



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

27 February 2020 *

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Article 15, point 5 and Article 16, point 5 — Insurance of ‘large risks’ — Jurisdiction clause agreed upon by the policyholder and the insurer — Whether that clause may be relied on against the insured person)

In Case C–803/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos Aukščiausiasis Teismas (Supreme Court, Lithuania), made by decision of 7 December 2018, received at the Court on 20 December 2018, in the proceedings

AAS ‘Balta’

v

UAB ‘Grifs AG’,

THE COURT (Sixth Chamber),

composed of M. Safjan (Rapporteur), President of the Chamber, L. Bay Larsen and N. Jääskinen, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- AAS ‘Balta’, by S. Drazdauskas, advokatas,
- UAB ‘Grifs AG’, by J. Milašauskienė, A. Bosaitė, M. Inta, and G. Abromavičius, advokatai,
- the Lithuanian Government, by K. Dieninis and by R. Butvydytė and G. Taluntytė, acting as Agents,
- the European Commission, by M. Heller and A. Steiblytė, acting as Agents,

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

* Language of the case: Lithuanian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 15, point 5, and Article 16, point 5, 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 (OJ 2012 L 351, p. 1).
- 2 The request was made in the context of proceedings between AAS ‘Balta’, an insurance company established in Latvia, and UAB ‘Grifs AG’ (‘Grifs’), a security company registered in Lithuania, relating to the payment of an insurance claim.

Legal context

Regulation No 1215/2012

- 3 Under recitals 15, 18 and 19 of Regulation No 1215/2012:

‘(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant’s domicile. ...

...

(18) In relation to insurance, consumer contracts and employment, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for.

(19) The autonomy of the parties to a contract, other than an insurance, consumer or employment contract, where only limited autonomy to determine the courts having jurisdiction is allowed, should be respected subject to the exclusive grounds of jurisdiction laid down in this regulation.’
- 4 Article 4(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 Pursuant to Article 5(1) of that regulation:

‘Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.’
- 6 The rules of jurisdiction in insurance matters, which are the subject of Section 3 of Chapter II of Regulation No 1215/2012, are set out in Articles 10 to 16 thereof.
- 7 Article 10 of that regulation is worded 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)(b) of Regulation No 1215/2012 provides that an insurer domiciled in a Member State may be sued 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 12 of that regulation provides:

‘In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.’

10 Article 15 of that regulation provides:

‘The provisions of this section may be departed from only by an agreement:

...

- (3) which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that Member State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that Member State;
- (4) which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State; or
- (5) which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 16.’

11 Article 16 of that regulation provides:

‘The following are the risks referred to in point 5 of Article 15:

...

- (5) notwithstanding points 1 to 4, all “large risks” as defined in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) [(OJ 2009 L 335, p. 1)].’

12 Article 25(1) of Regulation No 1215/2012 is worded as follows:

‘If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:

- (a) in writing or evidenced in writing;
- (b) in a form which accords with practices which the parties have established between themselves; or
- (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.’

13 Article 63(1) of that regulation provides:

‘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.’

Directive 2009/138

14 Article 13(27) of Directive 2009/138, as amended by Directive 2013/58/EU of the European Parliament and of the Council of 11 December 2013 (OJ 2013 L 341, p. 1) (‘Directive 2009/138’), defines the concept of ‘large risks’ for the purposes of that directive.

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

15 Grifs provides security services. ‘Grifs AG’ SIA, registered in Latvia, owns Grifs and holds all of the shares in that company. On 31 July 2012, Grifs AG and Balta entered into a general civil-liability insurance contract (‘the insurance contract’), which also covered the civil liability of Grifs.

16 The general conditions of the insurance contract state that all disputes relating to that contract are to be settled by negotiation and that, if the parties are unable to reach agreement, the dispute is to be decided by Latvian courts, in accordance with the legislation in force in the Republic of Latvia.

17 On 21 August 2012, a theft of jewellery and cash was committed in a jewellery store belonging to UAB ‘Jaunystės romantika’ in Alytus (Lithuania), for which Grifs provided security under a contract for the supply of security services. Having brought an action before the Lithuanian courts in order to obtain compensation for the losses suffered as a result of the theft, Jaunystės romantika and its insurer, namely ERGO Insurance SE, obtained an award for the payment of damages and reimbursement of costs. It was found that Grifs was grossly negligent and that there was a direct causal link between the loss suffered and inaction on the part of Grifs.

18 Once those proceedings had been concluded, Grifs brought an action before the Vilniaus apygardos teismas (Regional Court, Vilnius, Lithuania), seeking an order that Balta be ordered to pay, on the basis of the insurance contract, the sum of EUR 114 941.58 by way of insurance compensation, together with interest, and to pay the costs. By judgment of 21 November 2017, the Vilniaus apygardos teismas (Regional Court, Vilnius) declared that it did not have jurisdiction to hear that action, noting that, according to the general terms and conditions of the insurance contract, all disputes concerning the insurance contract were to be decided by Latvian courts in accordance with Latvian law. Moreover, since the company which concluded the insurance contract, namely Grifs AG, is the owner of Grifs, the Vilniaus apygardos teismas (Regional Court, Vilnius) considered that there was no doubt that Grifs had consented, even if only expressed indirectly, to all the provisions of the contract, including those relating to jurisdiction.

19 Since Grifs appealed against that ruling, the Lietuvos apeliacinis teismas (Court of Appeal of Lithuania), by judgment of 29 March 2018, set aside the ruling and referred the case back to the Vilniaus apygardos teismas (Regional Court, Vilnius) for a fresh decision on the admissibility of the action brought by Grifs.

- 20 In its judgment, the Lietuvos apeliacinis teismas (Court of Appeal of Lithuania) found that the fact that the parties to the insurance contract had agreed that disputes arising out of that contract would be decided by Latvian courts in accordance with the laws in force in Latvia did not oblige Grifs to bring its action exclusively before a Latvian court. That company had the status of ‘insured party’ under an insurance contract and was entitled, in that capacity, to opt for another ground of jurisdiction provided for in Article 11 of Regulation No 1215/2012.
- 21 Balta brought an appeal on a point of law before the referring court, the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), against the judgment of 29 March 2018 of the Lietuvos apeliacinis teismas (Court of Appeal of Lithuania).
- 22 The referring court is unsure whether the considerations set out by the Court in the judgment of 12 May 2005, *Société financière et industrielle du Peloux* (C-112/03, EU:C:2005:280), relating to the legal protection of the economically weaker entities, are relevant where insurance covers a ‘large risk’, in particular in the light of the judgment of 13 July 2017, *Assens Havn* (C-368/16, EU:C:2017:546).
- 23 In that regard, the referring court states, first, that, as long as the insured activity satisfies the criteria of ‘large risks’ within the meaning of Article 16, point 5, of Regulation No 1215/2012, it should, in principle, be presumed that the parties to the insurance relationship are economically capable and may depart from the provisions relating to jurisdiction in Section 3 of Chapter II of that regulation. Second, the referring court notes that the policyholder’s specific nature does not always reflect the situation and economic capacity of the insured party. In that case, there may therefore be a need to ensure a proper balance between the rights and responsibilities of the parties to the insurance relationship. However, the line between contractual autonomy and the need to protect the weaker party is not perfectly clear.
- 24 In those circumstances, the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:
- ‘Must [Article 15, point 5, and Article 16, point 5] of Regulation [No 1215/2012] be construed as meaning that, in the case of large-risk insurance, an agreement conferring jurisdiction included in the insurance contract concluded between the policyholder and the insurer may be relied on against a [party] insured under that contract who has not expressly subscribed to that clause and who is habitually resident or established in a [Member State other than that in which] the policyholder and the insurer [are domiciled]?’

Consideration of the question referred

- 25 By its question, the referring court asks, in essence, whether Article 15, point 5, and Article 16, point 5, of Regulation No 1215/2012 must be interpreted as meaning that the jurisdiction clause in an insurance contract covering a ‘large risk’, within the meaning of the latter provision, concluded by the policyholder and the insurer, may be relied on against the party insured under that contract, who is not an insurance professional, who has not consented to that clause and who is domiciled in a Member State other than that in which the policyholder and the insurer are domiciled.
- 26 In that respect, it must be borne in mind that, since Articles 15 and 16 of Regulation No 1215/2012 repeat the wording of Articles 13 and 14 respectively 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), the interpretation given by the Court with regard to those provisions of that latter regulation remains valid for the equivalent provisions of Regulation No 1215/2012 (see, by analogy, judgment of 31 January 2018, *Hofsoe*, C-106/17, EU:C:2018:50, paragraph 36).

- 27 It is common ground that Section 3 of Chapter II of Regulation No 1215/2012 lays down special rules of jurisdiction in insurance matters, intended to protect the weaker party to the contract by rules which are more favourable to his or her interests than the general rules, as is stated in recital 18 of that regulation (judgment of 31 January 2018, *Hofsoe*, C-106/17, EU:C:2018:50, paragraph 39 and the case-law cited).
- 28 Thus, first, Article 11(1)(b) of Regulation No 1215/2012 provides that an insurer domiciled in a Member State may be sued in another Member State in which the claimant is domiciled in the case of actions brought by the policyholder, the insured or a beneficiary. Second, Article 12 of that regulation provides that, in respect of liability insurance or insurance of immovable property, the insurer may also be sued in the courts for the place where the harmful event occurred. Those rules ensure that a weaker party who intends to bring an action against a stronger party can do so before a court of a Member State which is easily accessible.
- 29 Nevertheless, in certain cases, Regulation No 1215/2012 makes it possible to depart from the rules on jurisdiction in insurance matters by agreement; in particular, pursuant to Article 15, point 5, of that regulation, by an agreement which relates to a contract of insurance inasmuch as it covers one or more of the risks set out in Article 16 thereof.
- 30 In the present case, the referring court specifies that the insurance contract at issue in the main proceedings covers ‘large risks’, provided for in Article 16, point 5, of Regulation No 1215/2012, which refers to Directive No 2009/138, which defines, in Article 13, point 27, thereof, the concept of ‘large risks’ and establishes certain categories of risks falling within that concept.
- 31 In that context, it is necessary to examine whether a jurisdiction clause in such a contract may bind the third party insured, who is not a party to that contract and who has not subscribed to the terms of that contract.
- 32 In order to ascertain whether the insured may, as a third party to an insurance contract covering a ‘large risk’, be bound by a jurisdiction clause providing that only the courts for the place where the insurance company is domiciled have jurisdiction, reference must be made to the wording of Article 15, point 5, of Regulation No 1215/2012 and to the scheme of the rules which that regulation lays down in respect of insurance, the origin of those rules and the objectives underlying them.
- 33 As regards, first, the wording of Article 15, point 5, of Regulation No 1215/2012, the view may indeed be taken, in so far as that paragraph refers only to agreements concerning an insurance contract and not, unlike Article 15, points 3 and 4, to the parties to the agreement, that, where a valid jurisdiction clause is stipulated in an insurance contract covering a ‘large risk’, it may be relied on, by any person wishing to exercise his rights under that contract, also against the third party insured.
- 34 That difference in wording between Article 15, point 5, and the other paragraphs of that article of Regulation No 1215/2012 is explained by the origins of that article. As is apparent from paragraph 140 of the report by Mr P. Schlosser on the Convention on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and the Protocol on its interpretation by the Court of Justice (OJ 1979 C 59, p. 71), with a view to supplementing the latter convention at the time of the United Kingdom’s accession in 1978 without having to define an abstract and general criterion for delimiting the situations in which clauses conferring jurisdiction would be admissible, it was decided to draw up a list of insurance contracts to which the admissibility of such clauses should be extended. However, as is apparent from that paragraph of that report, such an addition was in no way intended to make such jurisdiction clauses enforceable against third parties.

- 35 Second, as regards the scheme of the provisions of Section 3 of Chapter II of Regulation No 1215/2012, it must be borne in mind that Regulation No 44/2001 extended the list of parties which may bring an action against the insurer before a court by also including the insured persons in Article 9(1)(b) of the latter regulation, which became Article 11(1)(b) of Regulation No 1215/2012, without making any distinction on the basis of the type of risks insured. The protection thus conferred on insured parties would, however, be ineffective if, in the case of insurance contracts relating to ‘large risks’, the competent court were to be determined on the basis of a jurisdiction clause to which the insured had not subscribed.
- 36 Third, as regards the objectives underlying Section 3 of Chapter II of Regulation No 1215/2012, the Court has previously held that, where an insurance contract is concluded for the benefit of a third party, a jurisdiction clause inserted in that contract, to which that party has not subscribed, can be relied on against that third party, in the event of a dispute arising from that contract, only if it does not undermine the objective of protecting the economically weaker party (judgment of 12 May 2005, *Société financière et industrielle du Peloux*, C-112/03, EU:C:2005:280, paragraph 38).
- 37 Thus, the Court has also stated that, in matters relating to insurance, the prorogation of jurisdiction remained strictly circumscribed by the aim of protecting the economically weaker party (judgment of 13 July 2017, *Assens Havn*, C-368/16, EU:C:2017:546, paragraph 36).
- 38 That being so, it is necessary to examine whether that consideration applies in the same way in the field of insurance contracts covering a ‘large risk’, where the insured parties, like the insurers and the policyholders, may enjoy considerable economic power.
- 39 In that regard, it is common ground that the EU legislature has, in view of their economic power, empowered the policyholder and the insurer to choose the competent court, including by way of derogation from the protective rules of jurisdiction laid down in Section 3 of Chapter II of Regulation No 1215/2012. As is apparent from the report by Mr P. Schlosser, referred to in paragraph 34 of the present judgment, the possibility given to the parties to depart from the general rules on jurisdiction in the context of contracts which subsequently become insurance contracts covering a ‘large risk’ was intended to take account of the fact that, since the companies concerned were powerful undertakings, the parties to the insurance contract were on an equal footing and additional protection for the weaker party was not justified.
- 40 However, it cannot be inferred from that finding that the economic power of the insured and that of the insurers and policyholders is the same or similar. Consequently, the question whether a third party to an insurance contract covering a ‘large risk’ can be regarded as the economically weaker party does not depend solely on whether the insurance contract concluded between the parties falls within the category of insurance contracts covering a ‘large risk’.
- 41 It must therefore be held that the option to depart from the general rules of jurisdiction in insurance contracts covering a ‘large risk’ applies only in relations between the contracting parties and cannot, as a general rule, be extended to the third party insured.
- 42 In that respect, the Court has previously pointed out that a case-by-case assessment of whether a party may be regarded as the economically weaker party would give rise to the risk of legal uncertainty and would be contrary to the objective of Regulation No 1215/2012, set out in recital 15 thereof, which is that the rules of jurisdiction must be highly predictable (see, to that effect, judgment of 20 July 2017, *MMA IARD*, C-340/16, EU:C:2017:576, paragraph 34).

- 43 That finding is all the more valid in the field of insurance contracts covering a ‘large risk’. As the referring court is correct to point out, Article 13, point 27, of Directive 2009/138 lays down a number of criteria which must be assessed jointly and which are not always applied systematically. That assessment may require extensive and potentially complex checks, which would run counter to the intention of making the rules of jurisdiction predictable.
- 44 That being said, it is settled case-law that the aim of protection underlying Section 3 of Chapter II of Regulation No 1215/2012 requires that the application of the special rules of jurisdiction laid down in those provisions are not to be extended to persons for whom that protection is not justified (see, to that effect, judgment of 31 January 2018, *Hofsoe*, C-106/17, EU:C:2018:50, paragraph 41 and the case-law cited).
- 45 Although it follows that no special protection is justified where the parties concerned are insurance professionals, neither of which may be presumed to be in a weaker position than the other (judgment of 31 January 2018, *Hofsoe*, C-106/17, EU:C:2018:50, paragraph 42 and the case-law cited), it is common ground that, in the present case, the third party insured, namely Grifs, is not an insurance professional.
- 46 In those circumstances, the answer to the question referred is that Article 15, point 5, and Article 16, point 5, of Regulation No 1215/2012 must be interpreted as meaning that the jurisdiction clause in an insurance contract covering a ‘large risk’, within the meaning of the latter provision, concluded by the policyholder and the insurer, may not be relied on against the party insured under that contract, who is not an insurance professional, who has not consented to that clause and who is domiciled in a Member State other than that in which the policyholder and the insurer are domiciled.

Costs

- 47 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 (Sixth Chamber) hereby rules:

Article 15, point 5, and Article 16, point 5, 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 must be interpreted as meaning that the jurisdiction clause in an insurance contract covering a ‘large risk’, within the meaning of the latter provision, concluded by the policyholder and the insurer, may not be relied on against the party insured under that contract, who is not an insurance professional, who has not consented to that clause and who is domiciled in a Member State other than that in which the policyholder and the insurer are domiciled.

[Signatures]