

PRIVATE INTERNATIONAL LAW AND INTERNATIONAL CIVIL PROCEDURE

Jurisdiction Based on Place of Performance in the Case of a Multimodal Transport.

Notes on ECJ 11-07-2018 – C-88/17 – Zurich Insurance plc, Metso Minerals Oy ./.
Abnormal Load Services (International) Ltd (→ *unalex EU-764*)

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Brussels I Regulation 44/2001 Article 5(1)(b) – Judicial cooperation in civil matters – Jurisdiction of the courts for the place of performance of the obligation – Place of provision of services – Contract for the carriage of goods between two Member States – Route consisting of several stages and involving a number of means of transport

The second indent of Article 5(1)(b) Brussels I Regulation must be interpreted as meaning that, in the context of a contract for the carriage of goods between Member States in several stages, with stops, and by a number of means of transport, such as that at issue in the main proceedings, both the place of dispatch and the place of delivery of the goods constitute places where transport services are provided, for the purposes of that indent.

1. The case in dispute

The European Court of Justice had to decide on a case in which the multimodal carriage¹ of a cylindrical crusher from Pori (Finland) to Sheffield (United Kingdom) was agreed between Metso Minerals Oy, a company incorporated under Finnish law, and Abnormal Load Services Ltd (ALS), a company established in the United Kingdom. The crusher was first transported on the chassis of a lorry from Pori to Rauma (Finland), where it was unloaded from the lorry and driven onto a ship under its own power. After being transported by sea to the port of Hull (United Kingdom), the crusher was driven off the ship, again under its own power, and then loaded onto another lorry. Finally, the crusher was dispatched from Hull by road, but it disappeared before being delivered to the consignee in Sheffield.

Zurich Insurance plc, an insurance company established in Ireland, reimbursed Metso the value of the crusher, less the excess provided for by the insurance contract. Zurich and Metso then brought a claim before the first instance

court Satakunta in Finland and requested that ALS be ordered to pay them as damages a sum equivalent to the value of the crusher. ALS contended that the claim was inadmissible because the court lacked jurisdiction. While the first instance court declared that it had jurisdiction and decided in favour of Zurich and Metso, the court of appeal which subsequently reviewed the dispute declared that it lacked jurisdiction. Finally, the Korkein oikeus (Supreme Court, Finland) decided to stay proceedings and to request to the ECJ a preliminary ruling according to Article 267 TFEU on the question of how the place or places of performance of a service are to be determined according to Article 5(1)(b) Brussels I Regulation (now art. 7(1)(b) Brussels Ibis Regulation)² when the contract in question concerns the carriage of goods between Member States and the transport consists of several different stages using different means of transport.

2. Cross-border multimodal carriage of goods and the legal framework

If separate transport contracts are agreed for individual transport legs (so-called segmented transport), which provisions of transport law apply usually depends on the means of transport used.³ By contrast, multimodal transport involves at least two different means of transport⁴ under the responsibility of a Multimodal Transport Operator (MTO) based on one integrated transport contract.⁵ This integrated contract therefore governs the carriage of the goods from the place of acceptance to the place of destination and delivery to the recipient.⁶

Efforts to unify the laws relating to the international carriage of goods by road,⁷ rail,⁸ inland waterways,⁹ air¹⁰

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¹ On this see n° 2.

² On this see n° 3.

³ *Soergel/von Hoffmann*, 12th ed. (1996) EGBGB Art. 28, para. 469.

⁴ Whereas in case of successive carriers (e.g. art. 34 CMR) the mode of transport does not change, wherefore no multimodal contract is given, *Mankowski*, in: *Reithmann/Martiny, Internationales Vertragsrecht* (8th ed. 2015) para. 6.2097.

⁵ *BeckOK BGB/Spickhoff*, 49th ed. (2019) VO (EG) 593/2008 art. 5 para. 12.

⁶ *MüKoBGB/Martiny*, 7th ed. (2018) Rom I-VO art. 5 para. 140.

⁷ Convention on the Contract for the International Carriage of Goods by Road (CMR) signed on 19th May 1956. See also “Protocol to the Convention on the Contract for the International Carriage of Goods

and – to a lesser extent – sea¹¹ have generally met with far-reaching success.¹² The conventions achieved a unified standard of legal issues relating to international haulage which are important in practice, including jurisdiction and particularly liability.¹³

However, the various international legal provisions are only designed for the carriage of goods with one means of transport (i.e. uni-modal) and therefore do usually not have direct application if goods are carried by different means of transport (i.e. multimodal) as part of an integrated transport process.¹⁴ Attempts to achieve unified provisions for the international multimodal carriage of goods have so far failed, in part because the representatives of single transport businesses are not ready to deviate from the positions they have reached.¹⁵ The United Nations

Convention on this topic signed in 1980¹⁶ must now also be considered a failure as it has not been sufficiently ratified.¹⁷ The Rotterdam Rules, which so far have not entered into force either, would at least cover the carriage of goods before and after a sea leg.¹⁸

There are minor exceptions, such as special provisions in unimodal transport conventions like Article 2 CMR for “combined transport” in which the vehicle carrying the goods is transported by another means of transport for one transport leg without being unloaded (roll-on/roll-off traffic or ferry transport).¹⁹ However, in relation to accidents on the carrier vehicle, Article 2(1) CMR refers to the liability law of the carrier vehicle in certain situations.²⁰ Article 1(3) CIM, which covers road legs before or after carriage by rail, is also worth noting. In contrast to CMR, however, it applies to domestic carriage only.²¹

3. International jurisdiction over claims based on contracts

If, as in this dispute,²² there is no transport law convention which has priority according to Article 71 Brussels Ibis Regulation,²³ the question of which court(s) has (have) jurisdiction in the EU must be determined according to the Brussels Ibis Regulation²⁴ for all cases brought after 10 October 2015.²⁵ By contrast, the previous provision of the Brussels I Regulation applies from 1 March 2002 to older disputes such as this one.²⁶ Since the provision at the centre of this decision, namely Article 5(1)(b) of the Brussels I Regulation, and the corresponding provision in Article

by Road” (1978) and “Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road concerning the Electronic Consignment Note” (2008); cf. *Carr/Kidner*, International Trade Law Statutes and Conventions 2009-2010 (2010) 757 *et seq.*; *Laimer*, International Carriage of Goods by Road between Uniform Law and Rome I: Some Recent Austrian Cases, EuLF 3/4 (2017) 58 *et seq.*. On a similar instrument in America see *Larsen*, The Uniform Legal Regime Governing Inter-American Contracts for Carriage of Goods by Road, *Unif. L. Rev.* 2002, Vol. 7(3), 791 *et seq.*.

⁸ Convention concerning International Carriage by Rail (COTIF) signed on 9th May 1980, with appendix B on Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM) signed on 9th June 1999. Cf. *Th. Koller*, Die Querbezüge zwischen UN-Kaufrecht und COTIF-Eisenbahngüterbeförderungsrecht (CIM), *AJP* 4 (2016) 415 *et seq.*.

⁹ Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI) signed on 22nd June 2001.

¹⁰ Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention) signed on 28th May 1999. On the relationship between this Convention and secondary EU legislation cf. ECJ 10.01.2006 – C-344/04 – *The Queen, International Air Transport Association, European Low Fares Airline Association ./. Department for Transport*, *unalex EU-595* (para. 35 *et seq.*) = *EuZW* 2006, 112 (notes by *Reich*); see also *Tonner*, Der Luftbeförderungsvertrag zwischen europäischer und globaler Regulierung, *NJW* 2006, 1854 *et seq.*. States which did not ratify Montreal Convention still apply the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw Convention) signed on 12th October 1929, *MüKoBGB/Martiny*, *Rom I-VO* art. 5 para. 56.

¹¹ In particular the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (1924)/First Protocol (1968)/Second Protocol (1979) (Hague-Visby Rules), the United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules) signed on 31st March 1978, whereas the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules) signed on 11th December 2008 have not been entered into force yet. Cf. *Furrer*, Das neue Seehandelsrecht im Kontext internationaler und privater Rechtsvereinheitlichung, *RdTW* 2014, 85 *et seq.*; *Djadjev*, Law and Practice of the Obligations of the Carrier over the Cargo – The Hague-Visby Rules (2016); *Salmerón Henríquez*, Freedom of Contract, Bargaining Power and Forum Selection in Bills of Lading (2016) 327 *et seq.*

¹² *Mauver*, Einheitsrecht im internationalen Warentransport, *RabelsZ* 81 (2017) 117 (127 *et seq.*).

¹³ *Mankowski*, in: *Reithmann/Martiny*, *supra* 4, para. 6.1922.

¹⁴ *Mankowski*, Notes to ECJ 11.07.2018 – C-88/17, *TransPR* 2018, 474 *et seq.*; *Rogert*, Einheitsrecht und Kollisionsrecht im internationalen multimodalen Gütertransport (2005) 105, 107; *Ramming*, Keine Anwendung der CMR auf Teilstrecken einer Multimodal-Beförderung, *NJW* 2009, 414; *Csoklich*, Der OGH zum multimodalen Transport und zwei weiteren transportrechtlichen Fragen, *RdW* 1994, 339. Cf. Communication from the Commission on Freight Transport Logistics in Europe - The key to sustainable mobility, COM(2006) 336 final (N° 4.2.7.3.: „Responsibility and liability in international transport arise from international conventions. Often they provide different rules for different modes. This creates a complex multitude of regimes with subsequent friction costs in multimodal chains.“).

¹⁵ *Jesser-Huß*, Multimodaler Transport, in: *Basodw/Hopt/Zimmermann* (eds.), *Handwörterbuch des Europäischen Privatrechts II* (2009) 1088.

¹⁶ Convention on International Multimodal Transport of Goods (MTC) signed on 24th May 1980.

¹⁷ *Mankowski*, in: *Reithmann/Martiny*, *supra* 4, para. 6.2092, also on the relevance of the Uniform Rules for a Combined Transport Document der International Chamber of Commerce (ICC).

¹⁸ *Maurer*, *RabelsZ* 81 (2017) 146, 148.

¹⁹ *Ferrari*, in: *Ferrari/Kieninger/Mankowski et al.*, Internationales Vertragsrecht (3rd ed. 2018) CMR art. 2 para. 6 *et seq.*

²⁰ *MüKoHGB/Jesser-Huß*, 3rd ed. (2014) CMR art. 2 para. 10 *et seq.*

²¹ *MüKoHGB/Freise*, 3rd ed. (2014) CIM art. 1 para. 11 *et seq.*. On other provisions which include multimodal issues (e.g. art. 18(3), art. 31 Warsaw Convention) see *Mankowski*, in: *Reithmann/Martiny*, *supra* 4, para. 6.2105; *MüKoBGB/Martiny*, *Rom I-VO* art. 5 para. 147.

²² See Opinion of Advocate General 10.04.2018 – C-88/17, *ECLI:EU:C:2018:224* (para. 25 *et seq.*).

²³ With respect to the relationship between art. 31 CMR and art. 71 Brussels I Regulation see ECJ 04.09.2014 – C-157/13 – *Nickel & Goeldner Spedition GmbH ./. «Kintra» UAB*, *unalex EU-604*; ECJ 19.12.2013 – C-452/12 – *Nipponkoa Insurance Co. (Europe) Ltd ./. Inter-Zuid Transport BV*, *unalex EU-570*; ECJ 04.05.2010 – C-533/08 – *TNT Express Nederland BV ./. AXA Versicherung AG*, *unalex EU-222*. Cf. *Wittwer*, in: *Mayr* (ed.), *Handbuch des europäischen Zivilverfahrensrechts* (2017) para. 3.223.

²⁴ Regulation (EU) n. 1215/2012 of 12.12.2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ 2012 L 351/1. Cf. *Domej*, Die Neufassung der EuGVVO. Quantensprünge im europäischen Zivilprozessrecht, *RabelsZ* 78 (2014) 508 *et seq.*

²⁵ With respect to prorogation of jurisdiction see *Nordmeier*, Internationale Gerichtsstandsvereinbarungen nach der EuGVVO nF, *RIW* 2016, 331 *et seq.* Recently ECJ 7.7.2016 – C-222/15 – *Höszig Kft. ./. Alstom Power Thermal Services*, *unalex EU-663*.

²⁶ Regulation (EC) n.°44/2001 of 22.12.2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ 2001 L 12/1.

7(1)(b) of the Brussels Ibis Regulation, are identical, the current provision can be used hereafter.²⁷

If there is no agreement on jurisdiction (Article 25 Brussels Ibis Regulation),²⁸ Article 4(1) of the Brussels Ibis Regulation primarily sets out that the courts in the defendant's EU member state of domicile have international jurisdiction.²⁹ This general place of jurisdiction competes with the special places of jurisdiction in Articles 7 to 9 of the Brussels Ibis Regulation which set out the option to choose a place of jurisdiction in another EU member state outside the defendant's state of domicile. The claimant is thus given the choice to bring the claim in the general or the special place of jurisdiction.³⁰ Transport contracts are exempt from the specific jurisdiction provisions that apply to consumer issues (Article 17(3) Brussels Ibis Regulation).³¹

4. In particular: Jurisdiction at the place of performance of the contract

For contractual claims, i.e. freely assumed obligations,³² Article 7(1) of the Brussels Ibis Regulation is of particular importance.³³ This provision provides the option of a place of jurisdiction, i.e. an alternative forum to the general place of jurisdiction, at the court of the place in which the disputed obligation has been performed or should have been performed.³⁴ For the two types of contract which are most important in practice, namely the sale of goods³⁵ and the provision of services, Article 7(1)(b) of the Brussels Ibis Regulation provides for a standard place of

performance determined autonomously by EU law in the place in which the distinctive contractual service, i.e. the obligation that determines the entire contractual relationship, was or should have been performed, provided that this place of performance is in an EU member state.³⁶ In the present case, these elements must be established in relation to the multimodal carriage of goods.

a. Multimodal carriage of goods as a service

The term "service" is to be interpreted autonomously, i.e. without reference to criteria set by the member states law.³⁷ According to ECJ jurisprudence, a contractual obligation is a service within the meaning of the provision if an activity is owed for payment.³⁸ This broad European definition of a service which comprises contractual obligations of conduct as well as obligations of result³⁹ also includes (multimodal) transportation contracts.⁴⁰

b. Place of performance of the transport service

Where then is the place of performance of transport services which, as set out above, determines the place of jurisdiction? For service contracts, the place of performance is determined by the place of the service: this means at first the place where the service should be performed according to the contract; after performance of the service, the factual place of performance is of relevance, provided that it complies with the contractual provisions or the counterparty has accepted performance at this place in accordance with the contract.⁴¹ Agreements on the place of performance, including implied agreements, generally determine the place of jurisdiction if they are valid according to the law applicable to the agreement.⁴² However, agreements that do not define a real place of performance but should merely determine a place of jurisdiction must comply with the requirements for jurisdiction clauses set out in Article 25 of the Brussels Ibis Regulation.⁴³

If there are several places of performance, the place of the principal performance is decisive.⁴⁴ However, in transport

²⁷ Cf. *Graf von Westphalen*, Gerichtsstand bei transnationaler Beförderung, IWRZ 2019, 40.

²⁸ In most cases the parties of transportation contracts agree on the court(s) that is (are) to have jurisdiction to settle any disputes which have arisen or which may arise in connection with their legal relationship, *Mankowski*, Der europäische Erfüllungsortgerichtsstand des Art 5 Nr 1 lit b EuGVVO und Transportverträge, TranspR 2008, 67. See e.g. Corte di Cassazione civile 07.09.2016 N° 17675, *unalex IT-763*.

²⁹ Cf. ECJ 13.07.2000 – C-412/98 – *Group Josi Reinsurance ./. Universal General Insurance*, *unalex EU-91*. For general provisions with respect to the domicil of natural and legal persons see art. 62 and art. 63 Brussels Ibis Regulation, but with respect to certain proceedings see art. 24 N° 2 Brussels Ibis Regulation.

³⁰ Cf. *Ballarino*, Diritto internazionale privato italiano (8th ed. 2016) 34.

³¹ *Lurger/Melcher*, Handbuch Internationales Privatrecht (2017) para. 4/92. On the jurisdiction of a court of a Member State before which a defendant enters an appearance according to art. 26 Brussels Ibis Regulation see ECJ 27.02.2014 – C-1/13 – *Cartier parfums-lunettes SAS et al. ./. Ziegler France SA et al.*, *unalex EU-576*; ECJ 13.06.2013 – C-144/12 – *Goldbet Sportwetten GmbH ./. Massimo Sperindeo*, *unalex EU-553*.

³² ECJ 17.06.1992 – C-26/91 – *Jakob Handte & Co. GmbH ./. Traitements mécano-chimiques des surfaces SA (TMCS)*, *unalex EU-74* (para. 15); ECJ 05.02.2004 – C-265/02 – *Frabuil SA ./. Assitalia SpA*, *unalex EU-68* (para. 24); ECJ 20.01.2005 – C-27/02 – *Petra Engler ./. Janus Versand GmbH*, *unalex EU-110* (para. 51).

³³ On the relevance of art. 7 n. 2 Brussels Ibis Regulation or art 8 n. 1 Brussels Ibis Regulation in the context of the carriage of goods see *Mankowski*, TranspR 2008, 67.

³⁴ MüKoZPO/*Gottwald*, 5th ed. (2017), Brüssel Ia-VO art. 7 para. 1.

³⁵ With respect to the autonomous interpretation of the term see ECJ 23.04.2009 – C-533/07 – *Falco Privatstiftung, Thomas Rabitsch ./. Gisela Weller-Lindhorst*, *unalex EU-177* (para. 19 *et seq.*). On the differentiation between sale of goods and services see ECJ 25.02.2010 – C-381/08 – *Car Trim GmbH ./. KeySafety Systems Srl*, *unalex EU-214*. Cf. *Carbone/Tuo*, Il nuovo spazio giudiziario europeo in materia civile e commerciale. Il regolamento UE n. 1215/2012 (2016) 101 *et seq.*

³⁶ Cf. *Mosconi/Campiglio*, Diritto internazionale privato e processuale, I. Parte generale e obbligazioni, 8th ed. (2017) 80 *et seq.*; *Wittwer*, in: Mayr (ed.), Handbuch des europäischen Zivilverfahrensrechts (2017) para. 3.273.

³⁷ *Salerno*, Giurisdizione ed efficacia delle decisioni straniere nel regolamento (UE) n. 1215/2012 (rifusione) (4th ed. 2015) 149 *et seq.*

³⁸ *Junker*, Internationales Zivilprozessrecht (3rd ed. 2016) 96.

³⁹ *Mankowski*, TranspR 2008, 69.

⁴⁰ ECJ 09.07.2009 – C-204/08 – *Peter Rehder ./. Air Baltic Corporation*, *unalex EU-181* (para. 40). Cf. *Graf von Westphalen*, IWRZ 2019, 40.

⁴¹ ECJ 11.03.2010 – C-19/09 – *Wood Floor Solutions Andreas Domberger GmbH ./. Silva Trade SA*, *unalex EU-217* (para. 38, 40); ECJ 09.06.2011 – C-87/10 – *Electrosteel Europe SA ./. Edil Centro SpA*, *unalex EU-483* (para. 16).

⁴² ECJ 17.01.1980 – C-56/79 – *Zelger ./. Salinitri*, *unalex EU-19* (para. 6); ECJ 09.06.2011 – C-87/10 – *Electrosteel Europe SA ./. Edil Centro SpA*, *unalex EU-483* (para. 22).

⁴³ ECJ 20.02.1997 – C-106/95 – *MSG, Mainschiffahrts-Genossenschaft ./. Les Gravières Rhénanes*, *unalex EU-99* (para. 31, 35).

⁴⁴ ECJ 11.03.2010 – C-19/09 – *Wood Floor Solutions Andreas Domberger GmbH ./. Silva Trade SA*, *unalex EU-217* (para. 33).

contracts, the main activities are usually performed at several places:⁴⁵ At the place of departure, the carrier must have the means of transport ready (and sometimes load the goods), followed by the actual transport, i.e. the physical movement of the goods which must be delivered to the place of destination of the carriage.⁴⁶

In relation to the transport of passengers by air, including flights which are divided into several legs,⁴⁷ the European Court of Justice has already decided that the relevant places which have an sufficient link to the essential nature of the services resulting from the contract are both the place of departure and the place of arrival of the flight. This is because a “separate part of the service which is the principal service, which is to be provided in a specific place, cannot be distinguished in such cases on the basis of an economic criterion”.⁴⁸ The place of performance is therefore in both the place of departure and the place of arrival and the claimant can choose between these places.⁴⁹

In continuation of these preceding cases, in relation to the multimodal carriage of goods the ECJ has now responded to the Finnish court that the claimant has the right to choose between the place of departure and the place of destination of the transport.⁵⁰ Both places are closely connected to the core of the contractual service obligations.⁵¹ By contrast, neither rest stops nor places of transfer are determinative of the contract and are therefore not places of performance.⁵² The decision discussed here clarifies that this interpretation of Article 7(b) second indent of the Brussels Ibis Regulation applies to the transport of both passengers and goods as well as all modes of transport including multimodal carriage.⁵³

5. Conclusion

In conclusion, the decision is to be welcomed. The claimant’s choice of two places of performance keeps their

number manageable, they are predictable for the parties and the contract has a sufficiently close link to both. Further, both the place of departure and the place of destination determine the place of jurisdiction also according to Article 31(1)(b) CMR, Article 46(1)(b) CIM and Article 21(1)(c) of the Hamburg Rules, which also supports the ECJ solution discussed here for the sake of coherence.⁵⁴

⁴⁵ Cf. Opinion of Advocate General 10.04.2018 – C-88/17, ECLI:EU:C:2018:224 (para. 28 *et seq.*); *Hartenstein*, Zur Bestimmung des Gerichtsstands des Erfüllungsorts in der EuGVVO – Anmerkung zum Urteil des EuGH vom 11.07.2018 (Rs C-88/17), *TranspR* 2018, 440.

⁴⁶ *Mankowski*, *TranspR* 2008, 70 *et seq.*

⁴⁷ ECJ 07.03.2018 – joined cases C-274/16, C-447/16 and C-448/16 – *flightright*, ECLI:EU:C:2018:160 (para. 65).

⁴⁸ ECJ 09.07.2009 – C-204/08 – *Peter Rehder ./. Air Baltic Corporation*, *unalex EU-181* (para. 42).

⁴⁹ *Lurger/Melcher*, *Handbuch Internationales Privatrecht* (2017) para. 4/92. With respect to the carriage of goods by road cf. ECJ 04.09.2014 – C-157/13 – *Nickel & Goeldner Spedition GmbH ./. «Kintra» UAB*, *unalex EU-604* (para. 41).

⁵⁰ ECJ 11.07.2018 – C-88/17 – *Zurich Insurance plc, Metso Minerals Oy ./. Abnormal Load Services (International) Ltd*, *unalex EU-764* (para. 23). Previously contra OGH (AT) 13.03.1996, 3 Ob 514/94.

⁵¹ Cf. ECJ 11.07.2018 – C-88/17 – *Zurich Insurance plc, Metso Minerals Oy ./. Abnormal Load Services (International) Ltd*, *unalex EU-764* (para. 20). Approving note by *Schlosser*, *Internationale Zuständigkeit bei grenzüberschreitenden Transporten mit mehreren Verkehrsmitteln aufgrund eines einzigen Auftrags*, *IPRax* 2019, 23 (24).

⁵² Opinion of Advocate General 10.04.2018 – C-88/17, ECLI:EU:C:2018:224 (para. 59 *et seq.*); *Mankowski*, *TranspR* 2018, 475; *Mankowski*, *TranspR* 2008, 70. Cf. ECJ 09.07.2009 – C-204/08 – *Peter Rehder ./. Air Baltic Corporation*, *unalex EU-181* (para. 40). Contra *Hartenstein*, *TranspR* 2018, 441.

⁵³ *Mankowski*, *TranspR* 2018, 474 *et seq.*; Opinion of Advocate General 10.04.2018 – C-88/17, ECLI:EU:C:2018:224 (para. 48 *et seq.*). With differentiating considerations *Hartenstein*, *TranspR* 2018, 441.

⁵⁴ See also art. 26(1)(c) MTC; but different art. 3(1) Montreal Convention (the place of destination only); see for comprehensive discussion *Mankowski*, *TranspR* 2008, 72 *et seq.*

International Civil Procedure

Court of Justice of the European Union
28 February 2019 – C-579/17 – BUAK Bauarbeiter-Urlaubs- u. Abfertigungskasse v. Gradbeništvo Korana d.o.o. (→ *unalex EU-787*)

Brussels Ia Regulation¹ Articles 1(1), 1(2) and 53 – Jurisdiction in civil and commercial matters – Scope – Civil and commercial matters – Matters excluded – Social security – Application for the issue of the certificate certifying that the judgment delivered by the court of origin is enforceable – Judgment relating to a claim for wage supplements

¹ 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).

regarding annual leave pay that a social security body has against an employer with respect to the posting of workers – Exercise of a judicial function by the court ruling in the case

Article 1 Brussels Ia Regulation must be interpreted as meaning that an action for payment of wage supplements in respect of annual leave pay brought by a body governed by public law against an employer, in connection with the posting of workers to a Member State where they do not have their habitual place of work, or in the context of the provision of labour in that Member State, or against an employer established outside of the territory of that Member State in connection with the employment of workers who have their habitual place of work in that Member State, falls within the scope of ap-