



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

6 October 2021 *

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 1215/2012 – Article 1(1) – Civil and commercial matters – Article 35 – Provisional, including protective, measures – Action based on a contract for the construction of a public expressway, concluded between a public authority and two private law companies – Application for interim relief relating to penalties and guarantees arising from that contract – Decision on interim relief already given by a court having jurisdiction as to the substance)

In Case C-581/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria), made by decision of 28 October 2020, received at the Court on 5 November 2020, in the proceedings

Skarb Państwa Rzeczypospolitej Polskiej reprezentowany przez Generalnego Dyrektora Dróg Krajowych i Autostrad

v

TOTO SpA – Costruzioni Generali,

Vianini Lavori SpA,

THE COURT (First Chamber),

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

Advocate General: A. Rantos,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 15 July 2021,

after considering the observations submitted on behalf of:

- Skarb Państwa Rzeczypospolitej Polskiej reprezentowany przez Generalnego Dyrektora Dróg Krajowych i Autostrad, by O. Temnikov, advokat,

* Language of the case: Bulgarian.

- TOTO SpA – Costruzioni Generali and Vianini Lavori SpA, by A. Valov, and by V.P. Penkov, N.G. Tsvetanov, P.D. Tsanov, V.V. Tomova, B.H. Strizhlev and V.K. Semkov, advokati, and by M.T. Stoeva, acting as Agent,
- the Polish Government, by B. Majczyna and S. Żyrek, acting as Agents,
- the European Commission, by M. Heller and M.I. Zaloguín, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 September 2021,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 1(1) and Article 35 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 proceedings between the Skarb Państwa Rzeczypospolitej Polskiej reprezentowany przez Generalnego Dyrektora Dróg Krajowych i Autostrad (Public Treasury of the Republic of Poland, represented by its General Director for National Roads and Motorways) ('the General Director for Roads') and TOTO SpA – Costruzioni Generali and Vianini Lavori SpA ('the construction companies'), companies incorporated under Italian law, concerning a contract for the construction of an expressway in Poland.

Legal context

European Union law

- 3 Recitals 10, 33 and 34 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, ...

...

- (33) Where provisional, including protective, measures are ordered by a court having jurisdiction as to the substance of the matter, their free circulation should be ensured under this Regulation. However, provisional, including protective, measures which were ordered by such a court without the defendant being summoned to appear should not be recognised and enforced under this Regulation unless the judgment containing the measure is served on the defendant prior to enforcement. This should not preclude the recognition and enforcement of such measures under national law. Where provisional, including protective, measures are ordered by a court of a Member State not having jurisdiction as to the substance of the matter, the effect of such measures should be confined, under this Regulation, to the territory of that Member State.

(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)], [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 [that Convention] and of the Regulations replacing it.'

4 Article 1(1) of Regulation No 1215/2012 provides:

'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*).'

5 Article 2(a) of that regulation states:

'For the purposes of this Regulation:

(a) ...

For the purposes of Chapter III, "judgment" includes provisional, including protective, measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter. It does not include a provisional or protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement.'

6 Article 25(1) of that regulation, which is included in Section 7 of Chapter II, entitled 'Jurisdiction', states:

'If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. ...

...'

7 Article 35 of Regulation No 1215/2012, in Section 10 of Chapter II thereof, provides:

'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.'

Bulgarian law

8 Article 18 of the *Grazhdanski protsesualen kodeks* (Code of Civil Procedure), in the version applicable to the dispute in the main proceedings ('the GPK'), entitled 'Judicial Immunity', provides:

'(1) The Bulgarian courts shall have jurisdiction over actions to which a foreign State or a person with judicial immunity is a party, as follows:

1. where judicial immunity is waived;
2. in the case of actions based on contractual relationships, if the place of performance of the obligation is in the Republic of Bulgaria;
3. in the case of actions for damages for tort or delict committed in the Republic of Bulgaria;
4. in the case of actions concerning rights to a deceased person's assets or to unclaimed estates in the Republic of Bulgaria;
5. in cases falling within the exclusive jurisdiction of the Bulgarian courts.

(2) The provisions of paragraph 1(2), (3) and (4) shall not apply to legal transactions and acts carried out in performance of the duties of public office or in connection with exercise of the sovereign rights of foreign States.'

9 Article 389 of the GPK, entitled 'Interim measures in respect of an action brought', states:

'(1) At each stage of the proceedings prior to the end of preparatory inquiries in the appeal procedure, the plaintiff may lodge an application for interim measures to the court before which the case is pending.

(2) Interim measures may be granted in respect of all categories of action.'

10 Article 391 of the GPK, entitled 'Conditions for granting interim measures' provides, in paragraph 1 thereof:

'Interim measures may be granted where it would otherwise be impossible or difficult for the plaintiff in the main action to enforce the rights arising from the judgment and if:

1. the main action is supported by convincing written evidence, or
2. a guarantee is provided, up to an amount specified by the court ...'

11 Article 393 of the GPK, entitled 'Inadmissibility of interim measures', states:

'(1) Interim measures relating to an action for a monetary claim against the State, public authorities, municipalities and hospitals within the meaning of Article 5(1) of the *Zakon za lechebnite zavedenya* [Law on hospitals] or to claims against the National Health Insurance Fund hospital shall not be admissible.

(2) Interim measures shall not be granted in respect of an action for a monetary claim by means of attachment of receivables which is not enforceable.’

12 Article 397 of the GPK is entitled ‘Categories of measures’, and Article 397(1) states:

‘Interim measures shall be implemented:

1. by attachment of real property;
2. by attachment of movable property and of a debtor’s rights to receive payment;
3. by means of other appropriate measures determined by the court, including by immobilising a motor vehicle and by stay of enforcement.’

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

- 13 As is apparent from the file submitted to the Court, on 30 July 2015, following a public procurement procedure initiated by the General Director for Roads, as contracting authority, a contract to construct the S-5 Poznań – Wrocław expressway, junction Poznań A 2, village of Głuchowo – Wronczyn (Poland), was concluded with the construction companies, as contractors.
- 14 Pursuant to that contract, at the request of the construction companies, two guarantees were provided in favour of the contracting authority by an insurance company incorporated under Bulgarian law, Euroins AD: the first, a guarantee of performance in conformity with the contract, effective until 31 July 2019 and extended to 30 June 2024, provided security against non-performance or improper performance of the contract, while the second, effective until 31 July 2019, was to secure payment of a contractual penalty in the event of failure to comply with the time limits for performance of the contract.
- 15 According to the relevant clauses of the contract, jurisdiction over any dispute which may arise in connection with performance of the contract is conferred on the court having jurisdiction for the place where the contracting authority is established and Polish law is designated as the applicable law, including to those guarantees.
- 16 Disputes having arisen between the parties to the main proceedings concerning the quality of the work or the timely performance of the contract, the construction companies brought an action before the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland) for a negative declaration seeking, in essence, to prevent the contracting authority from exercising its rights in respect of the guarantees provided.
- 17 The construction companies also lodged applications for interim measures before the same court, seeking, inter alia, an order against the General Director for Roads to refrain, until 26 June 2019, from notifying the companies of his intention to terminate the contract at issue, from charging them penalties and from making use of the proper performance guarantee provided by Euroins.
- 18 The Sąd Okręgowy w Warszawie (Regional Court, Warsaw), by orders of 7 June 2019 and 2 December 2019 dismissed those applications for interim measures, on the ground, essentially, that the evidence provided was not sufficient to demonstrate a prima facie case.

- 19 At the same time as taking proceedings before that court, on 31 July 2019, the construction companies lodged an application for interim measures before the Sofiyski gradski sad (Sofia City Court, Bulgaria), similar in content to those in the proceedings against the General Director for Roads; by order of the court, this application was dismissed as inadmissible.
- 20 The Apelativen sad – Sofia (Court of Appeal, Sofia, Bulgaria) set that order aside, granted the application for interim measures under Article 389 of the GPK and Article 35 of Regulation No 1215/2012 and imposed an attachment order on the General Director for Roads' right to receive payment on the basis of the two guarantees provided by Euroins.
- 21 The General Director for Roads appealed to the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria), disputing, inter alia, the application of Regulation No 1215/2012 to the present case, on the ground that the main proceedings do not concern 'civil and commercial matters' within the meaning of Article 1(1) of that regulation.
- 22 In that appeal, it submitted a European order for payment under Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ 2006 L 399, p. 1), issued by the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) against Euroins.
- 23 Having considered the relevant case-law of the Court, the referring court expresses doubts as to the civil or commercial nature of the dispute in the main proceedings, within the meaning of Regulation No 1215/2012, in the light of the public status of the Polish party to the contract.
- 24 On the assumption that this dispute falls within the scope of application of Regulation No 1215/2012, the referring court wonders whether the fact that the court having jurisdiction as to the substance of the matter – in this instance, a Polish court – has already ruled on a similar application precludes the jurisdiction of a court seised of an application for interim measures under Article 35 of that regulation. In that connection, it states that, under its national law, namely Articles 389 and 390 of the GPK, an existing judgment on an application for interim measures is not an obstacle to a later application to the court having jurisdiction.
- 25 The referring court also asks whether an application for interim measures must be analysed in the light of the independent concept of provisional, including protective, measures, that is, measures 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 (judgment of 3 September 2020, *Supreme Site Services and Others*, C-186/19, EU:C:2020:638, paragraph 50), or whether it must be examined in the light of all the conditions provided for by the *lex fori*. It points out that, if the latter is the case, by virtue of the principle of effectiveness, it could be obliged to disapply Article 393 of the GPK.
- 26 In those circumstances, the Varhoven kasatsionen sad (Supreme Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
 - '(1) Must Article 1 of [Regulation No 1215/2012] be interpreted as meaning that a case such as that described in this order for reference must be regarded in whole or in part as a civil or commercial matter within the meaning of Article 1(1) of that regulation?

- (2) After the right to make an application for provisional/protective measures has been exercised and the court having jurisdiction as to the substance of the matter has already ruled on that application, is the court seised of an application for interim relief on the same basis and under Article 35 of [Regulation No 1215/2012] to be regarded as not having jurisdiction from the point at which evidence is produced that the court having jurisdiction as to the substance of the matter has given a ruling on that application?
- (3) If it follows from the answers to the first two questions referred that the court seised of an application under Article 35 of [Regulation No 1215/2012] has jurisdiction, must the conditions for the ordering of protective measures under Article 35 of [Regulation No 1215/2012] be interpreted independently? Should a provision which does not allow a protective measure to be ordered against a public body in a case such as the present one be disapplied?

Procedure before the Court

- 27 The referring court requested that the reference for a preliminary ruling in the present case be dealt with under the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court of Justice. In support of its request, the referring court argued, first, that under national rules the nature of the main proceedings required it to rule within a short time and, second, that granting the provisional measures would mean that one of the parties to the contract at issue in the main proceedings would be unable to exercise its rights for a long period of time, pending the conclusion of the proceedings on the substance of the matter.
- 28 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure.
- 29 As is clear from the Court's case-law, neither the fact that a request for a preliminary ruling has been made in connection with proceedings for interim relief nor the fact that the referring court is required to do everything possible to ensure that the case in the main proceedings is resolved swiftly is in itself sufficient to justify the use of the expedited procedure under Article 105(1) of the Rules of Procedure (see, to that effect, orders of the President of the Court of 23 January 2007, *Consel Gi. Emme*, C-467/06, not published, EU:C:2007:49, paragraph 7, and of 23 December 2015, *Vilkas*, C-640/15, not published, EU:C:2015:862, paragraph 8 and the case-law cited).
- 30 In the light of the foregoing considerations, the referring court's request that the expedited procedure under Article 105(1) of the Rules of Procedure be applied to the present case was rejected by decision of the President of the Court of 20 November 2020.
- 31 Nevertheless, by decision of the same day, the President of the Court decided that that case would be given priority, pursuant to Article 53(3) of the Rules of Procedure.

Consideration of the questions referred

The first question

- 32 By its first question, the referring court asks, in essence, whether Article 1(1) of Regulation No 1215/2012 must be interpreted as meaning that an action for interim relief, brought and continued in accordance with the rules of general law before a court of a Member State, relating to penalties in respect of the performance of a contract for the construction of a public expressway concluded following a procurement procedure for which the contracting authority is a public body, is covered by the concept of ‘civil and commercial matters’ within the meaning of that provision.
- 33 Article 1(1) of Regulation No 1215/2012 provides that the regulation is to apply in civil and commercial matters. The first question therefore concerns whether the abovementioned action for interim relief falls within the scope of Regulation No 1215/2012.
- 34 As a preliminary point, it must be observed that the action for interim relief in the main proceedings seeks provisional measures in order to preserve a factual situation subject to the assessment of the court in the substantive proceedings, and that that action and those proceedings were initiated between the same parties. Such an action for interim relief therefore 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.
- 35 In that connection, the Court has held 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 (judgment of 3 September 2020, *Supreme Site Services and Others*, C-186/19, EU:C:2020:638, paragraph 54).
- 36 It is also clear from the Court’s settled case-law that, in order to determine whether or not a matter falls within the scope of the independent concept of ‘civil and commercial matters’ within the meaning of Article 1(1) of Regulation No 1215/2012, and, consequently, whether it comes within the scope of that regulation, it is necessary to determine the nature of the legal relationships between the parties to the action and the subject matter of the action or, alternatively, the basis of the action and the detailed rules applicable to it (judgment of 16 July 2020, *Movic and Others*, C-73/19, EU:C:2020:568, paragraph 37 and the case-law cited).
- 37 Thus, the Court has repeatedly held that, 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 that effect, judgments of 12 September 2013, *Sunico and Others*, C-49/12, EU:C:2013:545, paragraph 34, and of 7 May 2020, *Rina*, C-641/18, EU:C:2020:349, paragraph 33 and the case-law cited).
- 38 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 (judgment of 3 September 2020, *Supreme Site Services and Others*, C-186/19, EU:C:2020:638, paragraph 57 and the case-law cited).

- 39 The Court has also held that 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 3 September 2020, *Supreme Site Services and Others*, C-186/19, EU:C:2020:638, paragraph 66 and the case-law cited).
- 40 In the present case, as regards the legal relationship between the parties to the dispute and the subject matter of the latter, it appears from the information in the file before the Court that the purpose of the action for interim relief in the main proceedings is to ensure the protection of the rights arising from the contract concluded on 30 July 2015 between the construction companies and the General Director for Roads.
- 41 However, neither the subject matter of such a contract nor the fact that only the General Director for Roads is entitled to initiate a public procurement procedure for the construction of an expressway can be regarded as indicative of the exercise of public powers.
- 42 Furthermore, as regards the basis of the action and the detailed rules applicable to it, it must be observed that, as the referring court points out, the first question concerns an action for interim relief, brought and continued in accordance with the rules of general law.
- 43 Consequently, even though it was concluded following a public procurement procedure and relates to the construction of a public expressway, a contract such as that at issue in the main proceedings establishes a legal relationship between the parties, under which those parties freely took on rights and obligations and which therefore concerns civil and commercial matters within the meaning of Article 1(1) of Regulation No 1215/2012.
- 44 The fact that a provision of national law, such as Article 393 of the GPK, does not grant interim measures in respect of an action for monetary claims against, inter alia, the State and public authorities and therefore appears to establish limited immunity from jurisdiction in favour of the latter – which it is for the referring court to determine – does not affect the civil and commercial nature of an action such as that in the main proceedings, within the meaning of Article 1(1) of Regulation No 1215/2012.
- 45 Thus the privilege of immunity does not automatically preclude the application of Regulation No 1215/2012 (see, to that effect, judgment of 3 September 2020, *Supreme Site Services and Others*, C-186/19, EU:C:2020:638, paragraph 62).
- 46 In the light of those considerations, the answer to the first question is that Article 1(1) of Regulation No 1215/2012 must be interpreted as meaning that an action for interim relief, brought and continued in accordance with the rules of general law before a court of a Member State, relating to penalties in respect of the performance of a contract for the construction of a public expressway concluded following a procurement procedure for which the contracting authority is a public body, is covered by the concept of ‘civil and commercial matters’ within the meaning of that provision.

The second question

- 47 By its second question, the referring court asks, in essence, whether Article 35 of Regulation No 1215/2012 must be interpreted as meaning that a Member State court seised of an application for provisional, including protective, measures under that provision is required to

declare that it has no jurisdiction if the court of another Member State having jurisdiction as to the substance of the matter has already ruled on an application involving the same cause of action and between the same parties.

- 48 The referring court is seeking guidance as to whether it has jurisdiction to hear and determine the application for provisional measures before it in the main proceedings. However, it must be observed, as a preliminary point, that this jurisdiction does not depend solely on the answer to the second question as rephrased.
- 49 In particular, as the statement of reasons for the order for reference shows, the construction works contract at issue in the main proceedings contains a clause conferring jurisdiction over any dispute which may arise in connection with performance of the contract on the Polish courts.
- 50 As the Advocate General observed, in essence, in points 59 and 60 of his Opinion, in the scheme of Regulation No 1215/2012, and in particular under Article 25 of that regulation, the parties may, by agreement, determine international jurisdiction in respect of provisional, including protective, measures and it can be presumed that a choice of forum clause drafted in general terms confers jurisdiction to adopt such measures on the chosen court.
- 51 Although the positions expressed by the parties to the main proceedings at the hearing before the Court differed as to whether the jurisdiction clause in the contract in the main proceedings covers the provisional, including protective, measures requested, it must be observed that, according to the case-law of the Court, it is for the national court to interpret such a clause and determine its scope (see, to that effect, judgment of 7 July 2016, *Höszig*, C-222/15, EU:C:2016:525, paragraph 28 and the case-law cited).
- 52 Furthermore, it is also for the referring court to carry out an analysis, pursuant to Article 35 of Regulation No 1215/2012, in order to establish the existence of a real connecting link between the subject matter of the measures sought in the main proceedings and the territorial jurisdiction of the Member State of the court before which those measures are sought, in accordance with the case-law of the Court (see, to that effect, judgment of 17 November 1998, *Van Uden*, C-391/95, EU:C:1998:543, paragraph 40).
- 53 As to the interpretation of that article requested in the second question, it is appropriate to bear in mind from the outset that, with regard to the interpretation of a provision of EU law, it is necessary, according to the Court's settled case-law, to take into account not only its terms, but also the context in which it is set (see, to that effect, judgment of 10 June 2021, *KRONE – Verlag*, C-65/20, EU:C:2021:471, paragraph 25 and the case-law cited).
- 54 Under Article 35 of Regulation No 1215/2012, 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.
- 55 Article 35 thus confers international jurisdiction in respect of provisional, including protective, measures not only on the courts of a Member State having jurisdiction as to the substance of the matter but also, under certain conditions, on the courts of other Member States.

- 56 So far as concerns the context of Article 35, it must be observed that the effect of Article 2(a) of the regulation together with recital 33 of the regulation is that only provisional, including protective, measures ordered by a court having jurisdiction as to the substance of the matter are classified as ‘judgments’, the free circulation of which is to be ensured under that regulation.
- 57 By contrast, where provisional, including protective, measures are ordered by a court of a Member State not having jurisdiction as to the substance of the matter, their effect is confined, under Regulation No 1215/2012, solely to the territory of that Member State.
- 58 Accordingly, an interested party may apply for a provisional or protective measure either before the court of a Member State having jurisdiction as to the substance of the matter, whose judgment on the application will be freely circulated, or before the courts of other Member States where the assets or the person against whom the measure is to be enforced are located.
- 59 Therefore, while it follows from the scheme of Regulation No 1215/2012 that the effects of judgments delivered by the courts of a Member State having jurisdiction as to the substance of the matter differ from those of the judgments of the courts of other Member States, the fact remains that that regulation does not establish a hierarchy between them.
- 60 In particular, it is not at all clear from the wording of Article 35 of Regulation No 1215/2012 whether the latter is founded on the principle that jurisdiction to adopt provisional, including protective, measures is generally conferred on the courts of a Member State having jurisdiction as to the substance of the matter, with the consequence that the courts of other Member States no longer have jurisdiction to adopt such measures once the courts with jurisdiction as to the substance have been seised of an application for such measures or have ruled on such an application.
- 61 In the light of those considerations, the answer to the second question is that Article 35 of Regulation No 1215/2012 must be interpreted as meaning that a Member State court seised of an application for provisional, including protective, measures under that provision is not required to decline jurisdiction if the court of another Member State having jurisdiction as to the substance of the matter has already ruled on an application involving the same cause of action and between the same parties.

The third question

- 62 By its third question, the referring court asks, in essence, whether Article 35 of Regulation No 1215/2012 must be interpreted as meaning that examination of an application for provisional, including protective, measures is subject to the independent conditions of EU law and, if so, as precluding national legislation which does not grant interim measures in respect of an action for a monetary claim against the State or a public authority.
- 63 It is relevant to note at the outset that it follows from the wording of Article 35 of Regulation No 1215/2012 that the court seised on the basis of that article is to adopt provisional measures in accordance with its national law.

- 64 That provision thus establishes an alternative ground of jurisdiction in favour of the courts of a Member State other than that whose courts have jurisdiction as to the substance of the matter, but it does not guarantee that a provisional or protective measure will be granted in a specific dispute, a decision which remains entirely subject to the legislation of the Member State whose courts are seised of the application for interim relief.
- 65 Therefore, a national provision which limits the possibility of granting interim measures in respect of an action for a monetary claim against the State and certain of its public authorities cannot be regarded as incompatible with the rule of jurisdiction laid down in Article 35 of Regulation No 1215/2012.
- 66 The context of Article 35 of Regulation No 1215/2012 supports that view.
- 67 Regulation No 1215/2012 seeks, in the field of cooperation in civil or commercial matters, to strengthen the simplified and efficient system for rules of conflict, recognition and enforcement of judicial decisions, a system established by the legal instruments of which that regulation forms a continuation, in order to facilitate judicial cooperation with a view to contributing to the attainment of the objective set for the European Union to become an area of freedom, security and justice, founded on the high level of confidence which should exist between the Member States (see, to that effect, judgment of 9 March 2017, *Pula Parking*, C-551/15, EU:C:2017:193, paragraph 53 and the case-law cited).
- 68 Therefore, as was the case with the legal instruments which preceded it, the object of Regulation No 1215/2012 is not to unify the procedural rules of the Member States, but to determine which court has jurisdiction in disputes concerning civil and commercial matters (see, by analogy, judgment of 6 June 2002, *Italian Leather*, C-80/00, EU:C:2002:342, paragraph 43 and the case-law cited).
- 69 In the light of those considerations, the answer to the third question is that Article 35 of Regulation No 1215/2012 must be interpreted as meaning that an application for provisional, including protective, measures must be examined under the law of the Member State of the court seised and does not preclude national legislation which does not grant interim measures in respect of an action for a monetary claim against the State or a public authority.

Costs

- 70 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 (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 must be interpreted as meaning that an action for interim relief, brought and continued in accordance with the rules of general law before a court of a Member State, relating to penalties in respect of the performance**

of a contract for the construction of a public expressway concluded following a procurement procedure for which the contracting authority is a public body, falls within the concept of ‘civil and commercial matters’ within the meaning of that provision.

- 2. Article 35 of Regulation No 1215/2012 must be interpreted as meaning that a Member State court seised of an application for provisional, including protective, measures under that provision is not required to decline jurisdiction if the court of another Member State having jurisdiction as to the substance of the matter has already ruled on an application involving the same cause of action and between the same parties.**
- 3. Article 35 of Regulation No 1215/2012 must be interpreted as meaning that an application for provisional, including protective, measures must be examined under the law of the Member State of the court seised and does not preclude national legislation which does not grant interim measures in respect of an action for a monetary claim against the State or a public authority.**

[Signatures]