

**Judgment of the Court (Fifth Chamber) of 18 July 2013  
(request for a preliminary ruling from the Hovrätten för  
Nedre Norrland — Sweden) — ÖFAB, Östergötlands  
Fastigheter AB v Frank Koot, Evergreen Investments BV**

(Case C-147/12) <sup>(1)</sup>

**(Judicial cooperation in civil matters — Regulation (EC)  
No 44/2001 — Court with jurisdiction — Special jurisdiction  
in ‘matters relating to contract’ and ‘matters relating to tort,  
delict and quasi-delict’)**

(2013/C 260/23)

Language of the case: Swedish

**Referring court**

Hovrätten för Nedre Norrland

**Parties to the main proceedings**

*Applicant:* ÖFAB, Östergötlands Fastigheter AB

*Defendant:* Frank Koot, Evergreen Investments BV

**Re:**

Request for a preliminary ruling — Hovrätten för Nedre Norrland — Interpretation of Article 5(1) and (3) of Council Regulation (EC) 44/2001 of 22 December 2001, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2000 L 12, p. 1) — Whether or not included within special jurisdiction in matters relating to contract or in matters relating to tort, delict and quasi delict — Legal proceedings brought in Member State A against a natural person domiciled in Member State B who was a member of the board of directors of a limited company with its registered office in Member State A, and against a limited company having its registered office in Member State B which held the majority of the shares in the company with its registered office in Member State A — Action seeking a declaration that a member of the board of directors of a limited company is liable for the debts of that company resulting from the failure of the member of the board of directors to carry out certain formalities intended to monitor the financial situation of the company — Action seeking a declaration that the owner of a limited company is liable for the acts of another where the company continues trading despite being undercapitalised and despite the legal obligation to put the company into liquidation

**Operative part of the judgment**

1. The concept of ‘matters relating to tort, delict or quasi delict’ in Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, must be interpreted as meaning that it covers actions such as those at issue in the main proceedings brought by a creditor of a limited company seeking to hold liable a member of the board of directors of that company and one of its shareholders for the debts of that

company, because they allowed that company to continue to carry on business even though it was undercapitalised and was forced to go into liquidation.;

2. The concept of ‘the place where the harmful event occurred or may occur’ in Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that as regards actions seeking to hold liable a member of the board of directors and a shareholder of a limited company for the debts of that company, that place is situated in the place to which the activities carried out by that company and the financial situation related to those activities are connected.
3. The fact that the claim at issue has been transferred by the initial creditor to another, in circumstances such as those at issue in the main proceedings, has no impact on the determination of the court having jurisdiction under Article 5(3) of Regulation No 44/2001.

<sup>(1)</sup> OJ C 151, 26.5.2012.

**Judgment of the Court (Ninth Chamber) of 18 July 2013  
(request for a preliminary ruling from the Corte di Appello  
di Roma — Italy) — Martini SpA v Ministero delle Attività  
Produttive**

(Case C-211/12) <sup>(1)</sup>

**(Agriculture — System of import licences — Regulation (EC)  
No 1291/2000 — Article 35(4)(c) — Securities lodged at the  
time of application for the issue of the licences — Import  
licence — Late submission of proof of its use — Penalty —  
Calculation of the amount forfeited — Regulation (EC)  
No 958/2003 — Tariff quotas)**

(2013/C 260/24)

Language of the case: Italian

**Referring court**

Corte di Appello di Roma

**Parties to the main proceedings**

*Appellant:* Martini SpA

*Respondent:* Ministero delle Attività Produttive

**Re:**

Request for a preliminary ruling — Corte di Appello di Roma — Interpretation of Article 35 of Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (OJ 2000 L 152, p. 1) — Securities lodged at the time of application for the issue of the import licences — Determination of the amount to be forfeited in respect of quantities for which proof concerning the export licence with advance fixing of the refund was not provided within the time-limit specified

## Operative part of the judgment

1. Article 35 of Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products, as amended by Commission Regulation (EC) No 325/2003 of 20 February 2003, must be interpreted as meaning that the objective of the security referred to by that provision is not only to guarantee that the obligation to import the product concerned will be fulfilled but also to ensure that proof of the use of the licence will be submitted within a certain period.
2. Article 35(4)(c) of Regulation No 1291/2000, as amended by Regulation No 325/2003, must be interpreted as meaning that, where proof that a product has been correctly imported has been submitted late, the amount to be forfeited, in respect of the quantities for which proof has not been provided within the time-limit set under Article 35(4)(a) of that regulation, must be calculated on the basis of a level of security which was actually applied at the time when the application for the issue of the licence or licences relating to that importation was made. For the purposes of such an interpretation, it is irrelevant that the security was lodged on the basis of a rate that was higher than that applicable to other imports of the same type of product as the product imported, given that the latter was exempted from the payment of import duties.

<sup>(1)</sup> OJ C 194, 30.6.2012.

**Judgment of the Court (Eighth Chamber) of 18 July 2013 (requests for a preliminary ruling from the Tribunale amministrativo regionale per il Lazio — Italy) — Vodafone Omnitel NV (C-228/12, C-231/12 and C-258/12), Fastweb SpA (C-229/12 and C-232/12), Wind Telecomunicazioni SpA (C-230/12 and C-254/12), Telecom Italia SpA (C-255/12 and C-256/12), Sky Italia srl (C-257/12) v Autorità per le Garanzie nelle Comunicazioni, Presidenza del Consiglio dei Ministri (C-228/12 to C-232/12, C-255/12 and C-256/12), Commissione di Garanzia dell'Attuazione della Legge sullo Sciopero nei Servizi Pubblici Essenziali (C-229/12, C-232/12 and C-257/12), Ministero dell'Economia e delle Finanze (C-230/12)**

**(Joined Cases C-228/12 to C-232/12 and C-254/12 to C-258/12) <sup>(1)</sup>**

**(Electronic communications networks and services — Directive 2002/20/EC — Article 12 — Administrative charges imposed on undertakings in the sector concerned — National legislation making operators of electronic communications subject to the payment of a charge intended to cover the operating costs of the national regulatory authorities)**

(2013/C 260/25)

Language of the case: Italian

## Referring court

Tribunale amministrativo regionale per il Lazio

## Parties to the main proceedings

**Applicants:** Vodafone Omnitel NV (C-228/12, C-231/12 and C-258/12), Fastweb SpA (C-229/12 and C-232/12), Wind Telecomunicazioni SpA (C-230/12 and C-254/12), Telecom Italia SpA (C-255/12 and C-256/12), Sky Italia srl (C-257/12)

**Defendants:** Autorità per le Garanzie nelle Comunicazioni, Presidenza del Consiglio dei Ministri (C-228/12 to C-232/12, C-255/12 and C-256/12), Commissione di Garanzia dell'Attuazione della Legge sullo Sciopero nei Servizi Pubblici Essenziali (C-229/12, C-232/12 and C-257/12), Ministero dell'Economia e delle Finanze (C-230/12)

**In the presence of:** Wind Telecomunicazioni SpA (C-228/12, C-229/12, C-232/12, C-255/12 to C-258/12), Telecom Italia SpA (C-228/12, C-230/12, C-232/12 and C-254/12), Vodafone Omnitel NV (C-230/12 and C-254/12), Fastweb SpA (C-230/12, C-254/12 and C-256/12), Television Broadcasting System SpA (C-257/12)

## Re:

Request for a preliminary ruling — Tribunale amministrativo regionale per il Lazio — Interpretation of Article 12 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services ('the Authorisation Directive') (OJ 2002 L 108, p. 21) — Administrative charges imposed on undertakings in the sector concerned — Legislation providing that all costs for the national regulatory authorities, not financed by the State, are to be imposed upon individual undertakings in the sector concerned according to the income received for the relevant sales of goods and provision of services

## Operative part of the judgment

Article 12 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services ('the Authorisation Directive') must be interpreted as meaning that it does not preclude legislation of a Member State, such as that at issue in the main proceedings, pursuant to which undertakings providing electronic communications services or networks are liable to pay a charge intended to cover all the costs incurred by the NRA which are not financed by the State, the amount of which being determined according to the income received by those undertakings, provided that that charge is exclusively intended to cover the costs relating to the activities mentioned in Article 12(1)(a), that the totality of the income obtained in respect of that charge does not exceed the total costs relating to those activities and that that charge is imposed upon individual undertakings in an objective, transparent and proportionate manner, which is for the national court to ascertain.

<sup>(1)</sup> OJ C 217, 21.7.2012.