

Case C-913/19**Request for a preliminary ruling****Date lodged:**

13 December 2019

Referring court:

Sąd Rejonowy w Białymstoku (Poland)

Date of issue of the decision to refer:

18 November 2019

Applicant:

CNP spółka z ograniczoną odpowiedzialnością

Defendant:

Gefion Insurance A/S [...] (Denmark)

[...]

DECISION

On 18 November 2019

the Sąd Rejonowy w Białymstoku VIII Wydział Gospodarczy (District Court in Białystok, 8th Commercial Chamber) [...]

[...] [composition of the chamber]

having examined on 18 November 2019 in Białystok

during an *in camera* hearing

the case brought by CNP, a limited liability company,

against Gefion Insurance A/S (Denmark)

concerning payment

has decided:

I. to refer the following questions to the Court of Justice of the European Union pursuant to the second paragraph of Article 267 TFEU:

- (1) **Should Article 13(2), in conjunction with Article 10, 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* be interpreted as meaning that, in a dispute between a trader and an insurance company, the former having acquired from an injured party a claim arising from civil liability insurance against that insurance company, the establishment of court jurisdiction on the basis of Article 7(2) or Article 7(5) of the regulation is not precluded?**
- (2) **If Question 1 is answered in the affirmative, should Article 7(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* be interpreted as meaning that a commercial company operating in a Member State which adjusts losses under compulsory insurance against civil liability in respect of the use of motor vehicles [Or. 1] pursuant to a contract with an insurance undertaking established in another Member State is a branch, agency or other establishment of that insurance undertaking?**
- (3) **If Question 1 is answered in the affirmative, should Article 7(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* be interpreted as meaning that it constitutes an independent basis for the jurisdiction of the court of the Member State in which the harmful event occurred, before which court the creditor who has acquired the claim from the injured party under compulsory insurance against civil liability brings an action against an insurance undertaking established in another Member State?**

II. to stay the proceedings pursuant to Article 177(1).31 of the Kodeks Postępowania Cywilnego (Code of Civil Procedure) until the conclusion of the proceedings before the Court of Justice of the European Union.

Grounds

Facts of the case

1. On 28 February 2018, a road collision occurred involving a vehicle owned by the injured party A.M. and a vehicle owned by the party responsible for the damage, who at that time was insured against civil liability in respect of the use of motor vehicles under a contract concluded with Gefion Insurance A/S.

2. On 1 March 2018, for the duration of the vehicle repair period, the injured party concluded a contract with an automobile repair workshop (registered as a general partnership) under which she rented a replacement vehicle in return for payment. On that same day, as settlement of the rental arrangement, the injured party assigned to the automobile repair workshop the future claim against the defendant for the reimbursement of rental costs. On 7 June 2018, after the end of the rental period, the automobile repair workshop issued a VAT invoice for the service. **[Or. 2]**
3. On 25 June 2018, the applicant, by way of a fiduciary assignment of claims, acquired from the automobile repair workshop the right to claim from the defendant the amount due as reimbursement of the costs of renting the replacement vehicle.
4. By letter of 25 June 2018, the applicant requested the defendant to pay the rental amount arising from the invoice. The request for payment was sent to Polins, a limited liability company with its seat in Żychlin, which represents the interests of the defendant as a foreign insurance undertaking in Poland.
5. The loss adjustment was dealt with by Crawford Polska, a limited liability company acting on behalf of the defendant. By a decision of 16 August 2018, Crawford Polska granted part of the requested amount of reimbursement of the rental cost. According to that decision, the rental invoice was partially validated by it 'acting for and on behalf of Gefion Insurance A/S'. The final part of the decision stated that a complaint could be lodged with Crawford Polska sp. z o.o. as the entity authorised by the insurance undertaking.
6. The decision concerning the claim also stated that an action against Gefion Insurance A/S could be brought 'either pursuant to provisions on general jurisdiction or before a court competent for the place of residence or seat of the policyholder, insured party, beneficiary or another person entitled under the insurance contract'.
7. On 20 August 2018, the applicant brought an action before a Polish court. In support of that court's jurisdiction, the applicant referred to the information made public by the defendant that its main representative in Poland was Polins sp. z o.o. with its seat in Żychlin. The applicant requested that documents intended for the defendant be served at the address of Polins sp. z o.o.
8. On 11 December 2018, an order for payment was issued, which was served at the address of Polins sp. z o.o. together with the statement of claim. **[Or. 3]**
9. In a first written pleading (a statement of opposition to the order for payment), the defendant contended that the claim should be rejected due to the lack of jurisdiction of the Polish court. The defendant cited Article 5(1) 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* ('the regulation') as the provision

applicable to jurisdiction. The defendant argued that the applicant was not a policyholder, insured party or beneficiary, but merely a professional entity purchasing claims under insurance contracts and thus did not have the capacity to bring actions before a court in a Member State other than that of the insurer's seat.

10. In support of its motion that the claim should be rejected, the defendant relied on the judgment of the Court of Justice of the European Union of 31 January 2018 in Case C-106/17 [*Hofsoe*, EU:C:2018:50]. The defendant pointed to the protective function of Article 13(2) of Regulation No 1215/2012 and, in line with what the Court of Justice had held, reiterated that a person whose professional activity consists in recovering claims for damages from insurers as a contractual assignee of those claims cannot benefit from the special protection afforded by the *forum actoris*.
11. In the further part of its statement of opposition, the defendant also referred to the content of the statement of claim.
12. The legal counsel representing the defendant stated that her authorisation to act on behalf of the defendant derived from the power of attorney granted to her by Crawford Polska sp. z o.o., acting on behalf of the defendant. She also submitted a power of attorney of 31 May 2016 granted by authorised members of the management board of Gefion Insurance A/S to Crawford Polska sp. z o.o. The aforementioned power of attorney includes the 'comprehensive handling of claims' as well as 'the representation of Gefion in all proceedings [...] before the courts and other public authorities'.
13. Referring to the motion that the claim should be rejected due to lack of jurisdiction, the applicant pointed out that the defendant is entered in the list of insurance undertakings from EU/EFTA Member States notified in Poland [**Or. 4**] and subject to supervision by the Komisja Nadzoru Finansowego (Polish Financial Supervision Authority). The defendant sells insurance policies in the territory of Poland and it is, the applicant argues, unacceptable that an automobile repair workshop which accepts a claim assignment from the injured party in settlement of repair costs should not be able to claim reimbursement of those repair costs before the court having jurisdiction for the place where the harmful event occurred and the repairs were carried out. The applicant states that this will result in automobile repair workshops refusing to carry out repairs in cases where the insurer of the party responsible for the damage is Gefion Insurance A/S or in customers having to pay for repairs and seek compensation from the defendant themselves.

Grounds

Statement of and reasons for the request

14. At the outset, it should be noted that, pursuant to Article 3(2) of the Agreement between the European Union and Denmark, Denmark notified the Commission, by letter of 20 December 2012, of its decision to implement the contents of

Regulation (EU) No 1215/2012. This means that 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* is applicable in the present case, in which the defendant is a Danish insurance undertaking.

15. Pursuant to the provisions governing civil procedure, one of the basic obligations of the court during the entire proceedings is to establish its jurisdiction; this is provided for in the first sentence of Article 1099(1) of the Kodeks Postępowania Cywilnego (Code of Civil Procedure). Where a case has been examined by a court lacking jurisdiction, the proceedings are null and void (Article 1099(2) of the Code of Civil Procedure). The parties to the present case are established in different EU Member States. This means that the court has to determine whether it has jurisdiction on the basis 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*. The court thus directly applies European Union law. **[Or. 5]**

This is also justified in the case where a defendant alleges that the court seised lacks jurisdiction.

16. The question of law referred for a preliminary ruling gives rise to differences in the case-law of national courts which issue conflicting judgments in similar circumstances.¹ If this situation persists, it could result in a de facto limitation of the right of access to a court for those who are compelled to bring an action before a court in another Member State. In the event of short limitation periods of three years, this may render ineffective an application seeking damages.

Applicable legislation

17. The defendant relies on the judgment of the Court of Justice of 31 January 2018 in Case C-106/17, [*Hofsoe*, EU:C:2018:50] in which the Court of Justice stated that *Article 13(2) of Regulation No 1215/2012, read in conjunction with*

¹ Order of the Sąd Okręgowy w Szczecinie (Regional Court, Szczecin, Poland) of 16 May 2019, Ref. No VIII Gz 70/19 –

http://orzeczenia.ms.gov.pl/content/jurysdykcja/155515000004027_VIII_Gz_000070_2019_Uz_2019-05-16_001;

Order of the Sąd Okręgowy w Szczecinie of 16 May 2019, Ref. No VIII Gz 52/19 –

http://orzeczenia.ms.gov.pl/content/jurysdykcja/155515000004027_VIII_Gz_000052_2019_Uz_2019-05-16_001;

Order of the Sąd Okręgowy w Toruniu (Regional Court, Toruń, Poland) of 13 June 2019, Ref. No VI Gz 128/19 –

http://orzeczenia.torun.so.gov.pl/content/SN/151025000003027_VI_Gz_000128_2019_Uz_2019-06-13_001.

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, inter alia, 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 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. Without questioning the validity of the above argumentation of the Court of Justice, it should be noted that that judgment concerned circumstances different from those of the present case. The defendant overlooks the fact that it engages [Or. 6] in insurance activity in Poland, which is where the event giving rise to the damage and loss adjustment took place as well. Case C-106/17 concerned a German insurance undertaking which was liable for the damage caused by a German national, and the road traffic incident in question occurred in Germany.

18. The wording of Article 13(2) of the regulation indicates that Articles 10, 11 and 12 apply only to the entities referred to therein, which entities are privileged as regards their ability to bring actions on the basis of different connecting factors. This is confirmed by recital 18 of the regulation. The provisions of Section 3 [of Chapter II: 'Jurisdiction'] are designed so as to apply only to this category of entities. At the same time, Article 10 appears to allow these entities to use the jurisdiction indicated in Article 7(5) as well. The provisions of Section 3 of [Chapter II of] the regulation do not provide for exclusive jurisdiction. They merely introduce a special rule with respect to the general jurisdiction rules set out in the regulation, of benefit to the weaker party to the dispute.
19. In connection with the above regulation, the question arises as to whether in cases relating to insurance claims the provisions of Section 3 preclude the application of Section 2. This is supported by the strong wording of Article 10 and the doubts are exacerbated by the first sentence of Article 12: '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'. As regards civil liability insurance, this provision appears superfluous in the light of Article 7(2) unless we consider that the provisions of Section 3 govern all insurance matters and thus exclude the application of Article 7. In the case of persons who cannot avail themselves of the facilitations indicated in Section 3, this would mean having to sue in accordance with Article 4(1), that is, before the court of the defendant's domicile (seat). This would exclude the bases for jurisdiction arising from Article 7(2) and 7(5).
20. The aforementioned jurisdiction rule in Section 3 is comprehensive when it comes to insurance cases, but only with regard to the category of privileged entities. Thus, the question arises of determining jurisdiction where the case [Or. 7] still concerns insurance (a claim is derived from insurance regulations), but the applicant is not an entity considered to be the weaker party to the legal relationship.

21. If the applicant is a trader who has purchased from the injured party a claim against the insurer under the civil liability insurance of the party responsible for the damage then, in the court's view, the jurisdiction rules set forth in Section 2 of [Chapter II of] the regulation will apply. The title of Section 2 refers to 'special jurisdiction', understood as a list of legal events to which the jurisdiction of the court should be linked when Sections 3 to 7 do not apply. This is why the jurisdiction is 'special' — while it is subordinate to the rules set out in Sections 3 to 7, it takes precedence, in view of the contents of Article 5(1), over the general jurisdiction rule laid down in Article 4(1).
22. Article 7(5) explicitly provides that a person domiciled in a Member State may be sued in another Member State as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated.
23. At the same time, it should be noted that Gefion Insurance A/S operates in Poland and is entered in the register of the Polish Financial Supervision Authority as an insurance company of an EU Member State which has been notified in Poland. While it is not subject to supervision by the Polish Financial Supervision Authority, it is supervised by its counterpart in Denmark (Finanstilsynet). This may mean, and the court agrees with such an interpretation, that it acts in Poland through an 'other establishment' within the meaning of Article 7(5) of the regulation, *a fortiori* as the interests of the defendant in Poland are represented by Crawford Polska sp. z o.o., which conducts loss adjustment.
24. The court notes that the formula adopted by the defendant, which consists in operating in the market of another Member State through two different companies which are not branches, as that term is understood within the meaning of the Kodeks Spółek Handlowych (Commercial Companies Code), may give rise to difficulties in determining the entity responsible for loss adjustment [Or. 8] and in conducting legal proceedings against the insurance undertaking.² Indeed, this has resulted in the lodging of numerous complaints with the Polish Financial Supervision Authority, which have in turn triggered an inspection by Finanstilsynet, and this has revealed numerous irregularities.³
25. In interpreting the terms 'branch', 'agency' and 'other establishment', the Court of Justice has indicated two criteria for determining whether an action relating to the activities of such an establishment is related to a Member State. Firstly, these

² Request for a preliminary ruling submitted by the Sąd Okręgowy w Poznaniu (Regional Court, Poznań, Poland) on 15 January 2019 — Corporis Sp. z o.o., with its seat in Bielsko-Biała v Gefion Insurance A/S, with its seat in Copenhagen — Case C-25/19 (2019/C 164/12): 'Should Article 152(1) and (2), in conjunction with Article 151, of Directive 2009/138/EC and recital 8 of Regulation No 1393/2007 be interpreted as meaning that the representation of a non-life insurance undertaking by an appointed representative includes the receipt of a document which initiates court proceedings for damages in respect of a road traffic accident?'

³ <https://www.finanstilsynet.dk/TilsyniVurderinger-af-finansielle-virksomheder/2019/Gefion110719/Engelsk-version>

concepts imply a place of business which has the appearance of permanency, such as the extension of a parent body. It must have a management and be materially equipped to negotiate business with third parties so that the latter do not have to deal directly with the parent body (judgment of 18 March 1981 in *Blanckaert & Willems*, Case 139/80 [1981] ECR 819, [EU:C:1981:70] paragraph 11). Secondly, the dispute must concern the acts relating to the management of those entities or commitments entered into by them on behalf of the parent body, if those commitments are to be performed in the State in which the entities are situated (judgment of 22 November 1978 in *Somafer*, Case 33/78 [1978] ECR 2183, [EU:C:1978:205] paragraph 13).

26. In the view of the referring court, these conditions are met by the company to which the defendant commissioned the loss adjustment. It is an independent legal entity (legal person) and is fully competent to act with legal effect for the insurance undertaking.
27. Moreover, a situation in which a foreign entity conducting business activity (here, specifically, the business of insurance) in one of the EU Member States could not be sued before a court in that **[Or. 9]** Member State would also be incompatible with the objectives of the regulation. Recital 76 of 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)* states: ‘In view of the increasing mobility of citizens of the Union, motor liability insurance is increasingly being offered on a cross-border basis. To ensure the continued proper functioning of the green card system and the agreements between the national bureaux of motor insurers, it is appropriate that Member States are able to require insurance undertakings providing motor liability insurance in their territory by way of provision of services to join and participate in the financing of the national bureau as well as of the guarantee fund set up in that Member State. The Member State of provision of services should require undertakings which provide motor liability insurance to appoint a representative in its territory to collect all necessary information in relation to claims and to represent the undertaking concerned.’
28. However, the second sentence of Article 145(1) of the directive provides: ‘Any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as a branch, even where that presence does not take the form of a branch, but consists merely of an office managed by the own staff of the undertaking or by a person who is independent but has permanent authority to act for the undertaking as an agency would’. The foregoing argues in favour of treating Crawford Polska sp. z o.o. as another establishment of the defendant within the meaning of Article 7(5) of the regulation.
29. Notwithstanding the doubts mentioned above, the referring court is inclined to answer all the questions referred in the affirmative. **[Or. 10]**

[...] [name of the judge]