



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

22 October 2015*

(Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 1 — Scope — Complaint seeking to join a civil action to proceedings — Article 27 — Lis pendens — Proceedings brought before a court of another Member State — Ongoing judicial investigation — Article 30 — Time when a court is deemed to be seised)

In Case C-523/14,

REQUEST for a preliminary ruling under Article 267 TFEU made by the Rechtbank Gelderland (District Court, Gelderland, Netherlands) by decision of 12 November 2014, received at the Court on 20 November 2014, in the proceedings

Aannemingsbedrijf Aertssen NV,

Aertssen Terrassements SA

v

VSB Machineverhuur BV,

Van Sommeren Bestrating BV,

Jos van Sommeren,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Second Chamber, acting as President of the Third Chamber, C. Toader (Rapporteur), J.-C. Bonichot, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- VSB Machineverhuur BV, Van Sommeren Bestrating BV and Mr van Sommeren, by R. van Seumeren, advocaat,
- the European Commission, by M. Wilderspin and G. Wils, acting as Agents,

* Language of the case: Dutch.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 1, 27 and 30 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 relation to proceedings between, on the one hand, Aannemingsbedrijf Aertssen NV and Aertssen Terrassements SA, companies incorporated under Belgian law (together: 'the Aertssen companies'), and on the other, VSB Machineverhuur BV and Van Sommeren Bestrating BV, companies incorporated under Netherlands law, and Mr van Sommeren (together: 'VSB and others'), concerning an allegation of fraudulent conduct against VSB and others.

Legal context

European Union law

- 3 Recital 15 in the preamble to Regulation No 44/2001 is worded as follows:

'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. There should be a clear and effective mechanism for resolving cases of *lis pendens* and related actions, and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation, that time should be defined autonomously.'
- 4 Chapter 1 of that regulation, headed 'Scope', contains only Article 1, paragraph (1) of which 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.'
- 5 Article 5 of Regulation No 44/2001, which is within Section 2 of Chapter II thereof, headed 'Special jurisdiction', states:

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

...

4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings.

...'

6 Section 9 of Chapter II of Regulation No 44/2001, headed '*Lis pendens* — related actions', contains Articles 27 to 30. Article 27 of that regulation is worded as follows:

'1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.'

7 Article 28 of that regulation provides:

'1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.'

8 Article 30 of that regulation provides:

'For the purposes of this Section, a court shall be deemed to be seised:

1. at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant; or

2. if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.'

Netherlands law

9 Article 700 of the Code of Civil Procedure (Wetboek van burgerlijke rechtsvordering) provides:

'1. An attachment order shall require the authorisation of the judge responsible for hearing applications for interim measures of the court in whose jurisdiction one or more of the goods affected are located or, if the attachment does not relate to goods, where the debtor or any person against whom the attachment is directed is domiciled.

2. Authorisation shall be requested by means of an application indicating the nature of the attachment to be carried out and the right relied on by the applicant and, if that right is a pecuniary debt, its amount or, if that amount is not yet fixed, its maximum amount, without prejudice to the particular legal requirements for an attachment of the kind at issue. The judge hearing applications for interim measures shall make a decision after summary examination. ...

3. Unless an action initiating the main proceedings has already been brought on the date of authorisation, authorisation shall be granted only on the condition that that action is brought within a period to be determined by the judge hearing applications for interim measures but at least eight days

after the attachment. The judge hearing applications for interim measures may extend that period if the attaché so requests before the expiry of that period. ... In the event of failure to comply with the period granted for the bringing of an action initiating the main proceedings the attachment shall be null and void.

...'

Belgian law

- 10 The Code of Criminal Procedure includes, in Book I entitled 'Criminal investigation by the judiciary and police officers engaged therein', a Chapter VI, entitled 'Investigating magistrates'. Within Chapter VI, Article 63 of that code provides:

'Any person who claims to have been harmed by a crime or an offence may lodge a complaint of that harm and join a civil action to the proceedings before the investigating magistrate with jurisdiction.

Any victim who joins a civil action to the proceedings may be heard, on request, at least once, by the investigating magistrate responsible for the case.'

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

- 11 On 26 March 2013 the Aertssen companies lodged with the investigating judge at the rechtbank van eerste aanleg te Antwerpen (Court of First Instance, Antwerp, Belgium) a complaint, pursuant to Article 63 of the Code of Criminal Procedure, seeking to join to proceedings a civil action against Nicolaas Kraaijeveld, VSB Groep BV, a company incorporated under Netherlands law, and its subsidiaries Van Sommeren Bestrating BV and VSB Machineverhuur BV, as well as Van Sommeren Bestrating BV, Mr van Sommeren and X, X being defined as all persons who, in the course of the judicial investigation, may be proved to have participated in the criminal acts which are the subject-matter of the complaint before the court.
- 12 That complaint concerned allegations of fraud. In that complaint the Aertssen companies stated that they provisionally assessed the quantum of their loss at approximately EUR 200 000.
- 13 On 26 April 2013 the Aertssen companies submitted to the voorzieningenrechter te Arnhem (the judge hearing applications for interim measures at Arnhem, Netherlands), under Article 700 of the Code of Civil Procedure, an application for authorisation to serve an attachment order on VSB and others. That authorisation was granted on the same day and the Aertssen companies served that attachment order on 1 May 2013.
- 14 Following an application made by VSB and others, the voorzieningenrechter te Arnhem (the judge hearing applications for interim measures at Arnhem) ordered, by judgment of 18 July 2013, the release of the attachments effected. It was held in that judgment that a complaint seeking to join a civil action to proceedings could not be the equivalent of an action initiating the main proceedings within the meaning of Article 700(3) of the Code of Civil Procedure.
- 15 On 19 July 2013 the Aertssen companies made a further application to the voorzieningenrechter te Arnhem (the judge hearing applications for interim measures at Arnhem) for authorisation to serve an attachment order on VSB and others. That court granted that application on 25 July 2013 but the authorisation granted was subject to the condition that an action initiating the main proceedings should be brought within 30 days following the attachment.

- 16 The Aertssen companies served a second attachment order on 29 July 2013. In order to comply with the condition imposed by the court, the Aertssen companies brought before the Rechtbank Gelderland (District Court, Gelderland) a substantive action in which they claim that VSB and others should be declared liable for the harm which the Aertssen companies allegedly suffered as a result of the fraud committed by VSB and others and that VSB and others should be ordered, provisionally, pending final determination of the quantum of that harm, to pay a sum of EUR 200 000.
- 17 The Aertssen companies none the less claim, first, that the Rechtbank Gelderland (District Court, Gelderland) should declare that it lacks jurisdiction and rule that the complaint seeking to join a civil action to proceedings, pending in Belgium, is the equivalent of an action initiating the main proceedings within the meaning of Article 700(3) of the Code of Civil Procedure. In that regard, the Aertssen companies argue, relying on Article 27(2) of Regulation No 44/2001, that the Rechtbank Gelderland has no jurisdiction, unless the jurisdiction of the Belgian court before which the complaint seeking to join a civil action to proceedings is disputed, in which case the referring court ought of its own motion to stay proceedings under Article 27(1).
- 18 In the alternative, the Aertssen companies claims that the Rechtbank Gelderland (District Court, Gelderland) should stay proceedings, under Article 28 of that regulation, on the ground that the main proceedings are related to the proceedings which are pending, in Belgium, following the complaint seeking to join a civil action to proceedings.
- 19 In the further alternative, the Aertssen companies claim that the Rechtbank Gelderland should immediately stay proceedings until the investigating magistrate at the rechtbank van eerste aanleg te Antwerpen (Court of First Instance, Antwerp) has decided to refer the case to the criminal court of first instance or to declare that no proceedings will be taken.
- 20 VSB and others contend that the complaint lodged by the Aertssen companies seeking to join a civil action to proceedings is essentially a criminal matter. VSB and others conclude that the main proceedings do not fall within the scope *ratione materiae* of Regulation No 44/2001. VSB and others add that the complaint and the action brought before the Rechtbank Gelderland (District Court, Gelderland) do not involve the same cause of action.
- 21 The Rechtbank Gelderland (District Court, Gelderland) considers, first, that it is apparent from settled case-law of the Court that the scope of that regulation is essentially defined by reference to the factors which characterise the nature of the legal relationships between the parties to the dispute or the subject-matter of that dispute. Given that the Aertssen companies are seeking to obtain compensation for the loss which they claim to have suffered as a result of the unlawful acts imputed to VSB and others, the dispute between them should be classified as a ‘civil or commercial matter’ within the meaning of Article 1 of that regulation. Accordingly Regulation No 44/2001 is applicable to a case such as that which has been brought before the investigating magistrate at the rechtbank van eerste aanleg te Antwerpen (Court of First Instance, Antwerp), even where that case is dealt with within proceedings which primarily concern criminal matters.
- 22 Second, according to the referring court, the purpose of the complaint seeking to join a civil action to proceedings is not merely that a criminal investigation should be undertaken but also that, within a criminal prosecution, compensation should be awarded to the complainant. The purpose of the ongoing proceedings before the investigating magistrate at the rechtbank van eerste aanleg te Antwerpen (Court of First Instance, Antwerp) and the Rechtbank Gelderland (District Court, Gelderland) is similar. In that regard, both those proceedings relate, with respect to the facts under consideration, to acts which are alleged to be fraudulent and those acts, according to the Aertssen companies, constitute, with respect to the rules of law, not only criminal offences but also civil wrongs. Moreover, the complaint lodged in Belgium is directed against the parties summoned before the referring court.

23 Consequently it is, according to the referring court, necessary to determine whether the lodging of the complaint seeking to join a civil action to the proceedings before the investigating magistrate of the rechtbank van eerste aanleg te Antwerpen (Court of First Instance, Antwerp), taking into consideration the fact that the preliminary judicial investigation has not yet been completed, should be deemed to constitute proceedings which have been brought within the meaning of Article 27(1) of Regulation No 44/2001, and, if that is the case, when that court was seised within the meaning of Article 30 of that regulation.

24 That being the case, the Rechtbank Gelderland (District Court, Gelderland) decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:

‘(1) Does the complaint lodged by the Aertssen companies seeking to join a civil action to proceedings, as provided for in Article 63 et seq. of the Belgian Code of Criminal Procedure, given the manner in which it was lodged and the stage which the proceedings have reached, come within the scope *ratione materiae* of Regulation No 44/2001?

If Question 1 is answered in the affirmative:

(2) Must Article 27(1) of that regulation be interpreted as meaning that proceedings in a foreign (in this case Belgian) court, within the meaning of that provision, have also been brought in a case in which a complaint seeking to join a civil action to proceedings has been lodged with a Belgian investigating magistrate and the preliminary judicial investigation has not yet been completed?

(3) If the answer is in the affirmative, when will the action initiated by the lodging before the court of a complaint seeking to join a civil action to proceedings be deemed to have been brought and/or when must the court be deemed to be seised of that action for the purposes of Article 27(1) and Article 30 of [that regulation]?

(4) If the answer is in the negative, must Article 27(1) of Regulation No 44/2001 be interpreted as meaning that the effect of the lodging of a complaint seeking to join a civil action to proceedings can be that an action will subsequently be pending before a Belgian court for the purposes of the application of that provision?

(5) If the answer to the preceding question is in the affirmative, when will proceedings be deemed to have been brought and/or when will the court be deemed to have been seised of the action for the purposes, respectively, of Article 27(1) and Article 30 of Regulation No 44/2001?

(6) If a complaint seeking to join a civil action to proceedings has been lodged but if, at the time of lodging that complaint, proceedings as referred to in Article 27(1) of Regulation No 44/2001 are not yet thereby pending but may become so subsequently, in the course of dealing with the complaint lodged, and that with retroactive effect to the date of the lodging of the complaint, is the effect of Article 27(1) of Regulation No 44/2001 that a court seised of proceedings brought after the complaint seeking to join a civil action to proceedings has been lodged with the Belgian court must stay its proceedings until such time as it has been established whether proceedings as referred to in Article 27(1) have been brought in the Belgian court?’

Consideration of the questions referred for a preliminary ruling

The first question

- 25 By its first question, the referring court seeks, in essence, to ascertain whether Article 1 of Regulation No 44/2001 must be interpreted as meaning that a complaint lodged with an investigating magistrate seeking to join a civil action to proceedings falls within the scope of that regulation in so far as the cause of action is, inter alia, to obtain monetary compensation for the loss allegedly suffered by the complainant.
- 26 It must be recalled, first, that, under Article 1(1) of Regulation No 44/2001, that regulation is to apply ‘in civil and commercial matters whatever the nature of the court or tribunal’.
- 27 Accordingly, given the wording of that provision, decisions given on civil matters by a criminal court fall within the scope of that regulation (see, to that effect, judgment in *Krombach*, C-7/98, EU:C:2000:164, paragraph 30 and the case-law cited).
- 28 Further, Article 1(1) of Regulation No 44/2001 indicates that only certain matters expressly mentioned in that regulation are excluded from the concept of civil and commercial matters (see, to that effect, judgment in *Mahamdia*, C-154/11, EU:C:2012:491, paragraph 38).
- 29 In accordance with the Court’s settled case-law, in order to ensure, as far as possible, that the rights and obligations which derive from that regulation for the Member States and the persons to whom it applies are equal and uniform, the concept of ‘civil and commercial matters’ should not be interpreted as a mere reference to the internal law of one or other of the States concerned. That concept must be regarded as an autonomous concept to be interpreted by reference, first, to the objectives and scheme of Regulation No 44/2001 and, second, to the general principles which stem from the corpus of the national legal systems (judgments in *Schneider*, C-386/12, EU:C:2013:633, paragraph 18 and the case-law cited, and *flyLAL-Lithuanian Airlines*, C-302/13, EU:C:2014:2319, paragraph 24 and the case-law cited).
- 30 In order to determine whether or not a matter falls within the scope of that regulation, the factors which characterise the nature of the legal relationships between the parties to the dispute or the subject-matter thereof must be examined (judgment in *flyLAL-Lithuanian Airlines*, C-302/13, EU:C:2014:2319, paragraph 26 and the case-law cited).
- 31 In that regard, in paragraph 19 of the judgment in *Sonntag* (C-172/91, EU:C:1993:144), the Court held that, even though it is joined to criminal proceedings, a civil action for compensation for injury to an individual resulting from a criminal offence continues to be civil in nature. In the legal systems of the contracting States, the Court held, the right to obtain compensation for injury suffered as a result of conduct regarded as culpable under criminal law is generally recognised as being a civil-law right.
- 32 In this case, while the aim of the complaint seeking to join a civil action to proceedings is to set in motion a criminal prosecution and while the investigation undertaken by the Belgian court is criminal in nature, the fact remains that its purpose is also to resolve a dispute between private persons concerning compensation for harm which one of those persons considers it has suffered as a result of the fraudulent conduct of others. Consequently, the legal relationship between the parties concerned in the main proceedings must be classified as ‘a private law relationship’ and is therefore covered by the ‘concept of civil and commercial matters’ within the meaning of Regulation No 44/2001 (see, by analogy, judgment in *Realchemie Nederland*, C-406/09, EU:C:2011:668, paragraph 41).

- 33 Further, the general scheme of that regulation does not require that the treatment of ancillary proceedings should necessarily be linked to that of the main proceedings (see, by analogy, judgment in *Cavel*, 120/79, EU:C:1980:70, paragraphs 7 to 9).
- 34 In particular, Article 5(4) of Regulation No 44/2001 confers on a criminal court, the decisions of which are plainly excluded from the scope of that regulation, jurisdiction to hear a civil claim which is ancillary to criminal proceedings, with the consequence that a decision made on the civil claim comes within the scope of that regulation. It is apparent therefore from that provision that the scope of that regulation extends to an action seeking compensation which is ancillary to criminal proceedings, which, since they pertain to criminal matters, are otherwise excluded from it.
- 35 Consequently, although an action seeking compensation brought before a criminal court is ancillary to criminal proceedings, such an action is covered by the concept of ‘civil and commercial matters’ within the meaning of Article 1(1) of that regulation.
- 36 It follows from all the foregoing that Article 1 of Regulation No 44/2001 must be interpreted as meaning that a complaint lodged with an investigating magistrate seeking to join a civil action to proceedings falls within the scope of that regulation in so far as its object is to obtain monetary compensation for harm allegedly suffered by the complainant.

The second question

- 37 By its second question, the referring court seeks, in essence, to ascertain whether Article 27(1) of Regulation No 44/2001 must be interpreted as meaning that proceedings are brought, within the meaning of that provision, when a complaint seeking to join a civil action to proceedings has been lodged with an investigating magistrate, even though the investigation of the case at issue has not yet been closed.
- 38 It must be recalled that the concepts used in Article 27 of that regulation, in order to determine whether *lis pendens* exists, must be interpreted independently, by reference to the scheme and objectives of that regulation (judgment in *Cartier parfums-lunettes and Axa Corporate Solutions assurances*, C-1/13, EU:C:2014:109, paragraph 32 and the case-law cited).
- 39 One of the objectives of Regulation No 44/2001, as stated in recital 15 thereof, is to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given where a number of courts have jurisdiction to hear the same dispute. That is why the European Union legislature sought to put in place a mechanism which is clear and effective in order to resolve situations of *lis pendens*. It follows that, in order to achieve those objectives, Article 27 of that regulation must be interpreted broadly (see, to that effect, judgments in *Mærsk Olie & Gas*, C-39/02, EU:C:2004:615, paragraph 32 and the case-law cited, and *Cartier parfums-lunettes and Axa Corporate Solutions assurances*, C-1/13, EU:C:2014:109, paragraph 40).
- 40 In the wording of Article 27 of that regulation, that article is to apply where the parties to two disputes pending before the courts of different Member States are the same and where the proceedings have the same cause of action, and that provision imposes no additional condition (see, to that effect, judgment in *Gubisch Maschinenfabrik*, 144/86, EU:C:1987:528, paragraph 14).
- 41 As regards, first, the question whether the parties are the same for the purposes of Article 27 of Regulation No 44/2001, it is apparent from the judgments in *Sonntag* (C-172/91, EU:C:1993:144, paragraph 19) and *Cavel* (120/79, EU:C:1980:70, paragraphs 7 to 9), that the right to obtain compensation for harm suffered as a result of conduct which is subject to criminal prosecution remains a civil matter in that the general scheme of that regulation does not require that the treatment of ancillary proceedings should necessarily be linked to the treatment of the main

proceedings. The question whether the parties are the same cannot depend on the position of one or other of the parties in the two proceedings (judgment in *Tatry*, C-406/92, EU:C:1994:400, paragraph 31 and the case-law cited).

- 42 In this case, the fact that the parties to the civil action do not have the power to undertake a criminal prosecution cannot alter the fact that those parties are the same parties as the applicants and defendants to the action brought before the referring court, in so far as the latter are also referred to in the complaint seeking to join a civil action to proceedings before the investigating magistrate at the rechtbank van eerste aanleg te Antwerpen (Court of First Instance, Antwerp).
- 43 As regards, secondly, ‘the cause’ of an action for the purposes of Article 27 of Regulation No 44/2001, that comprises the facts and the rule of law relied on as the basis of the action (see, to that effect, judgment in *Mærsk Olie & Gas*, C-39/02, EU:C:2004:615, paragraph 38 and the case-law cited).
- 44 In this case, in the two parallel sets of proceedings, it is a common feature that the Aertssen companies consider that they suffered harm as a result of fraudulent acts. That being the case, it is not inconceivable that those proceedings have the same cause, which, however, it is for the referring court to determine after analysis of all the facts and rules of law relied on.
- 45 As regards, thirdly, ‘the object’ of an action for the purposes of Article 27 of Regulation No 44/2001, the Court has stated that this means the end the action has in view (see, to that effect, judgment in *Gantner Electronic*, C-111/01, EU:C:2003:257, paragraph 25 and the case-law cited). The latter concept cannot be restricted to the claims being formally identical (see, to that effect, judgment in *Gubisch Maschinenfabrik*, 144/86, EU:C:1987:528, paragraph 17) and is to be interpreted broadly (see, to that effect, judgment in *Nipponkoa Insurance Co. (Europe)*, C-452/12, EU:C:2013:858, paragraph 42 and the case-law cited).
- 46 In this case, it is a common feature that the Aertssen companies seek compensation for the harm suffered by them, provisionally estimated at approximately EUR 200 000.
- 47 Consequently, without prejudice to the determination to be made by the referring court, it appears that all the criteria set out in paragraph 40 of this judgment are satisfied.
- 48 Further, it must be recalled, first, that the mechanism introduced by Regulation No 44/2001 to resolve situations of *lis pendens* is objective and automatic (see, by analogy, judgment in *Gantner Electronic*, C-111/01, EU:C:2003:257, paragraph 30) and is based on the chronological order in which the courts concerned were seised (see, to that effect, judgments in *Weber*, C-438/12, EU:C:2014:212, paragraph 52 and the case-law cited, and, by analogy, *A*, C-489/14, EU:C:2015:654, paragraph 30).
- 49 Next, it must be observed that Article 27(1) of Regulation No 44/2001, since it provides for no exception, covers all proceedings which fall within the scope of that regulation. As the Court held in paragraph 36 of this judgment, a complaint lodged with an investigating magistrate seeking to join a civil action to proceedings falls within that scope.
- 50 Last, as was stated in paragraph 39 of this judgment, Article 27 of Regulation No 44/2001 must, having regard to the objective pursued, which is to minimise the possibility of concurrent proceedings and irreconcilable judgments, be interpreted broadly. Where a person has joined a civil action to proceedings before an investigating magistrate, the possibility of any other court of another Member State being seised of the same civil action, namely proceedings involving the same cause of action and between the same parties, would lead, if that article were held not to be applicable, to there being concurrent proceedings and would create the danger of delivery of irreconcilable judgments, which would be contrary to that objective.

51 In that regard, as stated by the European Commission in its written observations, the fact that there is uncertainty as to the outcome of the judicial investigation is of no relevance. Such uncertainty is inherent in any type of pending proceedings and, therefore, exists in all cases where a situation of *lis pendens* is likely to arise.

52 In the light of all the foregoing, the answer to the second question is that Article 27(1) of Regulation No 44/2001 must be interpreted as meaning that proceedings are brought, within the meaning of that provision, when a complaint seeking to join a civil action to proceedings has been lodged with an investigating magistrate, even though the judicial investigation of the case at issue has not yet been closed.

The third question

53 By its third question, the referring court seeks, in essence, to determine how Articles 27(1) and 30 of Regulation No 44/2001 are to be interpreted in order to identify, where a person lodges a complaint with an investigating magistrate seeking to join a civil action to proceedings, the time when that magistrate is deemed to be seised for the purposes of those provisions.

54 First, it must be recalled that, under Article 27(1) of Regulation No 44/2001, where there are parallel proceedings before the courts of different Member States, the court second seised must stay its proceedings of its own motion until the jurisdiction of the court first seised is established. Furthermore, Article 27(2) provides that, where the jurisdiction of the court first seised is established, any court other than the court first seised must decline jurisdiction in favour of that court.

55 Further, in so far as the substantive conditions laid down in paragraph 40 of the present judgment are met, *lis pendens* exists from the moment when two courts of different Member States are definitively seised of legal proceedings, that is to say, before the defendants have been able to state their position (see, to that effect, judgment in *Gantner Electronic*, C-111/01, EU:C:2003:257, paragraph 27 and the case-law cited).

56 Regulation No 44/2001 does not set out in which circumstances the jurisdiction of the court or tribunal first seised is to be regarded as ‘established’ within the meaning of Article 27 of that regulation (judgment in *Cartier parfums-lunettes and Axa Corporate Solutions assurances*, C-1/13, EU:C:2014:109, paragraph 31). However, as stated in paragraph 48 of this judgment, the procedural rule laid down in that article is based on the chronological order in which the courts or tribunals concerned have been seised.

57 Article 30 of that regulation defines uniformly and independently the time when a court is to be deemed to be seised for the purposes of the application of Section 9 of Chapter II of that regulation, relating to *lis pendens*. Under Article 30, a court is deemed to be seised either at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or, if a document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court. Two methods of bringing proceedings before national courts or tribunals are envisaged, either by the lodging of the document initiating proceedings at the court or tribunal or by service of that document.

58 Consequently, it is necessary that the referring court examine, in this case, whether the Aertssen companies were, at the time when their complaint seeking to join a civil action to proceedings was brought, subject, under the applicable national law, to a duty to effect prior service of that complaint.

- 59 In the absence of any such duty to effect prior service, it would have to be concluded that the investigating magistrate of the rechtbank van eerste aanleg te Antwerpen (Court of First Instance, Antwerp) was seised at the time when the complaint seeking to join a civil action to proceedings was lodged at that court, provided however that the Aertssen companies did not omit to take the measures which they were, again under the applicable national law, obliged to take to ensure that the document lodged should thereafter be served on the defendants. It is apparent from the order for reference that the Aertssen companies lodged their complaint seeking to join to proceedings a civil action against defendants whose identity is known, namely the persons referred to in paragraph 11 of this judgment.
- 60 It follows from all the foregoing that the answer to the third question is that Article 30 of Regulation No 44/2001 must be interpreted as meaning that, where a person lodges a complaint seeking to join a civil action to proceedings with an investigating magistrate by means of the lodging of a document which need not, under the applicable national law, be served before that lodging, the time which must be chosen for the purposes of holding that magistrate to be seised is the time when that complaint was lodged.

The fourth to sixth questions

- 61 Since the fourth question is referred on the hypothesis that the answer to the second question might be negative, and since the answer given was positive, there is no need to answer the fourth question. In the light of the answers given to the first, second and third questions, it is also unnecessary to answer the fifth and sixth questions.

Costs

- 62 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 (Third Chamber) hereby rules:

- 1. Article 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 a complaint lodged with an investigating magistrate seeking to join a civil action to proceedings falls within the scope of that regulation in so far as its object is to obtain monetary compensation for harm allegedly suffered by the complainant.**
- 2. Article 27(1) of Regulation No 44/2001 must be interpreted as meaning that proceedings are brought, within the meaning of that provision, when a complaint seeking to join a civil action to proceedings has been lodged with an investigating magistrate, even though the judicial investigation of the case at issue has not yet been closed.**
- 3. Article 30 of Regulation No 44/2001 must be interpreted as meaning that, where a person lodges a complaint seeking to join a civil action to proceedings with an investigating magistrate by means of the lodging of a document which need not, under the applicable national law, be served before that lodging, the time which must be chosen for the purposes of holding that magistrate to be seised is the time when that complaint was lodged.**

[Signatures]