Case C-352/21

Request for a preliminary ruling

Date lodged:

28 May 2021

Referring court:

Østre Landsret (Denmark)

Date of the decision to refer:

27 April 2021

Appellants:

A1

A2

Respondents:

I

ØSTRE LANDSRET
RECORD

27 April 2021 […]

A1

and

A2

[…]

v

I

[…]

The Østre Landsret (High Court of Eastern Denmark) has decided, pursuant to the second paragraph of Article 267 of the Treaty on the Functioning of the European Union ('TFEU') and after consultation with the parties, to ask the Court of Justice of the European Union for a preliminary ruling on the meaning and interpretation of Article 15(5) and Article 16(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 (Brussels I Regulation).

The proceedings before the High Court of Eastern Denmark concern whether a jurisdiction clause in an insurance contract, under which proceedings must be brought before the courts of the country of the insurance company's domicile, namely the Netherlands, can be enforced against the policyholder. The scope of Article 16(1)(a) and (5) of the Brussels I Regulation, in conjunction with what is stated regarding large risks under class 6 in Part A of Annex I to 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 Directive), gives rise to doubt in that regard. The question is whether Article 16(5) of the Brussels I Regulation must be interpreted as meaning that hull insurance for pleasure craft that are not used for commercial purposes is covered by the provision, with the effect that a choice of court agreement between an insurer and a policyholder who is a consumer can be validly concluded prior to the emergence of the dispute.

A. Facts of the case

1. On 15 October 2013, the appellants **A1** and **A2**, who are resident in Denmark, purchased, following an inspection, a second-hand Nautor Swan 48 sailing boat from a dealer in Ijmuden in the Netherlands. According to the contract of purchase/sale, which was concluded between the parties on 15 October 2012, the purchase price amounted to EUR 315 000 and the acquisition took place on 1 November 2013.

2. With effect from 1 November 2013 the appellants also took out liability and hull insurance with the respondent insurance company, **I**, which has its head office in the Netherlands.

3. On the insurance company's 'Application form yacht insurance' the appellants stated that the sailing boat would have its home port in Helsingør Nordhavn, Denmark, and declared inter alia as follows in paragraph 13:

   'a. Will the vessel only be used privately and for recreation? – x yes

   b. Will the vessel be let out or chartered? – x no'

4. In the policy which the appellants received from the insurance company, reference was made to insurance terms 'PLV 2010'. Paragraphs 1.7.5 and 1.7.6 of the insurance terms state as follows:

   'Complaints

   1.7.5 Any complaints and disputes that relate to the intermediary services, realization and performance of the agreement may first be submitted to the Complaints Coordinator of **I** BV. If the policyholder is not satisfied with the latter's point of view he may apply to "Klachteninstituut Financiële Dienstveriening" (Complaints Institute Financial Services) PO Box 93257, 2509AG THE HA[GU]E, www.klfid.nl.

   Competent court

   1.7.6 If the polic[y]holder does not want to use the possibilities mentioned in 1.7.5 or if he still does not regard the handling of his complaint as adequate, he may submit the dispute to a competent court in the Netherlands.'

5. The appellants let the sailing boat overwinter in Ijmuden in the Netherlands and sailed it home to Denmark in the spring of 2014.

6. In 2018 the appellants sailed to Finland where, according to the information provided, they ran aground on 26 May 2018. When the sailing boat was taken ashore in the spring of 2019 with a view to making it ready for the upcoming season, the appellants discovered damage to the keel and hull. On 14 May 2019, the appellants reported the grounding to the insurance company which, following an assessor's inspection, refused to cover the reported damage, citing the nature thereof.

7. The appellants then brought an action against the insurance company in the country of their own domicile, before the Retten i Helsingør (Court of Helsingør), claiming that the insurance company should be ordered to cover the repair of the damage, which was calculated at DKK 300 000. The insurance company contended that the action was inadmissible since, in its view, the action was covered by the choice of court agreement in the insurance conditions and therefore had to be brought in the Netherlands.

B. Procedure to date

1. The Court of Helsingør gave judgment at first instance on 19 May 2020 and upheld the plea of inadmissibility raised by the insurance company, meaning that the action must be brought before a Netherlands court.

2. It was agreed before the city court that the question of jurisdiction must be resolved in accordance with Section 3 of the Brussels I Regulation on jurisdiction in matters relating to insurance.

3. In the grounds of its judgment, the Court of Helsingør stated, inter alia, as follows:

‘Under the general rule laid down in Article 11(1)(b) of the regulation, [the appellants] may, in principle, bring an action against [the respondent] before the court of their place of domicile (the Court of Helsingør).

The question is whether the parties’ choice of court agreement is valid, since the action must, where appropriate, be brought before a Netherlands court.

Under Article 15(5) of the Brussels I Regulation – which is the relevant provision in the present case – the provisions of Section 3 of the regulation may be departed from by an agreement which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 16.

Article 16 lists the risks referred to and, under Article 16(5), covers ‘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).’

Article 13 of the Solvency II Directive contains a long list of definitions, and ‘large risks’ is defined as covering, inter alia, ‘risks classified under classes 4, 5, 6, 7, 11 and 12 in Part A of Annex I’ (see Article 13(27)(a)).

According to Annex 7 to the Law on financial undertakings, which transposes the provisions of the directive, class 6 concerns: ‘Ships (sea, lake and river and canal vessels): all damage to or loss of river and canal vessels, lake vessels [and] sea vessels’.

In accordance with the natural linguistic meaning, the sailing boat in question, which in both the contract of sale drawn up in English and the insurance contract of sale drawn up in English is referred to as a ‘vessel’, must be regarded as a vessel falling within class 6.

Against that background, and in accordance with the meaning of class 6 provided by the Danish Financial Supervisory Authority, the court finds that the insurance contract between the parties covers ‘large risks’. Furthermore, this cannot be considered incompatible with the fact that the insurance contract in question concerns a sailing boat which was purchased for, and is insured in the amount of, EUR 315 000.

The Court finds that there is no basis for adopting the interpretation of Article 16 of the Brussels I Regulation put forward in the alternative by the [appellants], according to which that provision relates in its entirety only to the commercial use of vessels.

The court accordingly finds that the parties' choice of court agreement is valid and therefore the action must be brought before a (competent) Netherlands court.'

4. The appellants lodged an appeal with the High Court of Eastern Denmark, claiming that the case should be referred back or, in the alternative, that the case should be heard before the High Court of Eastern Denmark, the appellants having claimed that the vessel is not covered by Article 16(5) of the Brussels I Regulation since it is a pleasure craft. It is therefore argued that the action was rightly brought before the Court of Helsingør at first instance.

5. By order of 12 November 2020, the High Court of Eastern Denmark decided to refer a question concerning the interpretation of Article 16(5) of the Brussels I Regulation to the Court of Justice of the European Union for a preliminary ruling.

C. Danish rules on jurisdiction and choice of court agreements

1. The rules on jurisdiction and choice of court agreements are laid down in Chapter 22 of the Code of Civil Procedure. Of relevance to the case are Paragraphs 244 to 247, which are worded as follows:

'**Paragraph 244** In cases concerning consumer contracts which have not been concluded in person at the trader's business premises, the consumer may bring an action against the trader before the courts of his or her domicile.

Paragraph 245 The parties may agree before which of several similar courts an action must be brought.

Subparagraph 2 In cases concerning consumer contracts, prior agreements on choice of court shall not be binding on the consumer.

...

Paragraph 246 Actions against persons, companies, societies, private institutions and other associations which are not domiciled in Denmark may be brought in Denmark in so far as a court can be regarded under Paragraphs 237, 238(2), 241, 242, 243 and 245 as having jurisdiction to hear the case. In cases concerning consumer contracts, the consumer may bring an action against the persons and associations referred to in the first sentence before the courts of his or her domicile if conclusion of the contract was preceded by the presentation of a specific offer or advertisement in Denmark and the consumer took in Denmark the necessary steps for conclusion of the contract.

…

Paragraph 247 In cases covered by an international agreement, which is transposed into Danish law by the Law on the Brussels Convention etc. or the Law on the recognition and enforcement of certain foreign judgments etc. in civil and commercial matters, including by decree pursuant to those laws, the rules on jurisdiction of that agreement shall apply. However, this shall not be so in the case of actions brought before the jurisdiction referred to in Paragraph 246a and which are covered by the Convention of 10 May 1952 on the arrest of sea-going ships.

…'

D. The provisions of EU law

1. Recitals 18 and 19 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 (Brussels I Regulation) state as follows:

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

(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.

…'

2. Section 3 of that regulation, which concerns jurisdiction in matters relating to insurance, states, inter alia:

'**Article 10** In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7.

Article 11 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; or

…

Article 15 The provisions of this Section may be departed from only by an agreement:

(1) which is entered into after the dispute has arisen;

(2) which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section;

(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.

Article 16 The following are the risks referred to in point 5 of Article 15:

(1) any loss of or damage to:

(a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;

(b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft;

(2) any liability, other than for bodily injury to passengers or loss of or damage to their baggage:

(a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) in so far as, in respect of the latter, the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;

(b) for loss or damage caused by goods in transit as described in point 1(b);

(3) any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire;

(4) any risk or interest connected with any of those referred to in points 1 to 3;

(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).'

3. 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 Directive) states as follows:

'**Article 2**

[Scope]

1. This Directive shall apply to direct life and non-life insurance undertakings which are established in the territory of a Member State or which wish to become established there.

It shall also apply to reinsurance undertakings which conduct only reinsurance activities and which are established in the territory of a Member State or which wish to become established there with the exception of Title IV.

2. In regard to non-life insurance, this Directive shall apply to activities of the classes set out in Part A of Annex I.

…

Article 13

[Definitions]

For the purposes of this Directive, the following definitions shall apply:

…

(27) "large risks" means:

(a) risks classified under classes 4, 5, 6, 7, 11 and 12 in Part A of Annex I;

(b) risks classified under classes 14 and 15 in Part A of Annex I, where the policy holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to such activity;

(c) risks classified under classes 3, 8, 9, 10, 13 and 16 in Part A of Annex I in so far as the policy holder exceeds the limits of at least two of the following criteria:

(i) a balance-sheet total of EUR 6.2 million;

(ii) a net turnover, within the meaning of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies of EUR 12.8 million;

(iii) an average number of 250 employees during the financial year.

…

ANNEX I

CLASSES OF NON-LIFE INSURANCE

A. Classification of risks according to classes of insurance

…

6. Ships (sea, lake and river and canal vessels)

All damage to or loss of

- river and canal vessels,
- lake vessels,
- sea vessels.'

4. As regards the origin and wording of Article 15(5), the following is stated in paragraphs 140 to 141 of the Schlosser Report on the Convention on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Brussels Convention (OJ 1979 C 59, p. 71):

'140. The United Kingdom's request for special rules for the insurance of large risks was probably the most difficult problem for the Working Party. The request was based on the realization that the concept of social protection underlying a restriction on the admissibility of provisions conferring jurisdiction in insurance matters is no longer justified where the policyholders are powerful undertakings. The problem was one of finding a suitable demarcation line. Discussions on the second Directive on insurance had already revealed the impossibility of taking as criteria abstract, general factors like company capital or turnover. The only solution was to examine which types of insurance contracts were in general concluded only by

policyholders who did not require social protection. On this basis, special treatment could not be conceded to industrial insurance as a whole.

…

The result of a consideration of all these matters is the solution which figures in the new paragraph (5) of Article 12, as supplemented by Article 12a: agreements on jurisdiction are in principle to be given special treatment in marine insurance and in some sectors of aviation insurance.

…

In order to avoid difficulties and differences of interpretation, a list had to be drawn up of the types of policy for which the admissibility of agreements on jurisdiction was to be extended. The idea of referring for this purpose to the list of classes of insurance appearing in the Annex to the First Council Directive of 24 July 1973 (73/239/EEC) proved inadequate. The classification used there took account of the requirements of State administration of insurance, and was not directed towards a fair balancing of private insurance interests. There was thus no alternative but to draw up a separate list for the purposes of the 1968 Convention. The following comments apply to the list and the classes of insurance not included in it.

141. Article 12 a(1)(a)

This provision applies only to hull insurance and not to liability insurance. The term "seagoing ships" means all vessels intended to travel on the sea. This includes not only ships in the traditional sense of the word but also hovercraft, hydrofoils, barges and lighters used at sea. It also covers floating apparatus which cannot move under its own power, e.g. oil exploration and extraction installations which are moved about on water. Installations firmly moored or to be moored on the seabed are in any event expressly included in the text of the provision. The provision also covers ships in the course of construction, but only in so far as the damage is the result of a maritime risk. This is damage caused by the fact that the ship is on the water and not therefore, damage which occurs in dry-dock or in the workshops of shipyards.'

5. Recitals 2, 4 and 7 of Council Decision of 4 December 2014 on the approval, on behalf of the European Union, of the Hague Convention of 30 June 2005 on Choice of Court Agreements (2014/887/EU) state inter alia as follows:

'(2) The Convention on Choice of Court Agreements concluded on 30 June 2005 under the auspices of the Hague Conference on Private International Law ('the Convention') makes a valuable contribution to promoting party autonomy in international commercial transactions and to increasing the predictability of judicial solutions in such transactions. In particular, the

Convention ensures the necessary legal certainty for the parties that their choice of court agreement will be respected and that a judgment given by the chosen court will be capable of recognition and enforcement in international cases.

…

(4) The Convention affects Union secondary legislation relating to jurisdiction based on the choice of the parties and to the recognition and enforcement of the resulting judgments, in particular Council Regulation (EC) No 44/2001, which is to be replaced as of 10 January 2015 by Regulation (EU) No 1215/2012 of the European Parliament and of the Council.

…

(7) The Union should, when approving the Convention, in addition make the declaration allowed under Article 21 excluding from the scope of the Convention insurance contracts in general, subject to certain well-defined exceptions. The objective of the declaration is to preserve the protective jurisdiction rules available to the policyholder, the insured party or a beneficiary in matters relating to insurance under Regulation (EC) No 44/2001. The exclusion should be limited to what is necessary to protect the interests of the weaker parties in insurance contracts. It should therefore not cover reinsurance contracts nor contracts relating to large risks. The Union should at the same time make a unilateral declaration stating that it may, at a later stage in light of the experience acquired in the application of the Convention, reassess the need to maintain its declaration under Article 21.'

6. The Unilateral Declaration by the European Union at the time of approval of the Hague Convention of 30 June 2005 on Choice of Court Agreements ('the Convention'), made under Article 21 of the Convention, which forms Annex I to the Council Decision of 4 December 2014, states, inter alia:

'The objective of this declaration which excludes certain types of insurance contracts from the scope of the Convention is to protect certain policyholders, insured parties and beneficiaries who, according to internal EU law, receive special protection.

1. The European Union declares, in accordance with Article 21 of the Convention, that it will not apply the Convention to insurance contracts, except as provided for in paragraph 2 below.

2. The European Union will apply the Convention to insurance contracts in the following cases:

…

(d) where the choice of court agreement relates to a contract of insurance which covers one or more of the following risks considered to be large risks:

(i) any loss or damage arising from perils which relate to their use for commercial purposes, of, or to:

(a) seagoing ships, installations situated offshore or on the high seas or river, canal and lake vessels.'

E. Case-law of the Court of Justice of the European Union

1. In its judgment of 27 February 2020 in Case C-803/18, *Balta* v *Grifs AG*, the Court of Justice addressed the interpretation of Article 15(5) and Article 16(5) of the Brussels I Regulation in the context of proceedings between Balta, an insurance company established in Latvia, and Grifs AG, a security company registered in Lithuania, relating to the payment of an insurance claim. In that case, the referring court had specified that the insurance contract at issue in the main proceedings covered 'large risks', as referred to in Article 16(5) of the Brussels I Regulation. In paragraph 37 of that judgment, the Court of Justice noted that, in the judgment of 13 July 2017 in Case C-368/16, *Assens Havn*, the Court of Justice stated that, in matters relating to insurance, the prorogation of jurisdiction remained strictly circumscribed by the aim of protecting the economically weaker party.

2. The answer given by the Court of Justice was that Article 15(5) and Article 16(5) of the Brussels I Regulation 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 between the policyholder and the insurer, may not be relied on against the party insured under that contract, who is not an insurance professional, has not consented to that clause and is domiciled in a Member State other than that in which the policyholder and the insurer are domiciled.

F. Submissions of the appellants:

1. The appellants have claimed that Article 16(5) of the Brussels I Regulation covers 'large risks' only where the damage occurs while an insured vessel is being used for commercial purposes and the occurrence of the damage is connected to it.

2. The appellants take the view that an interpretation of Article 16(5) of the Brussels I Regulation according to which 'large risks' covers every vessel, whatever its size and use, including pleasure craft used for private purposes,

goes against recitals 18 and 19 of the regulation and the aim to protect the weaker party in a contractual relationship.

3. This interpretation is supported by the classification in Article 3(a), (b), (c), (f) and (j) of Directive (EU) 2016/1629 of the European Parliament and of the Council laying down technical requirements for inland waterway vessels and, similarly, the definitions set out in Paragraph 2(1) to (6) of Lovbekendtgørelse nr. 74 af 17. januar 2014 om skibes besætning (Consolidated Law No 74 of 17 January 2014 on the crewing of vessels), which is consistent with the international definitions of the various types of vessel and worded as follows:

‘**Paragraph 2**

For the purposes of this law, the following terms shall have the following meanings:

(1) “Merchant vessel”: Any vessel other than a fishing vessel and recreational craft.

(2) “Passenger vessel”: A vessel carrying more than 12 passengers.

(3) “Cargo ship”: A merchant ship which is not a passenger vessel.

(4) “Fishing vessel”: A vessel whose nationality is marked with an external identification number.

(5) “Recreational craft”: A vessel which is not used for commercial purposes. In the event of doubt, the Danish Maritime Authority shall determine whether a vessel may be regarded as a recreational craft.

(6) “Seagoing vessel”: A vessel used outside ports, rivers, lakes and similar sheltered waters.’

4. If it had been intended that recreational craft were to be covered by class 6 under Article 16(5) of the Brussels I Regulation, they would have been specifically mentioned in the list in the annex under class 6. The description of class 6 in Annex I, Part A must naturally be understood as meaning that all damage to or loss of ‘river and canal vessels, lake vessels and sea vessels’ is a subset of ‘sea, lake and river and canal vessels.’

5. It is clear from recitals 4, 5 and 7 of Council Decision of 4 December 2014 on the approval, on behalf of the European Union, of the Hague Convention of 30 June 2005 on Choice of Court Agreements, that the declaration was made having regard to Regulation 44/2001 (now the Brussels I Regulation) in order to preserve the protective jurisdiction rules available to the policyholder. As regards the Unilateral Declaration by the European Union at the time of approval of the Hague Convention of 30 June 2005 on Choice

of Court Agreements ('the Convention'), made pursuant to Article 21 of the Convention, which forms Annex I to the Council Decision, it may be inferred from Article 1(2)(d) that large risks include only losses or damage to, inter alia, vessels relating to their use for commercial purposes.

G. Respondent's observations

1. The respondent disputes the jurisdiction of the Court of Helsingør in the present case.

2. It is clear from the insurance contract entered into that, in 2013, the parties concluded an agreement on, inter alia, jurisdiction and that, therefore, an action against the respondent must be brought in the Netherlands before 'a competent court in the Netherlands' (see clause 1.7.6 of the agreement).

3. It is submitted primarily that the appellant – although he is a consumer – entered into a binding insurance contract and a binding choice of court agreement with the respondent, under which the court having jurisdiction is to be a court in the Netherlands. The agreed jurisdiction is valid notwithstanding the Hague Convention.

4. Under Article 11(1)(b) of the Brussels I Regulation, the respondent may, in principle, be sued before the court of the appellant's domicile, namely the Court of Helsingør.

5. However, under Article 15 of that regulation the parties to an insurance contract may depart from the rule. This may be done by a choice of court agreement under Article 15(5), in so far as it covers one or more of the risks set out in Article 16.

6. 'Large risks' is defined in Article 13(27) of Council Directive 73/239/EEC, as amended by Directive 88/357/EEC and Directive 90/618/EEC, which was most recently implemented in Danish law by Lov nr. 308 af 28. marts 2015 om ændring af lov om finansiel virksomhed (Law No 308 of 28 March 2015 amending the Law on financial undertakings).

7. Under Article 13(27)(a) of that directive, risks classified inter alia under class 6 in Part A of Annex I come within the category of 'large risks'. The list of classes of insurance also appears in Annex 7 to Lov nr. 1447 af 11. september 2020 om finansiel virksomhed (Law No 1447 of 11 September 2020 on financial undertakings). It states as follows:

'…

Insurance – damage

Classification of risks according to classes of insurance.

…

6. Ships (sea, lake and river and canal vessels): all damage to or loss of river and canal vessels, lake vessels and sea vessels.

…’

8. The class in question therefore covers ships (sea, lake and river and canal vessels) in so far as relates to all damage to or loss of river and canal vessels, lake vessels and sea vessels.

9. Reference may also be made to the Danish Financial Authority’s email of 30 June 2016, which states inter alia:

‘Class 6, which is set out in Annex I to the Solvency II Directive, was implemented in Danish law in the Law on financial undertakings, Annex 7, point 6.

Class 6 is hull insurance and covers both commercial and private use of vessels for navigation.

Hull insurance is insurance against damage caused to the insured property (in this case ships, boats and other vessels), including, in general, also in the event of the loss of that property as a result of theft etc.’

10. It is therefore argued that hull insurance such as that at issue is covered by the definition of ‘large risks’ set out in Article 16 of the Brussels I Regulation and, therefore, that under Article 15(5), in conjunction with Article 16(5), it is permitted to conclude a choice of court agreement such as that at issue in the main proceedings.

11. It is disputed that the fact that the EU (and subsequently Denmark) declared that the EU does not intend to apply the Hague Convention to insurance contracts – except in the context of commercial situations – means that the choice of court agreement does not apply. It is thus argued that the Brussels I Regulation is applicable in the present case and the abovementioned declaration does not change this.

12. It is argued that that declaration merely means that the Hague Convention does not apply, in those cases, to the specific context of the European Union. In such situations it is the European Union’s own rules that apply.

13. The declaration must therefore be understood as meaning that the Hague Convention does not give private policyholders adequate protection under EU rules. Therefore, private policyholders can rely on the EU’s own rules, including the Brussels I Regulation.

14. It follows from recital 7 of the Council Decision of 4 December 2014 (2014/887/EU) that the Hague Convention does not apply to insurance proceedings between two parties, at least one of whom is not an economic operator, where both are covered by EU law. In such proceedings, the Brussels I Regulation applies.

H. The High Court of Eastern Denmark's observations

1. The High Court of Eastern Denmark finds that, in the light of the wording of Article 16(1)(a) and (5) of the Brussels I Regulation, in conjunction with what is stated regarding large risks under class 6 in Part A of Annex I to 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 Directive), and in conjunction with the underlying purpose of the rules on choice of court agreements, there is doubt as to whether Article 16(5) of the Brussels I Regulation must be interpreted as meaning that hull insurance for pleasure craft that are not used for commercial purposes is covered by that provision.

2. As clarification on this issue must be presumed to be decisive for the resolution of this case, and as the existing doubt concerns the interpretation of a rule of EU law, the High Court of Eastern Denmark finds it necessary to stay proceedings and refer the question to the Court of Justice of the European Union.

It is hereby ordered:

The High Court of Eastern Denmark requests the Court of Justice of the European Union to answer the following question:

Must Article 15(5) of the Brussels I Regulation, in conjunction with Article 16(5) thereof, be interpreted as meaning that hull insurance for pleasure craft that are not used for commercial purposes falls within the exception laid down in Article 16(5) of that regulation, and is, therefore, an insurance contract which contains a choice of court agreement departing from the rule laid down in Article 11 of that regulation valid under Article 15(5) of that regulation?