ECLI:EU:C:2017:688

JUDGMENT OF THE COURT (Second Chamber)

14 September 2017 (*)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction — Jurisdiction over individual contracts of employment — Regulation (EC) No 44/2001 — Article 19(2)(a) — Concept of 'place in which the employee habitually carries out his work' — Airline sector — Airline crew — Regulation (EEC) No 3922/91 — Concept of 'home base')

In Joined Cases C-168/16 and C-169/16,

REQUESTS for a preliminary ruling under Article 267 TFEU from the cour du travail de Mons (Mons Higher Labour Court, Belgium), made by decisions of 18 March 2016, received at the Court on 25 March 2016, in the proceedings

Sandra Nogueira,

Victor Perez-Ortega,

Virginie Mauguit,

Maria Sanchez-Odogherty,

José Sanchez-Navarro

v

Crewlink Ireland Ltd (C-168/16),

and

Miguel José Moreno Osacar

v

Ryanair Designated Activity Company, formerly Ryanair Ltd (C-169/16),

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Second Chamber, A. Rosas, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 2 February 2017,

after considering the observations submitted on behalf of:

– S. Nogueira, V. Perez-Ortega, V. Mauguit, M. Sanchez-Odogherty and J. Sanchez-Navarro and of M.J. Moreno Osacar, by S. Gilson and F. Lambinet, avocats,

– Crewlink Ireland Ltd, by S. Corbanie, advocaat, and F. Harmel, avocat,

– Ryanair Designated Activity Company, formerly Ryanair Ltd, by S. Corbanie, advocaat, F. Harmel and E. Vahida, avocats, and by G. Metaxas-Maranghidis, dikirigos,

– the Belgian Government, by C. Pochet, M. Jacobs and L. Van den Broeck, acting as Agents,

– Ireland, by A. Joyce, acting as Agent, and by S. Kingston, Barrister,

– the French Government, by D. Colas, D. Segoin and C. David, acting as Agents,

– the Netherlands Government, by M. Bulterman and C. Schillemans, acting as Agents,

– the Swedish Government, initially by C. Meyer-Seitz, A. Falk, U. Persson and N. Otte Widgren, acting as Agents, and subsequently by C. Meyer-Seitz and A. Falk, acting as Agents,

– the European Commission, by M. Wilderspin, M. Heller and P. Costa de Oliveira, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 27 April 2017,

gives the following

Judgment

1 The requests for a preliminary ruling concern the interpretation of Article 19(2)(a) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1; ‘the Brussels I Regulation’).

2 These requests have been made in the context of two disputes between, in Case C-168/16, Ms Sandra Nogueira, Mr Victor Perez-Ortega, Ms Virginie Mauguit, Ms Maria Sanchez-Odogherty and Mr José Sanchez-Navarro (‘Ms Nogueira and Others’) and Crewlink Ireland Ltd (‘Crewlink’) and, in Case C-169/16, Mr Miguel José Moreno Osacar and Ryanair Designated Activity Company, formerly Ryanair Ltd (‘Ryanair’), concerning the conditions of performance and termination of the individual contracts of employment of Ms Nogueira and Others and Mr Moreno Osacar as well as the international jurisdiction of the Belgian courts to determine these disputes.

Legal context

International law

3 The Convention on International Civil Aviation, signed in Chicago (United States) on 7 December 1944 ('the Chicago Convention'), was ratified by all the Member States of the European Union; however the European Union is not itself a party to that convention.

4 Article 17 of that convention provides:

'Aircrafts have the nationality of the State in which they are registered.'

EU law

5 Recitals 13 and 19 of the Brussels I Regulation state:

'(13) In relation to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for.

…

(19) Continuity between the Convention [of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), as amended by the successive conventions relating to the accession of new Member States to that convention] and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation of [that] … convention … and the [first protocol on the interpretation by the Court of Justice of the Convention of 1968, in its revised and amended version (OJ 1998 C 27, p. 28)] should remain applicable also to cases already pending when this Regulation enters into force.'

6 Section 5 of Chapter II of that regulation, which comprises Articles 18 to 21 thereof, sets out the rules of jurisdiction over disputes concerning individual contracts of employment.

7 Article 18(1) of that regulation provides:

'In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 4 andpoint 5 of Article 5.'

8 Article 19 of that regulation provides:

'An employer domiciled in a Member State may be sued:

1. in the courts of the Member State where he is domiciled, or

2. in another Member State:

(a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or

(b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.'

9 Article 21 of the Brussels I Regulation is worded as follows:

‘The provisions of this Section may be departed from only by an agreement on jurisdiction:

1. which is entered into after the dispute has arisen; or

2 which allows the employee to bring proceedings in courts other than those indicated in this Section.’

10 The preamble of the Rome Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 226, p. 1) (‘the Rome Convention’) stipulates:

‘The High Contracting Parties to the Treaty establishing the European Economic Community,

Anxious to continue in the field of private international law the work of unification of law which has already been done within the Community, in particular in the field of jurisdiction and enforcement of judgments,

Wishing to establish uniform rules concerning the law applicable to contractual obligations,

Have agreed …’

11 Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation (OJ 1991 L 373, p. 4), as amended by Regulation (EC) No 1899/2006 of the European Parliament and of the Council of 12 December 2006 (OJ 2006 L 377, p. 1) (‘Regulation No 3922/91’), concerns, as laid down in Article 1 thereof, ‘the harmonisation of technical requirements and administrative procedures in the field of civil aviation safety related to the operation and maintenance of aircraft and persons and organisations involved in such tasks’.

12 That regulation contained, before its repeal by Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ 2008 L 79, p. 1), an Annex III, subpart Q of which was entitled ‘Flight and duty time limitations and rest requirements’. Air operation (OPS) 1.1090, point 3.1, which was included in that subpart, provided:

‘An operator shall nominate a home base for each crew member.’

13 That subpart also included OPS 1.1095 which, in point 1.7, defined the concept of ‘home base’ as ‘the location nominated by the operator to the crew member from where the crew member normally starts and ends a duty period or a series of duty periods and where, under normal conditions, the operator is not responsible for the accommodation of the crew member concerned’.

14 In addition, OPS 1.1110, which also appeared in Annex III, subpart Q, of Regulation No 3922/91, entitled ‘Rest’, read as follows:

‘1. Minimum rest

1.1. The minimum rest which must be provided before undertaking a flight duty period starting at home base shall be at least as long as the preceding duty period or 12 hours whichever is the greater;

1.2. The minimum rest which must be provided before undertaking a flight duty period starting away from home base shall be at least as long as the preceding duty period or 10 hours whichever is the greater; when on minimum rest away from home base, the operator must allow for an eight hour sleep opportunity taking due account of travelling and other physiological needs.

…'

15 In the field of social security, the concept of 'home base' is also mentioned in recital 18b of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1), as amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 (OJ 2012 L 149, p. 4). That recital is worded as follows:

'In Annex III to Regulation … No 3922/91 …, the concept of "home base" for flight crew and cabin crew members is defined as the location nominated by the operator to the crew member from where the crew member normally starts and ends a duty period, or a series of duty periods, and where, under normal conditions, the operator is not responsible for the accommodation of the crew member concerned. In order to facilitate the application of Title II of this Regulation for flight crew and cabin crew members, it is justified to use the concept of "home base" as the criterion for determining the applicable legislation for flight crew and cabin crew members. However, the applicable legislation for flight crew and cabin crew members should remain stable and the home base principle should not result in frequent changes of applicable legislation due to the industry's work patterns or seasonal demands.'

16 Article 11 of Regulation No 883/2004, which forms part of Title II thereof, concerning the determination of the applicable legislation, provides:

'1. Persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. Such legislation shall be determined in accordance with this Title.

…

3. Subject to Articles 12 to 16:

(a) a person pursuing an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State;

…

5. An activity as a flight crew or cabin crew member performing air passenger or freight services shall be deemed to be an activity pursued in the Member State where the home base, as defined in Annex III to Regulation (EEC) No 3922/91, is located.'

17 Article 3 of Regulation No 465/2012 states that Article 11(5) of Regulation No 883/2004 comes into force on the 20th day following that of its publication in the *Official Journal of the European Union*. That publication having occurred on 8 June 2012, the amendments made by that

regulation are consequently not applicable, ratione temporis, to the disputes in the main proceedings.

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-169/16

18 On 21 April 2008, Mr Moreno Osacar concluded, in Spain, a contract of employment with Ryanair, an airline having its head office in Ireland.

19 Under that contract, his duties included 'passenger safety, care, assistance and control, boarding and ground assistance … on-board sales; cleaning of the interior of the aircraft, safety checks and all the relevant tasks which can be … entrusted by the company'.

20 According to the contract, drafted in English, the Irish courts had jurisdiction over possible disputes which may emerge between the parties regarding the performance and termination of that contract, and the legislation of that Member State governed the work relationship between them. That contract also stipulated that Mr Moreno Osacar's work, as cabin crew, was regarded as being carried out in Ireland given that his duties were carried out on board aircraft, registered in that Member State and belonging to that airline.

21 Furthermore, Mr Moreno Osacar's contract of employment nominated Charleroi airport (Belgium) as 'home base', and required that he live within an hour's journey of the base he was assigned to, this being the reason why he moved to Belgium.

22 On 1 April 2009, Mr Moreno Osacar was promoted to 'supervisor'. He resigned on 16 June 2011.

23 Subsequently, taking the view that his former employer had to respect and apply the provisions of Belgian law and considering that the courts of that Member State had jurisdiction to adjudicate on his claims, Mr Moreno Osacar, by summons of 8 December 2011, brought proceedings against Ryanair before the tribunal du travail de Charleroi (Charleroi Labour Court, Belgium) seeking an order requiring his former employer to pay various heads of compensation.

24 Ryanair challenged the jurisdiction of the Belgian courts over the dispute. In that regard, the company claimed that there is a close and real connection between the dispute and the Irish courts. Accordingly, in addition to the jurisdiction clause and the clause designating Irish law as the applicable law, Ryanair states that Mr Moreno Osacar was subject to Irish law in the field of tax and social security, he performed his contract of employment on board aircraft registered in Ireland and subject to that Member State's laws and, although Mr Moreno Osacar signed his contract of employment in Spain, that contract was only concluded once Ryanair affixed its signature at its head office in Ireland.

25 By judgment delivered on 4 November 2013, the tribunal du travail de Charleroi (Charleroi Labour Court) held that the Belgian courts did not have jurisdiction over Mr Moreno Osacar's application. The latter brought an appeal against that judgment before the referring court, the cour du travail de Mons (Mons Higher Labour Court, Belgium).

26 The referring court first of all sets out certain factual findings. It notes that Mr Moreno Osacar always started his working days at Charleroi airport and ended them there. Similarly, he sometimes had to stay there on standby in order to replace a potentially absent member of staff.

27 Further to those clarifications, that court states that, before ruling on the substance of the dispute, it must rule on the jurisdiction of the Belgian courts over it.

28 After having found that the jurisdiction clause cannot be relied on against Mr Moreno Osacar pursuant to Article 21 of the Brussels I Regulation, that court states that such a question must be considered in the light of Article 19(2) of that regulation. The referring court notes that that provision designates various courts with jurisdiction over disputes which may result from a contract of employment. Among those, it maintains that the habitual place of performance of work has long been considered as an essential criterion in the case-law of the Court.

29 In this respect, where the work entrusted to the employee is carried out on the territory of more than one Member State, it follows from the case-law of the Court, and in particular paragraph 24 of the judgment of 13 July 1993, *Mulox IBC* (C-125/92, EU:C:1993:306), that the habitual place of work can be defined as 'the place where or from which the employee principally discharges his obligations towards his employer'. It follows that, in order to determine that place, the national courts should adopt a circumstantial method, namely take into account all the circumstances of the particular case in order to determine the State with which the professional activity has the greatest connection.

30 Nevertheless, the determination of the court with jurisdiction over disputes brought before the courts of the Member States by the air crew of airlines raises a particular difficulty.

31 Concerning more specifically the identification of 'the effective centre of the professional activities' of those persons, the referring court asks whether that place is not, in fact, a very similar concept to that of 'home base', defined in Annex III to Regulation No 3922/91, as the reference to that concept in EU law on social security also seems to indicate.

32 In those circumstances, the cour du travail de Mons (Mons Higher Labour Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Taking into account:

– the need for predictability of approach and legal certainty, which governed the adoption of the rules on jurisdiction and the enforcement of judgments in civil and commercial proceedings laid down in the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by [successive conventions on the accession of new Member States to that convention] and the [Brussels I Regulation] (see, in particular, the judgment of 19 July 2012, *Mahamdia,* C-154/11, EU:C:2012:491, paragraphs 44 and 46).

– the particular features of the European air navigation sector, in which air crews working for airlines whose registered office is in one of the Member States of the European Union fly over, on a daily basis, the territory of the European Union, departing from a home base that may, as in the present case, be located in another Member State,

– the particular circumstances of the present case as described in the grounds of the … order for reference,

– the criterion derived from the concept of "home base" (as defined in Annex III to Regulation No 3922/91), which is used in Regulation No 883/2004 to determine which social security legislation applies, with effect from 28 June 2012, to airline flight crews and cabin crews,

– the approach taken in the case-law of the Court of Justice of the European Union, in the terms of the judgments cited in the grounds of the present order for reference,

may the concept of the "place where the employee habitually carries out his work" referred to in Article 19(2) of the [Brussels I Regulation] be interpreted as being comparable to that of "home base", defined in Annex III to [Regulation No 3922/91] as "the location nominated by the operator to the crew member from where the crew member normally starts and ends a duty period or a series of duty periods and where, under normal conditions, the operator is not responsible for the accommodation of the crew member concerned", for the purpose of determining the Contracting State (and thus the jurisdiction) on whose territory an employee habitually carries out his work where the employee is employed as a member of the air crew of an airline, subject to the laws of a Member State of the European Union, that transports passengers internationally by air throughout the territory of the European Union, since that criterion of connection, based on the "home base", in the sense of "the effective centre of the work relationship", inasmuch as the employee systematically begins and ends his working day at that place, organises his daily work there and, throughout the period of his contractual relationship maintains his residence there, is the criterion which both indicates the closest connection with a Contracting State and ensures the most satisfactory protection of the weaker party in the contractual relationship?'

Case C-168/16

33 Ms Nogueira and others, of Portuguese, Spanish or Belgian nationality, concluded, in the course of 2009 and 2010, contracts of employment with Crewlink, a legal person established in Ireland.

34 Each of their contracts of employment provided that those workers would be employed by Crewlink and seconded as cabin crew with Ryanair, for duties comparable to those of Mr Moreno Osacar.

35 Drafted in English, those contracts of employment also specified that their work relationship was subject to Irish law and that the courts of that Member State had jurisdiction over all disputes relating to the performance or termination of those contracts. Similarly, those contracts stated that their remuneration would be paid into an Irish bank account.

36 The work relationships ended as a result of resignation or dismissal in the course of 2011.

37 For the same reasons as Mr Moreno Osacar, Ms Nogueira and Others brought proceedings before the tribunal du travail de Charleroi (Charleroi Labour Court) with a view to obtaining payment of various heads of compensation.

38 By judgment of 4 November 2013, that court held that the Belgian courts did not have jurisdiction over those applications. The appellants in the main proceedings brought an appeal against that judgment before the referring court.

39 The referring court notes furthermore that, in Ms Nogueira and Others' contracts, it is stipulated that, 'the client's planes are registered in Ireland, and as you will be performing the tasks on those planes, your employment is based in Ireland', Charleroi airport is the 'home base' of those employees and each of them will have to reside within a one hour journey of the base to which he will be assigned.

40 In addition, that court notes a number of relevant facts stemming from its own findings. First, whereas their contract of employment allowed the employer the possibility to decide to transfer Ms Nogueira and Others to another airport, it is not disputed that, in the present case, Crewlink's only home base has been Charleroi airport. Second, each of these employees started his working day at Charleroi airport and systematically returned to his base at the end of his working day. Third, each of them has had to be on standby at Charleroi airport in order to potentially replace an absent member of staff.

41 Incidentally, the referring court points out that Ms Nogueira and Others' contracts of employment imposed an obligation on them to respect Ryanair's air security policy. Similarly, the existence of premises shared by Ryanair and Crewlink at Charleroi airport as well as the exercise of disciplinary power by Ryanair managerial staff over that of Crewlink shows to the requisite standard that the staff of both companies were working together.

42 That court explains, in terms similar to those of its request for a preliminary ruling in Case C-169/16, the need for a preliminary ruling. The cour du travail de Mons (Mons Higher Labour Court) decided to stay proceedings and to refer an essentially similar question to the Court of Justice for a preliminary ruling.

43 By order of the President of the Court of Justice of 11 April 2016, Cases C-168/16 and C-169/16 were joined for the purposes of the written and oral procedure and of the judgment.

Consideration of the questions referred

44 By its questions, the referring court asks, in essence, whether, in the event of proceedings brought by an employee who is a member of the air crew of an airline, or is assigned to it, and in order to establish the jurisdiction of the court in which proceedings were brought, the concept of 'place where the employee habitually carries out his work', as provided for in Article 19(2)(a) of the Brussels I Regulation, can be equated with that of 'home base', as provided for in Annex III to Regulation No 3922/91.

45 As a preliminary point, it must be pointed out that, in the first place, as is apparent from recital 19 of the Brussels I Regulation and in so far as that regulation replaces the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by successive conventions on the accession of new Member States to that convention ('the Brussels Convention'), in the relations between Member States, the interpretation given by the Court in respect of the provisions of that convention is also valid for those of that regulation whenever the provisions of those instruments may be regarded as equivalent (judgment of 7 July 2016, *Hőszig*, C-222/15, EU:C:2016:525, paragraph 30 and the case-law cited).

46 In that regard, whereas, in its original version, the Brussels Convention did not include specific provisions related to contracts of employment, Article 19(2) of the Brussels I Regulation is drafted in virtually identical terms to those of the second and third sentences of Article 5(1) of that convention in the version resulting from Convention 89/535/EEC on the accession of the Kingdom of Spain and the Portuguese Republic to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice with the adjustments made to them by the Convention on the accession of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland and the adjustments made to them by the Convention on the accession of the Hellenic Republic (OJ 1989 L 285, p. 1), so that, in accordance with the case-law referred to in the previous paragraph, continuity of interpretation of those two instruments must be ensured.

47 In addition, as regards an individual contract of employment, the place of performance of the obligation in question, referred to in the second part of the sentence of Article 5(1) of the Brussels Convention, must be determined on the basis of uniform criteria which it is for the Court to lay down on the basis of the scheme and objectives of that convention. The Court has thus stressed that such an autonomous interpretation alone is capable of ensuring uniform application of that convention, the objectives of which include unification of the rules on jurisdiction of the Contracting States, so as to avoid as far as possible the multiplication of the bases of jurisdiction in relation to one and the same legal relationship and to reinforce the legal protection available to persons established in the Community by, at the same time, allowing the plaintiff easily to identify the court before which he may bring an action and the defendant reasonably to foresee the court before which he may be sued (judgment of 10 April 2003, *Pugliese*, C-437/00, EU:C:2003:219, paragraph 16 and the case-law cited).

48 It follows that the requirement of autonomous interpretation applies to Article 19(2) of the Brussels I Regulation also (see, to that effect, judgment of 10 September 2015, *Holterman Ferho Exploitatie and Others*, C-47/14, EU:C:2015:574, paragraph 37 and the case-law cited).

49 In the second place, it follows from the settled case-law of the Court that, first, for disputes related to contracts of employment, Section 5 of Chapter II of the Brussels I Regulation lays down a series of rules whose objective, as is stated in Recital 13 of that regulation, is to protect the weaker party to the contract by means of rules of jurisdiction that are more favourable to his interests (see, to that effect, judgments of 19 July 2012, *Mahamdia,* C-154/11, EU:C:2012:491, paragraph 44 and the case-law cited, and of 10 September 2015, *Holterman Ferho Exploitatie and Others*, C-47/14, EU:C:2015:574, paragraph 43).

50 Those rules enable inter alia an employee to sue his employer before the court which he regards as closest to his interests, by giving him the option of proceeding before the courts of the Member State in which the employer is domiciled or the courts of the place in which the employee habitually carries out his work or, where that work is not carried out in any one country, before the courts of the place where the business which hired the employee is situated. The provisions of that section also limit the choice of jurisdiction by an employer suing an employee, and the possibility of derogating from the rules of jurisdiction laid down by that regulation (judgment of 19 July 2012, *Mahamdia*, C-154/11, EU:C:2012:491, paragraph 45 and the case-law cited).

51 Second, the provisions featuring under Section 5 of Chapter II of the Brussels I Regulation are not only specific but also exhaustive (see, to that effect, judgment of 10 September 2015, *Holterman Ferho Exploitatie and Others*, C-47/14, EU:C:2015:574, paragraph 44 and the case-law cited).

52 In the third place, Article 21 of the Brussels I Regulation restricts the conclusion by the parties to a contract of employment of an agreement on jurisdiction.Such an agreement must thus be concluded after the dispute has arisen or, if it was concluded beforehand, must allow the employee to bring proceedings before courts other than those on which those rules confer jurisdiction (judgment of 19 July 2012, *Mahamdia*, C-154/11, EU:C:2012:491, paragraph 61).

53 Consequently, that provision cannot be interpreted as meaning that a jurisdiction clause could apply exclusively and thus prohibit the employee from bringing proceedings before the courts which have jurisdiction under Articles 18 and 19 of the Brussels I Regulation (see, to that effect, judgment of 19 July 2012, *Mahamdia*, C-154/11, EU:C:2012:491, paragraph 63).

54 In the present case, it must be noted that, as the Advocate General stated in points 57 and 58 of his Opinion, a jurisdiction clause, such as that agreed in the contracts in the main proceedings, does not meet either of the requirements set out in Article 21 of the Brussels I Regulation and that, consequently, that clause is not enforceable against the appellants in the main proceedings.

55 In the fourth and final place, it must be noted that the autonomous interpretation of Article 19(2) of the Brussels I Regulation does not preclude the corresponding provisions in the Rome Convention from being taken into account, since that convention, as is apparent from its preamble, also aims to continue, in the field of private international law, the work of unification of law which has already been done within the Union, in particular in the field of jurisdiction and enforcement of judgments.

56 As noted by the Advocate General in point 77 of his Opinion, the Court has already interpreted, in the judgments of 15 March 2011, *Koelzsch* (C-29/10, EU:C:2011:151), and of 15 December 2011, *Voogsgeerd* (C-384/10, EU:C:2011:842), the Rome Convention in the light in particular of the provisions of the Brussels Convention relating to individual contracts of employment.

57 As regards the determination of the 'place where the employee habitually carries out his work', within the meaning of Article 19(2)(a) of the Brussels I Regulation, the Court has repeatedly held that the criterion of the Member State where the employee habitually carries out his work must be interpreted broadly (see, by analogy, judgment of 12 September 2013, *Schlecker*, C-64/12, EU:C:2013:551, paragraph 31 and the case-law cited).

58 As regards an employment contract performed in the territory of several Contracting States and where there is no effective centre of professional activities from which an employee performs the essential part of his duties vis-à-vis his employer, the Court has held that Article 5(1) of the Brussels Convention must — in view of the need to establish the place with which the dispute has the most significant link, so that it is possible to identify the courts best placed to decide the case in order to afford proper protection to the employee as the weaker party to the contract and to avoid multiplication of the courts having jurisdiction — be interpreted as referring to the place where, or from which, the employee actually performs the essential part of his duties vis-à-vis his employer. That is the place where it is least expensive for the employee to commence proceedings against his employer or to defend such proceedings and where the courts best suited to resolving disputes relating to the contract of employment are situated (see, to that effect, judgment of 27 February 2002, *Weber*, C-37/00, EU:C:2002:122, paragraph 49 and the case-law cited).

59 Thus, in such circumstances, the concept of 'place where the employee habitually carries out his work' enshrined in Article 19(2)(a) of the Brussels I Regulation must be interpreted as referring to the place where, or from which, the employee in fact performs the essential part of his duties vis-à-vis his employer.

60 In the present case, the disputes in the main proceedings concern employees employed as members of the air crew of an airline or assigned to the latter. Thus, the court of a Member State seised of such disputes, when it is not able to determine with certainty the 'place where the employee habitually carries out his work', must, in order to assess whether it has jurisdiction, identify 'the place from which' that employee principally discharged his obligations towards his employer.

61 As the Advocate General pointed out in point 95 of his Opinion, it is also apparent from the case-law of the Court that, to determine specifically that place, the national court must refer to a set of indicia.

62 That circumstantial method makes it possible not only to reflect the true nature of legal relationships, in that it must take account of all the factors which characterise the activity of the employee (see, by analogy, judgment of 15 March 2011, *Koelzsch*, C-29/10, EU:C:2011:151, paragraph 48), but also to prevent a concept such as that of 'place where, or from which, the employee habitually performs his work' from being exploited or contributing to the achievement of circumvention strategies (see, by analogy, judgment of 27 October 2016, *D'Oultremont andOthers*, C-290/15, EU:C:2016:816, paragraph 48 and the case-law cited).

63 As observed by the Advocate General in point 85 of his Opinion, as regards work relationships in the transport sector, the Court, in the judgments of 15 March 2011, *Koelzsch* (C-29/10, EU:C:2011:151, paragraph 49), and of 15 December 2011, *Voogsgeerd* (C-384/10, EU:C:2011:842, paragraphs 38 to 41), mentioned several indicia that might be taken into consideration by the national courts. Those courts must, in particular, determine in which Member State is situated (i) the place from which the employee carries out his transport-related tasks, (ii) the place where he returns after his tasks, receives instructions concerning his tasks and organises his work, and (iii) the place where his work tools are to be found.

64 In that regard, in circumstances such as those at issue in the main proceedings, and as pointed out by the Advocate General in point 102 of his Opinion, the place where the aircraft aboard which the work is habitually performed are stationed must also be taken into account.

65 Consequently, the concept of 'place where, or from which, the employee habitually performs his work' cannot be equated with any concept referred to in another act of EU law.

66 As regards the air crew, assigned to or employed by an airline, that concept cannot be equated with the concept of 'home base', within the meaning of Annex III to Regulation No 3922/91. Indeed, the Brussels I Regulation does not refer to Regulation No 3922/91, nor does it have the same objectives, the latter regulation aiming to harmonise technical requirements and administrative procedures in the field of civil aviation safety.

67 The fact that the concept of 'place where the employee habitually carries out his work', within the meaning of Article 19(2)(a) of the Brussels I Regulation, cannot be equated with that of 'home base', within the meaning of Annex III to Regulation No 3922/91, does not however mean, as stated by the Advocate General in point 115 of his Opinion, that that latter concept is irrelevant in order to determine, in circumstances such as those at issue in the cases in the main proceedings, the place from which an employee habitually carries out his work.

68 More specifically, as is apparent from paragraphs 61 to 64 of the present judgment, the Court has already highlighted the need to use a circumstantial method in identifying that place.

69 In that regard, the concept of 'home base' amounts to a factor likely to play a significant role in the identification of the indicia, referred to in paragraphs 63 to 64 of the present judgment, making it possible, in circumstances such as those at issue in the main proceedings, to determine the place from which employees habitually carry out their work and, consequently, whether a court is likely to have jurisdiction over an action brought by those employees, in accordance with Article 19(2)(a) of the Brussels I Regulation.

70 That concept is defined in Annex III to Regulation No 3922/91, under OPS 1.1095, as the place from which the air crew systematically starts its working day and ends it by organising its daily work there and close to which employees have, during the period of performance of their contract of employment, established their residence and are at the disposal of the air carrier.

71 According to OPS 1.1110 of that annex, the minimum rest periods of employees, such as the appellants in the main proceedings, vary according to whether that period is allocated away from or from that 'home base', within the meaning of Annex III to Regulation No 3922/91.

72 Furthermore, it must be noted that that place is not determined randomly or by the employee, but, in accordance with OPS 1.1090, point 3.1, of that annex, by the operator for each crew member.

73 It would only be if, taking account of the facts of each of the present cases, applications, such as those at issue in the main proceedings, were to display closer connections with a place other than the 'home base' that the relevance of the latter for the identification of 'the place from which employees habitually carry out their work' would be undermined (see, to that effect, judgment of 27 February 2002, *Weber*, C-37/00, EU:C:2002:122, paragraph 53, as well as, by analogy, judgment of 12 September 2013, *Schlecker*, C-64/12, EU:C:2013:551, paragraph 38 and the case-law cited).

74 Moreover, the autonomous nature of the concept of 'place where the employee habitually carries out his work' cannot be called into question by the reference to the concept of 'home base', within the meaning of that regulation, contained in the wording of Regulation No 883/2004, since that regulation and the Brussels I Regulation pursue different objectives. Indeed, whereas the Brussels I Regulation has the objective referred to in paragraph 47 of the present judgment, Regulation No 883/2004 has as its objective, as stated in recital 1 thereof, in addition to free movement of persons, 'contribut[ing] towards improving their standard of living and conditions of employment'.

75 Furthermore, the argument that the concept that the place where, or from which, the employee habitually carries out his work, to which Article 19(2)(a) of the Brussels I Regulation refers, is not, as is apparent from paragraph 65 of the present judgment, to be equated with any other concept, applies also as regards the 'nationality' of aircraft, within the meaning of Article 17 of the Chicago Convention.

76 Thus, and contrary to the claims made by Ryanair and Crewlink in the context of their observations, nor can the Member State from which a member of the air crew, assigned to or employed by an airline, habitually carries out his work be equated with the territory of the Member State of nationality of the aircraft of that company, within the meaning of Article 17 of the Chicago Convention.

77 In the light of the foregoing, the answer to the questions referred is that Article 19(2)(a) of the Brussels I Regulation must be interpreted as meaning that, in the event of proceedings being brought by a member of the air crew, assigned to or employed by an airline, and in order to establish the jurisdiction of the court seised, the concept of 'place where the employee habitually carries out his work', within the meaning of that provision, cannot be equated with that of 'home base', within the meaning of Annex III to Regulation No 3922/91. The concept of 'home base' constitutes nevertheless a significant indicium for the purposes of determining the 'place where the employee habitually carries out his work'.

Costs

78 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 19(2)(a) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the event of proceedings being brought by a member of the air crew, assigned to or employed by an airline, and in order to establish the jurisdiction of the court seised, the concept of 'place where the employee habitually carries out his work', within the meaning of that provision, cannot be equated with that of 'home base', within the meaning of Annex III to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation, as amended by Regulation (EC) No 1899/2006 of the European Parliament and of the Council of 12 December 2006. The concept of 'home base' constitutes nevertheless a significant indicium for the purposes of determining the 'place where the employee habitually carries out his work'.

[Signatures]

* Language of the case: French.