

# Smooth sailing? Jurisdiction agreements in yacht insurance contracts

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## Introduction

### Facts

### Comment

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A new ruling determines that prorogation of jurisdiction can be validly agreed in a yacht insurance contract, even where consumer interests are concerned and the contract requires that legal proceedings be brought in a court in the insurer's home country.

Pursuant to the ruling, a private policyholder who is an EU citizen and purchases boat insurance in another EU country is bound by the jurisdiction agreement in the insurance contract. Therefore, any lawsuit concerning insurance coverage must be brought in a court in the jurisdiction provided for in the jurisdiction agreement, which is normally a court in the insurer's home country.

EU law protects consumers in EU countries in many ways. The EU Brussels Regulation controls whether a consumer who signs an insurance agreement renounces their option to file a lawsuit in their home country. This new ruling determines that jurisdiction agreements with consumers may comply with current EU regulations.

## Facts

A Danish couple purchased a yacht in the Netherlands for private use. They filed a request for insurance with a Dutch insurer, presumably due to the need for coverage during the yacht's transport to Denmark and the first six months of its storage in the Netherlands. Several years later, the yacht hit ground while sailing abroad. The damage was reported to the insurer one year after the reported accident. However, the couple were unable to settle on the amount of compensation with the insurer. The couple filed a lawsuit against the insurer with the Helsingør Court. The insurer requested that the case be dismissed as the insurance contract included an agreement providing for the Netherlands' jurisdiction over disputes.

The plaintiff referred to the EU Brussels Regulation with regard to the court's competence and the possibility of recognition and enforcement of court decisions in civil and commercial matters as of 12 December 2012, (1) after which the defendant could be prosecuted by the plaintiff in the Helsingør Court.

The insurer referred to Article 15 of the Brussels Regulation, which states that parties to an insurance contract can deviate therefrom only in specific circumstances. Article 15(5) states that this can happen by agreement of jurisdiction if this covers one or more of the risks referred to in Article 16.

Article 15 states that:

*The provisions of this Section may be departed from only by an agreement:*

*(1) which is entered into after the dispute has arisen;*

...

*(5) which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 16.*

Article 16 states that:

*The following are the risks referred to in point 5 of Article 15:*

AUTHOR

**Christian  
Werenberg**



...

*(5) notwithstanding points 1 to 4, all 'large risks' as defined in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (1).*

Article 16(5) highlights the 'large risks', as defined in Article 13(27) of the EU Solvency II Directive, which has been implemented in Denmark through Law 308 of 28 March 2015.

Article 13(27) of the EU Solvency II Directive states that "'large risks' means... risks classified under classes 4, 5, 6, 7, 11 and 12 in Part A of Annex I".

Under Article 13(27)(a) of the EU Solvency II Directive, risks under Insurance Classification 6 in Part A, Annex 1 constitute large risks. The list of insurance classifications is also found in Appendix 7 of the Danish Law on Financial Institutions, which states as follows:

*Classification of risks with the help of insurance classes.*

...

*6. Comprehensive/risk insurance for vehicles for sailing at sea, lakes, and rivers: all damages on river, lake, and sea boats/vehicles.*

## **Comment**

Insurers often think that they cannot enter into jurisdiction agreements with insureds or policyholders. However, this may be allowed where it concerns large risks. These large risks have been defined by EU Directive 88/357/EEC and EU Directive 90/618/EEC, as amended, from which it follows that risks under Insurance Classification 6 constitute large risks. The list of insurance classifications in Appendix 7 of the Danish Law on Financial Institutions complies with EU Directive 88/357. From there, it follows that Insurance Classification 6 covers 'sea vehicles' and that this includes yachts and boats for private and recreational use.

Based on this information, the Helsingør Court – in conjunction with the insurer – held that the case should be dismissed.

The judgment has been appealed by the plaintiff.

*For further information on this topic please contact [Christian Werenberg](#) at WSCO Advokatpartnerselskab by telephone (+45 3525 3800) or email ([cw@wsko.dk](mailto:cw@wsko.dk)). The WSCO Advokatpartnerselskab website can be accessed at [www.wsko.dk](http://www.wsko.dk).*

## **Endnotes**

(1) Article 11, PCS 1, *litra* b.

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