Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 10 March 2016[1]

Case C-12/15

Universal Music International Holding BV
v
Michael Tétreault Schilling,
Irwin Schwartz,
Josef Brož(Request for a preliminary ruling

from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands))

(Area of freedom, security and justice — Jurisdiction in civil and commercial matters — Regulation (EC) No 44/2001 — Article 5(3) — Tort, delict or quasi-delict — Place where the harmful event occurred — Purely financial damage)

I – **Introduction**

1. It is well known that the system of conferring jurisdiction in civil and commercial matters, established by Regulation (EC) No 44/2001,[2] is based on the general rule in Article 2(1) of that regulation, according to which persons domiciled in a Member State are to be sued in the courts of that Member State, and that one of the derogations from that rule is found in Article 5(3) of Regulation No 44/2001, under which, in matters relating to tort, delict or quasi-delict, a person domiciled in a Member State may be sued in another Member State before the court for the place where the harmful event occurred.

2. The key question in the present case is whether financial loss suffered in a Member State as a result of an unlawful act in another Member State may, on its own, found jurisdiction under Article 5(3) of Regulation No 44/2001.

II – **Legal framework**

3. Article 2(1) of Regulation No 44/2001 states:

‘Subject to the provisions of this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.’

1 — Original language: French.

2 — Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

4. Article 5 of the regulation provides:

‘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;

…’

III – **The facts in the main proceedings and the questions referred for a preliminary ruling**

5. Universal Music International Holding BV (‘Universal Music’) is a record company established in Baarn (Netherlands), which is part of Universal Music Group, established in the United States. Universal Music International Ltd (‘Universal Ltd’) is a sister company of Universal Music and also part of Universal Music group.

6. In 1998, Universal Ltd, B&M spol. s.r.o. (‘B&M’), a company established in the Czech Republic, and the shareholders of B&M agreed that, as the company ultimately designated for that purpose within Universal Music Group, one or more companies in that group would buy first of all 70% of the shares in B&M, and then the remaining shares in 2003. The price of the shares was to be set in 2003 at the time of the acquisition of the remaining 30%. Those agreements were recorded in a Letter of Intent which set as an objective a sale price equal to five times the average annual profit of B&M.

7. The parties negotiated the sale and delivery of 70% of the shares in B&M and a share-option agreement for the remaining 30%. On the instructions of the legal department of Universal Music Group, the share-option agreement was drawn up by the Czech law firm Burns Schwartz International. From the end of August 1998, eight draft agreements were exchanged between the Legal Department of Universal Music Group, Burns Schwartz International and B&M’s shareholders. Universal Music was designated as purchaser during those negotiations.

8. On 5 November 1998, Universal Music, B&M and B&M’s shareholders concluded the share-option agreement.

9. It is apparent from the documents before the Court that an amendment proposed by the Legal Department of Universal Music Group was not wholly taken up by an employee of Burns Schwartz International; the result was that the sale price was five times greater than the price that had been envisaged, a sale price that had then to be multiplied by the number of shareholders.

10. When, in August 2003, Universal Music fulfilled its obligation to purchase the 30% of remaining shares of the B&M shareholders, and calculated the intended selling price, which was CZK 10 180 281 (approximately EUR 313770.41), the B&M shareholders claimed the amount resulting from the formula in the share option agreement, which was CZK 1 003 605 620 (approximately EUR 30932520.27).

11. Universal Musical and the B&M shareholders decided to take their dispute to an arbitration board, before which they reached an agreement on 31 January 2005. Pursuant to that compromise settlement, Universal Musical paid the sum of EUR 2654280.03 for the remaining 30% of the shares (‘the settlement amount’). It paid the settlement amount by transfer from a bank account it holds in the Netherlands. The transfer was made to an account held in the Czech Republic by the shareholders selling the B&M shares.

12. Universal Music brought an action before the Rechtbank Utrecht (District Court, Utrecht) seeking an order requiring the defendants jointly and severally to pay EUR 2767861.25, plus interest and costs, by reason of their quasi-delictual liability. That claim relates to the damage which Universal Music alleges it suffered as a result of the negligence of an employee of Burns Schwartz International when the text of the share-option agreement was being drafted. The damages claimed correspond to the difference between, on the one hand, the intended selling price and, on the other hand, the settlement amount and the costs incurred by Universal Music in connection with the arbitration and settlement.

13. Universal Music contended that, as a result of the conduct attributed to the defendants, it suffered 'initial financial damage' in the Netherlands, on the grounds that it paid the settlement amount and the costs associated with the arbitration and settlement out of its assets in the Netherlands, where it is established.

14. Mr Schilling and Mr Brož, domiciled in Romania and the Czech Republic respectively, disputed the jurisdiction of the Netherlands court, arguing that the payment of the settlement amount and of the costs borne by the assets of Universal Music cannot be regarded as initial financial damage occurring in the Netherlands as a result of actions that took place in the Czech Republic.

15. By judgment of 27 May 2009, the Rechtbank Utrecht (District Court, Utrecht) declared that it had no jurisdiction to hear and determine the claim brought by Universal Music. It held that the damage alleged by Universal Music was purely financial damage which was the direct result of the harmful event. The question arose whether the place where that damage occurred, in the present case Baarn, where Universal Music is established, could be considered to be the place where the harmful event occurred within the meaning of Article 5(3) of Regulation No 44/2001. The Rechtbank Utrecht (District Court, Utrecht) took the view that it could not, for there are insufficient connecting factors for the Netherlands courts to assume jurisdiction on the basis of Article 5(3) of that regulation.

16. Hearing the appeal brought by Universal Music, the Gerechtshof Arnhem-Leeuwarden (Regional Court of Appeal, Arnhem-Leeuwarden), by judgment of 15 January 2013, confirmed the decision of the Rechtbank Utrecht (District Court, Utrecht).With regard to Article 5(3), that court held that the particularly close connecting factor between the claim and the court seised, which constitutes a criterion for the application of Article 5(3) of Regulation No 44/2001, was wanting in the present case. The mere fact that the settlement amount was payable by a company established in the Netherlands is insufficient to justify conferring jurisdiction on the Netherlands courts.

17. Universal Music has brought an appeal in cassation before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) against the judgment of the Gerechtshof (Regional Court of Appeal). Mr Schilling and Mr Brož have each separately brought a conditional cross-appeal in cassation.

18. The referring court states that the Court has had occasion to hold, in the judgment in *Marinari*,[3] that the place where the victim claims to have suffered financial damage following upon initial damage arising in another Member State cannot be construed as being the place where the harmful event occurred, in accordance with Article 5(3) of Regulation No 44/2001.

19. However, the Court has not yet specified the criterion or the aspect on the basis of which the national courts could determine whether the damage in question is initial financial damage, also called basic or direct financial damage, or rather financial damage which is the result of the latter or consequent upon it, also called consequential or indirect damage.

3 — C-364/93, EU:C:1995:289.

20. Nor has the Court stated the criterion or aspect on the basis of which the national courts must determine the place in which the financial damage, whether direct or indirect, occurred or is deemed to have occurred.

21. In the view of the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), the question also arises whether, and, if so, to what extent, the national court that must assess whether it has jurisdiction pursuant to Regulation No 44/2001 in the present case is obliged, when making its assessment, to base its assessment on the relevant statements of the claimant or applicant in that regard, or whether it is obliged also to take into account the arguments put forward by the defendant to challenge those statements.

22. In those circumstances, the referring court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Must Article 5(3) of Regulation No 44/2001 be interpreted as meaning that the “place where the harmful event occurred” can be construed as being the place in a Member State where the damage occurred, if that damage consists exclusively of financial damage which is the direct result of unlawful conduct which occurred in another Member State?

(2) If the answer to Question 1 is in the affirmative:

(a) What criterion or what perspectives should the national court apply, when assessing its jurisdiction on the basis of Article 5(3) of Regulation No 44/2001, in order to determine whether in the present case there has been financial damage which is the direct result of unlawful conduct (“initial financial damage” or “direct financial damage”) or whether there has been financial damage which is the result of initial damage which occurred elsewhere or damage which has resulted from damage which occurred elsewhere (“consequential damage” or “derived financial damage”)?

(b) What criterion or what perspectives should the national court apply, when assessing its jurisdiction on the basis of Article 5(3) of Regulation No 44/2001, in order to determine where, in the present case, the financial damage — whether it be direct or derived financial damage — occurred or is deemed to have occurred?

(3) If the answer to Question 1 is in the affirmative, must Regulation No 44/2001 be interpreted as meaning that the national court which is required to determine whether it has jurisdiction pursuant to that regulation in the present case is obliged, when making its determination, to proceed on the basis of the relevant submissions of the claimant or applicant in that regard, or is it obliged also to take into account the arguments put forward by the defendant to refute those submissions?’

23. The appellant in the main proceedings, Mr Schilling, Mr Brož, the Greek Government and the European Commission have submitted observations and stated their views at the hearing held on 25 November 2015.

IV – **Assessment**

A – *Preliminary observations*

24. In this Opinion, I cite the Court's case-law concerning the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters,[4] as amended by the successive conventions relating to the accession of new Member States to that convention ('the Brussels Convention'), given that, in so far as Regulation No 44/2001 replaces the Brussels Convention, the interpretation provided by the Court in respect of the provisions of the Brussels Convention is also valid for those of that regulation whenever the provisions of those instruments may be regarded as equivalent.[5] Indeed, the key provision in the present case, namely, Article 5(3) of Regulation No 44/2001 is drafted in almost identical terms to those of its counterpart in the Brussels Convention, whose system it has adopted. In the light of such similarity, it is necessary to ensure, in accordance with Recital 19 of Regulation No 44/2001, continuity in the interpretation of those two instruments.[6]

B – *Question 1*

25. By its first question, the referring court asks whether Article 5(3) of Regulation No 44/2001 is to be interpreted as meaning that the place, situated in a Member State, where the damage[7] occurred may be regarded as the 'place where the harmful event occurred' if that damage consists solely of financial damage that is the direct result of an unlawful act committed in another Member State.

26. The referring court therefore wishes, in essence, to know whether financial damage suffered in a Member State is a sufficient connecting factor for determining the court with jurisdiction under Article 5(3) of Regulation No 44/2001.

27. It is only by way of derogation from the fundamental principle laid down in Article 2(1) of Regulation No 44/2001, conferring jurisdiction on the courts of the Member State in which the defendant is domiciled, that Section 2 of Chapter II thereof makes provision for certain special cases of conferral of jurisdiction, among them the case in Article 5(3) of that regulation.[8] In so far as the jurisdiction of the courts of the place where the harmful event occurred or may occur constitutes a rule of special jurisdiction, it must be interpreted independently and strictly,[9] which does not admit an interpretation going beyond the cases expressly envisaged by that regulation.[10]

4 — OJ 1978, L 304, p. 36.

5 — Judgment in *TNT Express Nederland* (C-533/08, EU:C:2010:243, paragraph 36 and the case-law cited).

6 — See also, with regard specifically to Article 5(3) of Regulation No 44/2001, the judgment in *Zuid-Chemie* (C-189/08, EU:C:2009:475, paragraph 19).

7 — In order to avoid any risk of confusion, I should point out that the terms 'damage' and 'harm' are used indiscriminately in this Opinion.

8 — See, inter alia, the judgments in *Coty Germany* (C-360/12, EU:C:2014:1318, paragraph 44), and *Melzer* (C-228/11, EU:C:2013:305, paragraph 23).

9 — According to settled case-law. See, by way of example, the judgments in *Holterman Ferho Exploitatie and Others* (C-47/14, EU:C:2015:574, paragraph 72); *CDC Hydrogen Peroxide* (C-352/13, EU:C:2015:335, paragraph 37); and *Kolassa* (C-375/13, EU:C:2015:37, paragraph 43).

10 — See, inter alia, the judgments in *Coty Germany* (C-360/12, EU:C:2014:1318, paragraph 45), and *Melzer* (C-228/11, EU:C:2013:305, paragraph 24).

28. The main reason for the rule of special jurisdiction laid down in Article 5(3) of Regulation No 44/2001 is, according to the Court's settled case-law, based on the existence of a particularly close connecting factor between the dispute and the courts of the place where the harmful event occurred, which justifies the conferring of jurisdiction on those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings.[11] The courts for the place where the harmful event occurred are usually the most appropriate for deciding the case, in particular on the grounds of proximity and ease of taking evidence.[12]

29. Article 5(3) of Regulation No 44/2001 therefore provides that a person domiciled in one Member State may be sued in another Member State 'in matters relating to tort, delict or quasi-delict, in the courts for the place where *the harmful event* occurred or may occur'.

30. I note that that provision makes no mention whatever of *harm* or *damage*, but of a *harmful event*. It is therefore not the harm which is primarily referred to by the wording of Article 5(3) of Regulation No 44/2001, but the event giving rise to harm. The logic of that provision seems clear to me: a court will usually be best placed to gather the facts, to hear the witnesses and to undertake any procedural measure in the place where harm has in fact been caused.

31. Nonetheless, it is well known that the Court, since the landmark case which led to the judgment in *Bier, 'Mines de potasse d'Alsace'*,[13] interprets the words 'place where the harmful event occurred' as covering two different places, namely, the place where the damage occurred[14] and the place of the causal event[15] giving rise to that damage.[16]

32. As regards financial damage, the Court held in the judgment in *Marinari*[17] that the term 'place where the harmful event occurred' did not cover the place where the victim claimed to have suffered financial damage *following upon* initial damage arising and suffered by him in another Member State.[18] In that case, the applicant had lodged, with a branch of a bank in the United Kingdom, a bundle of promissory notes which the bank staff had refused to return, while advising the police of their existence and stating them to be of dubious origin, which led to the applicant's arrest and the sequestration of the promissory notes. Having been released by the English authorities, the applicant brought an action before an Italian court seeking compensation from the bank for the damage caused by its staff. The claim was for payment of the face value of the promissory notes and compensation for the damage he suffered as a result of his arrest, and for the breach of several contracts and damage to his reputation as well.

33. In the case in the main proceedings, the agreement containing the incorrect clause was negotiated and signed in the Czech Republic. The rights and obligations of the parties were defined in that Member State, including Universal Music's obligation to pay a higher amount than initially planned for the 30% remaining shares. That contractual obligation, which the parties to the contract had not intended to create, arose in the Czech Republic. It is therefore in that Member State that the obligation to pay a higher price than planned became irreversible and unavoidable and, in my view, that the harm occurred.

11 — See the judgment in *Zuid-Chemie* (C-189/08, EU:C:2009:475, paragraph 24 and the case-law cited).

12 — Judgment in *Zuid-Chemie* (C-189/08, EU:C:2009:475, paragraph 24 and the case-law cited).

13 — 21/76, EU:C:1976:166.

14 — Called 'Erfolgsort' according to German academic lawyers.

15 — Called 'Handlungsort' according to German academic lawyers.

16 — 21/76, EU:C:1976:166, paragraph 24; see also the judgments in *Zuid-Chemie* (C-189/08, EU:C:2009:475, paragraph 23), and *Kainz* (C-45/13, EU:C:2014:7, paragraph 23).

17 — C-364/93, EU:C:1995:289.

18 — See the judgment in *Marinari* (C-364/93, EU:C:1995:289, paragraph 21).

34. That finding means that the first two questions become hypothetical, in so far as, according to settled case-law the 'place where the harmful event occurred' is in the Czech Republic.

35. The referring court states, however, that it has not found an answer, in the Court's case-law, to the question of whether financial damage alone may constitute an 'Erfolgsort' and, therefore, establish jurisdiction under Article 5(3) of Regulation No 44/2001. In other words, it wonders whether there is jurisdiction under that provision when there is not already initial damage, as in the case which gave rise to the judgment in *Marinari*.[19]

36. Alternatively, and in such a hypothesis, the key question in the present proceedings is therefore whether the Court's statement in the judgment in *Mines de potasse d'Alsace*[20] judgment that the words 'place where the harmful event occurred' covers both places also applies when damage is purely financial.

37. I think not.

38. When there is financial damage, namely, damage which consists only in a reduction in financial assets,[21] I think that the term 'Erfolgsort' is not wholly relevant.[22] In certain situations, it is impossible to distinguish between 'Handlungsort' and 'Erfolgsort'. In order to determine whether there is an 'Erfolgsort', it all depends, in such a situation, on where the financial assets are situated, which is usually the same as the place of residence or, in the case of a legal person, the place in which it has its registered office. That matter is often uncertain and connected with considerations which are unrelated to the events at issue.

39. I am therefore wary of transposing to the letter the decision in *Mines de potasse d'Alsace*[23] to a situation in which the damage is financial. As the Commission rightly points out in its observations, it was not in order to extend the derogation from the general rule of jurisdiction that the Court acknowledged, in the *Mines de potasse d'Alsace* judgment,[24] the applicant might choose between the place where the damage occurred and the place where the event which initially caused the damage took place. The reason for that choice lies in the necessity of staying as close as possible to the facts of the case and of designating the court aptest for settling the case and, in that context, of conducting proceedings efficiently, for example by taking evidence and hearing witnesses.

40. As we have seen above, all the factors enabling a court to conduct proceedings efficiently are therefore to be found in the Czech Republic.

41. In other words, for reasons of good administration of justice and procedural organisation, the mere fact that a settlement amount has been paid by a company established in the Netherlands is not enough to establish the jurisdiction of the Netherlands court.

42. Analysis of the Court's case-law does not seem to me to invalidate this view.

19 — C-364/93, EU:C:1995:289.

20 — 21/76, EU:C:1976:166.

21 — 'Vermogensschade' in the terminology of the referring court.

22 — Obviously it is different if it is the assets themselves that are the object of the unlawful act. In such a situation it is clear to me that the 'Erfolgsort' may very well be the place where the financial damage is suffered. See also, to that effect, Mankowski, P., in Magnus,U., and Mankowski, P., Brussels Ibis Regulation Commentary, Verlag Dr. Otto Schmidt, Cologne, 2016, Article 7, paragraph 328.

23 — 21/76, EU:C:1976:166.

24 — 21/76, EU:C:1976:166.

43. In the case which gave rise to the judgment in *Kronhofer*,[25] the person harmed, who was established in Austria, had responded to an offer to open an account in Germany, to which he had transferred funds. The Court ruled that Article 5(3) of the Brussels Convention must be interpreted as meaning that the expression 'place where the harmful event occurred' does not refer to the place where the claimant is domiciled or where 'his assets are concentrated' *by reason only* of the fact that he has suffered financial damage there resulting from the loss of part of his assets which arose and was incurred in another Contracting State.[26] That finding is persuasive, given that that place is rather fortuitous and is not necessarily a reliable connecting factor.

44. In the case which gave rise to the judgment in *Kolassa*,[27] an investor had, in his own country, Austria, invested a certain sum with a bank. For the Court, the damage occurred in the place in which the investor suffered it,[28] namely, Austria. According to the Court, jurisdiction pursuant to Article 5(3) of Regulation No 44/2001 was established.[29]

45. I think, however, that a general rule cannot be deduced from that case to the effect that financial damage suffices as a connecting factor for the purposes of that provision. The facts in the case leading to the judgment in *Kolassa*[30] were specific. The defendant in that case, a British bank, had published a prospectus concerning the financial certificates in question in Austria[31] and it was an Austrian bank that had sold those certificates.

46. In the case which gave rise to the judgment in *CDC Hydrogen Peroxide*, concerning competition law, in which the victims were in several Member States, the Court recognised that those different places could serve as linking factors.[32] The Court held that 'as for loss consisting in additional costs incurred because of artificially high prices, … that place is identifiable only for each alleged victim taken individually and is located, in general, at that victim's registered office'.[33]

47. I do not think that that statement can be the basis for a general rule that the registered office of a harmed undertaking constitutes the place where damage has occurred. On the contrary, that statement too is explained by the particular features of that case, in which a large number of persons had been harmed. No one place could, in consequence, be identified as the place where the cartel agreement had been concluded or, therefore, the place of the causal event. Furthermore, it seems to me that the registered office of an undertaking tends to be the same as the site of its economic activities.

48. In short, I cannot see how Article 5(3) of Regulation No 44/2001 can establish the jurisdiction of a court situated in a Member State with which the case is connected only by the fact that the person harmed has suffered financial damage there.

49. I therefore propose that the reply to Question 1 should be that, on a proper construction of Article 5(3) of Regulation No 44/2001, the place, in one Member State, where the damage occurred is not, failing any other connecting factors, to be considered to be the 'place where the harmful event occurred', if that damage consists exclusively of financial damage that is the result of an unlawful act committed in another Member State.

50. In the light of this proposal, there is no need to examine the second question.

25 — C-168/02, EU:C:2004:364.
26 — Judgment in *Kronhofer* (C-168/02, EU:C:2004:364, paragraph 21).
27 — C-375/13, EU:C:2015:37.
28 — Judgment in *Kolassa* (C-375/13, EU:C:2015:37, paragraph 54).
29 — Judgment in *Kolassa* (C-375/13, EU:C:2015:37, paragraph 57).
30 — C-375/13, EU:C:2015:37.
31 — See also my opinion in *Kolassa* (C-375/13, EU:C:2014:2135, point 64).
32 — C-352/13, EU:C:2015:335, paragraph 52.
33 — Judgment in *CDC Hydrogen Peroxide* (C-352/13, EU:C:2015:335, paragraph 52).

C – Question 3

51. By its third question, the referring court asks, in essence, whether Article 5(3) it is to be interpreted as meaning that the national court called upon to determine whether it has jurisdiction pursuant to that provision is obliged to base its determination on the asseverations of the applicant, or whether it is obliged also to take into account the arguments put forward by the defendant to challenge those asseverations.

52. Even though the referring court asks this question only if the answer to Question 1 should be in the affirmative, I consider that there is an interest in replying, for this question is of general scope and relates to the determination of jurisdiction, and not only to the question whether financial damage is sufficient for establishing jurisdiction.

53. It should be noted as a preliminary point [34] that the jurisdiction of the court is determined by the autonomous rules of Regulation No 44/2001, whilst the merits of the case are decided according to the national law applicable, determined by the rules of private international law on contractual [35] or non-contractual [36] obligations.

54. It seems to me that the existing case-law already provides us with several paths that help to find the answer to this question.

55. Regulation No 44/2001 does not specify the extent of the national court's duties of review when assessing whether it has jurisdiction. It is settled case-law that the object of the Brussels Convention was not to unify the rules of procedure of the Contracting States, but to determine which court has jurisdiction in disputes relating to civil and commercial matters in relations between the Contracting States and to facilitate the enforcement of judgments. [37] The Court has also consistently held that, as regards procedural rules, reference must be made to the national rules applicable by the national court, provided that the application of those rules does not impair the effectiveness of the Brussels Convention. [38]

56. Thus, the Court has ruled that an applicant might invoke the jurisdiction of the courts of the place of performance in accordance with Article 5(1) of the Brussels Convention, even when the existence of the contract on which the claim was based was in dispute between the parties. [39] It has also stated that it was consonant with the aim of legal certainty that the national court seised should be able readily to decide whether it had jurisdiction on the basis of the rules of the Convention, without having to consider the substance of the case. [40]

57. The Court has held too that, at the stage at which international jurisdiction is determined, the court seised examines neither the admissibility nor the substance of the application for a negative declaration according to the rules of national law, but identifies only the points of connection with the State in which that court is situated that support its claim to jurisdiction under Article 5(3) of Regulation No 44/2001. [41] It has also taken the view that, for the application of Article 5(3) of Regulation No 44/2001, the court seised may regard as established, solely for the purpose of

34 — See also my Opinion in *Kolassa* (C-375/13, EU:C:2014:2135, point 69).

35 — Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6).

36 — Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 40).

37 — See, in that regard, the judgments in *Shevill and Others* (C-68/93, EU:C:1995:61, paragraph 35); *Italian Leather* (C-80/00, EU:C:2002:342, paragraph 43); and *DFDS Torline* (C-18/02, EU:C:2004:74, paragraph 23).

38 — Judgments in *Hagen* (C-365/88, EU:C:1990:203, paragraphs 19 and 20), and *Shevill and Others* (EU:C:1995:61, paragraph 36).

39 — Judgment in *Effer* (38/81, EU:C:1982:79, paragraph 8).

40 — Judgment in *Benincasa* (C-269/95, EU:C:1997:337, paragraph 27).

41 — Judgment in *Folien Fischer and Fofitec* (C-133/11, EU:C:2012:664, paragraph 50).

ascertaining whether it has jurisdiction under that provision, the applicant's assertions as regards the conditions for liability in tort, delict or quasi-delict.[42] Finally, it has also held that, in the context of the determination of international jurisdiction under Regulation No 44/2001, it is not necessary to conduct a comprehensive taking of evidence in relation to disputed facts that are relevant both to the question of jurisdiction and to the existence of the claim, and that it is, however, permissible for the court seised to examine its international jurisdiction in the light of all the information available to it, including, where appropriate, the allegations made by the defendant.[43]

58. I therefore propose that the reply to Question 3 should be that, in order to determine its jurisdiction under the provisions of Regulation No 44/2001, the court seised of a case must assess all the elements available to it, including, where appropriate, the elements put forward by the defendant.

V – **Conclusion**

59. In the light of the foregoing considerations, I propose that the Court answer the questions asked by the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) as follows:

(1) On a proper construction of Article 5(3) 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, the place, in one Member State, where the damage occurred is not, failing any other connecting factors, to be considered to be the 'place where the harmful event occurred', if that damage consists exclusively of financial damage that is the result of an unlawful act committed in another Member State.

(2) In order to determine whether it has jurisdiction under the provisions of Regulation No 44/2001, the court seised must assess all the elements available to it, including, where appropriate, the elements put forward by the defendant.

42 — Judgment in *Hi Hotel HCF* (C-387/12, EU:C:2014:215, paragraph 20).

43 — Judgment in *Kolassa* (C-375/13, EU:C:2015:37, paragraph 65).