

JUDGMENT OF THE COURT OF JUSTICE (Sixth Chamber)

April 25, 2024 (*)

'(Reference for a preliminary ruling - Judicial cooperation in civil and commercial matters - Regulation (EU) No 1215/2012 - Article 25(1) - Contract for the carriage of goods documented in a bill of lading - Jurisdiction clause inserted in that bill of lading shipment - Opposability to the third party holder of the bill of lading - Applicable law - National legislation requiring individual and separate negotiation of the jurisdiction clause by the third party bill of lading holder".

In joined cases C-345/22 to C-347/22,

REFERENCES for a preliminary ruling under Article 267 TFEU, made by the Audiencia Provincial de Pontevedra, Spain, by orders of 16 May 2022, received at the Court on 25 May 2022, in the proceedings between

Maersk A/S

y

Allianz Seguros y Reaseguros, S. A. (C-345/22 and C-347/22),

and between

Mapfre España Compañía de Seguros y Reaseguros, S. A.,

and

MACS Maritime Carrier Shipping GmbH & Co. (C-346/22),

THE COURT OF JUSTICE (Sixth Chamber),

composed of P.G. Xuereb, acting as President of the Chamber, A. Kumin (Rapporteur) and I. Ziemele, Judges;

General Counsel: Mr. A. M. Collins;

Secretary: Mr. A. Calot Escobar;

having considered the written submissions on file; having

considered the observations presented:

- on behalf of Maersk A/S and MACS Maritime Carrier Shipping GmbH & Co., by C. Lopera Merino, lawyer, and G. Quintás Rodríguez and C. Zubeldía Blein, avocats, and G. Quintás Rodríguez and C. Zubeldía Blein, solicitors, on behalf of Maersk A/S and MACS Maritime Carrier Shipping GmbH & Co. Zubeldía Blein, attorneys-at-law;
- on behalf of Allianz Seguros y Reaseguros, S. A., by Mr. L. A. Souto Maqueda, lawyer;
- on behalf of Mapfre España Compañía de Seguros y Reaseguros, S. A., by Mr. J. Tojeiro Sierto, lawyer;
- on behalf of the Spanish Government, by M. J. Ruiz Sánchez, acting as Agent;
- the European Commission, by S. Noë and C. Urraca Caviedes, acting as Agents;

after hearing the Opinion of the Advocate General, delivered in open court on November 16, 2023; dictates the following

Sentence

- 1 The references for a preliminary ruling concern the interpretation of Article 25(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 (OJ 2012, L 351, p. 1; hereinafter "*Brussels Ia* Regulation").
- 2 These petitions have been filed in the context of three lawsuits between, in cases C-345/22 and C-347/22, the Danish shipping company Maersk A/S and the Spanish insurance company Allianz Seguros y Reaseguros, S. A. (hereinafter "*Allianz*"), and, in case C-346/22, the Spanish insurance company Mapfre España Compañía de Seguros y Reaseguros, S. A. (hereinafter "*Mapfre*") and, in case C-346/22, the Spanish insurance company Mapfre España Compañía de Seguros y Reaseguros, S. A. (hereinafter "*Mapfre*"), and the German shipping company MACS Maritime Carrier Shipping GmbH & Co. (hereinafter, "*MACS*"), in relation to the compensation, claimed before a Spanish court by those two insurance companies subrogated to the rights of the third parties acquiring the goods that were transported by sea by the aforementioned shipping companies, for the material damages that said goods allegedly suffered on the occasion of said transports, and with the challenge, by the aforementioned transport companies, of the jurisdiction of the Spanish courts due to a clause that attributes to a court in the United Kingdom the jurisdiction to hear disputes arising from the contracts of carriage at issue in the main proceedings.

Legal framework

Union Law Withdrawal

Agreement

- 3 By Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and from the European Atomic Energy Community (OJ 2020, L 29, p. 1), the Council of the European Union approved, on behalf of the European Union and the European Atomic Energy Community (EAEC), the said Withdrawal Agreement (OJ 2020, L 29, p. 7; hereinafter referred to as the "*Withdrawal Agreement*"). It was annexed to the aforementioned Decision and entered into force on February 1, 2020.
- 4 Article 67 of the Withdrawal Agreement, entitled "*Jurisdiction, recognition and enforcement of judgments and related cooperation between central authorities*", establishes in its paragraph 1:

"In the United Kingdom, and in the Member States in situations for which the United Kingdom is responsible, in respect of legal proceedings instituted before the end of the transitional period and in respect of proceedings or actions in connection with such legal proceedings pursuant to Articles 29, 30 and 31 of the [*Brussels Ia*] Regulation [...], the following acts or provisions shall apply:

 - a) the jurisdiction provisions of the [*Brussels I bis*] Regulation; [...]"
- 5 Pursuant to Article 126 of the aforementioned Agreement, entitled "*Transitional Period*":

"A transitional or implementation period is established, which shall commence on the date of entry into force of this Agreement and end on December 31, 2020."

6 Article 127 of the aforementioned Agreement, entitled "Scope of the Transitory Provisions", reads as follows:

"Unless otherwise provided for in this Agreement, Union law shall apply to and in the United Kingdom during the transitional period.

[...]

During the transitional period, Union law applicable under paragraph 1 shall produce, in respect of and in the United Kingdom, the same legal effects as it produces in the Union and its Member States, and shall be interpreted and applied according to the same general methods and principles as those applicable within the Union.

[...]"

Brussels Convention

7 El artículo 17 del Convenio relativo a la Competencia Judicial y a la Ejecución de Resoluciones Judiciales en Materia Civil y Mercantil, firmado en Bruselas el 27 de septiembre de 1968 (DO 1972, L 299, p. 32; texto consolidado en DO 1998, C 27, p. 1), en su versión modificada por el Convenio de 9 de octubre de 1978 relativo a la Adhesión del Reino de Dinamarca, de Irlanda y del Reino Unido de Gran Bretaña e Irlanda del Norte (DO 1978, L 304, p. 1, as amended by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1) and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1) (hereinafter referred to as the "Brussels Convention"), provided in its first paragraph:

"If the parties, at least one of whom is domiciled in a Contracting State, have agreed that a court or courts of a Contracting State shall have jurisdiction over any dispute which has arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction. Such an agreement conferring jurisdiction shall be concluded:

- a) in writing or orally with written confirmation, or
- b) in a form that conforms to the customs that the parties have established between them, or
- c) in international trade, in a form conforming to usages known or ought to be known to the parties and which, in such trade, are widely known and regularly observed by the parties to contracts of the same type in the trade in question.

[...]"

Brussels I Regulation

8 Article 23 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; hereinafter referred to as "Brussels I Regulation") provided in paragraph 1:

"If the parties, at least one of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State shall have jurisdiction in any dispute which has arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive, unless otherwise agreed between the parties. Such an agreement conferring jurisdiction shall be concluded:

- a) in writing or orally with written confirmation; or
- b) in a form that conforms to the customs that the parties have established between them; or

- c) in international trade, in a form conforming to usages known or ought to be known to the parties and which, in such trade, are widely known and regularly observed by the parties to contracts of the same type in the trade in question".

Brussels Ia Regulation

- 9 Chapter II of the Brussels I *bis* Regulation, entitled "Competition", includes a section 7, entitled "Extension of jurisdiction". Pursuant to Article 25 of said Regulation, which is contained in this section:

"If the parties, irrespective of their domicile, have agreed that a court or the courts of a Member State shall have jurisdiction over any dispute which has 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 otherwise agreed between the parties. The agreement conferring jurisdiction shall be concluded:

- a) in writing or verbally with written confirmation;
- b) in a form that conforms to the habits that the parties have established between them, or
- c) in international trade, in a form conforming to usages of which the parties are or ought to be aware and which, in such trade, are widely known and regularly observed by the parties to contracts of the same type in the trade in question.

[...]

5. An agreement conferring jurisdiction that forms part of a contract shall be considered as an agreement independent of the other clauses of the contract.

The validity of the agreement conferring jurisdiction may not be challenged on the sole ground of the invalidity of the contract."

Spanish Law

- 10 Section XI of the preamble of Law 14/2014, of July 24, 2014, on Maritime Navigation (BOE no. 180, of July 25, 2014, p. 59193; hereinafter, "LNM"), reads as follows:

"[...] Chapter I [of Title IX] contains the so-called specialities of jurisdiction and competence, which, starting from the preferential application in this matter of the rules contained in international conventions and in the rules of the European Union, tries to avoid the abuses detected by declaring the nullity of the clauses of submission to a foreign jurisdiction or arbitration abroad, contained in the contracts for the use of the ship or in the contracts auxiliary to navigation, when they have not been individually and separately negotiated. [...]"

- 11 Pursuant to Article 251 of the LNM, entitled "Eficacia traslativa":

"The transfer of the bill of lading shall produce the same effects as the delivery of the goods represented, without prejudice to the criminal and civil actions that correspond to whoever has been illegitimately dispossessed of the goods. The acquirer of the bill of lading shall acquire all the rights and actions of the transferor over the goods, with the exception of agreements on jurisdiction and arbitration, which shall require the consent of the acquirer under the terms indicated in Chapter I of Title IX."

- 12 Article 468 of the LNM, entitled "Jurisdiction and Arbitration Clauses", which appears in Chapter I of Title IX of said Law, provides in its first paragraph:

"Without prejudice to the provisions of international conventions in force in Spain and the rules of the European Union, the clauses of submission to a jurisdiction shall be null and void and shall be deemed not to have been put into effect.

The contracts for the use of the vessel or contracts ancillary to navigation, when they have not been negotiated individually and separately, shall be subject to foreign arbitration or foreign arbitration.

[...]"

Main litigation and preliminary rulings

Case C-345/22

- 13 Maersk Line Peru SAC, a Peruvian subsidiary of Maersk, entered, as carrier, into a contract for the carriage of goods by sea subject to CFR (cost and freight) conditions with Aquafrost Peru (hereinafter "Aquafrost"), as shipper, which contract was documented in a bill of lading issued on April 9, 2018. On the reverse side of said bill of lading was a jurisdiction or jurisdiction-attributing clause worded as follows:
- "this bill of lading shall be governed by and construed in accordance with English law and all disputes arising hereunder shall be determined by [the High Court of Justice (England and Wales), United Kingdom], the jurisdiction of the courts of another country being excluded. Alternatively, and at the carrier's discretion, the carrier may bring proceedings against the merchant in a court of competent jurisdiction at the merchant's place of operation."
- 14 The goods in question were purchased by Oversea Atlantic Fish, S. L. (hereinafter referred to as Oversea Atlantic Fish, S. L.), "Oversea"), which thus became the third party holder of the bill of lading. As these goods arrived damaged at the port of destination, Allianz, subrogated to the rights of Oversea, filed before the Commercial Court No. 3 of Pontevedra an action claiming from Maersk for the amount of EUR 67,449.71 as compensation for damages. This action was filed before the end of the transitional period provided for in article 126 of the Withdrawal Agreement.
- 15 On the basis of the jurisdiction or jurisdiction clause mentioned in paragraph 13 of this judgment, Maersk challenged the jurisdiction of the Spanish courts.
- 16 By order of May 26, 2020, Commercial Court No. 3 of Pontevedra dismissed this declinatory action. Maersk filed an appeal for reconsideration against this order, which was dismissed by order dated December 2, 2020. On the other hand, by judgment dated July 7, 2021, the aforementioned court upheld Allianz's claim on the merits.
- 17 Maersk filed an appeal against that judgment before the Provincial Court of Pontevedra, which is the referring court, challenging the jurisdiction of the Spanish courts on the grounds that the aforementioned jurisdiction clause is enforceable against the third party holder of the bill of lading. Indeed, in its opinion, Article 25 of the Brussels I *bis* Regulation should be applied, and not Article 251 of the LNM, which, in its opinion, is contrary to EU law.
- 18 The referring court wonders whether such jurisdiction or jurisdiction clause is enforceable against the third party holder of the bill of lading even though the latter did not expressly, individually and separately consent to it when it acquired the bill of lading. According to the referring court, it follows from the judgment of 18 November 2020, *DelayFix* (C-519/19, EU:C:2020:933), that the Brussels *Ia* Regulation enhances the freedom of choice of the contracting parties in the choice of the applicable jurisdiction in comparison with what was the case during the validity of the Brussels I Regulation.
- 19 Moreover, in the view of the referring court, it follows from paragraph 27 of the judgment of 16 March 1999 in Case C-159/97 *Castelletti* (EU:C:1999:142) that, in the international maritime traffic sector, there is a presumption of knowledge and consent of the contracting party as regards jurisdiction or jurisdiction clauses in contracts of carriage, since this is a stipulation normally used in this sector.

- 20 Moreover, the referring court emphasizes the autonomous nature and separability of jurisdiction or jurisdiction clauses, so that they could be subject, as regards the substantive law applicable, to a different legal regime from the rest of the contract in which they are inserted. It thus points out that a jurisdiction or jurisdiction clause may be valid, even if the contract itself is null and void.
- 21 The referring court points out that Article 251 of the HML makes, for the specific case of bills of lading for the carriage of goods containing a jurisdiction or jurisdiction clause and which are subsequently acquired by a third party, a reference to Article 468 of the HML, which provides that such a clause is void if it has not been individually and separately negotiated by that third party.
- 22 The referring court notes that this legislation is justified in the explanatory memorandum of the LNM by the need to protect the interests of national receivers, holders of bills of lading in which the original parties have introduced a jurisdiction or jurisdiction clause, who are in the weakest contractual position, especially in cases of contracts of carriage by sea under a liner bill of lading. Indeed, the underlying idea is that forcing domestic entrepreneurs, shippers and receivers of goods, to litigate in foreign jurisdictions may in practice lead to a denial of the effectiveness of judicial protection.
- 23 The national court argues that it would be problematic to apply Article 251 of the UBL to fill any gaps in EU law. Moreover, there is a contradiction between that provision and the case-law of the Court of Justice arising, in particular, from the judgment of 9 November 2000 in Case C-387/98 Coreck (EU:C:2000:606), paragraph 23. According to the referring court, since, under Spanish law, jurisdiction clauses or clauses conferring jurisdiction and arbitration clauses only bind the parties if they are the proven result of individual and separate negotiation, the assignment of rights arising from a bill of lading would not be full.
- 24 However, the referring court questions the possible inapplicability of the national legislation at issue in the main proceedings.
- 25 First, the referring court considers, relying both on Article 25(1) of the Brussels *Ia* Regulation and on the case-law arising from the judgments of 3 July 1997 in Case C-269/95 Benincasa (EU:C:1997:337) and 18 November 2020 in Case C-519/19 DelayFix (EU:C:2020:933), that the validity of a jurisdiction or jurisdiction clause must be examined in the light of the law of the State to which that clause confers jurisdiction: C:2020:933), that the validity of a jurisdiction or jurisdiction clause must be examined in the light of the law of the State to which that clause confers jurisdiction, so that, in the present case, English law, and not Article 468 MAL, would be applicable. Secondly, assuming that Article 251 MAL is applicable to the main proceedings, the court considers that the manner of consent to a jurisdiction or jurisdiction clause is governed by European Union law and not by national law, in order to prevent each Member State from imposing different requirements in that regard. Thirdly, that court has doubts as to the conformity of Article 251 of the HML with the case-law arising from the judgment in Case C-387/98 Coreck (EU:C:2000:606), since, under that provision, the rights and obligations relating to a jurisdiction or jurisdiction clause contained in a bill of lading are excluded from those transferred to the third party holding the bill of lading.
- 26 In these circumstances, the Provincial Court of Pontevedra decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- "(1) Does the rule in Article 25 of the [Brussels I *bis*] Regulation, when it provides that the nullity as of right of the jurisdiction agreement must be analysed in accordance with the law of the Member State to which the parties have deferred jurisdiction, [also] cover, - in a situation such as that in the main proceedings - the question of the validity of the extension of the clause to a third party not party to the contract in which the clause is laid down?"

- 2) In the case of circulation of the bill of lading to a third party, consignee of the goods, who did not intervene in the contract between the shipper and the maritime carrier, is a rule such as that contained in Article 251 of the [Brussels I *bis*] Regulation, which requires that, in order for the clause to be enforceable against the third party, the jurisdiction clause must have been negotiated "individually and separately", compatible with Article 25 of the [Brussels I *bis*] Regulation and with the case law of the CJ interpreting it?
- 3) Is it possible, under EU law, for the legislation of the Member States to establish additional validity requirements for the effectiveness against third parties of jurisdiction clauses inserted in bills of lading?
- 4) Does a rule such as that contained in Article 251 of the [LNM], - which provides that the subrogation of the third party holder only occurs partially, to the exclusion of jurisdiction extension clauses - entail the introduction of an additional requirement for the validity of these clauses, contrary to Article 25 of the [Brussels I *bis*] Regulation?"

Case C-346/22

27 MACS, as carrier, and Tunacor Fisheries Ltd, as shipper, entered into a contract for the carriage of goods by sea subject to CFR (cost and freight) terms, which was documented in a bill of lading issued on April 13, 2019. The reverse side of the said bill of lading contained a jurisdiction or jurisdiction-attributing clause worded as follows:

"This Bill of Lading shall be governed by English law and any dispute arising hereunder shall be referred [to the High Court of Justice (England and Wales)] for resolution."

28 The goods in question were purchased by Fortitude Fishing, S. L. (hereinafter referred to as "Fortitude Fishing"), "Fortitude"), which thus became the third party holder of the bill of lading. As these goods arrived damaged at the port of destination, Mapfre, subrogated in the rights of Fortitude, filed before the Commercial Court No. 3 of Pontevedra a lawsuit claiming from MACS the amount of 80,187.90 euros as compensation for damages. This action was filed before the end of the transitional period provided for in article 126 of the Withdrawal Agreement.

29 On the basis of the jurisdiction or jurisdiction clause mentioned in paragraph 27 of this judgment, MACS challenged the jurisdiction of the Spanish courts.

30 By order dated May 3, 2021, Commercial Court No. 3 of Pontevedra declined jurisdiction.

31 Mapfre filed an appeal against this order before the Provincial Court of Pontevedra, which is also the referring court in case C-346/22, arguing, on the one hand, that the Spanish courts had jurisdiction insofar as Fortitude was not a party to the contract of carriage concluded between MACS and Tunacor Fisheries and had not intervened in such carriage and, on the other hand, that, pursuant to article 251 of the LNM, the aforementioned jurisdiction clause could not be invoked against it.

32 On the other hand, MACS contests the jurisdiction of the Spanish courts, arguing that the aforementioned jurisdiction clause is enforceable against the third party holder of the bill of lading. Indeed, in its opinion, Article 25 of the Brussels I *bis* Regulation should be applied, and not Article 251 of the LNM, which, in its opinion, is contrary to EU law.

33 Having the same doubts as those raised in Case C-345/22, the referring court decided to stay the proceedings and to refer a number of questions to the Court of Justice for a preliminary ruling, essentially identical to those raised in that case.

Case C-347/22

- 34 Maersk Line Peru, as carrier, and Aquafrost, as shipper, entered into a contract for the carriage of goods by sea subject to CFR (cost and freight) conditions, which was documented in a bill of lading issued on August 2, 2018. The reverse side of that bill of lading contained a jurisdiction or jurisdiction-attributing clause drafted in terms identical to those used in the jurisdiction or jurisdiction-attributing clause at issue in Case C-345/22.
- 35 The goods in question were acquired by Oversea, which thus became a third party holder of the bill of lading. To the extent that the goods arrived damaged at the port of destination, Allianz, subrogated to the rights of Oversea, filed an action before the Commercial Court No. 3 of Pontevedra claiming from Maersk the amount of EUR 106 093.65 in damages. This action was filed before the end of the transitional period provided for in article 126 of the Withdrawal Agreement.
- 36 On the basis of the jurisdiction or jurisdiction clause mentioned in paragraph 34 of this judgment, Maersk challenged the jurisdiction of the Spanish courts.
- 37 By order of October 20, 2020, the Commercial Court No. 3 of Pontevedra rejected this declinatory action. Maersk did not file an appeal for reconsideration against such order. On the other hand, by judgment dated July 9, 2021, the aforementioned court upheld Allianz's claim on the merits.
- 38 Maersk filed an appeal against that judgment before the Audiencia Provincial de Pontevedra, which is also the referring court in Case C-347/22, challenging the jurisdiction of the Spanish courts on the ground that the aforementioned jurisdiction or jurisdiction clause is enforceable against the third party holder of the bill of lading. Indeed, in its opinion, Article 25 of the Brussels I *bis* Regulation should be applied, and not Article 251 of the LNM, which, in its opinion, is contrary to EU law.
- 39 Having the same doubts as those raised in Case C-345/22, the referring court decided to stay the proceedings and to refer a number of questions to the Court of Justice for a preliminary ruling, essentially identical to those raised in that case.

Proceedings before the Court of Justice

- 40 By order of the President of the Court of Justice of 15 July 2022, Cases C-345/22, C-346/22 and C-347/22 were joined for the purposes of the written and oral stages of the proceedings and the decision closing the proceedings.

Preliminary rulings

Preliminary observations

- 41 As regards the question whether the scope of application of the Brussels *Ia* Regulation, the interpretation of which the referring court seeks, covers a situation such as that at issue in the main proceedings, it should be noted, first, that, by the clauses conferring jurisdiction at issue in those cases, jurisdiction to hear the disputes relating to the shipping contracts at issue in those cases was conferred on a court in the United Kingdom and, second, that the Withdrawal Agreement entered into force on February 1, 2020.
- 42 That said, by virtue of Article 67(1)(a) of the Withdrawal Agreement, the provisions on jurisdiction contained in the Brussels *Ia* Regulation shall apply, both in the United Kingdom and in the Member States in situations falling within the competence of that State, to legal proceedings instituted before the end of the transitional period provided for in Article 126 of that Agreement (judgment of 24 November 2022, Tilman, C-358/21, EU:C:2022:923, paragraph 28).

43 Furthermore, pursuant to Article 127(1) and (3) of the said Agreement, during that transitional period, Union law shall, on the one hand, be applicable to the United Kingdom and, on the other hand, shall be interpreted and applied in accordance with the same general principles and methods as those applicable within the Union.

44 Consequently, insofar as it is apparent from the orders for reference that Allianz and Mapfre brought their respective actions before 31 December 2020 and, therefore, before the end of the said transitional period, it must be held that, as the Spanish Government and the European Commission point out in their written observations, notwithstanding the withdrawal of the United Kingdom from the Union, the Brussels *Ia* Regulation is applicable to the main disputes.

The first question referred for a preliminary ruling in each of the joined cases

45 By the first question referred for a preliminary ruling in each of the joined cases, the referring court asks, in essence, whether Article 25(1) of the Brussels *Ia* Regulation must be interpreted as meaning that the enforceability of a clause conferring jurisdiction on the third party holding the bill of lading in which that clause is inserted is governed by the law of the Member State to which one or more courts designated by that clause belong.

46 Under the first sentence of Article 25(1) of the Brussels *Ia* Regulation, "if the parties, regardless of their domicile, have agreed that a court or the courts of a Member State shall have jurisdiction over any dispute which has 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".

47 Thus, that provision does not specify whether a clause conferring jurisdiction may be transferred, outside the circle of the contracting parties, to a third party, a party to a subsequent contract which is subrogated, in whole or in part, to the rights and obligations of one of the parties to the original contract (judgment of 18 November 2020, *DelayFix*, C-519/19, EU:C:2020:933, paragraph 40 and the case law cited).

48 Moreover, although it follows from Article 25(1) of the Brussels *Ia* Regulation that the substantive validity of a clause conferring jurisdiction is to be assessed in the light of the law of the Member State to which one or more courts designated by that clause belong, the fact remains that the enforceability of such a clause against a third party in respect of the contract, as a third party holding the bill of lading, does not fall within the substantive validity of that clause, as the Advocate General pointed out in points 54 to 56 of his Opinion, but within its effects, the assessment of which necessarily follows that of its substantive validity, the latter having to be carried out in the light of the relations between the original parties to the contract.

49 Consequently, Article 25(1) of the Brussels *I bis* Regulation does not specify the effects of a jurisdiction clause vis-à-vis a third party or the national law applicable in this respect.

50 That said, it should be recalled that it follows from the case-law of the Court of Justice relating to the first paragraph of Article 17 of the Brussels Convention and Article 23(1) of the Brussels I Regulation that a clause conferring jurisdiction contained in a bill of lading may be relied on against a third party in respect of that contract provided that its validity has been recognized in the relationship between the shipper and the carrier and that, under the applicable national law, the third party holding the bill of lading, by acquiring it, has been subrogated to the rights and obligations of the shipper. In that case, it is not necessary for the court hearing the case to ascertain whether that third party consented to that clause (judgments of 19 June 1984, *Russ*, 71/83, EU:C:1984:217, paragraphs 24 and 25, and of 7 February 2013, *Refcomp*, C-543/10, EU:C:2013:62, paragraph 34 and case-law cited).

51 The Court of Justice has deduced from this, in relation to those provisions of the Brussels Convention and the Brussels I Regulation, that only if, in accordance with the national law applicable to the merits, as determined under the rules of private international law of the organ of the European Communities, the national law applicable to the case, as determined under the rules of private international law of the organ of the European Communities, is not applicable to the case in question.

(Case C-387/98 Coreck, EU:C:2000:606, paragraphs 24, 25 and 30, and Case C-352/13 CDC Hydrogen Peroxide, EU:C:2015:335, paragraph 65). Conversely, where the applicable national law does not provide for such a substitution relationship, that court must verify the reality of that third party's consent to such a clause (judgment of 7 February 2013, Refcomp, C-543/10, EU:C:2013:62, paragraph 36 and case-law cited).

52 While it is true that Article 25(1) of the Brussels *Ia* Regulation is drafted in terms partly different from the first paragraph of Article 17 of the Brussels Convention and Article 23(1) of the Brussels I Regulation, it should nevertheless be noted, as the Advocate General does in points 51 to 54 of his Opinion and as is apparent, in essence, from the judgment of 24 November 2022, Tilman (C-358/21, EU:C:2022:923), paragraph 34, that the case-law set out in paragraphs 50 and 51 of this judgment is applicable to this provision of the Brussels *Ia* Regulation.

53 First, in so far as Article 25(1) of the Brussels *Ia* Regulation no longer contains the requirement that at least one of the parties must be domiciled in a Member State, it must be held that the removal of that requirement reinforces the parties' freedom of choice as regards the choice of the court or courts having jurisdiction, without that removal in any way influencing the definition of the effects of a clause conferring jurisdiction on a third party in respect of the contract. Furthermore, in so far as that provision now designates the national law applicable for the purposes of assessing the substantive validity of such a clause, it must be held, in the light of what is apparent from paragraph 48 of this judgment, that that new conflict-of-law rule does not, on the other hand, govern the enforceability of the clause in question against such a third party.

54 Consequently, if, in the present cases, the referring court were to find that Oversea and Fortitude, as third party holders of bills of lading, are subrogated respectively to all the rights and obligations of Aquafrost and Tunacor Fisheries, as shippers and, therefore, original parties to the contracts of carriage at issue in the main proceedings, it should follow from this, in accordance with Article 25(1) of the Brussels *Ia* Regulation, as interpreted by the case-law of the Court of Justice, that the clauses conferring jurisdiction at issue in those proceedings are enforceable against those third parties. On the other hand, that provision is not relevant in the context of the examination of the question whether those third parties are subrogated to all the rights and obligations of those shippers, since that subrogation is governed by the national law applicable to the substance, determined by virtue of the rules of private international law of the Member State to which the referring court belongs.

55 In the light of the foregoing considerations, the answer to the first question referred for a preliminary ruling in each of the joined cases must be that Article 25(1) of the Brussels *Ia* Regulation must be interpreted as meaning that the enforceability of a clause conferring jurisdiction on the third party holding the bill of lading containing that clause is not governed by the law of the Member State to which one or more courts designated by that clause belong. Such a clause is enforceable against such a third party if, by acquiring the bill of lading, that third party is subrogated to all the rights and obligations of one of the original parties to the contract, which must be assessed in accordance with the national law applicable to the substance, determined by the rules of private international law of the Member State to which the court seized of the dispute belongs.

The second to fourth questions referred for a preliminary ruling in each of the joined cases

56 By the second to fourth questions referred in each of the joined cases, which it is appropriate to examine together, the referring court seeks to know, in essence, whether Article 25(1) of the Brussels *Ia* Regulation must be interpreted as precluding national legislation under which a third party in respect of a contract for the supply of goods or services to a third party in respect of which a third party is a party to a contract for the supply of goods or services to a third party is a party to a contract for the supply of goods or services to a third party in respect of which a third party is a party to that contract.

The carrier, which acquires the bill of lading documenting the contract of carriage of goods between a carrier and a shipper and thus becomes a third party holder of such bill of lading, is subrogated to all the rights and obligations of the shipper, with the exception of those arising from a clause conferring jurisdiction inserted in the bill of lading, a clause that is only enforceable against the third party if it has negotiated it individually and separately.

- 57 In the light of paragraphs 50 to 52 and 55 of this judgment, Article 25(1) of the Brussels *Ia* Regulation must be interpreted as meaning that a clause conferring jurisdiction in a bill of lading is enforceable against the third party holding that bill of lading provided that, first, its validity has been recognised in the relationship between the shipper and the carrier who concluded the contract of carriage which that bill of lading documents and, secondly, in accordance with the applicable national law, as determined by the rules of private international law of the Member State to which the court seised of the dispute belongs, that third party, when acquiring that bill of lading, is entitled to rely on that clause as against the third party holding that bill of lading, on the other hand, in accordance with the applicable national law, determined by virtue of the rules of private international law of the Member State to which the court seised of the dispute belongs, that third party, by acquiring the bill of lading in question, has been subrogated to all the rights and obligations of one of the original parties to the contract.
- 58 In the present cases, the national court has not provided any information which might call into question the validity of the clauses conferring jurisdiction at issue in the main proceedings. It is therefore for that court to verify whether, under the applicable national law, each of the third party bill of lading holders at issue in those cases has been subrogated to all of the rights and obligations of the shippers concerned. If so, the reality of the consent of each of those third parties to those clauses does not have to be verified.
- 59 In this regard, as is apparent from the orders for reference, the referring court seems to consider that Spanish law is the applicable national law. However, Article 251 of the LNM, in conjunction with Article 468 of the LNM, establishes, in essence, that the acquirer of the bill of lading acquires all the rights and actions of the transferor over the goods, with the exception of the clauses conferring jurisdiction, which require the consent of the acquirer, such clauses being null and void and deemed not to have been entered into if they have not been individually and separately negotiated.
- 60 Consequently, it must be held, as the Commission has done in its written observations and the Advocate General in point 61 of his Opinion, that such national legislation has the effect of circumventing Article 25(1) of the Brussels *Ia* Regulation, as interpreted by the case-law of the Court of Justice, and is therefore contrary to the latter provision.
- 61 Indeed, according to the information provided by the referring court, Article 251 of the LNM, in conjunction with Article 468 of that Law, obliges the national courts concerned to verify the existence of the consent of a third party to a clause conferring jurisdiction inserted in the bill of lading it acquires, even if it has been subrogated to all the rights and obligations of the shipper who concluded the contract which that bill of lading documents.
- 62 Furthermore, it should be noted that this national legislation is contrary to the case law arising from the judgment of 9 November 2000 in Case C-387/98 Coreck (EU:C:2000:606), paragraph 25, in that it has the effect of conferring on the third party holding the bill of lading more rights than those enjoyed by the shipper to whom it has succeeded, since that third party may choose not to be bound by the extension of jurisdiction agreed between the original parties to the contract.
- 63 In those circumstances, it should be recalled that, in order to ensure the effectiveness of all the provisions of EU law, the principle of primacy requires, in particular, the national courts to interpret, as far as possible, their domestic law in conformity with EU law (Case C-205/20 Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect), EU:C:2022:168, paragraph 35 and the case-law cited).

- 64 However , the obligation to interpret national law in conformity with national law has certain limits and cannot, in particular, serve as a basis for an interpretation *contra legem* of national law (judgment of 8 March 2022, Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect), C-205/20, EU:C:2022:168, paragraph 36 and the case-law cited).
- 65 It should also be recalled that the principle of primacy obliges the national court responsible for applying, within its jurisdiction, the provisions of Union law, where it is not possible to interpret the national legislation in accordance with the requirements of Union law, to ensure the full effectiveness of the requirements of that law in the dispute before it, if necessary by disapplying, on its own initiative, any national legislation or practice, even if it is subsequent, in so far as it is contrary to a directly applicable provision of Union law, such as a provision of a regulation, without having to request or await its prior elimination by legislation or by waiting for it to be eliminated by legislation or by a regulation, any national rule or practice, even a subsequent one, in so far as it is contrary to a directly applicable provision of Union law, such as a provision of a regulation, without having to request or await its prior removal by legislation or by any other constitutional procedure [see, to that effect, the judgments of 21 January 2021, Whiteland Import Export, C-308/19, EU:C:2021:47, paragraph 31, and of 8 March 2022, Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct Effect), C-205/20, EU:C:2022:168, paragraphs 37 and 57 and case law cited).
- 66 In the present cases, Article 251 of the LNM refers to the provisions of Chapter I of Title IX of the LNM with regard to the requirement relating to the consent of the purchaser of a bill of lading to the clauses conferring jurisdiction contained in the bill of lading. Article 468 of the LNM, which is part of this Chapter I, states that, "without prejudice to [...] the rules of the European Union, clauses of submission to a foreign jurisdiction or arbitration abroad, contained in contracts for the use of the ship or in contracts ancillary to navigation, shall be null and void and shall be considered as not having been individually and separately negotiated".
- 67 It will therefore be for the referring court to verify whether Article 251 of the MAL, in conjunction with Article 468 of that Act, can be interpreted as meaning that the rule it lays down, according to which the acquirer of the bill of lading acquires all the rights and remedies of the transferor in respect of the goods, with the exception of jurisdiction clauses and arbitration clauses if they have not been individually and separately negotiated by that acquirer, only applies to a situation if the latter does not fall within the scope of Article 25(1) of the Brussels I *bis* Regulation. If that court finds that this is not the case, it should refrain from applying that national rule in the main proceedings, in so far as it is contrary to that directly applicable provision of EU law.
- 68 In the light of all the foregoing considerations, the answer to the second to the fourth questions referred for a preliminary ruling in each of the joined cases must be that Article 25(1) of the Brussels *Ia* Regulation must be interpreted as precluding national legislation under which a third party to a contract for the carriage of goods concluded between a carrier and a shipper, which acquires the bill of lading documenting that contract and thus becomes a third party holder of that bill of lading, is subrogated to all the rights and obligations of that shipper, with the exception of those arising from a clause conferring jurisdiction inserted in that bill of lading, a clause which is enforceable against that third party only if it has negotiated it individually and separately.

Costs

- 69 Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court. Costs incurred by persons who are not parties to the main proceedings but who have submitted observations to the Court are not recoverable.

In view of the foregoing, the Court (Sixth Chamber) declares:

- 1) **Article 25(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**

the enforcement of judgments in civil and commercial matters,

should be interpreted as meaning that

the enforceability of a clause conferring jurisdiction on the third party holding the bill of lading in which that clause is inserted is not governed by the law of the Member State to which one or more courts designated by that clause belong. Such a clause is enforceable against such a third party if, by acquiring the bill of lading, that third party is subrogated to all the rights and obligations of one of the original parties to the contract, which must be assessed in accordance with the national law applicable to the substance, determined by the rules of private international law of the Member State to which the court seised of the dispute belongs.

2) **Article 25(1) of Regulation No. 1215/2012 must be**

interpreted as meaning that.

precludes national legislation under which a third party to a contract of carriage of goods concluded between a carrier and a shipper, who acquires the bill of lading documenting that contract and thus becomes a third party holder of that bill of lading, is subrogated to all the rights and obligations of that shipper, with the exception of those arising from a clause conferring jurisdiction inserted in that bill of lading, a clause which is only enforceable against that third party if it has negotiated it individually and separately.

Xuereb

Kumin

Ziemele

Delivered in open court in Luxembourg on April 25, 2024.

The Secretary
Chamber in

The President of the
functions

A. Calot EscobarP

. G. Xuereb

* Language of procedure: Spanish.