

# Question of jurisdiction for claim against carrier under Brussels I Regulation revisited

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**Facts**

**Decision**

**Comment**

## Facts

The Supreme Court recently decided a case on appeal from the Maritime and Commercial Court (for further information please see "[Question of jurisdiction for claim against carrier under Brussels I Regulation](#)"). The facts may be resumed as follows: a Danish company (S) sold a consignment of frozen chicken products to a German buyer on carriage and insurance paid terms. The chicken products were stored at a Dutch terminal (V) in Hertogenbosch, the Netherlands. S booked transportation of the consignment to Pulheim, Germany, with a Danish carrier (T). T subcontracted the transportation to a Slovakian road carrier, which informed T of the registration number of the truck that would carry out the transportation. A delivery instruction was issued to V on that basis, setting out that the chicken products should be released to that particular truck. Further, it was stated in the delivery instruction that delivery should not be made until delivery confirmation had been received.

V issued and signed a Convention on the Contract for the International Carriage of Goods by Road consignment note for the transport. It was stipulated in the consignment note that the transport should be performed by Rolli Frigo Speed with a different truck than that mentioned in the delivery instruction. On that basis, the consignment was delivered by V to Rolli Frigo Speed. The consignment subsequently went missing.

S's cargo insurer paid compensation and issued legal proceedings against T and V in Denmark. In support of the claim against T, the cargo insurer submitted that the loss, subject to the hearing of evidence, was a result of the fact that T's sub-carrier had subcontracted the carriage to another carrier, which had taken delivery of the consignment and unlawfully disposed of the cargo. In support of the claim against V, the cargo insurer submitted that the loss could also have been the result of the fact that V had wrongfully delivered the cargo to Rolli Frigo Speed. On that basis, the cargo insurer submitted that the Danish court had jurisdiction to hear the proceedings against V pursuant to Article 8(1) of the Brussels I Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as there would be a risk of irreconcilable judgments if the claims against T and V were heard separately.

T submitted that V should hold it free of any liability which T might incur regarding the cargo insurer. In support, T argued that V was liable for wrongful delivery because:

- it had delivered the products contrary to the instruction given; and
- there was jurisdiction in Denmark for T's indemnification claim pursuant to Article 8(2) of the Brussels I Regulation, as V was a third party to the proceedings before the court.

V contested that the Danish court had jurisdiction pursuant to Article 8(1) of the Brussels I Regulation and submitted that the claims against T and V were not so closely connected to make it expedient to hear them together to avoid the risk of irreconcilable judgments. Further, V submitted

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that the court had no jurisdiction over T's claim for indemnification with reference to Article 8(2) of the Brussels I Regulation, as V had already been made a party to the proceedings following the action brought against it by the cargo insurers.<sup>(1)</sup>

## Decision

The Maritime and Commercial Court found that Article 8(1) of the Brussels I Regulation could not establish jurisdiction for the cargo insurer's claim against V. This decision was overturned by the Supreme Court appeal. The Supreme Court reasoned as follows:

*"In order to decide the question of liability it is of decisive relevance to clarify the factual circumstances in connection with the delivery of the chicken products to the truck driver who did not deliver the products to the German buyer. The parties disagree on these facts. The Supreme court finds that there is a risk of irreconcilable judgments if the claims [against T and V] are heard separately. This is due to that the hearing of evidence, which may be of decisive importance to the cargo insurers claim against T and V, may result in different conclusions. The cargo insurer's claim against T is based on a contract between the insured, S, and T, whereas the cargo insurer's claim against V is based on non-contractual liability. It is, however, not hindering the application of Council Regulation Art. 8 (1) that the claims against the different defendants are not based on identical legal grounds, cf. The European Court of Justice's decision of 11 October 2007 in case C-98/06 (Freeport), paragraph 38. It, further, does not render Art. 8 (1) inapplicable that the cargo insurer's claim against T must be decided under Danish law whereas the cargo insurer's claim against V, possibly, is subject to Dutch law, cf. The European Court of Justice's decision of 1 December 2011 in case C-145/10 (Painer), paragraph 84. The Supreme court finds that the cargo insurer's claims against T and V are so closely related that they should be heard together before the same court of law in order to avoid irreconcilable judgments. The conditions for establishing jurisdiction before the Maritime and Commercial Court pursuant to the Council Regulation Art. 8 (1) are, thus, fulfilled as far as the cargo insurer's claim against V is concerned."*

The court, further, found that T's claim for indemnification against V could also be heard in Denmark:

*"As the Maritime and Commercial Court, based on the above, is competent to hear the cargo insurer's claim against V, cf. Art. 8 (1) of the Council Regulation, the claim brought by T for indemnification against V can also be heard under these proceedings. Consequently, it is not necessary to decide whether the conditions for establishing Danish jurisdiction over T's claims against V under The Council Regulation Art. 8 (2) are fulfilled."*

## Comment

The Supreme Court reversed the Maritime and Commercial Court's decision and found that the conditions for applying Article 8(1) had been fulfilled as emphasis should be placed on the fact that there was a risk that different courts might base their decisions on irreconcilable understandings of the factual circumstances which form the basis for the claims against T and V if the claims were heard separately. The Supreme Court did not decide whether the proceedings brought by the cargo insurer against T and V meant that T would be barred from obtaining a separate decision by the court on the question of whether it could – independently of the question of whether Article 8(1) could be applied – rely on Article 8(2) and base its recourse claim against V on this article.

*For further information on this topic please contact [Jesper Windahl](#) at Windahl Sandroos & Co by telephone (+45 3525 3800) or email ([jw@wsco.dk](mailto:jw@wsco.dk)). The Windahl Sandroos & Co website can be accessed at [www.wsco.dk](http://www.wsco.dk).*

## Endnotes

(1) Supreme Court decision of January 30 2018 in cases 40/2017 and 41/2017.

