Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

10 March 2022 *

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 1215/2012 – Article 7(2) – Jurisdiction in matters relating to tort, delict or quasi-delict – Claim made by a liquidator against a third party in the interests of creditors – Place where the harmful event occurred – Article 8(2) – Application to intervene by a defendant of collective interests – Regulation (EC) No 864/2007 – Scope – General rule)

In Case C-498/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Midden-Nederland (District Court, Central Netherlands), made by decision of 2 September 2020, received at the Court on 29 September 2020, in the proceedings

ZK, in his capacity as successor to JM, liquidator in the bankruptcy of BMA Nederland BV,

v

BMA Braunschweigische Maschinenbauanstalt AG,

other party:

Stichting Belangbehartiging Crediteuren BMA Nederland,

THE COURT (Eighth Chamber),

composed of N. Jääskinen, President of the Chamber, M. Safjan (Rapporteur) and N. Piçarra, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– ZK, in his capacity as successor to JM, liquidator in the bankruptcy of BMA Nederland BV, by I. Lintel and T. van Zanten, advocaten,

* Language of the case: Dutch.

– BMA Braunschweigische Maschinenbauanstalt AG, by L. Kortmann, B. Kraaipoel and N. Pannevis, advocaten,

– Stichting Belangbehartiging Crediteuren BMA Nederland, by F. Eikelboom, advocaat,

– the European Commission, by M. Heller and by F. Wilman and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 October 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of, first, Article 7(2) and Article 8(2) 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) and, secondly, Article 4 of 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).

2 The request has been made in proceedings between ZK, in his capacity as successor to JM, liquidator in the bankruptcy of BMA Nederland BV ('BMA NL') and BMA Braunschweigische Maschinenbauanstalt AG ('BMA AG') with regard to the latter's allegedly harmful conduct, in breach of its duty of care, to the detriment of the former's creditors.

Legal framework

European Union law

Regulation No 1215/2012

3 Recitals 15, 16 and 34 of Regulation No 1215/2012 are worded as follows:

'(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

(16) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member

State which he could not reasonably have foreseen. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

…

(34) Continuity between the [Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), as amended by the successive conventions on the accession of new Member States to that convention ('the 1968 Brussels Convention')], [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)] 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.'

4 Chapter II of that regulation, entitled 'Jurisdiction', contains, inter alia, Section 1, entitled 'General provisions', and Section 2 entitled 'Special jurisdiction'. Article 4(1) of that regulation, which is included in Section 1, provides:

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

5 Article 7 of the same regulation, which is in Section 2 of Chapter II thereof, provides:

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

…

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

…'

6 Under Article 8(2) of Regulation No 1215/2012, which is also in Section 2, a person domiciled in a Member State may also be sued:

'as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case'.

The Rome II Regulation

7 Recital 7 of the Rome II Regulation states:

'The substantive scope and the provisions of this Regulation should be consistent with [Regulation No 44/2001] and the instruments dealing with the law applicable to contractual obligations.'

8 Article 1(2) of that regulation, entitled 'Scope', provides:

'The following shall be excluded from the scope of this Regulation:

…

(d) non-contractual obligations arising out of the law of companies and other bodies corporate or unincorporated regarding matters such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies corporate or unincorporated, the personal liability of officers and members as such for the obligations of the company or body and the personal liability of auditors to a company or to its members in the statutory audits of accounting documents'.

9 Chapter II of that regulation is devoted to torts/delicts. Article 4 of the same regulation, entitled 'General rule', is worded as follows:

'1. Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.

2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.

3. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.'

Netherlands law

10 Article 305a of Book 3 of the Burgerlijk Wetboek (Civil Code), which entered into force on 1 July 1994, provides:

'1. Any institution or association which has full legal capacity may bring an action in defence of similar interests held by others, provided that the defence is conducted in accordance with its statutes.

…

3. An action such as that provided for in paragraph 1 may not be brought for the purpose of obtaining … monetary damages.

…'

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

11 BMA NL and its parent company, BMA Groep BV, are established in the Netherlands. BMA AG, established in Germany, is the parent company of BMA Groep and, consequently, the 'grandparent' company of BMA NL. BMA Groep, which holds 100% of the shares in BMA NL, is the sole administrator.

12 Between 2004 and 2011, BMA AG granted loans to BMA NL totalling EUR 38 million. In the financing agreements, the German courts are designated as the competent court and German law as the applicable law. The financing was provided through a bank account established in the Netherlands. BMA AG also guaranteed BMA NL's debts and made capital contributions to BMA NL.

13 At the beginning of 2012, BMA AG ceased the financial support for BMA NL. The latter then filed for bankruptcy. BMA NL was declared bankrupt on 3 April 2012.

14 It is apparent from the information available to the Court that the assets of the BMA NL estate are not sufficient to pay all the creditors in full, that the majority of the provisionally admitted unsecured claims belong to BMA AG and other companies in that group established in Germany and that the other unpaid creditors are established in various other countries, both within and outside the European Union.

15 In the case in the main proceedings, ZK brought an action against BMA AG which, under Netherlands law, is known as a '*Peeters-Gatzen* action'. This is an action in matters relating to tort, delict or quasi-delict brought by a liquidator against a third party who was allegedly involved in causing the damage to the creditors of a company declared bankrupt. The action is brought for the benefit of, but not on behalf of, the general body of creditors and is aimed at restoring recovery opportunities. The outcome benefits the general body of creditors. In order to rule on such an action, there is no need to examine the individual position of each of the creditors concerned.

16 ZK submits that BMA AG acted unlawfully in breach of its duty of care towards the general body of BMA NL's creditors and that BMA AG is liable for the damage suffered by them.

17 According to the liquidator, that infringement is more specifically the fact that BMA AG ceased to finance BMA NL with the result that the latter's bankruptcy became inevitable.

18 Following a challenge by BMA AG, the Rechtbank Midden-Nederland (District Court, Central Netherlands, Netherlands), which is the referring court, held that it had jurisdiction in 2018 to hear the liquidator's claim on the basis of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ 2015 L 141, p. 19).

19 In 2019, that court, on the basis of Article 8(2) of Regulation No 1215/2012, granted the application made by the Stichting Belangenbehartiging Crediteuren BMA Nederland (Foundation representing the interests of creditors of BMA Nederland, 'the Stichting') for leave to intervene in the main proceedings.

20 The purpose of the Stichting is to protect the interests of BMA NL's creditors who are suffering or have suffered damage as a result of actions or omissions on the part of BMA AG. The Stichting defends the interests of over 50 creditors whose combined claims represent approximately 40% of all admitted claims of unsecured creditors not connected to BMA AG.

21 Like ZK, the Stichting also claims that BMA AG has acted unlawfully towards the creditors and is obliged to compensate them for the damage thus suffered. However, whereas the liquidator is requesting payment to the BMA NL estate, the Stichting claims that the debts should be paid directly to each of the creditors.

22 The Stichting's application took the form of a collective action in accordance with Article 305a of Book 3 of the Civil Code.

23 The referring court acknowledges that, in the light of the judgment of 6 February 2019, *NK* (C-535/17, EU:C:2019:96), it erred in declaring itself to have jurisdiction under Regulation 2015/848. It is therefore for that court to assess whether it has jurisdiction, on the basis of Regulation No 1215/2012, to hear the claims of the liquidator and those of the Stichting as an intervener. The referring court notes that the Court did not rule on those points in the judgment of 6 February 2019, *NK* (C-535/17, EU:C:2019:96) and that there is a reasonable doubt in that regard.

24 According to the referring court, the fact that this is a collective action for the benefit of part of the general body of creditors leads to difficulties in determining the law applicable to the 'place where the damage occurs' in accordance with Article 4(1) of the Rome II Regulation, with the result that it is also necessary to obtain an interpretation from the Court in that regard.

25 In those circumstances, the Rechtbank Midden-Nederland (District Court, Central Netherlands) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1 (a) Must the term "place where the harmful event occurred" in Article 7, point 2, of [Regulation No 1215/2012] be interpreted as meaning that "the place of the event giving rise to the damage" (Handlungsort) is the place of establishment of the company which offers no redress for the claims of its creditors, if that lack of redress is the result of a breach by that company's grandparent company of its duty of care towards those creditors?

(b) Must the term "place where the harmful event occurred" in Article 7, point 2, of [Regulation No 1215/2012] be interpreted as meaning that "the place where the damage occurred" (Erfolgsort) is the place of establishment of the company which offers no redress for claims of its creditors, if that lack of redress is the result of a breach by that company's grandparent company of its duty of care towards those creditors?

(c) Are additional circumstances required which justify the jurisdiction of the courts of the place of establishment of the company which offers no redress and, if so, what are those circumstances?

(d) Does the fact that the Netherlands liquidator of the company which offers no redress for the claims of its creditors has, by virtue of his statutory duty to wind up the estate, made a claim for damages arising from tort/delict for the benefit of (but not on behalf of) the general body of creditors affect the determination of the competent court on the basis of Article 7, point 2, of the [Regulation No 1215/2012]? Such a claim implies that there is no

room for an examination of the individual positions of the individual creditors and that the third party concerned cannot avail itself of all the defences against the liquidator which it might have been able to use in respect of certain individual creditors.

(e) Does the fact that a portion of the creditors for whose benefit the liquidator makes the claim have their domicile outside the territory of the European Union affect the determination of the competent court on the basis of Article 7, point 2, of [Regulation No 1215/2012]?

2 Would the answer to Question 1 be different in the case of a claim made by a foundation which has as its purpose the protection of the collective interests of creditors who have suffered damage as referred to in Question 1? Such a collective claim implies that the proceedings would not determine (a) the domiciles of the creditors in question, (b) the particular circumstances giving rise to the claims of the individual creditors against the company and (c) whether a duty of care as referred to above exists in respect of the individual creditors and whether it has been breached.

3 Must Article 8, point 2, of [Regulation No 1215/2012] be interpreted as meaning that, if the court seised of the original proceedings reverses its decision that it has jurisdiction in respect of those proceedings, such a reversal also automatically excludes its jurisdiction in respect of the claims made by the intervening third party?

4 (a) Must Article 4(1) of [the Rome II Regulation] be interpreted as meaning that "the place where the damage occurs" is the place where the company which offers no redress for the damage suffered by its creditors as a result of the breach of the duty of care referred to above has its registered office?

(b) Does the fact that the claims have been made by a liquidator by virtue of his statutory duty to wind up the estate and by a representative of collective interests for the benefit of (but not on behalf of) the general body of creditors affect the determination of that place?

(c) Does the fact that some of the creditors are domiciled outside the territory of the European Union affect the determination of that place?

(d) Is the fact that there were financing agreements between the Netherlands bankrupt company and its grandparent company which nominated the German courts as the forum of choice and declared German law to be applicable a circumstance which makes the alleged tort/delict of BMA AG manifestly more closely connected with a country other than the Netherlands within the meaning of Article 4(3) of the Rome II Regulation?'

The questions referred for a preliminary ruling

The first question

26 By its first question, the referring court asks, in essence, whether Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that the court for the place of establishment of a company whose debts have become irrecoverable, because the grandparent company of that company breached its duty of care towards that company's creditors, has jurisdiction to hear a collective action for damages in matters relating to tort, delict or quasi-delict which the liquidator in the bankruptcy of that company has brought, by virtue of his statutory duty to wind up the estate, for the benefit of but not on behalf of the general body of creditors who will subsequently have to bring proceedings for their individual compensation.

27 As a preliminary point, it must be noted that, in so far as, in accordance with recital 34 of Regulation No 1215/2012, that regulation repeals and replaces Regulation No 44/2001, which itself replaced 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'. That is the case with point 3 of Article 5 of that Convention, as amended, and Regulation No 44/2001, on the one hand, and Article 7(2) of Regulation No 1215/2012, on the other (judgment of 12 May 2021, *Vereniging van Effectenbezitters*, C-709/19, EU:C:2021:377, paragraph 23 and the case-law cited).

28 It must also be recalled that, according to settled case-law, the rule of special jurisdiction laid down by Article 7(2) of Regulation No 1215/2012, which allows the applicant to bring his action in matters relating to tort, delict or quasi-delict in the courts for the place where the harmful event occurred or may occur, must be interpreted independently and strictly (judgment of 12 May 2021, *Vereniging van Effectenbezitters*, C-709/19, EU:C:2021:377, paragraph 24 and the case-law cited).

29 Thus, the rule of special jurisdiction, laid down by that provision by way of derogation from the general rule that jurisdiction lies with the courts of the defendant's place of domicile set out in Article 4 of that regulation, is 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 attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings (see, to that effect, judgments of 18 July 2013, *ÖFAB*, C-147/12, EU:C:2013:490, paragraph 49, and of 24 November 2020, *Wikingerhof*, C-59/19, EU:C:2020:950, paragraph 28).

30 In matters of tort, delict or quasi-delict, the courts of the place where the harmful event occurred or may occur are usually the most appropriate for deciding the case, in particular on grounds of proximity and ease of taking evidence (judgment of 18 July 2013, *ÖFAB*, C-147/12, EU:C:2013:490, paragraph 50).

31 As regards actions seeking to hold liable a member of the board of directors and a shareholder of a limited company in liquidation for the debts of that company, the Court ruled that 'the place where the harmful event occurred or may occur', referred to in Article 5(3) of Regulation No 44/2001, is situated in the place to which the activities carried out by that company and the financial situation related to those activities are connected, that place, in the case giving rise to the judgment of 18 July 2013, *ÖFAB* (C-147/12, EU:C:2013:490), would appear to be the place where that company has its seat (judgment of 18 July 2013, *ÖFAB*, C-147/12, EU:C:2013:490, paragraphs 54 and 55).

32 In the present case, it must be held, by analogy, that the latter place is also the place where the harmful event occurred or may occur, within the meaning of Article 7(2) of Regulation No 1215/2012, in the case of establishing jurisdiction to hear an action for damages brought by the liquidator in the bankruptcy of a company whose debts have become irrecoverable, because the grandparent company of that company breached its duty of care towards that company's creditors, against that grandparent company.

33 It may be considered that the place of establishment of the company declared bankrupt is where information on changes in that company's financial situation is available, in the light of which the existence and extent of the breach of the duty of diligence alleged in the present case may be assessed.

34 For those reasons, as regards the sound administration of justice and the efficacious conduct of proceedings, there is a particularly close connecting factor between the action brought and that place, as required by the case-law cited in paragraph 29 of this judgment. Moreover, as noted in recital 15 of Regulation No 1215/2012, the place of establishment is, for both the applicant and the defendant company, highly predictable.

35 However, the indirect damage suffered by each of the creditors of the company declared bankrupt is irrelevant for the purposes of applying Article 7(2) of Regulation No 1215/2012 to the claim brought by the liquidator by virtue of his statutory duty to wind up the estate (see, by analogy, judgment of 11 January 1990, *Dumez France and Tracoba*, C-220/88, EU:C:1990:8, paragraph 21).

36 It must therefore be held that, in accordance with Article 7(2) of that regulation, the court within whose jurisdiction the company declared bankrupt has its place of establishment has jurisdiction to hear a collective action for damages in matters relating to tort, delict or quasi-delict which the liquidator in the bankruptcy of that company has brought, by virtue of his statutory duty to wind up the estate.

37 It is irrelevant in that regard that such an action does not relate to the individual positions of the individual creditors, and therefore the third party facing liability cannot avail itself of all the defences against the liquidator in the bankruptcy, acting in connection with his statutory duty, which it might have been able to use in respect of certain individual creditors.

38 Such circumstances specific to the type of action provided for by the applicable national law cannot affect the autonomous interpretation of Article 7(2) of Regulation No 1215/2012 which, by its comprehensive form of words, covers a wide diversity of kinds of liability (judgment of 30 November 1976, *Bier*, 21/76, EU:C:1976:166, paragraph 18), since the consideration of assessment criteria derived from national substantive law would run counter to the objectives of unifying the rules of jurisdiction and of legal certainty pursued by that regulation (see, by analogy, judgment of 16 May 2013, *Melzer*, C-228/11, EU:C:2013:305, paragraphs 34 and 35).

39 Moreover, since the Court has already made it clear that Article 7(2) of Regulation No 1215/2012 also covers purely declaratory actions serving as a basis for subsequent claims for compensation (see, by analogy, judgment of 5 February 2004, *DFDS Torline*, C-18/02, EU:C:2004:74, paragraph 28), the fact that, in the context of a collective action brought by the liquidator, the individual situation of each creditor, who, for the purposes of his compensation, may rely on the decision given at the end of that action, is not examined, must be regarded as irrelevant for the purposes of establishing jurisdiction under that provision.

40 Therefore, the answer to the first question must be that Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that the court for the place of establishment of a company whose debts have become irrecoverable, because the grandparent company of that company breached its duty of care towards that company's creditors, has jurisdiction to hear a collective action for damages in matters relating to tort, delict or quasi-delict which the liquidator in the bankruptcy of that company has brought, by virtue of his statutory duty to wind up the estate, for the benefit of, but not on behalf of, the general body of creditors.

The second question

41 By its second question, the referring court asks, in essence, whether the answer to the first question would be different if account is taken of the fact that, in the case in the main proceedings, a foundation acts to defend the collective interests of creditors and that the action brought for that purpose does not take account of the individual circumstances of the creditors.

42 Since, in the case in the main proceedings, the Stichting is only an intervener, its position and the procedural prerogatives conferred on it by the applicable law cannot affect whether the referring court has jurisdiction to hear the action brought by the liquidator.

43 Therefore, the answer to the second question is that the answer to the first question is not different if account is taken of the fact that, in the case in the main proceedings, a foundation acts to defend the collective interests of creditors and that the action brought for that purpose does not take account of the individual circumstances of the creditors.

The third question

44 By its third question, the referring court asks, in essence, whether Article 8(2) of Regulation No 1215/2012 must be interpreted as meaning that if the court seised of the original proceedings reverses its decision that it has jurisdiction in respect of those proceedings, such a reversal also automatically excludes its jurisdiction in respect of the claims made by the intervening third party.

45 Under Article 8(2) of that regulation, the court which is competent to hear the original proceedings is, in principle, also competent to hear any third-party proceedings. It follows, however, that, if that court reviews its decision on the original proceedings to the effect that, ultimately, it has no jurisdiction to hear them, it cannot have jurisdiction to hear the third-party proceedings either.

46 It must be held that a contrary interpretation of that provision would run counter to its underlying objectives of, first, minimising the possibility of concurrent proceedings and ensuring that irreconcilable judgments will not be given in two Member States and, secondly, providing for a ground of jurisdiction based on a close link between the court and the action in order to facilitate the sound administration of justice (see, to that effect, judgment of 21 January 2016, *SOVAG*, C-521/14, EU:C:2016:41, paragraph 38).

47 Such a retention of jurisdiction only in respect of the third-party proceedings would necessarily lead to the existence of concurrent proceedings.

48 Therefore, the answer to the third question is that Article 8(2) of Regulation No 1215/2012 must be interpreted as meaning that if the court seised of the original proceedings reverses its decision that it has jurisdiction in respect of those proceedings, such a reversal also automatically excludes its jurisdiction in respect of the claims made by the intervening third party.

The fourth question

49 By its fourth question, which must be considered in its entirety, the referring court asks, in essence, whether Article 4 of the Rome II Regulation must be interpreted as meaning that the law applicable to an obligation to pay compensation by virtue of the duty of care of the grandparent company of a company declared bankrupt is, in principle, that of the country in which the latter is established.

50 As a preliminary point, it must be ascertained whether the liability at issue in the main proceedings falls outside the scope of company law and is, consequently, excluded from the scope of the Rome II Regulation pursuant to Article 1(2)(d) thereof. Even if, formally, the referring court limited its question to the interpretation of a particular provision of EU law, that does not prevent the Court from providing the referring court with all the elements of interpretation of EU law which may be of assistance in adjudicating in the case pending before it (judgment of 15 July 2021, *DocMorris*, C-190/20, EU:C:2021:609, paragraph 23 and the case-law cited).

51 That provision covers non-contractual obligations arising out of the law of companies and other bodies corporate or unincorporated regarding matters such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of those entities and the personal liability of officers and members for the obligations of those entities and the personal liability of auditors to a company or to its members in the statutory audits of accounting documents.

52 It must be recalled that, with regard to the corresponding exclusion from the scope of 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) of matters relating to questions governed by the law of companies and other bodies, corporate or unincorporated, set out in Article 1(2)(f) of that regulation, the Court ruled that it applies exclusively to the structural aspects of those companies and other bodies, corporate or unincorporated (judgment of 3 October 2019, *Verein für Konsumenteninformation*, C-272/18, EU:C:2019:827, paragraph 35 and the case-law cited).

53 As the Advocate General noted in point 54 of his Opinion, first, the personal liability of officers and administrators as such for the obligations of the company or body and, secondly, the personal liability of auditors in the statutory audits of accounting documents to a company or to its members, referred to in Article 1(2)(d) of the Rome II Regulation, do not constitute structural aspects of those companies and other bodies corporate or unincorporated, such that it is necessary to clarify the scope of the exclusion provided for by means of a functional criterion.

54 Since the objective underlying that exclusion is the legislative wish to keep matters for which there is a specific *modus operandi* on account of the link between such matters and the operation and organisation of a company or other body corporate or unincorporated subject to the single body of law of the *lex societatis*, it is necessary to ascertain in each case whether officers, administrators or auditors referred to in Article 1(2)(d) of the Rome II Regulation have a non-contractual obligation for reasons specific to, or indeed extraneous to, company law.

55 As regards specifically the breach of the duty of care at issue in the main proceedings, a distinction must be drawn between the specific duty of care arising from the relationship between the members and the company, which does not fall within the substantive scope of the Rome II Regulation, and the generic duty of care *erga omnes*, which does. That assessment is for the national court alone.

56 If that assessment were to lead the referring court to declare the Rome II Regulation applicable, as regards whether Article 4(1) of that regulation must be interpreted as meaning that 'the place where the damage occurs' is that where the company which offers no redress for the damage suffered by its creditors as a result of the breach, by the grandparent company thereof, of the duty of care is established, it is clear from paragraph 35 of this judgment that the damage at issue in the main proceedings is primarily to the assets of the company declared bankrupt, such that for the creditors of that company it is only indirect damage.

57 Article 4(1) of that regulation states that the country in which the event giving rise to the damage occurred and that in which its potential indirect consequences may occur are both irrelevant.

58 In that regard, the Court has already noted that, where it is possible to identify the occurrence of direct damage, the place where the direct damage occurred is the relevant connecting factor for the determination of the applicable law, regardless of the indirect consequences of the harmful event (see, to that effect, judgment of 10 December 2015, *Lazar*, C-350/14, EU:C:2015:802, paragraph 25).

59 Moreover, it follows from the Court's case-law on jurisdiction in matters relating to tort, delict or quasi-delict that the place where the damage occurred is the place where the initial damage to the persons directly affected occurs (see, to that effect, judgment of 11 January 1990, *Dumez France and Tracoba*, C-220/88, EU:C:1990:8, paragraph 22).

60 In accordance with the requirements of consistency laid down in recital 7 of the Rome II Regulation, that case-law should also be taken into account for the purposes of interpreting that regulation (see, to that effect, judgment of 21 January 2016, *ERGO Insurance and Gjensidige Baltic*, C-359/14 and C-475/14, EU:C:2016:40, paragraph 43).

61 It follows that the country where the damage occurs, within the meaning of Article 4(1) of the Rome II Regulation, is that where the company which offers no redress for the damage suffered by its creditors as a result of the breach, by the grandparent company thereof, of the duty of care is established.

62 In the second place, with regard to the fact that, in the case in the main proceedings, the claims have been made either by a liquidator by virtue of his statutory duty to wind up the estate, or by a representative of collective interests for the benefit of, but not on behalf of, the general body of creditors, it must be observed from the outset that, in accordance with the rules established by the Rome II Regulation, the question as to who brings an action and what type of action is involved has no bearing on the identification of the place where the damage occurs.

63 As regards the alleged pre-existence of a financing agreement between the company declared bankrupt and its grandparent company, which includes a choice of court, it should be noted that, under Article 4(3) of the Rome II Regulation, a manifestly closer connection with another country may be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

64 That said, as the Advocate General observed in points 89 and 92 of his Opinion, the existence of such a relationship is not sufficient in itself to exclude the application of the law applicable by virtue of Article 4(1) or (2) and does not permit the automatic application of the law of the contract to the non-contractual liability.

65 Under Article 4(3) of the Rome II Regulation, the court has discretion to assess whether there is a significant connection between the non-contractual obligation and the country whose law governs the pre-existing relationship. It is only if the court considers that that connection is present that it must apply the law of that country.

66 Therefore, the answer to the fourth question is that Article 4 of the Rome II Regulation must be interpreted as meaning that the law applicable to an obligation to pay compensation by virtue of the duty of care of the grandparent company of a company declared bankrupt is, in principle, that of the country in which the latter is established, although the pre-existence of a financing agreement between those two companies, which includes a choice of court, is a circumstance capable of establishing manifestly closer connections with another country, for the purposes of paragraph 3 of that article.

Costs

67 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 (Eighth Chamber) hereby rules:

1. **Article 7(2) 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 must be interpreted as meaning that the court for the place of establishment of a company whose debts have become irrecoverable, because the grandparent company of that company breached its duty of care towards that company's creditors, has jurisdiction to hear a collective action for damages in matters relating to tort, delict or quasi-delict which the liquidator in the bankruptcy of that company has brought, by virtue of his statutory duty to wind up the estate, for the benefit of, but not on behalf of, the general body of creditors.**

2. **The answer to the first question referred for a preliminary ruling is not different if account is taken of the fact that, in the case in the main proceedings, a foundation acts to defend the collective interests of creditors and that the action brought for that purpose does not take account of the individual circumstances of the creditors.**

3. **Article 8(2) of Regulation No 1215/2012 must be interpreted as meaning that if the court seised of the original proceedings reverses its decision that it has jurisdiction in respect of those proceedings, such a reversal also automatically excludes its jurisdiction in respect of the claims made by the intervening third party.**

4. Article 4 of 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) must be interpreted as meaning that the law applicable to an obligation to pay compensation by virtue of the duty of care of the grandparent company of a company declared bankrupt is, in principle, that of the country in which the latter is established, although the pre-existence of a financing agreement between those two companies, which includes a choice of court, is a circumstance capable of establishing manifestly closer connections with another country, for the purposes of paragraph 3 of that article.

[Signatures]