

Supremacy of EU Law: The CJEU Rules on the Validity of a Foreign Jurisdiction Clause under the Brussels I Recast Regulation

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In this article, **Dr Karl Grech Orr** and **Dr Francesca Vassallo** examine the Court of Justice of the European Union's (CJEU) ruling in Joined Cases C-345/22, C-346/22, and C-347/22, addressing the enforceability of foreign jurisdiction clauses in bills of lading under the Brussels I Recast Regulation (Regulation (EU) No 1215/2012). The CJEU's ruling confirmed that national provisions, such as Spanish legislation requiring third parties to expressly and separately accept foreign jurisdiction clauses, cannot override Article 25(1) of the Brussels I Recast Regulation.

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Introduction

On the 25th April 2024, the Court of Justice of the European Union ('CJEU'), composed of Judges P.G. Xuereb, A. Kumin and I. Ziemele, in Joined Cases C-345/22, C-346/22 and C-347/22 in the names *Maersk A/S v Allianz Seguros y Reaseguros SA and Mapfre España Compañía de Seguros y Reaseguros SA v MACS Maritime Carrier Shipping GmbH & Co*,¹ ruled, inter alia, in favour of the validity, under EU law, of a foreign jurisdiction clause incorporated in a bill of lading, including its enforceability against a third-party holder of said bill of lading. Consequently, the CJEU held that this validity precludes the application of Spanish national legislation requiring that foreign jurisdiction clauses be separately negotiated by third parties in order to be binding.

Facts of the Cases

These cases concerned three identical requests for a preliminary ruling on the interpretation of Article 25(1) of 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.²

The requests were brought, in Cases C-345/22 and C-347/22, by Danish transport company Maersk A/S ('Maersk') and Spanish insurance company Allianz Seguros y Reaseguros SA ('Allianz'), and in Case C-346/22 by the Spanish insurance company Mapfre España Compañía de Seguros y Reaseguros SA ('Mapfre') and the German transport company MACS Maritime Carrier Shipping GmbH & Co. ('MACS').

The facts were similar in the three cases. The cargo which was shipped by the carrier was received damaged. The insurance company indemnified the recipients and subrogated their rights under the bill of lading as a third-party holder. The bills of lading contained an exclusive foreign jurisdiction clause, selecting the English Courts to decide and determine any dispute. Despite this, the insurance company filed legal proceedings against the respective shipping companies before the Spanish Courts for damages.

The central issue in the Spanish legal proceedings was whether the insurance companies, as claimants, were bound by the foreign jurisdiction

¹ Cases C-345/22, C-346/22 and C-347/22 *Maersk A/S v Allianz Seguros y Reaseguros SA and Mapfre España Compañía de Seguros y Reaseguros SA v MACS Maritime Carrier Shipping GmbH & Co* [2024] ECLI:EU:C:2024:349.

² Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters [2012] OJ L351/1 (the "Brussels I Recast Regulation"), Article 25(1).

clause in the original contracts of carriage, in terms of the bills of lading signed between the carrier and the shipper.

On their part, the shipping companies objected to the jurisdiction of the Spanish Courts, on grounds that the English Courts were vested with exclusive jurisdiction under the bill of lading. However, the Spanish Commercial Court dismissed their jurisdiction pleas, resulting in the filing of separate appeals by both shipping companies, Maersk and MACS.

It was argued that Article 25(1) of the Brussels I Recast Regulation was applicable in the circumstances and that the relative Spanish legal provision which required the third party to accept to be bound by the foreign jurisdiction clause was contrary to EU law.

Faced with these appeals in the three separate cases, the Spanish Appeal Court referred the issue on the interpretation of a foreign jurisdiction clause to the CJEU and stayed their proceedings.

Considerations of the CJEU

The referring Spanish Appeal Court was uncertain as to whether the jurisdiction clause was enforceable against the third-party holder of the bill of lading, in the case where such third party did not expressly, individually and separately consent to it, upon being subrogated to the rights under the bill of lading according to Spanish law.

The following questions were referred to the CJEU:

1. Whether Article 25(1) of the Brussels I Recast Regulation had to be interpreted in the sense that the enforceability of a foreign jurisdiction clause against the third-party holder of the bill of lading containing such clause was to be governed by the law of the Member State of the court designated by that clause, in this case English law.
2. Whether Article 25(1) of the Brussels I Recast Regulation should be interpreted to preclude the application of the relevant national legislation under which a third-party was subrogated to all the shipper's rights and obligations, except for those arising under a jurisdiction clause, and whether such clause was only enforceable against the third-party if it was negotiated individually and separately.

With regards to the first question, the CJEU maintained that article 25(1) of the Brussels I Recast Regulation did not specify what the effects of a jurisdiction clause were vis-à-vis a third party. However, with reference to case law of this court, it noted that a foreign jurisdiction clause in a bill of lading was binding upon a third-party holder, provided that there was subrogation of rights under national legislation and such clause was valid

between the shipper and the carrier.

With regards to the second question, the CJEU first considered the relevant Spanish shipping law, whereby the rights of the shipper under a bill of lading were transferred to the third-party consignee save for any foreign jurisdiction and arbitration clause. Under Spanish law, the third party had to expressly consent to any foreign jurisdiction clause as otherwise, such clause would be deemed to be null and void, without prejudice to the provisions of international agreements applicable to Spain and EU law rules.

The CJEU held that it was up to the referring court to decide whether, according to national law rules, each of the third-party holders were subrogated to all the rights and obligations of the shippers concerned. If they were, then there was no need to ascertain whether the third parties actually accepted those clauses.

Decision of the CJEU

On the first question, the CJEU ruled that the enforceability of a jurisdiction clause against a third-party holder is not governed by the law of the Member State of the court designated by that clause. Rather, the jurisdiction clause is enforceable against the third-party holder if, upon acquiring the bill of lading, it is subrogated to all the rights and obligations of one of the original parties to the contract. In turn, subrogation must be assessed under the applicable national substantive law as determined by the private international law rules of the Member State of the court seized of the dispute.

Ruling on the second question, the CJEU stated that in this respect, the Spanish national legislation in question had the effect of granting more rights to the third-party holder than those enjoyed by the shipper who the third-party succeeded. Under Spanish law, in this case, the third-party was free to disregard the foreign jurisdiction agreed in the original bill of lading.

The CJEU therefore ruled that the exception under Spanish legislation, whereby a foreign jurisdiction clause can be rendered ineffective against third-party holders unless it has been separately negotiated and accepted by them, has the effect of circumventing Article 25(1) of the Brussels I Recast Regulation and is therefore contrary to this provision.

The CJEU therefore proclaimed and upheld the principle of primacy of EU law, holding that national courts are inherently required to interpret, to the greatest extent possible, their national law in a manner which ensures conformity with EU law.



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