

CJEU on jurisdiction for matters of non-contractual liability in connection with investments in securities and collective actions in the case Vereniging van Effectenbezitters, C-709/19

In December 2020, we reported about the Opinion presented by Advocate Generale Campos Sánchez-Bordona in the case Vereniging van Effectenbezitters, C-709/19. Today, the Court delivered its judgment in this case.

In brief, the request for a preliminary ruling arose out of the proceedings pertaining to a collective action for a declaratory judgment brought by an association against an oil and gas company on behalf of investors who bought, held or sold the ordinary shares through an investment account in the Netherlands. The association argued that this internationally listed company acted unlawfully towards its shareholders inasmuch as it made incorrect, incomplete and misleading statements about the circumstances pertaining to, inter alia, an explosion resulting in an oil spill. It is in this context that the referring court requested the Court of Justice to interpret Article 7(2) of the Brussels I bis Regulation.

At the request of the Court, in his Opinion of last December, AG Campos Sánchez-Bordona addressed two first preliminary questions. Thus, the third and fourth preliminary questions on international and internal territorial jurisdiction to hear subsequent individual claims of the investors were not addressed in the Opinion.

Ultimately, the third and fourth questions do not receive a definitive answer in the judgment either. The Court held that these questions are inadmissible as they are of hypothetical nature - in the proceedings pending before the referring court, no subsequent individual claim is concerned (paragraphs 38 and 39).

As to the first and second preliminary questions, these are worded as follows:

(1) (a) *Should Article 7(2) of [the Brussels I bis Regulation] be interpreted as meaning that the direct occurrence of purely financial damage to an investment account in the Netherlands or to an investment account of a bank and/or investment firm established in the Netherlands, damage which is the result of investment decisions influenced by globally distributed but incorrect, incomplete and misleading information from an international listed company, constitutes a sufficient connecting factor for the international jurisdiction of the Netherlands courts by virtue of the location of the occurrence of the damage (“Erfolgsort”)?*

(b) *If not, are additional circumstances required to justify the jurisdiction of the Netherlands courts and what are those circumstances? Are the additional circumstances [namely, the fact that the international listed company focuses on global investment public, including the investors in the Netherlands, and the association represents a considerable number of investors in this Member State, the fact that the settlement reached by the international listed company with a number of shareholders in the United States of America was not proposed to the investors represented by the association and, lastly, the fact that the shareholders for whom this association is acting include consumers to whom the Brussels I bis Regulation affords special legal protection] sufficient to found the jurisdiction of the Netherlands courts?*

(2) *Would the answer to Question 1 be different in the case of a claim brought under Article 3:305a of the BW by an association the purpose of which is to defend, in its own right, the collective interests of investors who have suffered damage as referred to in Question 1, which means, among other things, that neither the places of domicile of the aforementioned investors, nor the special circumstances of individual purchase transactions or of individual decisions not to sell shares which were already held, have been established?*

In its judgment, the Court answered together these questions (paragraph 22) and held that Article 7(2) of the Brussels I bis Regulation must be interpreted to the effect that the direct occurrence, in an investment account, of purely financial damage resulting from investment decisions made on the basis of information which was readily available worldwide, but which was incorrect, incomplete and

misleading and emanated from an international listed company, does not allow the international jurisdiction of the court of the Member State in which the bank or investment firm that holds that account is established to be founded on a connection with the place where the damage occurred, where that company was not subject to statutory reporting obligations in that Member State (paragraph 37).

The judgment can be consulted here (the English version is not yet available).