

# CJEU's Advocate General Issues Opinion on State Immunity and Summary Proceedings Involving International Organisations



On 2 April 2020, the Advocate General [\[1\]](#) to the Court of Justice of the European Union (CJEU), Henrik Saugmandsgaard Øe (*AG Saugmandsgaard Øe*), [handed down an Opinion in a case](#) which raised very interesting issues relating to the interaction and application of Regulation (EU) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the *Brussels Ibis Regulation*) in summary proceedings involving international organisations. The case also raised interesting issues relating to the interplay between the Brussels Ibis Regulation and the immunity enjoyed by such international organisations.

## Facts of the case

The case at hand relates to a dispute between, on the one hand, three companies belonging to the Supreme group (*Supreme*) and, on the other hand *Supreme Headquarters Allied Powers*

Europe (**SHAPE**) and an entity under SHAPE's command, *Allied Joint Force Command Headquarters Brunssum (JFCB)*. SHAPE and JFCB are two international organisations belonging to NATO.

The dispute related to the non-payment, by SHAPE and JFCB, of fuel, supplied by Supreme, used for NATO's military missions in Afghanistan.

In 2015, in order to obtain the payment for the fuel supplied to SHAPE and JFCB, Supreme brought attachment proceedings against SHAPE and JFCB before a Dutch District Court (JFCB being located in the Netherlands), requesting a garnishee order on SHAPE's escrow account located in Belgium. Although this request was initially granted (and SHAPE's escrow account frozen), SHAPE later appealed (in summary proceedings) that decision and ultimately obtained a lift of the interim garnishee order.

Supreme then, in turn, appealed (unsuccessfully) that decision before the Court of Appeal and then, before the Dutch Supreme Court.

However, in those latter proceedings, the Dutch Supreme Court raised, on its own initiative, the question of whether the jurisdiction to hear this case did not belong to the Belgian courts (instead of the Dutch courts) since the bank account at stake was located in Belgium. The Dutch Supreme Court's reasoning was based on Article 24(5) of the Brussels Ibis Regulation which provides that "*in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced*" shall exercise jurisdiction. In addition, the Dutch Supreme Court also questioned whether the fact that SHAPE and JFCB enjoyed immunity from execution and jurisdiction had any influence on the application of the Brussels Ibis Regulation.

Uncertain as to the answers to these issues, the Dutch Supreme Court stayed the proceedings and referred the matter to the

CJEU for a preliminary ruling.

Although the case remains currently pending, AG Saugmandsgaard Øe handed down his reasoned opinion in which he discussed the following issues.

**Since the Brussels Ibis Regulation only applies in “civil or commercial matters”, should summary proceedings (that are brought before the courts of a Member State and that are aimed at obtaining the lift of an interim garnishee order on assets located in another Member State) be considered as a “civil or commercial” matter?**

In order to answer this question, AG Saugmandsgaard Øe found that interim measures (such as those in the proceedings at stake) should be considered as having a civil and commercial nature (and, therefore, fall within the scope of the Brussels Ibis Regulation) insofar as the rights that these interim measures protect have a “civil or commercial” nature (para. 47).

Consequently, according to AG Saugmandsgaard Øe, the answer to the question of whether summary proceedings that are brought before the courts of Member State and that are aimed at obtaining the lift of an interim garnishee order on assets located in another Member State fall within the scope of the Brussels Ibis Regulation depends on the nature of Supreme’s underlying claim (para.53).

**Can SHAPE invoke the immunity granted to international organisations to preclude the application of the Brussels Ibis Regulation?**

In order to answer that question, AG Saugmandsgaard Øe divided the issue into a set of sub-questions:

**a) Are disputes involving international organisations automatically excluded from the scope of the Brussels Ibis regulation because of the immunity enjoyed by those**

## organisations?

As a threshold remark, AG Saugmandsgaard Øe relied on scholarly works to find that the immunity granted to international organisations is not entirely similar to the immunity granted to States. With respect to the immunity enjoyed by international organisations, AG Saugmandsgaard Øe noted this immunity has a wide functional character, which implies that the immunity covers all acts pursued by those international organisations (para. 65).

AG Saugmandsgaard Øe then found that the fact that international organisations enjoy a very wide immunity was not an obstacle to the assertion, by a national judge, of international jurisdiction in a case. According to AG Saugmandsgaard Øe, a judge is indeed able to rely on the Brussels Ibis Regulation in order to assert his international jurisdiction in a dispute involving an international organisation. However, the immunity enjoyed by the international organisation may come into play at a later stage (after the international jurisdiction has been asserted) and may force the judge to retract his jurisdiction over the case (paras 67 and 68).

Consequently, according to AG Saugmandsgaard Øe, disputes involving international organisations are not automatically excluded from the scope of the Brussels Ibis Regulation and the Brussels Ibis Regulation can thus, be applied in this case involving SHAPE and JFCB.

b) Irrespective of the fact that disputes involving international organisations are not automatically excluded from the scope of the Brussels Ibis Regulation, should such disputes nevertheless be considered as “acts and omissions in the exercise of State authority” and therefore be excluded from the scope of the Brussels Ibis Regulation (since the Brussels Ibis Regulation does not apply to disputes relating to “the liability of the State for acts and omissions in the

exercise of State authority”)?.

In this respect, AG Saugmandsgaard Øe first agreed that the notion of “*State authority*” in Article 1 of the Brussels Ibis Regulation also covered the acts of omissions of international organisations (para. 80).

However, referring to the former case-law of the CJEU (in particular to case C-814/79, *Rüffer*) he then found that disputes involving international organisations will only be considered as disputes relating to the exercise of State authority (and therefore fall outside the scope of the Brussels Ibis Regulation) if such disputes relate to a claim whose origin is to be found either (i) in a behavior which is intrinsically linked to an act of State authority or (ii) in a legal relationship which demonstrates certain features of State authority (para. 85).

### **Conclusion**

In light of these elements and applying these criteria to the case at hand, AG Saugmandsgaard Øe considered that – since Supreme’s request for a garnishee order on SHAPE’s escrow account aimed at preserving a contractual claim (and since that contractual relationship did not appear to meet any features of “*State authority*” (which is for the local court to determine (para. 101)) – summary proceedings aimed at obtaining the lift of an interim garnishee order on an international organisation’s escrow account could be considered as falling within the scope of the Brussels Ibis Regulation.

[1] In the European judicial landscape, Advocate Generals act in complete impartiality and independence and are requested to submit reasoned opinions on cases before the CJEU. Their opinions, however, are not binding on the CJEU, which can freely decide not to follow the opinions expressed by the Advocate Generals.

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