On Negative Declarations and the Brussels I Regulation

The latest issue of the *Anuario Español de Derecho Internacional Privado* (vol. XI, 2011), which has been recently published, includes an article by Crístian Oró Martínez (Universitat Autònoma de Barcelona – Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law) dealing precisely with the question examined by the CJEU in its judgment of 25 October 2012. The author analyses the long-standing case law on Article 5(3) of the Brussels I Regulation, especially insofar as it required that the action seek to establish the liability of the defendant. This would exclude the possibility of using this jurisdiction rule as regards actions for a negative declaration. However, in the author's view, there are a number of reasons to hold that Article 5(3) should cover this kind of actions, if interpreted both from a literal and from a systematic perspective. Since the issue at stake has resulted in divided opinions not only in legal literature, but also in the case law of national courts, the article analyses the arguments generally advanced in support of these different positions. As a conclusion, the author submits that the CJEU should review its case law in order to allow actions for a negative declaration to be brought under Article 5(3) of the Brussels I Regulation. In short, a position which coincides with the outcome of the judgment of 25 October 2012, even though the Court did not consider it necessary to review its own interpretation of the scope of Article 5(3) in order to reach such conclusion.