



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

12 September 2018\*

(Reference for a preliminary ruling — Regulation (EC) No 44/2001 — Jurisdiction in civil and commercial matters — Special jurisdiction — Article 5(3) — Jurisdiction in tort, delict or quasi-delict — Place where the harmful event occurred or may occur — Consumer, domiciled in a Member State, who bought, through a bank established in that Member State, securities issued by a bank established in another Member State — Jurisdiction to hear and determine the tort action brought by that consumer against the bank concerned)

In Case C-304/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 10 May 2017, received at the Court on 24 May 2017, in the proceedings

**Helga Löber**

v

**Barclays Bank plc,**

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, C.G. Fernlund, J.-C. Bonichot, S. Rodin and E. Regan, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Ms Löber, by L. Aigner, Rechtsanwalt,
- Barclays Bank plc, by H. Bielez, Rechtsanwalt,
- the Greek Government, by G. Papadaki, S. Papaioannou and T. Papadopoulou, acting as Agents,
- the European Commission, by M. Wilderspin and M. Heller, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 May 2018,

\* Language of the case: German.

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 5(3) 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 Ms Helga Löber and Barclays Bank plc concerning a tort action brought against that bank.

### **Legal context**

- 3 Recitals 11 and 12 of Regulation No 44/2001 state:
  - (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.'
- 4 Article 2(1) of that regulation provides:

'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'
- 5 Article 5(1) and (3) of that regulation provides as follows:

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

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

- 6 Barclays Bank has its seat in London (United Kingdom) and a branch in Frankfurt am Main (Germany).
- 7 That bank issued 'X1 Global EUR Index certificates' ('the certificates') in the form of bearer bonds, to which institutional investors subscribed, which then sold them on the secondary market, inter alia to consumers in Austria.

- 8 The certificates were issued on the basis of a German ‘base prospectus’ dated 22 September 2005, notified to the Oesterreichische Kontrollbank (Austrian supervisory bank), and general conditions dated 20 December 2005. The public offer to subscribe ran from 20 December 2005 to 24 February 2006. The certificates were issued on 31 March 2006.
- 9 The amount repayable, and therefore the value of the certificates, was governed by an index made up of a portfolio of several target funds, so that the value of the certificates was directly linked with that portfolio. The portfolio concerned was to be established and administered by X1 Fund Allocation GmbH, a company established in Germany. Since the money invested in the certificates was used in a pyramid fraud scheme and has, for the most part, been lost, the certificates have become worthless.
- 10 Ms Löber, who is domiciled in Vienna (Austria) invested a total of EUR 28 648.43 in the certificates through two separate Austrian banks, one with its seat in Salzburg (Austria) and the other with its seat in Graz (Austria).
- 11 As an investor who had suffered loss, Ms Löber brought an action against Barclays Bank before the Handelsgericht Wien (Commercial Court, Vienna, Austria), seeking payment by the latter of EUR 34 459.06, a declaration that Barclays Bank was liable in contract and tort and disclosure of the financial situation of that bank. In support of her arguments, she submitted, in particular, that the information in the prospectus was defective.
- 12 By an order dated 18 July 2016, the Handelsgericht Wien (Vienna Commercial Court) declined jurisdiction and dismissed that action on the ground, inter alia, that, with regard to the conditions for the application of Article 5(3) of Regulation No 44/2001, Ms Löber had not submitted that the damage at issue had occurred directly in a bank account which could be associated with her at a bank in Vienna (Austria). According to that court, since Ms Löber had acquired the certificates through banks in Graz or Salzburg, that damage had therefore arisen in Graz and Salzburg and not in one of the areas for which that court had jurisdiction.
- 13 Ms Löber brought an appeal against that order before the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria), which, by an order of 6 December 2016, confirmed the first-instance order, holding that Article 5(1)(a) of Regulation No 44/2001 was applicable and the Austrian courts did not have jurisdiction.
- 14 Ms Löber brought an appeal against the order of the Oberlandesgericht Wien (Higher Regional Court, Vienna) seeking a declaration that the Handelsgericht Wien (Commercial Court, Vienna) had jurisdiction to adjudicate on her case, on the basis, inter alia, of Article 5(3) of Regulation No 44/2001.
- 15 In those circumstances the Oberster Gerichtshof (Supreme Court, Austria) decided to stay proceedings and to refer to the Court of Justice the following question for a preliminary ruling:

‘Under Article 5(3) of [Regulation No 44/2001], in non-contractual claims based on prospectus liability where:

- the investor took his investment decision caused by the defective prospectus at the place where he is domiciled,
- and, on the basis of that decision, he transferred the purchase price for the security acquired on the secondary market from his account held with an Austrian bank to a clearing account held with another Austrian bank, from where the purchase price was subsequently transferred to the seller by order of the applicant,

(a) does jurisdiction lie with the court within whose area of jurisdiction the investor is domiciled,

- (b) does jurisdiction lie with the court within whose area of jurisdiction the seat/the account-keeping branch of the bank with which the applicant has his bank account from which he transferred the amount invested to the clearing account is located,
- (c) does jurisdiction lie with the court within whose area of jurisdiction the seat/the account-keeping branch of the bank which keeps the clearing account is located,
- (d) does jurisdiction lie with one of those courts at the choice of the applicant,
- (e) does jurisdiction lie with none of those courts?’

### Consideration of the question referred

- 16 By its question, the referring court asks, in essence, how Article 5(3) of Regulation No 44/2001 must be interpreted for the purposes of ascertaining the courts of a Member State with jurisdiction, as the courts for the place where the harmful event occurred within the meaning of that provision, to hear and determine a tort action brought, by reason of the inadequate nature of the information contained in the prospectus relating to a certificate, against the bank which issued that certificate and which is established in one Member State, by an investor who invested in that certificate, who is resident in another Member State, where the damage the investor claims to have suffered consists in financial loss which occurred in that investor’s bank account with a bank established on the territory of the Member State where the investor is domiciled.
- 17 As a preliminary point, it must be recalled that the rule of special jurisdiction laid down by Article 5(3) of that regulation must be interpreted independently and strictly (judgments of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 43; of 21 May 2015, *CDC Hydrogen Peroxide*, C-352/13, EU:C:2015:335, paragraph 37, and of 21 April 2016, *Austro-Mechana*, C-572/14, EU:C:2016:286, paragraph 29).
- 18 The jurisdiction provided for in Article 2 of that regulation, namely that the courts of the Member State in which the defendant is domiciled are to have jurisdiction, constitutes the general rule. It is only by way of derogation from that general rule that the regulation provides for special and exclusive rules of jurisdiction for cases, which are exhaustively listed, in which the defendant may or must, depending on the case, be sued in the courts of another Member State (judgment of 13 July 2006, *Reisch Montage*, C-103/05, EU:C:2006:471, paragraph 22, and of 12 May 2011, *BVG*, C-144/10, EU:C:2011:300, paragraph 30).
- 19 It is the Court’s settled case-law that the concept of ‘matters relating to tort, delict or quasi-delict’ 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 Regulation No 44/2001 (judgments of 27 September 1988, *Kalfelis*, 189/87, EU:C:1988:459, paragraphs 17 and 18; of 13 March 2014, *Brogstetter*, C-548/12, EU:C:2014:148, paragraph 20; of 21 April 2016, *Austro-Mechana*, C-572/14, EU:C:2016:286, paragraph 32, and of 16 June 2016, *Universal Music International Holding*, C-12/15, EU:C:2016:449, paragraph 24).
- 20 In particular, the Court held that Article 5(3) of that regulation applies 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)(a) of that regulation (judgment of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 57).

- 21 With regard to the case in the main proceedings, it is sufficient to observe, first, that the referring court has stated that the liability on the basis of the prospectus that was raised before it does not fall within the scope of such a ‘matter relating to a contract’ and, secondly, that Ms Löber seeks, by the action in the main proceedings, inter alia, a finding that Barclays Bank is liable in tort.
- 22 As to the concept of ‘place where the harmful event occurred or may occur’ in Article 5(3) of Regulation No 44/2001, those words are 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 (judgments of 10 June 2004, *Kronhofer*, C-168/02, EU:C:2004:364, paragraph 16; of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 45; of 21 May 2015, *CDC Hydrogen Peroxide*, C-352/13, EU:C:2015:335, paragraph 38, and of 16 June 2016, *Universal Music International Holding*, C-12/15, EU:C:2016:449, paragraph 28).
- 23 In this connection, the Court has held that the term ‘place where the harmful event occurred’ may not be construed so extensively as to encompass any place where the adverse consequences of an event, which has already caused damage actually arising elsewhere, can be felt (judgment of 19 September 1995, *Marinari*, C-364/93, EU:C:1995:289, paragraph 14; of 10 June 2004, *Kronhofer*, C-168/02, EU:C:2004:364, paragraph 19, and of 16 June 2016, *Universal Music International Holding*, C-12/15, EU:C:2016:449, paragraph 34) and that such a concept does not refer to the place where the applicant is domiciled and where his assets are concentrated 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 (judgments of 10 June 2004, *Kronhofer*, C-168/02, EU:C:2004:364, paragraph 21, and of 16 June 2016, *Universal Music International Holding*, C-12/15, EU:C:2016:449, paragraph 35).
- 24 Thus, 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 both the events causing damage and the damage itself occurred in the territory of another Member State (judgment of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 49).
- 25 On the other hand, 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 damage took place or the damage occurred (judgment of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 50).
- 26 In the present case, the case in the main proceedings concerns the identification of the place where the damage occurred.
- 27 It follows from the Court’s case-law that such a place is that where the alleged damage actually manifests itself (judgment of 21 May 2015, *CDC Hydrogen Peroxide*, C-352/13, EU:C:2015:335, paragraph 52).
- 28 In addition, the Court has held that 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 damage occurred, to hear and determine 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, 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 (judgment of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 57).
- 29 In its judgment of 16 June 2016, *Universal Music International Holding* (C-12/15, EU:C:2016:449), the Court stated that that finding was made within a specific context, the distinctive feature of which was the existence of circumstances contributing to attributing jurisdiction to those courts (judgment of 16 June 2016, *Universal Music International Holding*, C-12/15, EU:C:2016:449, paragraph 37).

- 30 Thus, it held that Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that the ‘place where the harmful event occurred’ may not be construed as being, failing any other connecting factors, the place in a Member State where the damage occurred when that damage consists exclusively of financial loss which materialises directly in the bank account of the applicant and is the direct result of an unlawful act committed in another Member State (judgment of 16 June 2016, *Universal Music International Holding*, C-12/15, EU:C:2016:449, paragraph 40).
- 31 In the present case, it appears that, taken as a whole, the specific circumstances of the present case contribute to attributing jurisdiction to the Austrian courts.
- 32 As is apparent from the order for reference, Ms Löber is domiciled in Austria and all the payments in relation to the investment transaction at issue in the main proceedings were made from Austrian bank accounts, namely the personal bank account of Ms Löber and the clearing accounts specifically intended for the execution of that transaction.
- 33 Moreover, besides the fact that Ms Löber, in connection with that transaction, had dealings only with Austrian banks, it is furthermore apparent from the order for reference that she acquired the certificates on the Austrian secondary market, that the information supplied to her concerning those certificates is that in the prospectus which relates to them as notified to the Österreichische Kontrollbank (Austrian supervisory bank) and that, on the basis of that information, she signed in Austria the contract obliging her to make the investment, which has resulted in a definitive reduction in her assets.
- 34 In addition, conferring jurisdiction on the Austrian courts in circumstances such as those in the case in the main proceedings is consistent with the objectives, set out in recitals 11 and 12 of Regulation No 44/2001, of the predictability of the rules on jurisdiction laid down in that regulation, of proximity between the courts designated by those rules and the dispute and of the sound administration of justice.
- 35 In this connection, 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 damage, the objective of Regulation No 44/2001 — which is to strengthen 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 — is met by upholding as the place where the damage occurred the place where the bank is established in which the applicant possessed the bank account in which the damage occurred (see, to that effect, judgment of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 56).
- 36 Consequently, the answer to the question referred is that Article 5(3) of Regulation No 44/2001 must be interpreted to the effect that in a situation, such as that in the main proceedings, in which an investor brings, on the basis of the prospectus relating to a certificate in which he or she invested, a tort action against the bank which issued that certificate, the courts of that investor’s domicile, as the courts for the place where the harmful event occurred within the meaning of that provision, have jurisdiction to hear and determine that action, where the damage the investor claims to have suffered consists in financial loss which occurred directly in that investor’s bank account with a bank established within the jurisdiction of those courts and the other specific circumstances of that situation also contribute to attributing jurisdiction to those courts.

## Costs

- <sup>37</sup> 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 (First Chamber) hereby rules:

**Article 5(3) 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 to the effect that in a situation, such as that in the main proceedings, in which an investor brings, on the basis of the prospectus relating to a certificate in which he or she invested, a tort action against the bank which issued that certificate, the courts of that investor's domicile, as the courts for the place where the harmful event occurred within the meaning of that provision, have jurisdiction to hear and determine that action, where the damage the investor claims to have suffered consists in financial loss which occurred directly in that investor's bank account with a bank established within the jurisdiction of those courts and the other specific circumstances of that situation also contribute to attributing jurisdiction to those courts.**

[Signatures]