



Reports of Cases

OPINION OF ADVOCATE GENERAL

RICHARD DE LA TOUR

delivered on 9 January 2025¹

Case C-536/23

Bundesrepublik Deutschland

v

Mutua Madrileña Automovilista

(Request for a preliminary ruling from the Landgericht München I (Regional Court, Munich I, Germany))

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 1215/2012 – Article 11(1)(b) – Article 13(2) – Jurisdiction in matters relating to insurance – Scope of the special rules of jurisdiction – Road traffic accident – Direct action by the injured party against the insurer – Concept of ‘injured party’ – Subrogation of the employer to the rights of its employee who was injured in the accident – Initiation of direct actions by a Member State in its capacity as an employer – Place where the claimant is domiciled)

I. Introduction

1. In adopting the special rules of jurisdiction which Regulation (EU) No 1215/2012² lays down in matters relating to insurance, the EU legislature sought to pursue the objective of protecting the weaker party.³ While it is relatively easy to identify the weaker party where the dispute is between, as is usually the case, the person injured in a road traffic accident and the insurance company of the vehicle responsible for that accident, it can prove to be more difficult where legal proceedings are brought by the injured person’s employer, which is subrogated to the rights of that person.

2. The Court is not unfamiliar with such a situation, since it has previously held that it follows from Regulation No 1215/2012 that an employer, established in one Member State, which continued to pay the remuneration of its employee absent as the result of a road traffic accident and to which have passed the employee’s rights with regard to the company insuring the civil liability resulting from the vehicle involved in that accident, which is established in a second

¹ Original language: French.

² Regulation of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

³ See recital 18 of Regulation No 1215/2012.

Member State, may, in the capacity of ‘injured party’, within the meaning of Article 11(2) of Regulation (EC) No 44/2001,⁴ sue the insurance company before the courts of the first Member State, where such a direct action is permitted.⁵

3. The particular feature of this reference for a preliminary ruling is the fact that the person who was injured in the road traffic accident is an official and that the employer subrogated to her rights is therefore a State.

4. In the present Opinion, I shall endeavour to explain why the solution already adopted by the Court can be applied, without betraying either the letter or the spirit of Regulation No 1215/2012, in a situation where the employer bringing the action, which it is common ground is subrogated to the rights of the person who was injured, is a State. In so doing, I shall also take the opportunity afforded by this reference for a preliminary ruling to clarify and explain the Court’s previous case-law concerning the determination of both the international and local jurisdiction of the court before which such an action may be brought, in this specific situation in which the connecting factor of the claimant’s domicile must be applied to a State.

II. Legal framework

5. Recitals 15, 16, 18 and 34 and Article 1(1), Article 4(1) and Article 5(1) of Regulation No 1215/2012 are relevant in the present case.

6. Moreover, reference should be made to Section 3 of Chapter II of Regulation No 1215/2012, entitled ‘Jurisdiction in matters relating to insurance’, which comprises Articles 10 to 16 of the regulation.

7. Article 10 of that regulation reads as follows:

‘In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7.’

8. Article 11(1)(a) and (b) of that regulation provides:

‘An insurer domiciled in a Member State may be sued:

- (a) in the courts of the Member State in which he is domiciled;
- (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the claimant is domiciled ...’

9. Article 13(2) of that regulation provides:

‘Articles 10, 11 and 12 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.’

⁴ Council Regulation of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

⁵ See judgment of 20 July 2017, *MMA IARD* (C-340/16; ‘the judgment in *MMA IARD*’, EU:C:2017:576, paragraph 39).

10. Finally, Article 63(1) of Regulation No 1215/2012 is worded as follows:

‘For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:

- (a) statutory seat;
- (b) central administration; or
- (c) principal place of business.’

III. The facts in the main proceedings and the question referred for a preliminary ruling

11. A federal official working at the Munich (Germany) office of the Deutsche Patent- und Markenamt (German Patent and Trade Mark Office) was injured in a road traffic accident on 8 March 2020 while on holiday in Spain. The rental car which collided with that official while she was cycling was covered by civil liability insurance provided by a Spanish insurance company, Mutua Madrileña Automovilista (‘the insurance company’).

12. As a result of the injuries resulting from that accident, the official was unfit for work from 8 March 2020 to 16 March 2020. During that period, her employer – the German State – continued to pay her remuneration. By letter of 25 January 2021, the German State requested from the insurance company’s claims representative appointed in Germany⁶ reimbursement of the continued remuneration, that is to say, the sum of EUR 1 432.77. Being of the view that it was the official who had caused the accident, that representative refused to pay.

13. The German State, still acting in its capacity as an employer, then brought a civil action against the insurance company before the Amtsgericht München (Local Court, Munich, Germany), seeking payment of the remuneration at issue. Since that company had its registered office in Spain, it argued that that court lacked international jurisdiction and contested the merits of the action.

14. In a judgment of 16 February 2022, the Amtsgericht München (Local Court, Munich) declined international jurisdiction. That court therefore ruled that the German State could not rely on jurisdiction based on Article 11(1)(b) and Article 13(2) of Regulation No 1215/2012, since those provisions lay down derogating rules which must be interpreted strictly and the benefit of which cannot be extended to an employer when it is a State. After carrying out a general assessment of the need for protection, the Amtsgericht München (Local Court, Munich) concluded that the German State, which also carries out activities as a social security institution, in particular in the field of pension and sickness insurance schemes, could not rely on those rules.

15. The German State appealed to the Landgericht München I (Regional Court, Munich I, Germany), the referring court. As the official’s employer, the German State submits that it could correctly rely on Article 11(1)(b) and Article 13(2) of Regulation No 1215/2012, since it had acquired, by way of subrogation by operation of law, the official’s right to claim compensation

⁶ In accordance with the obligation arising from Article 21 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11). Although that directive was amended by Directive (EU) 2021/2118 of the European Parliament and of the Council of 24 November 2021 (OJ 2021 L 430, p. 1), the amendments made have not affected that provision.

from the insurer of the vehicle involved in the accident in which she had been injured. It follows from the case-law of the Court relating to the rules laid down by those provisions,⁷ first, that there is no need to make an assessment on a case-by-case basis or to draw any distinction according to the criterion of weakness and, secondly, that, in order to ensure predictability of jurisdiction, any assignee acting by way of statutory subrogation, and not as an insurer or social security institution, should be able to bring an action before the courts for the place where the injured party is domiciled.

16. For its part, the insurance company, the defendant in the main proceedings, submits before the referring court that it follows from the objective of protection covered by Article 11(1)(b) and Article 13 of Regulation No 1215/2012 that only a party in a weaker position than the insurer which it is suing can rely on that privilege derogating from the principle that the courts of the defendant's domicile have jurisdiction. Moreover, the Court has denied that possibility both to a social security institution and to professionals in the insurance sector, regardless of their size.⁸ The existence of such a weak position must be excluded where the claimant is a Member State of the European Union, and therefore a body governed by public international law, a fortiori where that body provides benefits which, by their nature, correspond to social security benefits and supervises the insurance sector on its territory, as does the applicant in the main proceedings.

17. According to the referring court, the merits of the appeal depend on whether the court at first instance was correct in declining jurisdiction pursuant to Article 11(1)(b) and Article 13(2) of Regulation No 1215/2012. It points out, in that regard, that it is not disputed by the parties to the main proceedings that the German State intends to bring, in accordance with the applicable provisions of Spanish law⁹ and on the basis of an assignment of rights under German civil law,¹⁰ a direct action against the insurance company in that company's capacity as the insurer of the vehicle involved in the accident in which the official was injured.

18. In the light of the arguments put forward by each of the parties and the national case-law as it stands,¹¹ the referring court asks whether a Member State which, as an employer, brings a direct action against an insurer on the basis of a statutory subrogation to the rights of an official who has been injured in an accident may rely – notwithstanding the fact that they are derogating rules – on the special rules of jurisdiction in matters relating to insurance provided for the benefit of the 'injured party',¹² by the combined provisions of Article 11(1)(b) and Article 13(2) of Regulation No 1215/2012, read in the light of recitals 15 and 18 of that regulation. That court emphasises the particular legal nature of that employer in the main proceedings, which is also a subject of public international law.

⁷ The applicant in the main proceedings relies here on the judgment in *MMA IARD*.

⁸ The defendant in the main proceedings cites, in that regard, the judgments of 17 September 2009, *Vorarlberger Gebietskrankenkasse* (C-347/08; 'the judgment in *Vorarlberger Gebietskrankenkasse*', EU:C:2009:561); of 31 January 2018, *Hofsoe* (C-106/17, EU:C:2018:50); of 20 May 2021, *CNP* (C-913/19, EU:C:2021:399); and of 21 October 2021, *T.B. and D. (Jurisdiction in matters relating to insurance)* (C-393/20, EU:C:2021:871).

⁹ See paragraph 2.2 of the request for a preliminary ruling.

¹⁰ See paragraph 2.2 of the request for a preliminary ruling. Although the referring court did not expressly cite the relevant German provision, the European Commission did cite it in its pleadings. In essence, Paragraph 76 of the *Bundesbeamtengesetz* (Law on federal public servants) of 5 February 2009 (BGBl. 2009 I, p. 160) provides that, where an official, a pensioner or a member of their family is injured or killed, that person's legal right to compensation from a third party on the basis of that injury or death is transferred by way of statutory subrogation to *the employer* ('*dienstherrn*'), if that employer is required to pay benefits during the period of incapacity for work resulting from the bodily injury, or following bodily injury or death.

¹¹ As referred to by the referring court in Part I and paragraph 2.5 of Part II of its request for a preliminary ruling.

¹² Within the meaning of Article 13(2) of Regulation No 1215/2012. It is interesting to note that Directive 2009/103, as amended by Directive 2021/2118, defines the injured party as 'any person entitled to compensation in respect of any loss or injury caused by vehicles' (see Article 1(2) of Directive 2009/103, as amended, and recital 2 of Directive 2021/2118).

19. In those circumstances, the Landgericht München I (Regional Court, Munich I) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 13(2) of Regulation [No 1215/2012], read in conjunction with Article 11(1)(b) of that regulation, be interpreted as meaning that a Member State of the European Union itself, in its capacity as an employer which has continued to pay the remuneration of its official who has (temporarily) become unfit for work as a result of a road traffic accident and which is subrogated to the official’s rights vis-à-vis the company, established in another Member State, that provides the civil liability insurance for the vehicle involved in that accident, may sue the insurance company as an “injured party” within the meaning of that [first] provision before the courts for the place where the official who is unfit for work is domiciled, where a direct action is permitted?’

20. Written observations were submitted by the German State, the insurance company, the Spanish Government and the Commission.

IV. Analysis

21. It follows from a combined reading of Article 11(1)(b) and Article 13(2) of Regulation No 1215/2012 that, where direct actions brought by the injured party against the insurer are permitted,¹³ an insurer domiciled in a Member State may be sued in another Member State, in the courts for the place where the claimant is domiciled.

22. Those provisions, which are specific to the insurance sector,¹⁴ thus establish a derogation¹⁵ from the principle that the courts of the defendant’s domicile have jurisdiction,¹⁶ as follows in particular from recital 15, Article 4(1) or Article 11(1)(a) of Regulation No 1215/2012. By appearing to be more favourable to the claimant, Article 11(1)(b) and Article 13(2) of that regulation contribute to the achievement of the objective of protecting the weaker party.¹⁷

23. In its judgment in *MMA IARD*, the Court ruled on a situation at first sight very similar to that of the present request for a preliminary ruling. It held that an employer, established in one Member State, which continued to pay the remuneration of its employee absent as the result of a road traffic accident and to which have passed the employee’s rights with regard to the company insuring the civil liability resulting from the vehicle involved in that accident, which is established

¹³ This direct right of action available to injured parties following an accident caused by a vehicle covered by insurance against the insurance undertaking covering the civil liability of the person responsible stems from Directive 2009/103 (see recital 30 and Article 18 of that directive).

¹⁴ Since Articles 11 and 13 of Regulation No 1215/2012 come under Section 3 of Chapter II of that regulation, which is concerned with jurisdiction in matters relating to insurance. That section ‘establishes an autonomous system for the allocation of jurisdiction in insurance matters’ (see judgment of 9 December 2021, *BT (Action against the insured)* (C-708/20, EU:C:2021:986, paragraph 26 and the case-law cited)).

¹⁵ Because they derogate from jurisdiction based on the defendant’s domicile, those provisions must, however and in principle, be interpreted strictly: see judgment of 30 June 2022, *Allianz Elementar Versicherung* (C-652/20, EU:C:2022:514, paragraph 46 and the case-law cited).

¹⁶ See judgment of 14 February 2019, *Milivojević* (C-630/17, EU:C:2019:123, paragraph 81). See, in relation to Regulation No 44/2001, *inter alia*, judgments in *Vorarlberger Gebietskrankenkasse* (paragraph 37), and of 25 January 2018, *Schrems* (C-498/16, EU:C:2018:37, paragraph 27). In so far as Regulation No 1215/2012 repealed and replaced that regulation, which in turn replaced the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, signed in Brussels on 27 September 1968 (OJ 1972 L 299, p. 32), as amended by the successive conventions on the accession of new Member States to that convention (OJ 1998 C 27, p. 1; ‘the Brussels Convention’), the interpretation given by the Court so far as concerns the provisions of one of those legal instruments applies also to the provisions of the others, where those provisions may be regarded as equivalent.

¹⁷ In accordance with the intention of the EU legislature expressed in recital 18 of Regulation No 1215/2012.

in a second Member State, may, in the capacity of ‘injured party’, within the meaning of Article 11(2) of Regulation No 44/2001, sue the insurance company before the courts of the first Member State, where a direct action is permitted.

24. The referring court asks whether it is possible to apply that solution in the context of the main proceedings, where the employer is a Member State.

25. The insurance company, for its part, submits that the German State is acting, in the context of the dispute in the main proceedings, not as an employer, but as a body governed by public international law. Such a body cannot rely on the special rules of jurisdiction contained in Regulation No 1215/2012.

26. That argument must be rejected from the outset.

27. The fact that the employer is a State does not – and cannot – have the effect either of altering the nature of the proceedings brought or of weakening the position of the defendant. It is not disputed that the main proceedings are civil in nature. If it were otherwise, Regulation No 1215/2012 would not apply.¹⁸ As the German State indicates in its written pleadings,¹⁹ the same procedural rules apply to it in the action brought against the insurance company. It is required to assert its rights against the insurance company in ordinary civil proceedings, like any employer subrogated to the rights of its employee. The German State must be represented by a lawyer and may, as appropriate, be unsuccessful like any other party. As the Spanish Government rightly argued in its written observations, when a Member State brings an action in another Member State pursuant to the rules of jurisdiction laid down in Regulation No 1215/2012, it acts in the same way as any person having standing to do so under the provisions of that regulation.

28. Contrary to what the insurance company claims, the German State is acting in its *sole capacity* as the employer of the person who was injured in the road traffic accident,²⁰ and cannot rely on any privilege or any power falling outside the scope of the ordinary law. Accordingly, the obvious imbalance in favour of the State as employer described by that company in its observations seems to me to be qualified, since – I repeat once again – the German State is acting here not as a subject of public international law exercising State authority (*acta iure imperii*), but *solely and strictly* as an employer subrogated to the rights of its official who was injured in the road traffic accident (*acta iure gestionis*).

29. The German State is therefore acting, in the dispute in the main proceedings, in its capacity as a public employer. However, the referring court considers that, if it were to apply the solution in the judgment in *MMA IARD* to that particular applicant, such an approach could be difficult to reconcile with other judgments of the Court in which it specifically verified the need to protect the party deemed to be the weaker party before allowing it to benefit from the special rules of jurisdiction and precluded, in particular, the possibility that a social security institution or a professional in the insurance sector might rely on the *forum actoris*.

¹⁸ I would point out that, under Article 1(1) of Regulation No 1215/2012, that regulation is to apply in civil and commercial matters, but is not to extend ‘to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*)’.

¹⁹ It must be pointed out here that, in the present proceedings for a preliminary ruling, the German State is represented, both before the Court and before the referring court, not by agents for the government but by a lawyer.

²⁰ In accordance with the overall approach adopted by the Court in the judgment in *MMA IARD* (see paragraph 36 of that judgment). Moreover, the Court has already held that the provisions of Regulation No 44/2001 applied to a dispute in which an employee sought compensation and contested the termination of the contract of employment concluded by him with a third State (see judgment of 19 July 2012, *Mahamdia* (C-154/11, EU:C:2012:491, paragraph 56)).

30. In those circumstances, I must, first of all, review in detail the case-law relied on. Next, I must draw the conclusions from that analysis for the specific situation in which the subrogated employer is a State. Finally, once I have established that the special rules of jurisdiction in matters relating to insurance may, in my view, be relied on by the German State in the circumstances of the dispute in the main proceedings, it will remain to be determined before which court its action must be brought.

A. The relevant case-law as it stands

31. As a preliminary point, I would recall that Article 11(1)(b) and Article 13(2) of Regulation No 1215/2012 are provisions held to be equivalent to Article 9(1)(b) and Article 11(2) of Regulation No 44/2001, since the wording of the former provisions repeats, essentially, the respective wording of the latter. Consequently, the interpretation previously given by the Court with regard to the provisions of Regulation No 44/2001 remains valid for the equivalent provisions of Regulation No 1215/2012.²¹

32. The referring court identifies two lines of case-law of the Court which, if they were to be applied to the present case, would lead either to the conclusion that a State as employer cannot rely on the *forum actoris* provided for by the special provisions of Regulation No 1215/2012 in matters relating to insurance or to precisely the opposite conclusion.

33. In the first line of case-law, the Court held, in essence, that Article 9(1)(b) and Article 11(2) of Regulation No 44/2001 were to be interpreted as meaning that *a social security institution*, acting as the statutory assignee of the rights of the directly injured party in a motor accident, may not bring an action directly before the courts of its Member State of establishment against the insurer of the person allegedly responsible for that accident, where that insurer is established in another Member State.²²

34. The Court reached that conclusion following reasoning based on a systematic and teleological interpretation of Regulation No 44/2001,²³ and a reminder that the provisions analysed are derogating provisions.²⁴

35. It went on to state that ‘the protective role fulfilled by those provisions implies that the application of the rules of special jurisdiction ... should not be extended to persons for whom that protection is not justified’.²⁵ In the case in point, it had not been argued that the social

²¹ See judgments of 31 January 2018, *Hofsoe* (C-106/17, EU:C:2018:50, paragraph 36); of 9 December 2021, *BT (Action against the insured)* (C-708/20, EU:C:2021:986, paragraph 23); and of 4 October 2024, *Mahá* (C-494/23, EU:C:2024:848, paragraph 27 and the case-law cited). Moreover, the Court held that point 2 of the first paragraph of Article 8 of the Brussels Convention could be regarded as equivalent to Article 9(1)(b) of Regulation No 44/2001 and to Article 11(1)(b) of Regulation No 1215/2012, since those provisions ‘enable an insurer domiciled in, respectively, a Contracting State or a Member State, to be sued in the courts for the place where the claimant is domiciled, where – in the case of the convention – the action is brought by the policyholder, or – in the case of the regulations – by the policyholder, the insured or a beneficiary under the contract of insurance, provided that the claimant in question is domiciled in, respectively, another Contracting State or another Member State’ (judgment of 30 June 2022, *Allianz Elementar Versicherung* (C-652/20, EU:C:2022:514, paragraph 23)).

²² See the judgment in *Vorarlberger Gebietskrankenkasse* (paragraph 47).

²³ See the judgment in *Vorarlberger Gebietskrankenkasse* (paragraph 35).

²⁴ See the judgment in *Vorarlberger Gebietskrankenkasse* (paragraph 38).

²⁵ The judgment in *Vorarlberger Gebietskrankenkasse* (paragraph 41).

security institution was an *economically weaker party and less experienced legally* than the insurer and no special protection was justified where the parties concerned are professionals in the insurance sector.²⁶

36. Accordingly, the Court clearly stated that a statutory assignee of the rights of the directly injured party was able to benefit from the special rules on jurisdiction in question, provided that the assignee could himself or herself be considered to be a *weaker party*.²⁷

37. In support of its reasoning, the Court referred, lastly, to its rule laid down in the judgment of 15 January 2004, *Blijdenstein*,²⁸ according to which a public body could not, under the special rules of jurisdiction laid down by the Brussels Convention,²⁹ bring in the courts of the contracting State in which it is established an action for recovery seeking reimbursement of sums paid under public law to a maintenance creditor, to whose rights it is subrogated, against the maintenance debtor domiciled in another contracting State, since that body is not a weaker party in relation to the maintenance debtor.³⁰

38. In another context, the Court, after recalling that ‘no special protection is justified where the parties concerned are professionals in the insurance sector, neither of whom may be presumed to be in a weaker position than the other’,³¹ held that Article 13(2) of Regulation No 1215/2012, read in conjunction with Article 11(1)(b) of that regulation, must be interpreted as meaning that it may not be relied on by a natural person, whose professional activity consists in recovering claims for damages from insurers and who relies on a contract for the assignment of a claim concluded with the victim of a road traffic accident, to bring a civil liability action against the insurer of the person responsible for that accident, which has its registered office in a Member State other than the Member State of the place of domicile of the injured party, before a court of the Member State in which the injured party is domiciled.³² The procedural situation of a party deemed to be weaker is not affected by such a finding since the legal relationship was between two professionals.³³ A case-by-case assessment of the question whether a professional may be considered as a ‘weaker party’ in order to be covered by the definition of ‘injured party’, within the meaning of Article 13(2) of Regulation No 1215/2012, giving rise to the risk of legal uncertainty, would be contrary to the objective of that regulation.³⁴

39. In a second line of case-law, the Court, in the judgment in *MMA IARD*, ruled on the question whether Article 9(1)(b) of Regulation No 44/2001, read together with Article 11(2) thereof, was to be interpreted as meaning that an employer, which has continued to pay the salary of its employee, injured in a road traffic accident, while the latter was unavailable for work, may sue the civil-liability insurer of the vehicle that caused the accident before the courts of the Member State in which the employer is established, where a direct action is permitted.

²⁶ See the judgment in *Vorarlberger Gebietskrankenkasse* (paragraph 42).

²⁷ See the judgment in *Vorarlberger Gebietskrankenkasse* (paragraph 44). The Court then specifically referred to the case of the heirs of the person injured.

²⁸ C-433/01, EU:C:2004:21. Since the public body’s action was governed by civil law, the main proceedings fell within the concept of ‘civil matters’ within the meaning of the first paragraph of Article 1 of the Brussels Convention (see paragraph 21 of that judgment).

²⁹ On the uniformity of interpretation between the Brussels Convention, Regulation No 44/2001 and Regulation No 1215/2012, see footnote 16 of the present Opinion.

³⁰ See the judgment in *Vorarlberger Gebietskrankenkasse* (paragraph 46 and the case-law cited).

³¹ See judgment of 31 January 2018, *Hofsoe* (C-106/17, EU:C:2018:50, paragraph 42).

³² See judgment of 31 January 2018, *Hofsoe* (C-106/17, EU:C:2018:50, paragraph 47).

³³ See judgment of 31 January 2018, *Hofsoe* (C-106/17, EU:C:2018:50, paragraph 44)).

³⁴ See judgment of 31 January 2018, *Hofsoe* (C-106/17, EU:C:2018:50, paragraph 45).

40. The Court held that ‘an employer, established in one Member State, which continued to pay the salary of its employee absent as the result of a road traffic accident and to which have passed the employee’s rights with regard to the company insuring the civil liability resulting from the vehicle involved in that accident, which is established in a second Member State, may, in the capacity of “injured party”, within the meaning of [Article 11(2) of Regulation No 44/2001], sue the insurance company before the courts of the first Member State, where a direct action is permitted’.³⁵

41. In reaching that conclusion, the Court, first of all, pointed out that a matter relating to insurance is characterised by a certain *imbalance* between the parties and that the provisions of Section 3 of Chapter II of Regulation No 44/2001, concerning jurisdiction in that matter, are intended to correct that imbalance by enabling the weaker party to benefit from rules of jurisdiction more favourable to his or her interests than the general rules provide for.³⁶

42. It next examined the question whether an employer who is subrogated to the rights of the directly injured party falls within the concept of ‘injured party’ within the meaning of Article 11(2) of Regulation No 44/2001.³⁷ After noting that Article 9(1)(b) of that regulation covers, in essence, persons having suffered damage without necessarily having suffered it directly,³⁸ the Court lastly stated that ‘a case-by-case assessment of the question whether an employer which continues to pay the salary may be regarded as the economically weaker party in order to be covered by the definition of “injured party” within the meaning of Article 11(2) of Regulation No 44/2001, would give rise to the risk of legal uncertainty and would be contrary to the objective of that regulation, laid down in recital 11 thereof, according to which the rules of jurisdiction must be highly predictable’.³⁹

43. The Court thus ruled that ‘employers to which the rights of their employees to compensation have passed may, as persons which have suffered damage and *whatever their size and legal form*, rely on the rules of special jurisdiction laid down in Articles 8 to 10 of that regulation’.⁴⁰ Consequently, an employer to which the rights of the employee injured in a road traffic accident have passed and for whom it continued to pay his or her salary may, as the ‘injured party’, sue the insurer of the vehicle involved in that accident before *the courts of the Member State in which the employer is established*,⁴¹ where a direct action is permitted.⁴²

B. The case of the State as employer

44. In the judgment in *MMA IARD*, the Court adopted a clear position by expressly rejecting the idea of a case-by-case assessment of the position of the employer subrogated to the rights of its employee,⁴³ which may therefore rely, in any event and where it acts in that capacity, on the

³⁵ The judgment in *MMA IARD* (paragraph 39).

³⁶ See the judgment in *MMA IARD* (paragraph 28 and the case-law cited).

³⁷ It is worth recalling here that, on account of differences between the different language versions of that provision, the Court determined its interpretation in its judgment in *Vorarlberger Gebietskrankenkasse*, in which it held that Article 11(2) of Regulation No 44/2001 must be interpreted as referring to the injured party (see paragraphs 25 to 28 of that judgment).

³⁸ See the judgment in *MMA IARD* (paragraph 33 and the case-law cited).

³⁹ The judgment in *MMA IARD* (paragraph 34).

⁴⁰ The judgment in *MMA IARD* (paragraph 35). Emphasis added.

⁴¹ That wording leaves open the question of the specific court before which the action may be brought. It will therefore be necessary to return to that question later in the analysis (see point 59 et seq. of the present Opinion).

⁴² See the judgment in *MMA IARD* (paragraph 37).

⁴³ See the judgment in *MMA IARD* (paragraph 34).

special rules of jurisdiction provided for in matters relating to insurance by Regulation No 44/2001. The rejection of such an assessment has been reiterated in the Court's subsequent case-law.⁴⁴

45. Accordingly, in order to satisfy the objective of a high degree of predictability pursued by the provisions of Regulation No 44/2001, the special rules of jurisdiction laid down for the insurance sector and intended to protect weaker parties may be relied on without that weaker position having to be verified in practice. It is therefore sufficient, in that regard, for those rules to be relied on by persons falling within the personal scope of those provisions, that is to say, by the policyholder, the insured, a beneficiary or the injured party.⁴⁵ That broad formulation of the categories of beneficiaries gives rise to no requirement to verify their actual economic or legal weakness.⁴⁶ Although the insurance company, the defendant in the main proceedings, is right to maintain that derogations from the principle that jurisdiction is generally based on the defendant's domicile must be interpreted strictly, it must nevertheless be noted that, in the present case, it is the exception itself which is broadly formulated.

46. In so ruling, the Court necessarily acknowledged the possibility that those rules might be relied on by an employer who was not in a position of 'weakness' in relation to the insurer, since *neither the size nor the legal form* of the employer can call into question such a possibility.⁴⁷

47. The crux of the present request for a preliminary ruling requires the Court to answer the question whether the solution which it adopted in its judgment in *MMA IARD* is applicable where the employer subrogated to the rights of the person who was injured in the road traffic accident is a *State*, which sues the civil-liability insurer of the driver of the vehicle responsible before its own courts, with a view to obtaining reimbursement of the remuneration paid during the period that its official was unavailable for work.

48. In the light of the elements which I have noted above, I consider that that question must be answered in the affirmative.

49. There are also three further sets of arguments.

50. In the first place, I would point out that the employer in question in the judgment in *MMA IARD* was already a legal person governed by public law, namely an institution running five public hospitals.⁴⁸

⁴⁴ See judgments of 31 January 2018, *Hofsoe* (C-106/17, EU:C:2018:50, paragraph 45); of 27 February 2020, *Balta* (C-803/18, EU:C:2020:123, paragraph 42); of 21 October 2021, *T.B. and D. (Jurisdiction in matters relating to insurance)* (C-393/20, EU:C:2021:871, paragraph 40); and of 27 April 2023, *A1 and A2 (Insurance of a pleasure craft)* (C-352/21, EU:C:2023:344, paragraph 53).

⁴⁵ As I have already stated, the concept of 'injured party', referred to in Article 11(2) of Regulation No 44/2001, has been interpreted by the Court as meaning the injured party. The EU legislature consolidated that interpretation by ceasing to use the term 'injured party' in Article 13(2) of Regulation No 1215/2012, preferring instead the term 'injured party'.

⁴⁶ See, to the same effect, Opinion of Advocate General Bobek in *MMA IARD* (C-340/16, EU:C:2017:396, point 47).

⁴⁷ See the judgment in *MMA IARD* (paragraph 35).

⁴⁸ See the judgment in *MMA IARD* (paragraphs 21 and 25).

51. In the second place, as regards the legislative context, I would note that the provisions of Regulation No 1215/2012 referred to by the referring court in its question referred for a preliminary ruling are *equivalent*⁴⁹ to those interpreted by the Court in the judgment in *MMA IARD* and that the objective of predictability has not lost any of its importance in that regulation.⁵⁰

52. In the third place, in the light of the finding of the Court in paragraph 35 of the judgment in *MMA IARD*, the particular legal nature of the employer (the German State) does not prevent it from relying on the special rules of jurisdiction in matters relating to insurance and from suing the insurer before the German courts. In that judgment, the Court establishes a kind of presumption⁵¹ that, from the moment that the subrogated employer seeks to assert its rights, on that basis, against an insurance company, it will be able to rely on those special rules of jurisdiction provided for by secondary legislation.

53. That approach is based, in my view, on the idea that, in such a situation, the subrogated employer is obliged to bring an action against a defendant which, in its capacity as insurer, is naturally much more experienced than the employer in terms of disputes relating to matters of insurance.⁵² The employer, solely in that capacity, is therefore always deemed to be in a weaker position. This ensures the predictability of the rules of jurisdiction.

54. There is therefore a certain logic in extending the fiction of the almost institutional weakness of the employer, even where that employer is a State acting only as an employer subrogated to the rights of its employee, the injured party. This is the consequence of a choice made by the Court, since it ruled out any case-by-case assessment of the weaker position of the employer.

55. By proposing that the Court maintain a *maximalist* position, I ensure at the same time that all the situations in which an employer is in a genuinely weaker position are actually covered. I therefore share the view expressed by Advocate General Bobek, in his Opinion in *MMA IARD*,⁵³ who ‘all things considered [still thought] that the occasional factual over-inclusion of some entities [was] a more reasonable solution than in practice problematic case-by-case contextual examination of *rapport des forces* of the parties’.⁵⁴ Confirming that it is not necessary to carry out a case-by-case assessment of the position of weakness ensures that the two objectives pursued by Regulation No 1215/2012 are achieved, namely protecting the weaker party and ensuring that the rules of jurisdiction are highly predictable.

56. As regards the argument which the insurance company, the defendant in the main proceedings, claims to be derived from the judgment of 15 January 2004, *Blijdenstein*,⁵⁵ the analogy with the facts of that case seems to me to be limited, since, first, that judgment did not

⁴⁹ See footnote 21 of the present Opinion.

⁵⁰ See, in particular, recital 15 of Regulation No 1215/2012. See also judgments of 27 February 2020, *Balta* (C-803/18, EU:C:2020:123, paragraph 42); of 27 April 2023, *A1 and A2 (Insurance of a pleasure craft)* (C-352/21, EU:C:2023:344, paragraph 53); and of 22 February 2024, *FCA Italy and FPT Industrial* (C-81/23, EU:C:2024:165, paragraph 41).

⁵¹ The Court had already left open the possibility of establishing a presumption in its judgment of 13 July 2000, *Group Josi* (C-412/98, EU:C:2000:399), in which it had held that neither of the two parties to a reinsurance contract concluded between two professionals in that sector could ‘be presumed to be in a weak position compared with the other party to the contract’ (paragraph 66 of that judgment).

⁵² However, the presumption will be *objectively* rebutted where the direct action is brought by a subrogated employer who is a professional in the insurance sector.

⁵³ C-340/16, EU:C:2017:396.

⁵⁴ Opinion of Advocate General Bobek in *MMA IARD* (C-340/16, EU:C:2017:396, point 89).

⁵⁵ C-433/01, EU:C:2004:21. See point 37 of the present Opinion.

concern the autonomous system for the allocation of jurisdiction in insurance matters and, secondly, the nature of the claim was entirely different since, in that judgment, it concerned assistance of a social nature.

57. It therefore follows from my analysis that a Member State which, in its capacity as an employer, has continued to pay the remuneration of one of its officials who is unfit for work as a result of a road traffic accident and which is subrogated to the rights of that official vis-à-vis an insurance company, which is established in another Member State and which insures the civil liability resulting from the vehicle involved in that accident, must be regarded as an ‘injured party’, within the meaning of Article 13(2) of Regulation No 1215/2012, which may rely on the special rules of jurisdiction provided for by that provision, considered in conjunction with Article 11(1)(b) of that regulation, in order to sue that company in an action for an order that the company reimburse the remuneration paid before *that Member States’ own courts*.

58. Once it has been established that the courts of the employing Member State have international jurisdiction, a number of clarifications remain to be made as regards local jurisdiction.

C. Local jurisdiction in the event of subrogation

59. It is apparent from the request for a preliminary ruling that the official injured in the road traffic accident in Spain is domiciled in Munich. She works for the German Patent and Trade Mark Office, which – unless I am mistaken, which it will be for the referring court to ascertain – has its registered office in Munich. The German State brought its action at first instance before the Amtsgericht München (Local Court, Munich). It would appear that that court has local jurisdiction, whether based on the injured party’s domicile or based on the place where the employer’s ‘registered office’ is located.

60. In those circumstances, the following arguments are not immediately necessary for the referring court to resolve the dispute before it.

61. Nevertheless, I have two reasons for taking this analysis further.

62. On the one hand, the referring court and the interested parties which participated in the written procedure before the Court have identified in a variety of ways ‘the’ court having local jurisdiction. Accordingly, the wording of the question referred for a preliminary ruling refers to the possibility for the State as the subrogated employer to sue the insurance company *before the courts for the place where the official who is unfit for work is domiciled*. The German State submitted, in its written observations, that the employer subrogated to the rights of its official should be able to bring proceedings before precisely the same court as that which that official could have initially brought proceedings under Article 13(2), read in conjunction with Article 11(1)(b), of Regulation No 1215/2012, and bring its action before *the courts for the place where its official is domiciled*. The insurance company objected, first of all, to the possibility that it might be sued before *the courts for the registered office of the administrative authority* before ultimately referring to the *courts for the place where the official is domiciled*.⁵⁶ The Spanish Government merely referred to *courts ‘other than that for the place where the claimant is domiciled’*.⁵⁷ The Commission provided the Court with a more detailed analysis and proposed

⁵⁶ See, for comparison, paragraphs 1.1 and 3 of the written observations of the defendant in the main proceedings.

⁵⁷ Emphasis added.

the following distinction. If the employer is to be regarded as an ‘injured party’ within the meaning of Article 13(2) of Regulation No 1215/2012, it is the courts for the place where the employer is domiciled which have jurisdiction. If the employer is merely subrogated to the rights of its employee, who is the injured party, it is the courts for the place where that employee is domiciled which have jurisdiction to hear the direct action brought. For the purposes of resolving the dispute in the main proceedings, the Commission submits that the Member State as subrogated employer may sue the insurance company *before the courts for the place where the official who is unfit for work is domiciled*, where a direct action is permitted.

63. On the other hand, in the judgment in *MMA IARD*, the Court, in referring only generally to the courts of the Member State in which the employer is established,⁵⁸ ruled only on the question of international jurisdiction.

64. As a preliminary point, I would therefore recall that, although the delimitation of the court’s jurisdiction within which the place where the claimant is domiciled, within the meaning of Article 11(1)(b) of Regulation No 1215/2012, falls, in principle, within the organisational competence of the Member State to which that court belongs,⁵⁹ the Court has recognised that that provision ‘is intended to designate a specific court within a Member State directly, without reference to the rules of allocation of local jurisdiction in force in that Member State, and thus to determine not only international jurisdiction but also local jurisdiction, in the cases where that provision applies’.⁶⁰

65. That said, I consider that the Commission’s argument should be rejected from the outset. The Court has already very clearly ruled that a subrogated employer is itself an ‘injured party’ within the meaning of Article 13(2) of Regulation No 1215/2012.⁶¹ That subrogated employer, which falls within the scope of that provision, may therefore be covered by the rule set out in Article 11(1)(b) of that regulation, according to which, in its capacity as claimant, it may sue the insurer *in the courts for the place where it is domiciled*. A literal interpretation of those two provisions is sufficient, in my view, to reach that conclusion.

66. I also disagree with the Commission’s argument that the rights of the subrogated entity are not autonomous rights and therefore do not give rise to rights on the part of the subrogated entity, in terms of jurisdiction, which are independent of the rights of the directly injured party. The subrogated employer alone can rely on rights arising from subrogation. The inclusion of that employer in the category of beneficiaries of the special rules of jurisdiction in matters relating to insurance in its capacity as ‘injured party’ is, moreover, based on the idea of the recognition of its own injury. Understood in that way, I therefore find it difficult to identify any risk of a multiplicity of fora resulting from subrogation.

67. Moreover, although the relocation of the action from one Member State to another is already, in itself, an inconvenience for the defendant, I doubt that that inconvenience will be accentuated by the fact that one court rather than another within the same Member State must hear and determine the action. In other words, once the *forum actoris* has been determined, it seems to

⁵⁸ See the judgment in *MMA IARD* (paragraphs 26, 30, 36, 37, 39 and 40).

⁵⁹ See judgment of 30 June 2022, *Allianz Elementar Versicherung* (C-652/20, EU:C:2022:514, paragraph 56 and the case-law cited).

⁶⁰ Judgment of 30 June 2022, *Allianz Elementar Versicherung* (C-652/20, EU:C:2022:514, paragraph 38).

⁶¹ See, with respect to Article 11(2) of Regulation No 44/2001, the judgment in *MMA IARD* (paragraph 31 et seq.). The subrogated employer is expressly recognised as having the capacity of ‘injured party’ (see paragraphs 37 to 39 of that judgment).

me to be fairly neutral, from the defendant's point of view, whether the legal action is brought before the courts for the place where the employee is domiciled or before the courts for the registered office of the employer.

68. It follows from the foregoing that, in order for the rules enshrined in Articles 11 and 13 of Regulation No 1215/2012 to be genuinely *special* and in order for them to perform their protective function to the full, it is necessary to draw the conclusion that an employer subrogated to the rights of its employee injured in a road traffic accident must be able to bring its action against an insurance company in the courts for the place where that employer is domiciled or has its registered office.⁶²

69. It is also in this sense that it is necessary to understand the judgment in *MMA IARD*, in which the Court repeatedly refers to the courts of the Member State in which the subrogated employer is *established*.⁶³ By contrast, the criterion of the courts for the place where the employee is domiciled is notably absent from the Court's reasoning.⁶⁴

70. It therefore follows from Article 13(2), read in conjunction with Article 11(1)(b), of Regulation No 1215/2012 that a direct action brought by an employer subrogated to the rights of its employee against an insurance company established in another Member State must be brought in the courts for the place where that employer is established.

71. The question then arises as to how to determine that place when the employer is a State. As is the case in the main proceedings, the State as employer perceives its particular functions through the prism of its administrative organisation.

72. The fact that the official carried out her activities in Munich does not mean that the State as employer must be regarded as being established in Munich. The criterion of the place of the activities of the 'employee' is irrelevant to the question of determining the place where the employer is located.⁶⁵ Moreover, in accordance with the requirements of Article 63(1) of Regulation No 1215/2012, a legal person is domiciled at the place where it has its statutory seat, central administration or principal place of business.⁶⁶

73. However, although the State as employer brings a direct action against the insurance company, it does so under a statutory subrogation which makes it the creditor of an obligation on account of the payment, by one of its bodies, of the remuneration of its official during the latter's unavailability for work.

74. In such a situation, and in the interests of achieving both the objective of predictability of the rules of jurisdiction and the objective of legal certainty,⁶⁷ I therefore propose that the Court find that the State as employer, subrogated to the rights of its official, may sue the insurance company in the courts for the place of establishment of the administrative body which employs the official

⁶² See, to the same effect, judgment of 13 December 2007, *FBTO Schadeverzekeringen* (C-463/06, EU:C:2007:792, paragraph 28).

⁶³ See the judgment in *MMA IARD* (paragraphs 30, 36, 37, 39 and 40).

⁶⁴ The only information provided by the judgment in *MMA IARD* concerning the employee's domicile is that it was in Austria (see paragraph 15 of that judgment).

⁶⁵ The criterion adopted, following a combined reading of Article 11(1)(b) and Article 13(2) of Regulation No 1215/2012, is indeed that of the domicile of the subrogated employer as the injured party, and not the criterion of the place where the injured person works.

⁶⁶ The domicile of companies and legal persons is determined, in the absence of any reference to the laws of the Member States, according to an autonomous interpretation of EU law (see judgment of 14 September 2023, *Club La Costa and Others* (C-821/21, EU:C:2023:672, paragraph 60).

⁶⁷ See judgment of 30 June 2022, *Allianz Elementar Versicherung* (C-652/20, EU:C:2022:514, paragraph 54).

and which continued to pay remuneration during the official's unavailability for work. Subrogation operates only because remuneration was paid to the official, and it is because that body ensured payment of the remuneration during the official's absence following the accident that the employer is regarded as having been injured.

75. For all the foregoing reasons, I am of the opinion that Article 13(2) of Regulation No 1215/2012, read in conjunction with Article 11(1)(b) of that regulation, must be interpreted as meaning that a Member State, acting in its capacity as the employer to which the rights of the official injured in a road traffic accident have passed and for whom it continued to pay his or her salary may, as the 'injured party', sue the company insuring the civil liability resulting from the vehicle involved in that accident, which is established in another Member State, in the courts for the place where the administrative body employing that official has its registered office.

V. Conclusion

76. In the light of all the foregoing considerations, I propose that the Court answer the question referred for a preliminary ruling by the Landgericht München I (Regional Court, Munich I, Germany) as follows:

Article 13(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, read in conjunction with Article 11(1)(b) of that regulation,

must be interpreted as meaning that a Member State, acting in its capacity as the employer to which the rights of the official injured in a road traffic accident have passed and for whom it continued to pay his or her salary may, as the 'injured party', sue the company insuring the civil liability resulting from the vehicle involved in that accident, which is established in another Member State, in the courts for the place where the administrative body employing that official has its registered office.