Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

14 July 2016*

(Reference for a preliminary ruling — Judicial cooperation in civil and commercial matters — Regulation (EC) No 44/2001– Article 5(1) and (3) — Court having jurisdiction — Concepts of 'matters relating to a contract' and 'matters relating to tort or delict' — Abrupt termination of a long-standing business relationship — Action for damages — Concepts of 'sale of goods' and 'provision of services')

In Case C-196/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour d'appel de Paris (Court of Appeal, Paris, France), made by decision of 7 April 2015, received at the Court on 29 April 2015, in the proceedings

Granarolo SpA

v

Ambrosi Emmi France SA,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, C. Toader (Rapporteur), A. Rosas, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: J. Kokott,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 3 December 2015,

after considering the observations submitted on behalf of:

— Granarolo SpA, by S. Dechelette-Roy and M. Agbo, avocats,

— Ambrosi Emmi France SA, by L. Pettiti, avocat,

— the French Government, by D. Colas, F.-X. Bréchot and C. David, acting as Agents,

— the European Commission, by A. Lewis and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 December 2015,

gives the following

* Language of the case: French.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 5(1) and (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 (OJ 2001 L 12, p. 1; 'the Brussels I Regulation').

2 The request has been made in the context of a dispute between Granarolo SpA, a company incorporated under Italian law, and Ambrosi Emmi France SA ('Ambrosi'), a company incorporated under French law, concerning an action for damages founded on the abrupt termination of a long-standing business relationship.

Legal context

EU law

3 Article 2(1) of the Brussels I Regulation provides:

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

4 Article 5(1) and (3) of the Brussels I Regulation reads as follows:

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

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
   (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

   — in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

   — in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,
   (c) if subparagraph (b) does not apply then subparagraph (a) applies;

...

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

...'

French law

5 Article L. 442-6 of the Commercial Code (code de commerce) states:

'I. Any producer, trader, manufacturer or person registered in the trades register shall be liable for, and obliged to compensate for the harm resulting from, any act which:

...

5. abruptly terminates an established business relationship wholly or in part without prior written notice that takes account of the duration of the business relationship and is in accordance with the minimum notice period as determined, with regard to standard commercial practices, by inter-industry agreements. Where the business relationship relates to the supply of goods bearing the distributor's brand, the minimum notice period shall be double that which would apply if the goods were not supplied under the distributor's brand. In the absence of such agreements, orders issued by the minister responsible for economic affairs may determine a minimum notice period for each category of goods, having regard to standard commercial practices, and may lay down conditions for the termination of the business relationship, in particular based on its duration. The above provisions shall not affect the right to terminate without notice in the event of the other party's failure to perform his obligations or in the event of *force majeure*. Where a business relationship is terminated as a result of competitive bidding by distance auctioning, the minimum notice period shall be double that resulting from the application of the provisions of this paragraph if the duration of the initial notice period is less than six months, and at least one year in other cases.'

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

6 According to the order for reference, Ambrosi, established in Nice (France), had been distributing in France the food products made by Granarolo, established in Bologna (Italy), for approximately 25 years, without a framework contract or exclusivity agreement.

7 By registered letter of 10 December 2012, Granarolo informed Ambrosi that from 1 January 2013 its products would be distributed in France and Belgium by another French company.

8 Taking the view that that letter amounted to an abrupt termination of their established business relationship, within the meaning of Article L. 442-6 of the Commercial Code, which did not comply with a minimum notice period that took account of the duration of their relationship, Ambrosi brought an action for damages against Granarolo before the tribunal de commerce de Marseille (Commercial Court, Marseille, France) on the basis of that provision.

9 By judgment of 29 July 2014, that court declared that it had jurisdiction on the ground that the action related to a tort and the place where the harm occurred, for the purposes of Article 5(3) of the Brussels I Regulation, was Ambrosi's seat, in Nice.

10 By document lodged on 12 August 2014, Granarolo made an application to the cour d'appel de Paris (Court of Appeal, Paris) contesting the territorial jurisdiction of the tribunal de commerce de Marseille (Commercial Court, Marseille), on the ground that the action in question was a matter relating to a contract, within the meaning of the Brussels I Regulation, Article 5(1) of which lays down as a connecting factor the place where the goods were delivered or should have been delivered under successive contracts concluded for each delivery. In Granarolo's submission, that place is the plant in Bologna, in accordance with the indication 'Ex works' which appears on the invoices drawn up by Granarolo and is one of the standardised terms (Incoterms) established by the International Chamber of Commerce to specify the rights and obligations of the parties in international trade.

11 Ambrosi contends that the French courts have jurisdiction, given that the dispute is a matter relating to tort and that the place where the harmful event occurred is in France where Granarolo's food products are sold. It submits in the alternative that it has not been established that all the successive contracts were concluded under the Incoterm 'Ex works'.

12 The referring court observes that in French law an action such as that at issue in the main proceedings, founded on Article L. 442-6 of the Commercial Code, is an action in tort and cites in this connection a number of recent judgments of the Cour de cassation (Court of Cassation, France).

13 However, taking the view that the concepts of matters 'relating to a contract' and 'relating to tort or delict', within the meaning of the Brussels I Regulation, are autonomous concepts of EU law, the referring court considered it necessary to make a reference to the Court of Justice in that regard.

14 In those circumstances, the cour d'appel de Paris (Court of Appeal, Paris) decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 5(3) of [the Brussels I Regulation] be interpreted as meaning that an action for damages for the termination of an established business relationship consisting in the supply of goods over several years to a distributor without a framework contract or an exclusivity agreement is a matter relating to tort or delict?

(2) If the answer to the first question is in the negative, is Article 5(1)(b) of that regulation applicable in determining the place of performance of the obligation at issue in the first question?'

Consideration of the questions referred

Question 1

15 By its first question, the referring court asks, in essence, whether Article 5(3) of the Brussels I Regulation must be interpreted as meaning that an action for damages founded on an abrupt termination of a long-standing business relationship, such as the termination at issue in the main proceedings, is a matter relating to tort, delict or quasi-delict within the meaning of that provision.

16 First of all, it should be borne in mind that the Brussels I Regulation seeks to unify the rules of conflict of jurisdiction in civil and commercial matters by way of rules of jurisdiction which are highly predictable and accordingly pursues an objective of legal certainty which consists in strengthening the legal protection of persons established in the European Union, by enabling the applicant to identify easily the court in which he may sue and the defendant reasonably to foresee before which court he may be sued (see, to this effect, judgment of 23 April 2009 in *Falco Privatstiftung and Rabitsch*, C-533/07, EU:C:2009:257, paragraphs 21 and 22).

17 According to the Court's settled case-law, the system of common rules on conferment of jurisdiction laid down in Chapter II of the Brussels I Regulation is based on the general rule, set out in Article 2(1), that persons domiciled in a Member State are to be sued in the courts of that State, irrespective of the nationality of the parties. It is only by way of derogation from the general rule attributing jurisdiction to the courts of the defendant's domicile that Section 2 of Chapter II of the Brussels I Regulation makes provision for certain special jurisdictional rules, such as that laid down in Article 5(3) of the regulation (see, to this effect, in particular judgments of 16 July 2009 in *Zuid-Chemie*, C-189/08, EU:C:2009:475, paragraphs 20 and 21, and of 18 July 2013 in *ÖFAB*, C-147/12, EU:C:2013:490, paragraph 30).

18 The Court has already held that those special jurisdictional rules must be interpreted restrictively and cannot give rise to an interpretation going beyond the cases expressly envisaged by the regulation (judgment of 18 July 2013 in *ÖFAB*, C-147/12, EU:C:2013:490, paragraph 31).

19 It should also be borne in mind that the terms 'matters relating to a contract' and 'matters relating to tort, delict or quasi-delict', within the meaning, respectively, of Article 5(1)(a) and (3) of the Brussels I Regulation, must be interpreted autonomously, by reference principally to the regulation's scheme and objectives, in order to ensure that the regulation is applied uniformly in all the Member States. They

cannot therefore be taken to refer to how the legal relationship in question before the national court is classified by the applicable national law (judgment of 13 March 2014 in *Brogsitter*, C-548/12, EU:C:2014:148, paragraph 18).

20 The concept of 'matters relating to tort, delict or quasi-delict' within the meaning of Article 5(3) of the Brussels I Regulation covers all actions which seek to establish the liability of a defendant and do not concern 'matters relating to a contract' within the meaning of Article 5(1)(a) of the regulation (see judgment of 28 January 2015 in *Kolassa*, C-375/13, EU:C:2015:37, paragraph 44 and the case-law cited).

21 The Court has already held that the mere fact that one contracting party brings a civil liability action against the other is not sufficient to consider that the action concerns 'matters relating to a contract' within the meaning of Article 5(1) of the Brussels I Regulation. That is the case only where the conduct complained of may be considered a breach of the contractual obligations, obligations which may be established by taking into account the purpose of the contract (judgment of 13 March 2014 in *Brogsitter*, C-548/12, EU:C:2014:148, paragraphs 23 and 24).

22 It follows that, in a case such as that in the main proceedings, in order to determine the nature of the civil liability action brought before it, the national court must ascertain at the outset whether the action, irrespective of how it is classified in national law, is contractual in nature.

23 In a significant proportion of the Member States long-standing business relationships which have formed without a contract in writing may, in principle, be regarded as falling within a tacit contractual relationship, breach of which is liable to give rise to contractual liability.

24 In this connection, it should be noted that, whilst Article 5(1) of the Brussels I Regulation does not require a contract to be concluded in writing, a contractual obligation must nevertheless be identified in order for that provision to apply. Such an obligation may be regarded as having arisen tacitly, in particular where that results from unequivocal acts expressing the intention of the parties.

25 In the present instance, the national court therefore has the task of examining, first of all, whether, in the specific circumstances of the case which has been brought before it, the long-standing business relationship which existed between the parties is characterised by the existence of obligations tacitly agreed between them, so that a relationship existed between them that can be classified as contractual.

26 The existence of a tacit relationship of that kind cannot, however, be presumed and must, therefore, be demonstrated. Furthermore, that demonstration must be based on a body of consistent evidence, which may include in particular the existence of a long-standing business relationship, the good faith between the parties, the regularity of the transactions and their development over time expressed in terms of quantity and value, any agreements as to prices charged and/or discounts granted, and the correspondence exchanged.

27 It is in the light of a global assessment of that kind that the referring court is to ascertain whether such a body of consistent evidence exists in order to decide whether, even in the absence of a contract in writing, a tacit contractual relationship exists between the parties.

28 Having regard to the foregoing considerations, the answer to the first question is that Article 5(3) of the Brussels I Regulation must be interpreted as meaning that an action for damages founded on an abrupt termination of a long-standing business relationship, such as the termination at issue in the main proceedings, is not a matter relating to tort, delict or quasi-delict within the meaning of that regulation if a tacit contractual relationship existed between the parties, a matter which is for the referring court to ascertain. Demonstration of the existence of a tacit contractual relationship of that kind must be based on a body of consistent evidence, which may include in particular the existence of

a long-standing business relationship, the good faith between the parties, the regularity of the transactions and their development over time expressed in terms of quantity and value, any agreements as to prices charged and/or discounts granted, and the correspondence exchanged.

Question 2

29 By its second question, the referring court asks, in essence, whether Article 5(1)(b) of the Brussels I Regulation must be interpreted as meaning that a long-standing business relationship, such as that at issue in the main proceedings, is to be classified as a 'contract for the sale of goods' or rather as a 'contract for the provision of services', for the purposes of that provision.

30 First of all, it should be pointed out that the connecting factors for determining the court with jurisdiction that are laid down in Article 5(1)(b) of the Brussels I Regulation are applicable only in so far as the national court hearing the dispute which has arisen between the parties that entered into a long-standing business relationship with each other comes to the conclusion that that relationship is founded on a 'contract for the sale of goods' or a 'contract for the provision of services', for the purposes of that provision.

31 Such classification would exclude the application in the main proceedings of the rule of jurisdiction laid down in Article 5(1)(a) of the Brussels I Regulation. In view of the hierarchy which Article 5(1)(c) establishes between Article 5(1)(a) and (b), the rule of jurisdiction laid down in Article 5(1)(a) is intended to apply only in the alternative and if the rules of jurisdiction in Article 5(1)(b) do not apply (see, to this effect, judgment of 19 December 2013 in *Corman-Collins*, C-9/12, EU:C:2013:860, paragraph 42).

32 The Court has observed, regarding the place of performance of the obligations arising both from contracts for the sale of goods and from contracts for the provision of services, that the Brussels I Regulation, in Article 5(1)(b), defines that connecting factor autonomously, in order to reinforce the objectives of unifying the rules of jurisdiction and ensuring predictability (judgment of 19 December 2013 in *Corman-Collins*, C-9/12, EU:C:2013:860, paragraph 32).

33 The Court has also held that, for the purposes of identifying the court with jurisdiction in relation to contracts for the sale of goods or for the provision of services, Article 5(1) of the Brussels I Regulation adopts as a connecting factor the obligation which characterises the contract in question (judgment of 25 February 2010 in *Car Trim*, C-381/08, EU:C:2010:90, paragraph 31 and the case-law cited).

34 It follows that a contract which has as its characteristic obligation the supply of goods must be classified as a contract for the 'sale of goods' within the meaning of the first indent of Article 5(1)(b) of the Brussels I Regulation (judgment of 25 February 2010 in *Car Trim*, C-381/08, EU:C:2010:90, paragraph 32).

35 That classification may be applied to a long-standing business relationship between two economic operators where that relationship is limited to successive agreements each having the object of the delivery and collection of goods. On the other hand, it does not correspond to the general scheme of a typical distribution agreement, characterised by a framework agreement the subject matter of which is an undertaking for supply and provision concluded for the future by two economic operators (see, by analogy, judgment of 19 December 2013 in *Corman-Collins*, C-9/12, EU:C:2013:860, paragraph 36).

36 In the present instance, if any contract concluded orally or tacitly were classified as a contract for the sale of goods, the referring court would then have the task of ascertaining whether the indication 'Ex works', referred to in paragraph 10 of the present judgment, does in fact appear systematically in the successive contracts between the parties. If that is the case, the goods will have to be regarded as delivered at Granarolo's plant in Italy and not in France, at Ambrosi's seat.

37 As to whether a contract may be classified as a 'contract for the provision of services' for the purposes of the second indent of Article 5(1)(b) of the Brussels I Regulation, the Court has already held that the concept of 'services' within the meaning of that provision requires at least that the party who provides the services carries out a particular activity in return for remuneration (see, to this effect, judgment of 19 December 2013 in *Corman-Collins*, C-9/12, EU:C:2013:860, paragraph 37 and the case-law cited).

38 So far as concerns the first criterion in that definition, namely the existence of an activity, it is clear from the Court's case-law that that criterion requires the performance of positive acts, to the exclusion of mere omissions. As the Court has already held in relation to a factual situation which is seemingly quite similar to that at issue in the main proceedings, that criterion corresponds, in the case of a contract whose subject matter is the distribution of one party's products by the other party, to the characteristic service provided by the party who, by carrying out such distribution, is involved in promoting the spread of the products concerned.

39 As a result of the guarantee of supply which it may enjoy under such a contract and, as the case may be, its involvement in the supplier's commercial strategy, in particular with respect to promotional activity, these being factors in respect of which the national court has jurisdiction to make a finding, the distributor may be able to offer customers services and benefits that a mere reseller cannot and thereby acquire for the supplier's products a larger share of the local market (see, to this effect, judgment of 19 December 2013 in *Corman-Collins*, C-9/12, EU:C:2013:860, paragraph 38 and the case-law cited).

40 As to the second criterion, namely the remuneration provided as consideration for an activity, it must be pointed out that it cannot be understood in the strict sense of the payment of a sum of money. Such a restriction is neither required by the very general wording of the second indent of Article 5(1)(b) of the Brussels I Regulation nor consistent with the objectives of proximity and uniformity pursued by that provision (judgment of 19 December 2013 in *Corman-Collins*, C-9/12, EU:C:2013:860, paragraph 39).

41 In that connection, account must be taken of the fact that a distribution agreement is based, as a general rule, on a selection of the distributors by the supplier. That selection may confer a competitive advantage on the distributors in that they will have the sole right to sell the supplier's products in a particular territory or, at the very least, a limited number of distributors will enjoy that right. Moreover, a distribution agreement often provides assistance to the distributors regarding access to forms of advertising, communication of know-how by means of training, or payment facilities. All those advantages, whose existence it is for the court adjudicating on the substance to ascertain, represent an economic value for the distributors that may be regarded as constituting remuneration (see, to this effect, judgment of 19 December 2013 in *Corman-Collins*, C-9/12, EU:C:2013:860, paragraph 40).

42 It follows that any distribution agreement containing such typical elements may be classified as a 'contract for the provision of services' for the purpose of applying the rule of jurisdiction in the second indent of Article 5(1)(b) of the Brussels I Regulation (judgment of 19 December 2013 in *Corman-Collins*, C-9/12, EU:C:2013:860, paragraph 41).

43 It is, in the present instance, for the referring court to assess all the circumstances and factors characterising the activity carried out in France by Ambrosi for the purpose of selling Granarolo's products on the market of that Member State.

44 In the light of the foregoing considerations, the answer to the second question is that Article 5(1)(b) of the Brussels I Regulation must be interpreted as meaning that a long-standing business relationship, such as that at issue in the main proceedings, is to be classified as a 'contract for the sale of goods' if the characteristic obligation of the contract at issue is the supply of goods or as a 'contract for the provision of services' if the characteristic obligation is a supply of services, a matter which is for the referring court to determine.

Costs

45 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Second Chamber) hereby rules:

1. **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 must be interpreted as meaning that an action for damages founded on an abrupt termination of a long-standing business relationship, such as the termination at issue in the main proceedings, is not a matter relating to tort, delict or quasi-delict within the meaning of that regulation if a tacit contractual relationship existed between the parties, a matter which is for the referring court to ascertain. Demonstration of the existence of a tacit contractual relationship of that kind must be based on a body of consistent evidence, which may include in particular the existence of a long-standing business relationship, the good faith between the parties, the regularity of the transactions and their development over time expressed in terms of quantity and value, any agreements as to prices charged and/or discounts granted, and the correspondence exchanged.**

2. **Article 5(1)(b) of Regulation No 44/2001 must be interpreted as meaning that a long-standing business relationship, such as that at issue in the main proceedings, is to be classified as a 'contract for the sale of goods' if the characteristic obligation of the contract at issue is the supply of goods or as a 'contract for the provision of services' if the characteristic obligation is a supply of services, a matter which is for the referring court to determine.**

[Signatures]