Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

3 September 2020 * [i]

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Article 1(1) — Scope — Civil and commercial matters — Jurisdiction — Exclusive jurisdiction — Article 24(5) — Disputes concerning the enforcement of judgments — Action brought by an international organisation and based on immunity from execution, seeking the lifting of an interim garnishee order and a prohibition on the levying of such an order in the future)

In Case C-186/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), made by decision of 22 February 2019, received at the Court on 26 February 2019, in the proceedings

Supreme Site Services GmbH,

Supreme Fuels GmbH & Co KG,

Supreme Fuels Trading Fze

v

Supreme Headquarters Allied Powers Europe,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, M. Safjan, L. Bay Larsen, C. Toader (Rapporteur) and N. Jääskinen, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 December 2019,

after considering the observations submitted on behalf of:

– Supreme Fuels Trading Fze, Supreme Fuels GmbH & Co KG, Supreme Site Services GmbH, by J. van de Velden, G. van der Bend and B. Korthals Altes-van Dijk, advocaten,

* Language of the case: Dutch.

– Supreme Headquarters Allied Powers Europe, by G. den Dekker, advocaat, and by D. Waelbroeck, D. Slater and I. Antypas, avocats,

– the Netherlands Government, by M.K. Bulterman, A.M. de Ree and J. Hoogveld, acting as Agents,

– the Belgian Government, by C. Pochet, C. Van Lul and J.-C. Halleux, acting as Agents,

– the Greek Government, by V. Karra, S. Papaioannou and S. Charitaki, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by A. Grumetto, avvocato dello Stato,

– the Austrian Government, by J. Schmoll and F. Koppensteiner, acting as Agents,

– the European Commission, by R. Troosters and M. Heller, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 April 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1(1) and Article 24(5) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

2 The request has been made in the course of proceedings between, on one hand, Supreme Site Services GmbH, established in Switzerland, Supreme Fuels GmbH & Co KG, established in Germany, and Supreme Fuels Trading Fze, established in the United Arab Emirates (together, 'the Supreme companies') and, on the other hand, Supreme Headquarters Allied Powers Europe ('SHAPE'), established in Belgium, concerning the lifting of an interim garnishee order.

Legal context

International law

3 Under Article I(a) of the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty, signed in Paris on 28 August 1952 ('the Paris Protocol'):

'"the Agreement" means the Agreement signed in London on 19th June, 1951, by the Parties to the North Atlantic Treaty regarding the status of their Forces'.

4 Article XI of the Paris Protocol provides as follows:

'1. Subject to the provisions of Article VIII of the Agreement, a Supreme Headquarters may engage in legal proceedings as claimant or defendant. However, the receiving State and the Supreme Headquarters or any subordinate Allied Headquarters authorised by it may agree that the receiving State shall act on behalf of the Supreme Headquarters in any legal proceedings to which that Headquarters is a party before the courts of the receiving State.

2. No measure of execution or measure directed to the seizure or attachment of its property or funds shall be taken against any Allied Headquarters, except for the purposes of paragraph 6 a. of Article VII and Article XIII of the Agreement.'

European Union law

5 Recitals 10, 34 and 36 of Regulation No 1215/2012 state:

'(10) The scope of this Regulation should cover all the main civil and commercial matters apart from certain well-defined matters, …

…

(34) Continuity between the … Brussels Convention [of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32)], Regulation (EC) No 44/2001 [of the Council of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1)] 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 by the Court of Justice of the European Union of the 1968 Brussels Convention and of the Regulations replacing it.

…

(36) Without prejudice to the obligations of the Member States under the Treaties, this Regulation should not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of Regulation (EC) No 44/2001 which concern matters governed by this Regulation.'

6 Article 1(1) of that regulation provides as follows:

'This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).'

7 Article 4(1) of that regulation is worded as follows:

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

8 Under Article 24(5) of Regulation No 1215/2012:

'The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

…

(5) in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.'

9 Article 35 of that regulation provides as follows:

'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 Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter.'

10 Article 73(3) of that regulation states:

'This Regulation shall not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of Regulation (EC) No 44/2001 which concern matters governed by this Regulation.'

Netherlands law

11 Article 700 of the Nederlandse Wetboek van Burgerlijke Rechtsvordering (Netherlands Code of Civil Procedure; 'the Code of Civil Procedure') provides as follows:

'(1) A garnishee order shall require the authorisation of the judge responsible for hearing applications for interim measures of the court in whose jurisdiction one or more of the goods affected are located and, if the order does not relate to goods, the court where the debtor or the person or one of the persons against whom the order is levied is domiciled.

(2) The authorisation shall be requested by means of an application in which the nature of the order to be levied and the nature of the right relied upon by the applicant shall be indicated and, if that right is a pecuniary claim, also its amount or, if the amount has not yet been determined, its maximum amount, subject to the specific requirements imposed by law for the type of order concerned. The judge responsible for hearing applications for interim measures shall deliver his or her decision after a summary examination. …

…'

12 Under Article 705(1) of the Code of Civil Procedure:

'The court hearing the application for interim measures which authorised the order may, in interim proceedings, annul the order at the request of any interested party, subject to the jurisdiction of the ordinary court.'

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

13 SHAPE is an international organisation established in Mons (Belgium) under the Paris Protocol. A regional headquarters, the Allied Joint Force Command Brunssum ('JFCB'), which is under the authority of SHAPE, is established in Brunssum (the Netherlands).

14 By resolution of 20 December 2001, the United Nations Security Council authorised the creation of the International Security Assistance Force ('ISAF') in order to strengthen security in Afghanistan.

15 As of 11 August 2003, the North Atlantic Treaty Organisation (NATO) took over the strategic command, management and coordination of the ISAF.

16 As is apparent from the information in the file submitted to the Court, the Supreme companies, on the basis of two Basic Ordering Agreements ('BOAs'), signed on 1 February 2006 and 15 March 2007 respectively, supplied fuel to SHAPE for the purposes of the ISAF mission in Afghanistan. The term of the BOAs expired on 30 November 2014.

17 In order to guarantee the payment of all the costs stemming from the BOAs, in November 2013, JFCB and the Supreme companies signed an escrow agreement, in connection with which the Supreme companies are also designated as 'contractor'.

18 According to the terms of that agreement:

'RECITALS:

…

B. Upon expiry of the Contracts, certain adjustments, close down or trailing costs … may be payable to [the] Supreme [companies] by NATO Authorised Customers …, or amounts owing due to overpayments will be outstanding and recoverable by NATO and NATO authorised Customers.

C. The parties acknowledge that payment for potential costs provided for in the contracts upon expiration of the BOAs will have limited invoicing mechanisms available.

Furthermore, NATO and/or NATO Authorised Customers may not have the requisite funds to pay validated costs upon expiry of the contracts. In order to address these practical issues, the parties have agreed to establish an escrow account under the provision of the Escrow Agreement for cover of indemnification claims or other adjustments and enter into the escrow agreement as set forth below.

THE PARTIES AGREE as follows:

…

2. Establishment of Escrow Account

…

2.2 It is noted that ownership of the funds deposited, and that calculated under the Escrow Deposit (Para. 3.2), remain that of NATO and NATO Authorised Customers, from the moment of payment by … NATO or NATO Authorised Customers. Any transfer of ownership of the funds deposited can only be executed for cover of approved indemnification claims or other adjustments.

…

4. Responsibility of Contractor

…

4.4 The contractor will forward claims directly to the "Release of Funds" working group, and does not have any claim, right or title towards the escrow deposit.

…'

19 Following financial audits carried out by JFCB on the Supreme companies, the latter reimbursed, in respect of 2013, approximately 122 million United States dollars (USD) (approximately EUR 112 million) to NATO on account of overpayments. The amount reimbursed was paid into an escrow account opened, under the provisions of the escrow agreement, with the bank BNP Paribas, in Brussels (Belgium).

20 On 1 December 2015, the Supreme companies brought an action for payment against SHAPE and JFCB before the rechtbank Limburg (District Court, Limburg, the Netherlands), seeking that the amounts claimed be taken out of the funds deposited in the escrow account ('the substantive proceedings'). The Supreme companies substantiated their request by claiming that they had supplied fuel to SHAPE on the basis of the BOAs for the purposes of the ISAF mission in Afghanistan and that SHAPE and JFCB had not fulfilled their payment obligations.

21 SHAPE and JFCB raised an objection of lack of jurisdiction of the rechtbank Limburg (District Court, Limburg), invoking that they enjoyed immunity from jurisdiction. By decision of 8 February 2017, that court held that it had jurisdiction to hear the claims brought by the Supreme companies. On 4 May 2017, SHAPE lodged an appeal against that decision. As it was stated at the hearing before the Court, by judgment of 10 December 2019, the Gerechtshof 's-Hertogenbosch (Court of Appeal, 's-Hertogenbosch, the Netherlands) set aside the judgment of the rechtbank Limburg (District Court, Limburg) and declared itself not to have jurisdiction to hear and determine the action on account of the immunity from jurisdiction enjoyed by SHAPE and JFCB. That judgment was challenged before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands).

22 In parallel to those substantive proceedings, two other sets of proceedings were initiated before the rechtbank Limburg (District Court, Limburg).

23 As requested by the Supreme companies, in a first set of non-adversarial proceedings, by decision of 14 April 2016, the judge responsible for hearing applications for interim measures at the rechtbank Limburg (District Court, Limburg) authorised the Supreme companies to levy an interim garnishee order with the bank BNP Paribas, in Brussels, on the funds deposited in the escrow account for a sum of USD 217 857 167 (approximately EUR 200 855 593). The interim garnishee order was executed on 18 April 2016.

24 On 17 March 2017, in a second set of proceedings, namely the action for interim relief in the main proceedings, SHAPE brought an action before the rechtbank Limburg (District Court, Limburg) in order to lift the interim garnishee order authorised by the decision of 14 April 2016 and to prohibit the Supreme companies from levying an interim garnishee order again on the same grounds. In support of its claims, SHAPE invoked immunity from execution.

25 By decision of 12 June 2017, the rechtbank Limburg (District Court, Limburg) upheld SHAPE's claims.

26 That decision was confirmed on 27 June 2017 by the Gerechtshof 's-Hertogenbosch (Court of Appeal, 's-Hertogenbosch) which based its jurisdiction to hear and determine SHAPE's claims on Article 35 of Regulation No 1215/2012 and on Article 705 of the Code of Civil Procedure, according to which if the Netherlands court has granted authorisation to levy a garnishee order, it has jurisdiction to annul that order.

27 It is apparent from the request for a preliminary ruling that the Gerechtshof 's-Hertogenbosch (Court of Appeal, 's-Hertogenbosch) held that SHAPE's interest in immunity from execution prevailed over the Supreme companies' interest in the recovery of their claim and was not contrary to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

28 On 21 August 2017, the Supreme companies lodged an appeal in cassation before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) against that decision.

29 That court states, first, that the interim garnishee order levied by the Supreme companies in Belgium has already been lifted, after a Belgian court, pursuant to the Convention concluded between the Kingdom of Belgium and the Kingdom of the Netherlands on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 28 March 1925 ('the 1925 Bilateral Convention'), granted authorisation to execute the decisions of 12 June 2017 of the rechtbank Limburg (District Court, Limburg) and of 27 June 2017 of the Gerechtshof 's-Hertogenbosch (Court of Appeal, 's-Hertogenbosch). Nevertheless, the referring court takes the view that the Supreme companies still have an interest in bringing proceedings since the rechtbank Limburg (District Court, Limburg) not only authorised the lifting of the interim garnishee order, but it also prohibited the Supreme companies from levying such a measure again on the escrow account.

30 Secondly, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) states that it is required to examine of its own motion whether the court of another Member State had exclusive jurisdiction under Article 24(5) of Regulation No 1215/2012. However, before undertaking such an analysis, the referring court raises the issue of whether the action for interim measures brought by SHAPE falls within the scope *ratione materiae* of Regulation No 1215/2012.

31 In that regard, in the first place, the referring court wonders whether the fact that, in the proceedings for lifting the interim garnishee order, SHAPE relied on immunity from execution could result in a finding that it had acted in the exercise of State authority, such that the dispute would not fall within the scope *ratione materiae* of Regulation No 1215/2012. That court also raises the issue of what the effect might be, on the characterisation of the dispute as a 'civil and commercial matter' within the meaning of Article 1(1) of Regulation No 1215/2012, of the fact that the interim garnishee order was authorised in respect of a claim arising from a contractual relationship which is the subject of the substantive proceedings.

32 If the dispute should fall within the scope of Regulation No 1215/2012, the referring court wonders, in the second place, whether the lifting of a garnishee order levied on the authorisation of a judge is covered by the exclusive head of jurisdiction concerning the enforcement of a judgment, provided for in Article 24(5) of Regulation No 1215/2012. That court's doubts stem from the fact that, first, exceptions to the general rule on jurisdiction are to be strictly interpreted and, secondly, proceedings which are closely linked to enforcement proceedings fall within the scope of Article 24(5) of that regulation. That court also raises the issue of what effect the fact that SHAPE has invoked immunity from execution might have with regard to the analysis of that second question. In that court's opinion, it could be considered that the courts of the Member State in which an interim garnishee order was executed against an international organisation are the best placed to assess whether the garnishee order is contrary to the immunity from execution relied on by that organisation on the basis of a treaty or the customary international law by which that Member State is bound.

33 In the third place, the referring court wonders, in the event that the immunity from execution invoked by SHAPE could affect the application of Regulation No 1215/2012, to what extent the court seised is required to assess whether recourse to that immunity is well founded. Specifically, it raises the issue of how the rule that the court must assess all the evidence available to it, including the objections raised by the defendant in that regard, applies in the present case.

34 In those circumstances, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) (a) Must Regulation [No 1215/2012] be interpreted as meaning that a matter such as that at issue in the present case, in which an international organisation brings an action to
(i) lift an interim garnishee order levied in another Member State by the opposing party, and
(ii) prohibit the opposing party from levying, on the same grounds, an interim garnishee order in the future

and bases those claims on immunity from execution, must be wholly or partially considered to be a civil or commercial matter as referred to in Article 1(1) of [that regulation]?

(b) In answering question 1(a), what significance, if any, should be attached to the fact that the court of a Member State has granted leave to attach for a claim which the opposing party alleges to have against the international organisation, a claim in respect of which substantive proceedings are pending in that Member State, relating to a contractual dispute over the payment for fuels supplied for a peace operation carried out by an international organisation connected to the international organisation concerned?

(2) (a) If question 1(a) is answered in the affirmative, must Article 24(5) of Regulation No 1215/2012 be interpreted as meaning that, in a case in which the court of a Member State has granted leave to levy an interim garnishee order and that garnishee order has subsequently been levied in another Member State, the courts of the Member State where the interim garnishee order was levied have exclusive jurisdiction to hear a claim for the lifting of that garnishee order?

(b) In answering question 2(a), what significance, if any, should be attached to the fact that the international organisation has based its action to lift the interim garnishee order on immunity from execution?

(3) If, in answering the question of whether a civil or commercial matter as referred to in Article 1(1) of Regulation No 1215/2012 is at issue, or alternatively, the question of whether a claim falling within the scope of Article 24(5) of [that regulation] is at issue, significance is attached to the fact that the international organisation has based its claims on immunity from execution, to what extent is the court seised of the matter obliged to assess whether the reliance on immunity from execution is effective, and in that regard does the rule apply that it must assess all the evidence available to it, including, in the present case, the objections raised by the respondent, or any other rule?'

The request for the oral procedure to be reopened

35 Following the delivery of the Opinion of the Advocate General, SHAPE, by document lodged at the Court Registry, requested the Court to order the reopening of the oral part of the procedure, pursuant to Article 83 of the Rules of Procedure of the Court. In support of its request, it submits, in essence, that the Advocate General, in points 90 and 100 to 103 of his Opinion, based his assessment on an incorrect interpretation of the facts and law connected with the functioning of international organisations.

36 In accordance with Article 83 of the Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the opening or reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union (see, to that effect, judgments of 12 December 2013, *Carratù*, C-361/12, EU:C:2013:830, paragraph 18, and of 11 April 2019, *Bosworth and Hurley*, C-603/17, EU:C:2019:310, paragraph 17 and the case-law cited).

37 On the other hand, neither the Statute of the Court of Justice of the European Union nor its Rules of Procedure make provision for the parties to submit observations in response to the Advocate General's Opinion (judgment of 15 February 2017, *W and V*, C-499/15, EU:C:2017:118, paragraph 35 and the case-law cited).

38 In the present case, the arguments raised by SHAPE in support of its request to reopen the procedure consist in criticising the Opinion presented by the Advocate General in the present case. Given that the Court is not bound by the Advocate General's Opinion, it is not necessary to reopen the oral procedure each time the Advocate General raises a point with which the parties to the main proceedings disagree (judgment of 3 April 2014, *Weber*, C-438/12, EU:C:2014:212, paragraph 30).

39 In those circumstances, the Court, having heard the Advocate General, takes the view that in the present case it has all the material necessary to answer the questions referred by the national court and that all the arguments necessary for the determination of the case at issue have been debated between the parties and the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

40 Consequently, the Court considers that it is not necessary to order that the oral part of the procedure be reopened.

Consideration of the questions referred

Admissibility

41 SHAPE submits that the first and second questions are inadmissible in so far as they relate to the application to lift the interim garnishee order, namely question 1(a)(i) and question 2(a) and (b), on the ground that they have become hypothetical in so far as the interim garnishee order granted at the request of the Supreme companies by decision of 14 April 2016 of the rechtbank Limburg (District Court, Limburg) has already been lifted as a result of the decisions made at first instance and on appeal by the same court and by the Gerechtshof 's-Hertogenbosch (Court of Appeal, 's-Hertogenbosch) on 12 and 27 June 2017 respectively, and executed following the authorisation granted by a Belgian court pursuant to the 1925 Bilateral Convention.

42 In that regard, it should be noted that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to give a ruling on a question referred by a national court for a preliminary ruling, under Article 267 TFEU, only where, for instance, the requirements concerning the content of a request for a preliminary ruling, set out in Article 94 of the Rules of Procedure, are not satisfied or where it is quite obvious that the interpretation of a provision of EU law, or the assessment of its validity, which is sought by the national court, bears no relation to the actual facts of the main action or to its purpose or where the problem is hypothetical (judgment of 14 June 2017, *Online Games and Others*, C-685/15, EU:C:2017:452, paragraph 42 and the case-law cited).

43 It is not apparent from the facts of the case in the main proceedings that the questions referred for a preliminary ruling by the referring court, concerning the application to lift the interim garnishee order, bear no relation to the actual facts of the main action or to its purpose, a fortiori since it is for that court exclusively to determine the limits of its power of review in the appeal in cassation against the decision of 27 June 2017 of the Gerechtshof 's-Hertogenbosch (Court of Appeal, 's-Hertogenbosch), which confirmed the decision of 12 June 2017 delivered by the rechtbank Limburg (District Court, Limburg) and granted the application made by SHAPE to lift the interim garnishee order.

44 In that context, and as was also observed by the Advocate General in point 31 of his Opinion, the issue of whether the Netherlands courts have international jurisdiction under Regulation No 1215/2012 to rule on that application to lift the garnishee order does not appear either to be hypothetical or to bear no relation to the actual facts of the main action or its purpose.

45 In those circumstances, the request for a preliminary ruling must be held admissible.

The first question

46 By its first question, the referring court asks, in essence, whether Article 1(1) of Regulation No 1215/2012 is to be interpreted as meaning that the concept of 'civil and commercial matters' within the meaning of that provision covers an action for interim relief brought before a court of a Member State in which an international organisation invokes its immunity from execution in order to obtain both the lifting of an interim garnishee order executed in a Member State other than that of the forum and a prohibition on levying such an order in the future on the same

grounds, brought in parallel with substantive proceedings concerning a claim arising from alleged non-payment for fuel supplied for the purposes of a peacekeeping operation carried out by that organisation.

47 As a preliminary point, it should be recalled that in so far as Regulation No 1215/2012 repeals and replaces Regulation No 44/2001, which itself replaced the Convention of 27 September 1968 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended by successive conventions on the accession of new Member States to that convention ('the 1968 Brussels Convention'), the Court's interpretation of the provisions of the latter legal instruments also applies to Regulation No 1215/2012 whenever those provisions may be regarded as 'equivalent' (judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 23 and the case-law cited).

48 In order to provide a useful answer to the referring court, it is necessary to break the examination of the first question down into three issues and to analyse, first, the effect of the nature of the action for interim relief in the main proceedings on its being included within the scope of 'civil and commercial matters' within the meaning of Article 1(1) of Regulation No 1215/2012, for the purposes of examining, next, the criteria identified in the case-law in order to classify an action as being covered by those matters and, lastly, the role played by the privilege of immunity in the context of that classification.

49 As regards, in the first place, the effect of the nature of the action for interim relief in the main proceedings on its being included within the scope of 'civil and commercial matters' within the meaning of Article 1(1) of Regulation No 1215/2012, it is important, first of all, to note, as is apparent from the evidence in the file submitted to the Court, that such an action seeks interim measures in order to preserve a factual situation subject to the assessment of the court in the substantive proceedings initiated between the two parties. It may therefore be held that such an action concerns 'provisional, including protective, measures' within the meaning of Article 35 of Regulation No 1215/2012, provided that it falls within the scope of that regulation.

50 It is apparent from the Court's case-law on the interpretation of Article 24 of the 1968 Brussels Convention, which can be transposed to the interpretation of the equivalent provisions in Article 35 of Regulation No 1215/2012, that the expression 'provisional, including protective, measures' must be understood as referring to measures which, in matters within the scope of that regulation, are intended to preserve a factual or legal situation so as to safeguard rights the recognition of which is sought elsewhere from the court having jurisdiction as to the substance of the matter (see, to that effect, judgment of 26 March 1992, *Reichert and Kockler*, C-261/90, EU:C:1992:149, paragraph 34).

51 So far as concerns, secondly, the relationship between the substantive proceedings and the provisional and protective measures, it must be observed that the parties and the interested persons who lodged observations before the Court disagree on the issue whether the action for interim relief concerns 'civil and commercial matters' and on that basis falls within the scope of Regulation No 1215/2012. In that regard, the Supreme companies and the Greek Government claimed, in essence, that, in order to ascertain whether the action for interim relief in the main proceedings falls within the scope of Regulation No 1215/2012, it is necessary to base the assessment on the characteristics of the substantive proceedings, whereas SHAPE submitted that the analysis must concern the intrinsic characteristics of the provisional and protective measure at

issue in the main proceedings. On the other hand, the European Commission and the Netherlands and Belgian Governments gave precedence to the analysis of the rights which the provisional and protective measure seeks to safeguard.

52 According to the Court's case-law, provisional or protective measures may serve to safeguard a variety of rights, and so their inclusion in the scope of the 1968 Brussels Convention is determined not by their own nature but by the nature of the rights which they serve to protect (judgments of 27 March 1979, *de Cavel*, 143/78, EU:C:1979:83, paragraph 8, and of 26 March 1992, *Reichert and Kockler*, C-261/90, EU:C:1992:149, paragraph 32).

53 The Court has also held that where the subject matter of an application for provisional measures relates to a question falling within the scope *ratione materiae* of the 1968 Brussels Convention, the Convention is applicable and, accordingly, Article 24 thereof may confer jurisdiction on the court hearing that application even where proceedings have already been, or may be, commenced on the substance of the case, since provisional measures are ordered in parallel to such proceedings and seek, in essence, to protect the same rights as those proceedings (see, to that effect, judgment of 17 November 1998, *Van Uden*, C-391/95, EU:C:1998:543, paragraphs 33 and 34).

54 It follows from that case-law, which can be transposed, as it was pointed out in paragraph 47 above, to Article 35 of Regulation No 1215/2012, that whether provisional and protective measures fall within the scope *ratione materiae* of that regulation must be determined not by the nature of the measures per se, but by the nature of the substantive rights which they seek to protect.

55 As regards, in the second place, the criteria identified in the case-law in order to characterise whether or not an action is a 'civil or commercial matter' within the meaning of Article 1(1) of Regulation No 1215/2012, it must be pointed out that the Court has examined the elements which characterise the nature of the legal relationships between the parties to the dispute or the subject matter thereof (see, to that effect, judgments of 14 November 2002, *Baten*, C-271/00, EU:C:2002:656, paragraph 29; of 18 October 2011, *Realchemie Nederland*, C-406/09, EU:C:2011:668, paragraph 39; and of 7 May 2020, *Rina*, C-641/18, EU:C:2020:349, paragraph 32 and the case-law cited) or, alternatively, the basis and the detailed rules governing the bringing of the action (see, to that effect, judgments of 11 April 2013, *Sapir and Others*, C-645/11, EU:C:2013:228, paragraph 34; of 12 September 2013, *Sunico and Others*, C-49/12, EU:C:2013:545, paragraph 35; and of 7 May 2020, *Rina*, C-641/18, EU:C:2020:349, paragraph 35 and the case-law cited).

56 Thus, although certain actions between a public authority and a person governed by private law may come within the scope of Regulation No 1215/2012 where the legal proceedings relate to acts performed *iure gestionis*, the position is otherwise where the public authority is acting in the exercise of its public powers (see, to this effect, judgment of 7 May 2020, *Rina*, C-641/18, EU:C:2020:349, paragraph 33 and the case-law cited).

57 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 1215/2012 (see, to this effect, judgment of 7 May 2020, *Rina*, C-641/18, EU:C:2020:349, paragraph 34 and the case-law cited).

58 In the third place, the question is raised whether reliance in an action by an international organisation on the privilege derived from immunity from execution automatically excludes that action from the scope of Regulation No 1215/2012.

59 So far as concerns, first, the principle of customary international law relating to the immunity of States from jurisdiction, the Court has held that, in the present state of international law, the immunity of States from jurisdiction is not absolute, but is generally recognised where the dispute concerns sovereign acts performed *iure imperii*. By contrast, it may be excluded if the legal proceedings relate to acts which do not fall within the exercise of public powers (judgment of 7 May 2020, *Rina*, C-641/18, EU:C:2020:349, paragraph 56 and the case-law cited).

60 So far as concerns, secondly, the immunity from jurisdiction of bodies governed by private law, the Court has held that it does not preclude the application of Regulation No 1215/2012, where the court seised finds that such bodies have not had recourse to public powers (see, to that effect, judgment of 7 May 2020, *Rina*, C-641/18, EU:C:2020:349, paragraph 58).

61 That case-law concerning the immunity from jurisdiction of States or of bodies governed by private law can be transposed to the case where the privilege derived from immunity is relied upon by an international organisation, irrespective of whether immunity from jurisdiction or immunity from execution is at issue. The fact that, unlike the immunity of States from jurisdiction, based on the principle *par in parem non habet imperium* (judgment of 7 May 2020, *Rina*, C-641/18, EU:C:2020:349, paragraph 56 and the case-law cited), the immunities of international organisations are, as a general rule, conferred by the treaties establishing those organisations is not such as to call into question that interpretation.

62 Therefore, as the Advocate General observed in point 72 of his Opinion, the privilege of immunity relied on by an international organisation under international law does not automatically preclude the application of Regulation No 1215/2012.

63 Consequently, in order to ascertain whether or not a dispute involving an international organisation which has relied on the privilege derived from immunity from execution falls within the scope *ratione materiae* of that regulation, it is necessary to examine whether, having regard to the criteria mentioned in paragraph 55 above, that organisation is exercising public powers.

64 In this connection, as the Advocate General observed in point 67 of his Opinion, the mere fact that the national court has assumed international jurisdiction, in the light of the provisions of Regulation No 1215/2012, does not adversely affect the protection of immunity under international law invoked by the international organisation that is party to that dispute.

65 In the present case, it is apparent from the file before the Court that the purpose of the interim garnishee order, the lifting of which was applied for in the action for interim relief in the main proceedings, was to ensure the protection of the claims arising from a legal relationship of a contractual nature, namely the BOAs concluded between SHAPE and the Supreme companies. The BOAs, although they concern the supply of fuel to SHAPE for a military operation directed by NATO for the purposes of peace-keeping and security in Afghanistan, are the basis, between the parties to the main proceedings, of a legal relationship governed by private law under which those parties freely took on rights and obligations.

66 How SHAPE subsequently used the fuel supplied in execution of the BOAs is not, as the Commission argued in its written observations and as was also observed by the Advocate General in point 103 of his Opinion, such as to have an effect on the nature of such a legal relationship. The public purpose of certain activities does not, in itself, constitute sufficient evidence to classify them as being carried out *iure imperii*, in so far as they do not entail the exercise of any powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals (judgment of 7 May 2020, *Rina*, C-641/18, EU:C:2020:349, paragraph 41 and the case-law cited).

67 So far as concerns the basis and the detailed rules governing the bringing of the action, it must also be noted that the lifting of the interim garnishee order is sought before the referring court by means of an action for interim relief whose basis lies in the rules of ordinary law, namely Article 705(1) of the Code of Civil Procedure.

68 It follows from the foregoing that, subject to the checks which it is for the referring court to carry out, neither the legal relationship between the parties to an action such as that in the main proceedings nor the basis and the detailed rules governing the bringing of that action can be regarded as showing the exercise of public powers for the purposes of EU law, and therefore an action of that type is covered by the concept of 'civil and commercial matters' within the meaning of Article 1(1) of Regulation No 1215/2012 and falls within the scope of that regulation.

69 In the light of all the foregoing considerations, the answer to the first question is that Article 1(1) of Regulation No 1215/2012 is to be interpreted as meaning that an action for interim relief brought before a court of a Member State in which an international organisation invokes its immunity from execution in order to obtain both the lifting of an interim garnishee order executed in a Member State other than that of the forum and a prohibition on levying such an order in the future on the same grounds, brought in parallel with substantive proceedings concerning a claim arising from alleged non-payment for fuel supplied for the purposes of a peacekeeping operation carried out by that organisation, is covered by the concept of 'civil and commercial matters', in so far as that action is not pursued under public powers, within the meaning of EU law, which is a matter for the assessment of the referring court.

The second question

70 By its second question, the referring court asks, in essence, whether Article 24(5) of Regulation No 1215/2012 is to be interpreted as meaning that an action for interim relief brought before a court of a Member State in which an international organisation invokes its immunity from execution in order to obtain both the lifting of an interim garnishee order executed in a Member State other than that of the forum and a prohibition on levying such an order in the future on the same grounds, falls within the exclusive jurisdiction of the courts of the Member State in which the interim garnishee order was executed.

71 It follows from the terms of Article 24(5) of Regulation No 1215/2012 that, in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced are to have exclusive jurisdiction, regardless of the domicile of the parties.

72 In accordance with the case-law of the Court, actions intended to obtain a decision in proceedings relating to recourse to force, constraint or distrain on movable or immovable property in order to ensure the effective implementation of judgments and authentic instruments come within the scope of Article 24(5) of Regulation No 1215/2012 (judgment of 10 July 2019, *Reitbauer and Others*, C-722/17, EU:C:2019:577, paragraph 52).

73 In the present case, as is apparent from the order for reference, SHAPE does not contest the measures adopted by the Tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking), Belgium) pursuant to the 1925 Bilateral Convention, in order to execute the judgments of 12 June 2017 of the rechtbank Limburg (District Court, Limburg) and of 27 June 2017 of the Gerechtshof 's-Hertogenbosch (Court of Appeal, 's-Hertogenbosch) respectively, but seeks that the referring court lift the interim garnishee order decided upon previously in *ex parte* proceedings by the rechtbank Limburg (District Court, Limburg) and a prohibition on levying such an order again on the same grounds. It must be stated that proceedings, such as those ongoing in the main proceedings, which do not concern per se the enforcement of judgments within the meaning of Article 24(5) of Regulation No 1215/2012, are not covered by the scope of that provision and therefore do not fall within the exclusive jurisdiction of the courts of the Member State in which the interim garnishee order was executed.

74 Furthermore, the fact that an international organisation such as SHAPE relied on immunity from execution in support of its action for interim relief does not preclude examination by the court of its international jurisdiction under Regulation No 1215/2012. The issue of whether the immunity relied on by an international organisation is a bar to the court seised having jurisdiction to hear and determine such an action or to adopt implementing measures against such an organisation arises at a later stage, after the international jurisdiction of that court has been determined.

75 Having regard to all those considerations, the answer to the second question is that Article 24(5) of Regulation No 1215/2012 is to be interpreted as meaning that an action for interim relief brought before a court of a Member State in which an international organisation invokes its immunity from execution in order to obtain both the lifting of an interim garnishee order executed in a Member State other than that of the forum and a prohibition on levying such an order in the future on the same grounds, does not fall within the exclusive jurisdiction of the courts of the Member State in which the interim garnishee order was executed.

The third question

76 The third question concerns, in essence, the scope of the review by the national court of the merits of reliance on immunity from execution by an international organisation, in the event that the answer to the first and second questions shows that the immunity from execution thus relied upon is decisive for the purposes of classifying an action for interim relief such as that in the main proceedings as covered by 'civil and commercial matters' within the meaning of Article 1(1) of Regulation No 1215/2012, or for the purposes of the possible application of the rule on exclusive jurisdiction provided for in Article 24(5) of that regulation.

77 Since those questions were answered to the effect that reliance upon immunity from execution does not automatically exclude such an action from the scope of Regulation No 1215/2012 and does not affect the criteria for determining the international jurisdiction of a court of a Member State to hear and determine that action, there is no need to examine the third question.

Costs

78 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 (First Chamber) hereby rules:

1. **Article 1(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is to be interpreted as meaning that an action for interim relief brought before a court of a Member State in which an international organisation invokes its immunity from execution in order to obtain both the lifting of an interim garnishee order executed in a Member State other than that of the forum and a prohibition on levying such an order in the future on the same grounds, brought in parallel with substantive proceedings concerning a claim arising from alleged non-payment for fuel supplied for the purposes of a peacekeeping operation carried out by that organisation, is covered by the concept of 'civil and commercial matters', in so far as that action is not pursued under public powers, within the meaning of EU law, which is a matter for the assessment of the referring court.**

2. **Article 24(5) of Regulation No 1215/2012 is to be interpreted as meaning that an action for interim relief brought before a court of a Member State in which an international organisation invokes its immunity from execution in order to obtain both the lifting of an interim garnishee order executed in a Member State other than that of the forum and a prohibition on levying such an order in the future on the same grounds, does not fall within the exclusive jurisdiction of the courts of the Member State in which the interim garnishee order was executed.**

[Signatures]

[i] — The wording of the headwords of this document has been amended since it was first put online.