C:2000:225, paragraphs 27 and 28).

48 In that connection, by disallowing any review of a judgment delivered in another Member State as to its substance, Articles 36 and 45(2) of Regulation No 44/2001 prohibit the court of the State in which enforcement is sought from refusing to recognise or enforce that judgment solely on the ground that there is a discrepancy between the legal rule applied by the court of the State of origin and that which would have been applied by the court of the State in which enforcement is sought had it been seised of

the dispute. Similarly, the court of the State in which enforcement is sought cannot review the accuracy of the findings of law or fact made by the court of the State of origin (see judgment in *Apostolides*, EU:C:2009:271, paragraph 58 and the case-law cited).

49 Recourse to the public-policy clause in Article 34(1) of Regulation No 44/2001 can therefore 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. In order for the prohibition of any review of the substance of a judgment of another Member State to be observed, the infringement would have to 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 (see judgment in *Apostolides*, EU:C:2009:271, paragraph 59 and the case-law cited).

50 In the present case, the referring court is unsure, first, as to the consequences to be drawn from the failure to state reasons for the methods of determining the amount of the sums concerned by the provisional and protective measures granted by the judgment in respect of which recognition and enforcement are sought and, second, as to the consequences linked to the amount of those sums.

51 In the first place, as far as concerns the failure to state reasons, the Court has held that the observance of the right to a fair trial requires that all judgments be reasoned in order to enable the defendant to understand why judgment has been pronounced against him and to bring an appropriate and effective appeal against such a judgment (judgment in *Trade Agency*, C-619/10, EU:C:2012:531, paragraph 53 and the case-law cited).

52 It must be held that the extent of the obligation to give reasons may vary according to the nature of the judgment and must be examined, in the light of the proceedings taken as a whole and all the relevant circumstances, taking account of the procedural guarantees surrounding that judgment, in order to ascertain whether those guarantees ensure that the persons concerned have the possibility to bring an appropriate and effective appeal against that decision (see, to that effect, judgment in *Trade Agency*, EU:C:2012:531, paragraph 60 and the case-law cited).

53 In the present case, it follows from all of the information before the Court, first, that there is no lack of reasoning, since it is possible to follow the line of reasoning which led to the determination of the amount of the sums at issue. Second, the parties concerned had the opportunity to bring an action against such a decision and they exercised that option.

54 Therefore, the basic principles of a fair trial were respected and, accordingly, there are no grounds to consider that there has been a breach of public policy.

55 In the second place, as regards the consequences attached to the amount of the sums which are the subject of the provisional and protective measures ordered by the judgment in respect of which recognition and enforcement are sought, it must be stated, as set out in paragraph 49 of the present judgment, 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 recognition is sought or of a right recognised as fundamental within that legal order.

56 As the Advocate General noted in points 84 and 85 of her Opinion, the concept of ‘public policy’ within the meaning of Article 34(1) of Regulation No 44/2001 seeks to protect legal interests which are expressed through a rule of law, and not purely economic interests. That also applies where, as set out in paragraph 37 of the present judgment, the public authority acts as a market participant, in the present case as a shareholder, and exposes itself to certain risks.

57 First, it is clear from the observations submitted to the Court that the financial consequences attaching to the amount of potential losses have already been the subject of discussion before the Lithuanian courts. Second, as the European Commission stresses, the provisional and protective measures at issue in the main proceedings do not consist in the payment of a sum but simply in the monitoring of the assets of the defendants in the main proceedings.

58 Consequently, it must be held that the mere invocation of serious economic consequences does not constitute an infringement of the public policy of the Member State in which recognition is sought, within the meaning of Article 34(1) of Regulation No 44/2001.

59 It follows from all of the foregoing considerations that Article 34(1) of Regulation No 44/2001 must be interpreted as meaning that neither the detailed rules for determining the amount of the sums which are the subject of the provisional and protective measures granted by a judgment in respect of which recognition and enforcement are requested, in the case where it is possible to follow the line of reasoning which led to the determination of the amount of those sums, and even where legal remedies were available which were used to challenge such methods of calculation, nor the mere invocation of serious economic consequences constitute grounds establishing the infringement of public policy of the Member State in which recognition is sought which would permit the refusal of recognition and enforcement in that Member State of such a judgment given in another Member State.

Costs

60 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 (Third Chamber) hereby rules:

1. **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 must be interpreted as meaning that an action such as that in the main proceedings, seeking legal redress for damage resulting from alleged infringements of European Union competition law, comes within the notion of 'civil and commercial matters' within the meaning of that provision and, therefore, falls within the scope of that regulation.**

2. **Article 22(2) of Regulation No 44/2001 must be interpreted as meaning that an action such as that in the main proceedings, seeking legal redress for damage resulting from alleged infringements of European Union competition law, does not constitute proceedings having as their object the validity of the decisions of organs of companies within the meaning of that provision.**

3. **Article 34(1) of Regulation No 44/2001 must be interpreted as meaning that neither the detailed rules for determining the amount of the sums which are the subject of the provisional and protective measures granted by a judgment in respect of which recognition and enforcement are requested, in the case where it is possible to follow the line of reasoning which led to the determination of the amount of those sums, and even where legal remedies were available which were used to challenge such methods of calculation, nor the mere invocation of serious economic consequences constitute grounds establishing the infringement of public policy of the Member State in which recognition is sought which would permit the refusal of recognition and enforcement in that Member State of such a judgment given in another Member State.**

[Signatures]