



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

28 January 2015*

(Area of freedom, security and justice — Regulation (EC) No 44/2001 — Jurisdiction in civil and commercial matters — Consumer contracts — Consumer, domiciled in one Member State, having purchased securities issued by a bank in another Member State from an intermediary established in a third Member State — Jurisdiction for actions brought against the bank that issued those securities)

In Case C-375/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Handelsgericht Wien (Austria), made by decision of 20 June 2013, received at the Court on 3 July 2013, in the proceedings

Harald Kolassa

v

Barclays Bank plc,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, K. Jürimäe, J. Malenovský, M. Safjan (Rapporteur) and A. Prechal, Judges,

Advocate General: M. Szpunar,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 21 May 2014,

after considering the observations submitted on behalf of:

- Mr Kolassa, by P. Miller, Rechtsanwalt,
- Barclays Bank plc, by H. Bielez, Rechtsanwalt,
- the German Government, by T. Henze and J. Kemper, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, assisted by P. Gentili, avvocato dello Stato,
- the Netherlands Government, by M. Bulterman, acting as Agent,
- the European Commission, by B. Eggers and A.-M. Rouchaud-Joët, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 3 September 2014,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 5(1)(a), 5(3) and 15(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).
- 2 The request has been made in proceedings between Mr Kolassa, domiciled in Vienna (Austria), and Barclays Bank Plc ('Barclays Bank'), established in London (United Kingdom), concerning an action for damages based on the contractual, precontractual, tortious or delictual liability of that bank as a result of the loss in value of a financial investment made by Mr Kolassa through a financial instrument issued by the bank.

Legal context

EU law

- 3 Recitals 2 and 11 to 15 in the preamble to Regulation No 44/2001 state:
'(2) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation are essential.
...
(11) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking 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.
(12) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.
(13) In relation to insurance, consumer contracts and employment, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for.
(14) The autonomy of the parties to a contract, other than an insurance, consumer or employment contract, where only limited autonomy to determine the courts having jurisdiction is allowed, must be respected subject to the exclusive grounds of jurisdiction laid down in this Regulation.
(15) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. ...'

4 Articles 2 to 31 of that regulation, which appear under Chapter II thereof, contain rules on jurisdiction.

5 Section 1 of Chapter II, entitled ‘General Provisions’, contains Article 2(1), which 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.’

6 According to Article 5(1) and (3) of the same regulation:

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

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
- (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:
 - in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
 - in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,
- (c) if subparagraph (b) does not apply then subparagraph (a) applies;

...

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

7 Section 4, which is also within Chapter II, entitled ‘Jurisdiction over consumer contracts’ contains, in particular, Article 15(1) of Regulation No 44/2001, which provides

‘In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5, if:

- (a) it is a contract for the sale of goods on instalment credit terms; or
- (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer’s domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.’

8 Article 16 of Regulation No 44/2001, which is also found in Section 4 of Chapter II thereof, provides at paragraphs 1 and 2:

‘1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.’

- 9 Chapter II of the regulation also contains Section 8, entitled ‘Examination as to jurisdiction and admissibility’, under which Articles 25 and 26 appear, which are worded as follows:

‘Article 25

Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 22, it shall declare of its own motion that it has no jurisdiction.

Article 26

1. Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.

2. The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

...’

Austrian law

- 10 Paragraph 11 of the Austrian Law on Capital Markets (Kapitalmarktgesetz), in its version applicable to the dispute in the main proceedings, provided:

‘(1) Liability towards an investor for loss that he has suffered as a result of his reliance on the information contained in the prospectus or on any other information required under this federal law (Paragraph 6) that is relevant to the assessment of securities or investments shall be incurred by the following:

1. the issuer, for the provision, through his own fault or that of his staff or other persons whose services were used to draw up the prospectus, of any incorrect or incomplete information;
2. the prospectus auditor, for the provision of any incorrect or incomplete audits, through his own fault or that of his staff or other persons whose services were used to audit the prospectus;

...

3. the person who accepted in his own name or on behalf of another person the contractual agreement of the investor and the broker of the contract, if those persons operate the business or the brokerage for securities or investments on a professional basis and they or their staff knew, or did not know owing to serious negligence, that the information referred to in point 1 or in the audit was incorrect or incomplete ...

(2) In relation to securities and investments from foreign issuers, liability in accordance with subparagraph (1), point 1, also attaches to any person who placed on the Austrian market the offer subject to the prospectus.

(3) When liability is incurred by several persons, they shall assume the liability jointly. The liability of each is not reduced by reason of the fact that other persons also are required to compensate the same loss.

(4) Liability may be neither excluded nor restricted beforehand to the detriment of investors

...

(8) Claims for damages arising from infringements of other statutory provisions or breaches of contract shall not be affected by these provisions.'

11 Paragraph 26 of the Austrian Law on investment funds (Investmentfondsgesetz) in its version applicable at the time of the facts at issue in the main proceedings, provided:

'(1) The purchaser of a share in a foreign capital investment fund is entitled to receive, at or before the contract is concluded, without any cost to himself, the terms and conditions of the fund and/or the articles of association of the capital investment company, a prospectus of the foreign capital investment company and a copy of the application. The application form must indicate the amount of the subscription fee and the annual charge payable to the capital investment company.

(2) The prospectus must contain all the information which at the time of application is of essential importance for the assessment of the shares in the foreign capital investment fund. ... The prospectus must also contain, in particular, the following information:

1. the name, legal status, seat and equity capital (nominal capital less unpaid contributions plus capital reserves) of the foreign capital investment company, of the establishment that decides where to invest monies deposited (the management company), of the establishment responsible for the sale of shares in the capital investment fund (the sales company), and of the custodian bank;
2. the name, headquarters and address of the representatives and of the paying agents;
3. the objects that may be acquired for assets, the principles according to which they are selected, whether only listed securities are acquired for trading and, if so, on what stock exchanges, how earnings on assets are used, and whether and, if so, within what limits part of the assets is held in bank deposits;
4. the conditions subject to which holders of a share may demand disbursement of the part of the assets which may be apportioned to the share, and about the offices where this may be done.

... The prospectus and any amendments to it are to be audited for correctness and completeness by the representative as prospectus auditor. As regards the preparation, amendment, audit and responsibility for content of the prospectus, the provisions of the [Law on Capital Markets] apply correspondingly to the issuer and the prospectus auditor. ...'

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

12 Mr Kolassa, as a consumer, through the Austrian bank direktanlage.at AG ('direktanlage.at'), invested EUR 68 180.36 in X1 Global EUR Index Certificates ('the certificates'). The certificates were issued by Barclays Bank, which is registered in the United Kingdom register of companies, and also has a branch in Frankfurt-am-Main (Germany).

- 13 At the time of the issue of the certificates, Barclays Bank distributed a base prospectus, dated 22 September 2005. The certificates were subject to general conditions which were brought to the attention of the public on 20 December 2005. At the request of Barclays Bank, that base prospectus was also distributed in Austria. The public offer to subscribe ran from 20 December 2005 to 24 February 2006, and the certificates were issued on 31 March 2006. Repayment falls due in 2016. The borrowing conditions provided, furthermore, for the possibility of cancelling the subscription contract.
- 14 The certificates take the form of bearer bonds. The amount repayable, and hence the value of the bond, are governed by an index made up of a portfolio of several target funds, so that the value is directly linked with that portfolio. The portfolio was to be established and administered by the company X1 Fund Allocation GmbH, to which Barclays Bank had entrusted the investment of the money raised from the issue of the certificates. Most of that money has been lost. Currently, the value of the certificates is estimated to be EUR 0, which is, however, contested by Mr Kolassa.
- 15 It is apparent from the decision for reference that the certificates were sold to institutional investors who sold them on, in particular, to consumers. In the present case, direktanlage.at ordered the certificates to which Mr Kolassa wished to subscribe from its German parent company, DAB Bank AG, with its seat in Munich (Germany), which in turn acquired the certificates from Barclays Bank. In each case, the orders were placed and carried out in the name of the respective bank. Direktanlage.at fulfilled Mr Kolassa's order in accordance with its general terms and conditions 'in securities account', meaning that direktanlage.at holds the certificates as covering assets in its own name at Munich, on behalf of its clients. Mr Kolassa could claim only the delivery of the certificates from the corresponding share of the covering assets, it being understood that those certificates could not be transferred into his name.
- 16 As an investor having suffered loss, Mr Kolassa brought an action before the Handelsgericht Wien seeking the payment of EUR 73 705.07 in damages on the basis of the contractual, precontractual, tortious or delictual liability of Barclays Bank. He submitted that, if the bank had acted in accordance with the law, he would not have made the investment but would have invested the capital in a diversified fund portfolio with a market-neutral focus, which would have allowed him to obtain the amount claimed, namely, the amount invested plus interest.
- 17 Mr Kolassa submits that the Handelsgericht Wien has jurisdiction on the basis of Article 15(1)(c) of Regulation No 44/2001 or, in the alternative, on the basis of Article 5(1)(a) and (3) of that regulation.
- 18 Before the referring court, Barclays Bank disputes not only Mr Kolassa's substantive allegations but also the jurisdiction of the court seised.
- 19 In those circumstances, the Handelsgericht Wien decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- '(1) (a) As regards Article 15(1) of Regulation No 44/2001 is the wording "in matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession" in [that provision] to be interpreted as meaning that:
- (i) an applicant who, as a consumer, has acquired a bearer bond on the secondary market and now claims rights against the issuer of the bond on the basis of the bond terms and conditions, of breach of information and control obligations and of the issuer's prospectus liability, may invoke the ground of jurisdiction under that provision when, as a result of purchasing the security from a third party, he has entered into the contractual relationship between the issuer and the original subscriber of the bond;

- (ii) If Question 1(a)(i) is answered in the affirmative, the applicant may invoke the jurisdiction under Article 15 of that regulation when the third party from whom he purchased the bearer bond himself acquired it for a purpose which can be regarded as being within his trade or profession, that is to say, that the applicant therefore took over the bond relationship from a person who is not a consumer; and
 - (iii) if Questions 1(a)(i) and (ii) are answered in the affirmative, the applicant consumer may also invoke the jurisdiction provided for by Article 15 of the Regulation No 44/2001 when it is not he who is the holder of the bond, but the third party, instructed to acquire the securities for the applicant, it being understood that, in accordance with the terms agreed, that third party, not itself a consumer, keeps the security in its own name on trust for the applicant, and the latter may claim only delivery of the security under the law of obligations?
- (b) if Question 1(a)(i) is answered in the affirmative, does the court seized of contractual claims arising from a bond purchase have ancillary jurisdiction too under Article 15(1) of Regulation No 44/2001 for claims in tort or delict?
- (2) (a) As regards Article 5(1)(a) of Regulation No 44/2001, is the wording “in matters relating to a contract” in that provision to be interpreted as meaning that:
- (i) an applicant, who has acquired a bearer bond on the secondary market and now claims rights against the issuer of the bond on the basis of the bond terms and conditions, of breach of information and control obligations and of the issuer’s prospectus liability, may invoke the ground of jurisdiction under that provision when, as a result of purchasing the security from a third party, he has entered into the contractual relationship between the issuer and the original subscriber of the bond and,
 - (ii) if Question 2(a)(i) is answered in the affirmative, the applicant may also invoke jurisdiction under Article 5(1)(a) of Regulation No 44/2001 when it is not he who is the holder of the bond, but the third party, instructed to acquire the securities for the applicant, it being understood that, in accordance with the terms agreed, that third party keeps the security in its own name on trust for the applicant, and the latter may claim only delivery of the security under the law of obligations?
- (b) if Question 2(a)(i) is answered in the affirmative, does the court seized of contractual claims arising from a bond purchase have ancillary jurisdiction too under Article 5(1)(a) of Regulation No 44/2001 for claims in tort or delict?
- (3) (a) As regards Article 5(3) of Regulation No 44/2001, in connection with the issue of a bearer bond, can rights relating to the legislation on capital markets and based on prospectus liability incurred by the issuer and on breach of obligations to protect and advise be considered to be rights in tort, delict or quasi-delict within the meaning of [that provision]?
- (i) If Question 3(a) is answered in the affirmative, does the same apply when a person who is not himself the holder of the bond, but has only a contractual claim for delivery under the law of obligations against the holder who is holding the bond in trust for him, asserts such claims against the issuer?
- (b) Is the wording “the place where the harmful event occurred or may occur” in Article 5(3) of Regulation No 44/2001 to be interpreted as meaning that, when a security is purchased on the basis of deliberately misleading information,

- (i) the place where the damage occurred is taken to be the domicile of the person suffering the loss, being the place where his assets are concentrated?
 - (ii) if Question 3(b)(i) is answered in the affirmative, does the same apply when the purchase order and the transfer of value can be revoked until settlement of the transaction, and settlement took place in another Member State some time after the withdrawal from the account of the person suffering the loss?
- (4) In the context of its examination as to jurisdiction in accordance with Articles 25 and 26 of Regulation No 44/2001, must the court conduct a comprehensive taking of evidence in relation to disputed facts which are of relevance both for the question of jurisdiction and for the existence of the claim (“doubly relevant facts”) or is it, when determining jurisdiction, to start from the premiss that the facts asserted by the applicant are correct?”

The questions referred

Question 1

- 20 By Question 1, the referring court asks, in essence, whether Article 15(1) of Regulation No 44/2001 must be interpreted as meaning that an applicant who, as a consumer, has acquired a bearer bond from a professional intermediary may invoke jurisdiction under that provision for the purposes of an action brought against the issuer of the bond on the basis of the bond conditions, breach of information and control obligations and liability as regards the prospectus.
- 21 At the outset, it should be recalled, first, that in so far as Regulation No 44/2001 now replaces 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 relating to the accession of new Member States to that convention, the interpretation provided by the Court in respect of the provisions of the Brussels Convention is valid also for those of the regulation whenever the provisions of those instruments may be regarded as equivalent (see judgment in *Maletic*, C-478/12, EU:C:2013:735, paragraph 27 and case-law cited).
- 22 Second, the concepts used in Regulation No 44/2001, in particular those which appear in Article 15(1) of the regulation, must be interpreted independently, by reference principally to the general scheme and objectives of the regulation, in order to ensure that it is applied uniformly in all the Member States (see, to that effect, judgment in *Česká spořitelna*, C-419/11, EU:C:2013:165, paragraph 25 and case-law cited).
- 23 Article 15(1) of Regulation No 44/2001 applies if three conditions are met: first, a party to a contract is a consumer who is acting in a context which can be regarded as being outside his trade or profession, second, the contract between such a consumer and a professional has actually been concluded and, third, such a contract falls within one of the categories referred to in Article 15(1)(a) to (c). Those conditions must all be fulfilled, so that if one of the three conditions is not met, jurisdiction cannot be determined under the rules relating to consumer contracts (judgment in *Česká spořitelna*, EU:C:2013:165, paragraph 30).
- 24 In that regard, it is apparent from the case-file before the Court that the first and third conditions referred to in the previous paragraph are met in the present case, as the Advocate General noted at point 28 of his Opinion.

- 25 It suffices, therefore, to examine whether the second condition, namely that requiring the conclusion of a contract with the professional concerned, is satisfied in circumstances such as those in the main proceedings.
- 26 In that respect, the referring court's summary of the facts demonstrates, which it is nevertheless for that court to verify, that there is no contract between Barclays Bank and Mr Kolassa, for the latter is not the bearer of the bonds referred to in paragraph 14 of this judgment, those bonds being held by direktanlage.at as covering assets in its own name. By contrast, also according to the referring court, Mr Kolassa could request the delivery of the certificates from the corresponding share of the covering assets, it being understood that the certificates could not be transferred in to his name.
- 27 According to Mr Kolassa, in such circumstances, the aim of consumer protection requires the adoption of an economic approach and the finding that a contract has indeed been concluded, within the meaning of Article 15(1) of Regulation No 44/2001, between himself and Barclays Bank, for the role played by direktanlage.at was that of intermediary.
- 28 In that respect, it should be recalled that Article 15(1) of Regulation No 44/2001 constitutes a derogation both from the general rule of jurisdiction laid down in Article 2(1) of the regulation, which confers jurisdiction upon the courts of the Member State in which the defendant is domiciled, and from the rule of special jurisdiction for contracts, set out in Article 5(1) of the regulation, under which jurisdiction lies with the courts for the place of performance of the obligation in question. Thus, Article 15(1) must necessarily be interpreted strictly (see judgment in *Česká spořitelna*, EU:C:2013:165, paragraph 26 and case-law cited).
- 29 In addition, the condition that there must be a contract concluded between the consumer and the professional concerned makes it possible to ensure that the attribution of jurisdiction is predictable, which is one of the aims of Regulation No 44/2001, as is apparent from recital 11 in the preamble thereto.
- 30 Consequently, it must be held that the requirement of the conclusion of a contract with the professional concerned himself does not lend itself to an interpretation to the effect that such a requirement is satisfied when there is a chain of contracts through which certain rights and obligations of the professional in question are transferred to the consumer.
- 31 That finding is supported by a reading of Article 15 of Regulation No 44/2001 in conjunction with Article 16 thereof.
- 32 The rules on jurisdiction laid down, as regards consumer contracts, in Article 16(1) of the regulation apply, in accordance with the wording of that article, only to an action brought by a consumer against the other party to the contract, which necessarily implies that there be a contract concluded by the consumer with the professional concerned.
- 33 The Court has, admittedly, held that the concept of 'other party to the contract' laid down in Article 16(1) of Regulation No 44/2001 must be interpreted as meaning that it also covers the contracting partner of the operator with which the consumer concluded that contract (judgment in *Maletic*, EU:C:2013:735, paragraph 32). However, that interpretation rested on specific circumstances in which the consumer was from the outset contractually linked, inseparably, to two contracting partners. In addition, the consequence of excluding the contracting partner established in the consumer's Member State from the scope of Article 16 would have been that the court hearing the case against the two contracting partners jointly would have had jurisdiction only in respect of the operator established in another Member State.
- 34 Such an interpretation cannot be applied to the circumstances of the case in the main proceedings, in which there is absolutely no conclusion of any contract with the professional concerned.

35 It follows from the foregoing considerations that Article 15(1) of Regulation No 44/2001 must be interpreted as meaning that, in circumstances such as those of the case in the main proceedings, an applicant who, as a consumer, has acquired a bearer bond from a third party professional, without a contract having been concluded between that consumer and the issuer of the bond, which it is for the national court to verify, may not invoke jurisdiction under that provision for the purposes of an action brought against the issuer of the bond on the basis of the bond conditions, breach of the information and control obligations and liability for the prospectus.

Question 2

36 By Question 2, the referring court asks, in essence, whether Article 5(1)(a) of Regulation No 44/2001 must be interpreted as meaning that for the purposes of an action brought against the issuer of a bearer bond and based on the bond conditions, breach of the information and control obligations and prospectus liability, an applicant who has acquired that bond from a third party may invoke jurisdiction under that provision.

37 In order for an answer to be given to that question, it must be recalled at the outset that the concept of ‘matters relating to a contract’, within the meaning of Article 5(1) of Regulation No 44/2001, cannot be taken to refer to the classification under the relevant national law of the legal relationship in question before the national court. That concept must, on the contrary, be interpreted independently, regard being had to the general scheme and objectives of the regulation, in order to ensure that it is applied uniformly in all the Member States (judgments in *Handte*, C-26/91, EU:C:1992:268, paragraph 10, and *Česká spořitelna*, EU:C:2013:165, paragraph 45).

38 In contrast to the requirement laid down in Article 15(1) of Regulation No 44/2001, the conclusion of a contract is not a condition for the application of Article 5(1) of that regulation, so that the exclusion of jurisdiction under the first provision is not necessarily with prejudice to the applicability of the second.

39 However, although Article 5(1)(a) of Regulation No 44/2001 does not require the conclusion of a contract, it is nevertheless essential, for that provision to apply, that an obligation be identified, since the jurisdiction of the national court under that provision is determined by the place of performance of the obligation in question. Thus, the application of the rule of special jurisdiction provided for matters relating to a contract in Article 5(1)(a) presupposes the establishment of a legal obligation freely consented to by one person towards another and on which the claimant’s action is based (see the judgment in *Česká spořitelna*, EU:C:2013:165, paragraphs 46 and 47).

40 In that regard, it is clear from the summary of the facts set out by the referring court that such a legal obligation freely consented to by Barclays Bank with respect to Mr Kolassa is lacking on the facts of the case in the main proceedings, even if, under the national law applicable, Barclays Bank has certain obligations towards Mr Kolassa.

41 It follows from the foregoing considerations that Article 5(1)(a) of Regulation No 44/2001 must be interpreted as meaning that, in circumstances such as those of the case in the main proceedings, an applicant who has acquired a bearer bond from a third party, without the issuer thereof having freely assumed an obligation towards that applicant, which it is for the referring court to verify, may not invoke jurisdiction under that provision for the purposes of an action brought against the issuer and based on the bond conditions, breach of the information and control obligations and prospectus liability.

Question 3

- 42 By Question 3, the referring court asks, in essence, whether Article 5(3) of Regulation No 44/2001 must be interpreted as applying to an action seeking to put in issue the liability of the issuer of a certificate on the basis of the prospectus relating to it and of the breach of other legal information obligations incumbent on the issuer, thus allowing jurisdiction to be established for the courts where the applicant is domiciled on the basis that that is the place where the harmful event occurred or may occur.
- 43 In that regard, it should be recalled at the outset that Article 5(3) of Regulation No 44/2001 must be interpreted independently and strictly (see, to that effect, judgment in *Coty Germany*, C-360/12, EU:C:2014:1318, paragraphs 43 to 45).
- 44 The fact remains that the concept of ‘matters relating to tort, delict or quasi-delict’ within the meaning of Article 5(3) of Regulation No 44/2001 covers all actions which seek to establish the liability of a defendant and do not concern ‘matters relating to a contract’ within the meaning of Article 5(1)(a) of that regulation (see judgment in *Brogstetter*, C-548/12, EU:C:2014:148, paragraph 20). Thus, it must be assessed whether actions for damages brought against an issuer on the basis of the prospectus and for breaches of other legal information obligations towards investors are matters of delict or quasi-delict in as much as they are not covered by the concept of matters relating to a contract as defined at paragraph 39 of this judgment.
- 45 As regards the application of Article 5(3) of Regulation No 44/2001 in circumstances such as those of the case in the main proceedings, it must be recalled that the expression ‘place where the harmful event occurred or may occur’ in that provision is intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the applicant, in the courts for either of those places (judgment in *Coty Germany*, EU:C:2014:1318, paragraph 46).
- 46 In that connection, according to settled case-law, the rule of special jurisdiction laid down in Article 5(3) of Regulation No 44/2001 is based on the existence of a particularly close linking factor between the dispute and the courts of the place where the harmful event occurred or may occur, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings (judgment in *Coty Germany*, EU:C:2014:1318, paragraph 47).
- 47 Given that identification of one of the linking factors recognised by the case-law set out in paragraph 45 above must make it possible to establish the jurisdiction of the court objectively best placed to determine whether the elements that constitute liability do in fact exist, it follows that only the court within whose jurisdiction the relevant linking factor is situated may validly be seised (judgment in *Coty Germany*, EU:C:2014:1318, paragraph 48).
- 48 It should be recalled that the Court has held that the phrase ‘place where the harmful event occurred’ does not refer to the applicant’s place of domicile by reason only of the fact that he has suffered financial damage there resulting from the loss of part of his assets which arose and was incurred in another Member State (judgment in *Kronhofer*, C-168/02, EU:C:2004:364, paragraph 21).
- 49 Therefore, the mere fact that the applicant has suffered financial consequences does not justify the attribution of jurisdiction to the courts of the applicant’s domicile if, as was the situation in the case giving rise to the judgment in *Kronhofer* (EU:C:2004:364), both the events causing loss and the loss itself occurred in the territory of another Member State (see, to that effect, judgment in *Kronhofer*, EU:C:2004:364, paragraph 20).

- 50 By contrast, such an attribution of jurisdiction is justified if the applicant's domicile is in fact the place in which the events giving rise to the loss took place or the loss occurred.
- 51 In that regard, it is apparent from the decision for reference that, first, the certificates' loss of value was due, not to the vagaries of the market, but to the management of the funds in which the money from the issue of those certificates had been invested, preventing, at the end of the term, an increase in its value. Second, the actions or omissions alleged against Barclays Bank with respect to its legal information obligations took place before the investment made by Mr Kolassa and were, in his view, decisive for that investment.
- 52 On the assumption that the actions and omissions of Barclays Bank constituted a necessary precondition for the loss suffered by Mr Kolassa, which is sufficient for Article 5(3) of Regulation No 44/2001 to apply (see, to that effect, judgment in *DFDS Torline*, C-18/02, EU:C:2004:74, paragraph 34), it is also necessary, for that purpose, to ascertain to what extent the facts of the case in the main proceedings lead to the conclusion that the place in which the events causing the loss took place or in which the loss occurred was where the applicant is domiciled.
- 53 As regards the events giving rise to the loss claimed, namely, the alleged breach by Barclays Bank of the legal obligations relating to the prospectus and information for investors, it should be pointed out that the acts and omissions that might constitute such a breach cannot be considered to have taken place where the investor who claims to have suffered loss is domiciled, given that there is no information in the case-file to show that the decisions regarding the arrangements for the investments proposed by Barclays Bank and the contents of the relevant prospectuses were taken in the Member State in which the investor is domiciled or that those prospectuses were originally drafted and distributed anywhere other than the Member State in which Barclays Bank has its seat.
- 54 As regards, by contrast, the place where the loss occurred, it must be held that, in circumstances such as those summarised at paragraph 51 of this judgment, the loss occurred in the place where the investor suffered it.
- 55 The courts where the applicant is domiciled have jurisdiction, on the basis of the place where the loss occurred, to hear and determine such an action, in particular when that loss occurred itself directly in the applicant's bank account held with a bank established within the area of jurisdiction of those courts.
- 56 The place where the loss occurred thus identified meets, in circumstances such as those referred to in paragraph 51 of this judgment, the objective of Regulation No 44/2001 of strengthening the legal protection of persons established in the European Union, by enabling the applicant to identify easily the court in which he may sue and the defendant reasonably to foresee in which court he may be sued (see, to that effect, judgment in *Kronhofer*, EU:C:2004:364, paragraph 20), given that the issuer of a certificate who does not comply with his legal obligations in respect of the prospectus must, when he decides to notify the prospectus relating to that certificate in other Member States, anticipate that inadequately informed operators, domiciled in those Member States, might invest in that certificate and suffer loss.
- 57 Having regard to the foregoing considerations, the answer to Question 3 is that Article 5(3) of Regulation No 44/2001 must be interpreted as applying to an action seeking to put in issue the liability of the issuer of a certificate on the basis of the prospectus relating to it and of breach of other legal information obligations binding on the issuer, in so far as that liability is not based on a matter relating to a contract, within the meaning of Article 5(1) of the regulation. Under Article 5(3) of Regulation No 44/2001, the courts where the applicant is domiciled have jurisdiction, on the basis of the place where the loss occurred, to hear and determine such an action, particularly when the damage alleged occurred directly in the applicant's bank account held with a bank established within the area of jurisdiction of those courts.

Question 4

- 58 By Question 4, the referring court asks, in essence, whether it is necessary, in the context of the determination of international jurisdiction under Regulation No 44/2001, to conduct a comprehensive taking of evidence in relation to disputed facts that are of relevance both for the question of jurisdiction and for the existence of the claim or whether it is, instead, to be considered that the allegations of the applicant in the main proceedings alone are correct for the purposes of the decision on jurisdiction.
- 59 It is common ground that Regulation No 44/2001 does not explicitly define the extent of the verification obligations to which national courts are subject in the course of determining their international jurisdiction.
- 60 Although that is an aspect of national procedural law that the regulation is not intended to unify (see, to that effect, judgment in *G*, C-292/10, EU:C:2012:142, paragraph 44), the application of the relevant national laws must not, nevertheless, impair the effectiveness of Regulation No 44/2001 (see the judgment in *Shevill and Others*, C-68/93, EU:C:1995:61, paragraph 36 and case-law cited).
- 61 In that regard, the Court has held that the aim of legal certainty requires the national court seised to be able readily to decide whether it has jurisdiction, without having to consider the substance of the case (see the judgment in *Benincasa*, C-269/95, EU:C:1997:337, paragraph 27). As regards the application of that requirement in the context of the particular jurisdiction at issue in the main proceedings, the Court has, on the one hand, held that a court hearing a contractual dispute may examine, even of its own motion, the essential preconditions for its jurisdiction, having regard to conclusive and relevant evidence adduced by the party concerned establishing whether in fact the contract exists (judgment in *Effer*, 38/81, EU:C:1982:79, paragraph 7).
- 62 On the other hand, in relation specifically to Article 5(3) of Regulation No 44/2001, the Court has held that at the stage at which jurisdiction is determined, the court seised does not examine either the admissibility or the substance of the application in the light of national law, but identifies only the points of connection with the State in which that court is sitting that support its claim to jurisdiction under that provision (judgment in *Folien Fischer and Fofitec*, C-133/11, EU:C:2012:664, paragraph 50). Thus, the court seised may regard as established, solely for the purpose of ascertaining whether it has jurisdiction under that provision, the applicant's assertions as regards the conditions for liability in tort, delict or quasi-delict (judgment in *Hi Hotel HCF*, C-387/12, EU:C:2014:215, paragraph 20).
- 63 It must be observed that an obligation to conduct, at that early stage, a comprehensive taking of evidence as regards the facts relevant both to jurisdiction and substance risks prejudicing the assessment of the substance.
- 64 Although the national court seised is not, therefore, obliged, if the defendant contests the applicant's allegations, to conduct a comprehensive taking of evidence at the stage of determining jurisdiction, it must be pointed out that both the objective of the sound administration of justice, which underlies Regulation No 44/2001, and respect for the independence of the national court in the exercise of its functions require the national court seised to be able to examine its international jurisdiction in the light of all the information available to it, including, where appropriate, the defendant's allegations.
- 65 Having regard to the foregoing, the answer to Question 4 is that, in the context of the determination of international jurisdiction under Regulation No 44/2001, it is not necessary to conduct a comprehensive taking of evidence in relation to disputed facts that are relevant both to the question of jurisdiction and to the existence of the claim. It is, however, permissible for the court seised to examine its international jurisdiction in the light of all the information available to it, including, where appropriate, the allegations made by the defendant.

Costs

⁶⁶ 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 (Fourth Chamber) hereby rules:

1. **Article 15(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in circumstances such as those of the case in the main proceedings, an applicant who, as a consumer, has acquired a bearer bond from a third party professional, without a contract having been concluded between that consumer and the issuer of the bond, which it is for the national court to verify, may not invoke jurisdiction under that provision for the purposes of an action brought against the issuer of the bond on the basis of the bond conditions, breach of the information and control obligations and liability for the prospectus.**
2. **Article 5(1)(a) of Regulation No 44/2001 must be interpreted as meaning that, in circumstances such as those of the case in the main proceedings, an applicant who has acquired a bearer bond from a third party, without the issuer thereof having freely assumed an obligation towards that applicant, which it is for the referring court to verify, may not invoke jurisdiction under that provision for the purposes of an action brought against the issuer and based on the bond conditions, breach of the information and control obligations and prospectus liability.**
3. **Article 5(3) of Regulation No 44/2001 must be interpreted as applying to an action seeking to put in issue the liability of the issuer of a certificate on the basis of the prospectus relating to it and of breach of other legal information obligations binding on the issuer, in so far as that liability is not based on a matter relating to a contract, within the meaning of Article 5(1) of the regulation. Under Article 5(3) of Regulation No 44/2001, the courts where the applicant is domiciled have jurisdiction, on the basis of the place where the loss occurred, to hear and determine such an action, particularly when the damage alleged occurred directly in the applicant's bank account held with a bank established within the area of jurisdiction of those courts.**
4. **In the context of the determination of international jurisdiction under Regulation No 44/2001, it is not necessary to conduct a comprehensive taking of evidence in relation to disputed facts that are relevant both to the question of jurisdiction and to the existence of the claim. It is, however, permissible for the court seised to examine its international jurisdiction in the light of all the information available to it, including, where appropriate, the allegations made by the defendant.**

[Signatures]