



Reports of Cases

Case C-310/14

**Nike European Operations Netherlands BV
v
Sportland Oy**

(Request for a preliminary ruling from
the Helsingin hovioikeus)

(Reference for a preliminary ruling — Regulation (EC) No 1346/2000 — Articles 4 and 13 — Insolvency proceedings — Detrimental legal acts — Action for restitution of payments made before the date on which insolvency proceedings were opened — Law of the Member State in which insolvency proceedings were opened — Law of the Member State governing the legal act at issue — Law not allowing ‘any means of challenging that act in the relevant case’ — Burden of proof)

Summary — Judgment of the Court (Sixth Chamber), 15 October 2015

1. *EU law — Interpretation — Texts in several languages — Uniform interpretation — Differences between the various language versions — Interpretation by reference to context and purpose of the rules at issue*

(Council Regulation No 1346/2000, Art. 13)

2. *Judicial cooperation in civil matters — Insolvency proceedings — Regulation No 1346/2000 — Detrimental legal acts — Applicable law — Exception to the general rule of applying the *lex fori concursus* — Conditions under which applicable — Act unchallengeable on the basis of the *lex causae* — Obligation to take account of all the circumstances of the case*

(Council Regulation No 1346/2000, Art. 13)

3. *Judicial cooperation in civil matters — Insolvency proceedings — Regulation No 1346/2000 — Detrimental legal acts — Applicable law — Exception to the general rule of applying the *lex fori concursus* — Conditions under which applicable — Act unchallengeable on the basis of the *lex causae* — Burden of proof borne by the defendant in an action relating to the voidness, voidability or unenforceability of an act*

(Council Regulation No 1346/2000, Art. 13)

4. *Judicial cooperation in civil matters — Insolvency proceedings — Regulation No 1346/2000 — Detrimental legal acts — Applicable law — Exception to the general rule of applying the *lex fori concursus* — Conditions under which applicable — Act unchallengeable on the basis of the *lex**

causae — Burden of proof governed by the regulation — Lack of detailed procedural rules — Application of national law — Condition — Respect for the principles of equivalence and effectiveness

(Council Regulation No 1346/2000, Art. 13)

5. *Judicial cooperation in civil matters — Insolvency proceedings — Regulation No 1346/2000 — Detrimental legal acts — Applicable law — Exception to the general rule of applying the lex fori concursus — Conditions under which applicable — Act unchallengeable on the basis of the lex causae — Assessment to take account of the general provisions and principles of that law taken as a whole*

(Council Regulation No 1346/2000, Art. 13)

6. *Judicial cooperation in civil matters — Insolvency proceedings — Regulation No 1346/2000 — Detrimental legal acts — Applicable law — Exception to the general rule of applying the lex fori concursus — Conditions under which applicable — Act unchallengeable on the basis of the lex causae — Burden of proof borne by the defendant in an action relating to the voidness, voidability or unenforceability of an act — Shifting the burden of proof to the applicant only after the defendant has proved the unchallengeable character of the act at issue*

(Council Regulation No 1346/2000, Art. 13)

1. See the text of the decision.

(see para. 17)

2. Article 13 of Regulation No 1346/2000 on insolvency proceedings must be interpreted as meaning that, after taking account of all the circumstances of the case, the article applies provided that the act at issue cannot be challenged on the basis of the law governing that act (*lex causae*).

Article 13 of the regulation aims to protect the legitimate expectations of a person who has benefited from an act detrimental to all the creditors by providing that the act will continue to be governed, even after insolvency proceedings have been opened, by the law that was applicable at the date on which it was concluded, namely the *lex causae*. It is clear from that objective that the application of Article 13 of that regulation requires that all the circumstances of the case be taken into account. There cannot be legitimate expectations where, after insolvency proceedings have been opened, the validity of an act is to be assessed without regard being had to those circumstances whereas, where such proceedings are not opened, such circumstances would need to be taken into account.

Moreover, the obligation to interpret strictly the exception laid down in Article 13 of the regulation precludes a broad interpretation of the scope of that article which would allow a person who has benefited from an act detrimental to all the creditors to avoid the application of the *lex fori concursus* by relying solely, in a purely abstract manner, on the unchallengeable character of the act at issue on the basis of a provision of the *lex causae*.

(see paras 19-22, operative part 1)

3. For the purposes of the application of Article 13 of Regulation No 1346/2000 on insolvency proceedings and in the event that the defendant in an action relating to the voidness, voidability or unenforceability of an act relies on a provision of the law governing that act (*lex causae*) under which that act can be challenged only in the circumstances provided for in that provision, it is for the defendant to plead that those circumstances do not exist and to bear the burden of proof in that regard.

It is apparent from the wording of Article 13 of the regulation that it is for the defendant in an action relating to the voidness, voidability or unenforceability of an act to provide proof, on the basis of the *lex causae*, that the act cannot be challenged. Furthermore, by providing that the defendant must provide proof that an act cannot be challenged by any means after taking account of all the circumstances of the case, Article 13 of the regulation also, at least implicitly, places the burden on the defendant to prove both the facts from which the conclusion can be drawn that the act is unchallengeable and the absence of any evidence that would militate against that conclusion.

(see paras 25, 31, operative part 2)

4. Although Article 13 of Regulation No 1346/2000 on insolvency proceedings expressly governs where the burden of proof lies, it does not contain any provisions on more specific procedural aspects. For instance, that article does not set out, *inter alia*, the ways in which evidence is to be elicited, what evidence is to be admissible before the appropriate national court, or the principles governing that court's assessment of the probative value of the evidence adduced before it.

In the absence of harmonisation of such rules under EU law, it is for the national legal order of each Member State to establish them in accordance with the principle of procedural autonomy provided, however, that those rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness).

That principle precludes, first, the application of national rules of procedure that would make reliance on Article 13 of Regulation No 1346/2000 impossible or excessively difficult by providing for rules which are too onerous, especially in connection with proof of the negative, namely that certain circumstances did not exist. Second, that principle precludes national rules of evidence that are not sufficiently rigorous, the application of which would, in fact, have the effect of shifting the burden of proof laid down in Article 13 of the regulation.

However, the mere difficulty of proving that circumstances exist in which the *lex causae* prevents the act at issue from being challenged or, where relevant, that circumstances laid down in the *lex causae* do not exist in which the act can be challenged, does not in itself impinge upon the principle of effectiveness but rather reflects the need to interpret that article strictly.

(see paras 27-30)

5. Article 13 of Regulation No 1346/2000 on insolvency proceedings must be interpreted as meaning that the expression 'does not allow any means of challenging that act ...' applies, in addition to the insolvency rules of the law governing that act (*lex causae*), to the general provisions and principles of that law, taken as a whole.

Article 13 of the regulation aims to protect the legitimate expectations of a person who has benefited from an act detrimental to all the creditors, by providing that even after insolvency proceedings have been opened the act will continue to be governed by the *lex causae*. Moreover, the application of Article 13 in favour of such a person benefiting from a detrimental act requires that all the circumstances of the case be taken into account.

The aim of protecting legitimate expectations and the need for all the circumstances of the case to be taken into account require Article 13 of the regulation to be interpreted as meaning that a person benefiting from a detrimental act must prove that the act at issue cannot be challenged either on the basis of the insolvency provisions of the *lex causae* or on the basis of the *lex causae*, taken as a whole.

First, the wording of Article 13 of Regulation No 1346/2000 clearly supports such an interpretation, since it requires a person benefiting from a detrimental act to bear the burden of proving that the act cannot be challenged 'by any means'. Second, there cannot be legitimate expectations in the fact that an act, which may be challenged on the basis of a provision or general principle of the *lex causae*, is to be assessed, after insolvency proceedings have been opened, solely in the light of the insolvency provisions of the *lex causae*.

(see paras 33-36, operative part 3)

6. Article 13 of Regulation No 1346/2000 on insolvency proceedings must be interpreted as meaning that the defendant in an action relating to the voidness, voidability or unenforceability of an act must show that the law governing that act (*lex causae*), taken as a whole, does not allow for that act to be challenged.

Article 13 of the regulation, according to which it is for the defendant to plead that circumstances enabling the act to be challenged on the basis of the *lex causae* do not exist and to bear the burden of proof in that regard, does not distinguish insolvency provisions of the *lex causae* from the provisions and principles of the *lex causae* applicable to other areas of law, but provides that it is for the defendant to prove that the act at issue cannot be challenged by 'any means'. It is thus clear from its wording that that article must be interpreted as meaning that the defendant must show that the *lex causae*, taken as a whole, does not enable that act to be challenged.

That conclusion is also consistent with the principle that Article 13 of Regulation No 1346/2000 must be interpreted strictly and is consistent with the aim of Article 13 of the regulation to protect the legitimate expectations of a person who has benefited from an act detrimental to all the creditors by providing that that act will continue to be governed by the law that was applicable at the date on which it was concluded.

A national court before which an action relating to the voidness, voidability or unenforceability of an act is brought can rule that it is for the applicant to establish the existence of a provision or principle of the *lex causae* on the basis of which that act can be challenged only where that court considers that the defendant has first proven, in accordance with the rules generally applicable under national rules of procedure, that the act at issue cannot be challenged on the basis of the *lex causae*.

(see paras 38-41, 45, operative part 4)