

ECJ Rules Brussels I Regulation Excludes Incompatible Interpretation of CMR

On 19 December 2013, the Court of Justice of the European Union delivered its ruling in Nipponkoa Insurance Co. (Europe) Ltd v Inter-Zuid Transport BV (case C452/12).

The main issue for the court was whether the more conservative requirements for *lis pendens* under article 31 of the Convention on the Contract for the International Carriage of Goods by Road (CMR) were compatible with the Brussels I Regulation.

40 By its second question, the referring court wishes to know whether Article 71 of Regulation No 44/2001 must be interpreted as meaning that it precludes an interpretation of Article 31(2) of the CMR according to which an action for a negative declaration or a negative declaratory judgment in a Member State does not have the same cause of action as an action for indemnity brought in respect of the same damage and against the same parties or the successors to their rights in another Member State.

Article 31 of the CMR reads:

'1. In legal proceedings arising out of carriage under this Convention, the plaintiff may bring an action in any court or tribunal of a contracting country designated by agreement between the parties and, in addition, in the courts or tribunals of a country within whose territory:

(a) The defendant is ordinarily resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made, or

(b) The place where the goods were taken over by the carrier or the place designated for delivery is situated,

and in no other courts or tribunals.

2. Where in respect of a claim referred to in paragraph 1 of this article an action is pending before a court or tribunal competent under that paragraph, or where in respect of such a claim a judgement has been entered by such a court or tribunal no new action shall be started between the same parties on the same grounds unless the judgement of the court or tribunal before which the first action was brought is not enforceable in the country in which the fresh proceedings are brought.

3. When a judgement entered by a court or tribunal of a contracting country in any such action as is referred to in paragraph 1 of this article has become enforceable in that country, it shall also become enforceable in each of the other contracting States, as soon as the formalities required in the country concerned have been complied with. These formalities shall not permit the merits of the case to be re-opened.

4. The provisions of paragraph 3 of this article shall apply to judgements after trial, judgements by default and settlements confirmed by an order of the court, but shall not apply to interim judgements or to awards of damages, in addition to costs against a plaintiff who wholly or partly fails in his action.

...'

The Court answers that they are not.

47 As the Court has already held, rules laid down by the special conventions referred to in Article 71 of Regulation No 44/2001, such as those deriving from Article 31(2) of the CMR, can be applied within the European Union only in so far as the principles of free movement of judgments and mutual trust in the administration of justice are observed (see, to that effect, TNT Express Nederland, paragraph 54 and the case-law cited).

48 Those principles would not be observed under conditions at least as favourable as those laid down in Regulation No 44/2001 if Article 31(2) were to be interpreted as meaning that a negative declaratory judgment in one Member State does not have the same cause of action as an action for indemnity between the same parties in another Member State.

Final ruling:

1. Article 71 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 must be interpreted as meaning that it precludes an international convention from being interpreted in a manner which fails to ensure, under conditions at least as favourable as those provided for by that regulation, that the underlying objectives and principles of that regulation are observed.

2. Article 71 of Regulation No 44/2001 must be interpreted as meaning that it precludes an interpretation of Article 31(2) of the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956, as amended by the Protocol signed in Geneva on 5 July 1978, according to which an action for a negative declaration or a negative declaratory judgment in one Member State does not have the same cause of action as an action for indemnity between the same parties in another Member State.