Provisional text

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE
delivered on 27 April 2017 (1)

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

Sandra Nogueira,
Victor Perez-Ortega,
Virginie Mauguit,
Maria Sanchez-Odogherty,
José Sanchez-Navarro
v
Crewlink Ltd (C-168/16)

and

Miguel José Moreno Osacar
v
Ryanair, formerly Ryanair Ltd (C-169/16)

(Request for a preliminary ruling from the cour du travail de Mons (Belgium))

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

I. Introduction

1. The cour du travail de Mons (Higher Labour Court, Mons) (Belgium) has referred to the Court two questions for a preliminary ruling, couched in almost identical terms and concerning the interpretation of Article 19(2) of Regulation (EC) No 44/2001. (2)

2. The questions have arisen in two disputes between, on the one hand, Sandra Nogueira, Victor Perez-Ortega, Virginie Mauguit, Maria Sanchez-Odogherty and José Sanchez-Navarro (Case C-168/16) and, on the other hand, Miguel José Moreno Osacar (Case C-169/16) ('the appellants') and, respectively, Crewlink Ltd (Case C-168/16) ('Crewlink') and Ryanair, formerly Ryanair Ltd (Case C-169/16), the appellants' former employers, concerning the conditions of employment and dismissal applied by the latter to the appellants.

3. At this stage of the disputes in the main proceedings, the parties disagree as to the determination of the Member State whose courts have international jurisdiction in the proceedings in application of Regulation No 44/2001.

4. Having regard to the specific context of international passenger transport by air, in which workers may carry out their work on the territory of more than one Member State, the referring court asks the Court to rule on the interpretation of the concept of 'the place where the employee habitually carries out his work' in Article 19(2)(a) of Regulation No 44/2001.

5. For the reasons set out below, I propose that the Court should apply its settled case-law relating to contracts of employment performed on the territory of more than one Member State developed in the context of the Brussels Convention (3) and the Rome Convention (4) and, accordingly, rule that that place is the place where or from which the employee principally discharges his obligations towards his employer.

II. Legal context

A. Regulation No 44/2001

6. I would point out, by way of preliminary observation, that the relevant provisions of Regulation No 44/2001, cited below, were not amended between the date of adoption of that regulation and the date of relevant facts of the main proceedings.

7. Recital 13 of Regulation No 44/2001 states:

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

8. Section 5 of Chapter II of that regulation, entitled 'Jurisdiction over individual contracts of employment', consists of Articles 18 to 21 of that regulation.

9. Article 18(1) of Regulation No 44/2001 provides that, in matters relating to individual contracts of employment, jurisdiction is to be determined by that section, without prejudice to Article 4 and point 5 of Article 5 of that regulation.

10. Article 19 of that regulation provides:

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

in the courts of the Member State where he is domiciled; or

in another Member State:

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

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.'

11. Article 21 of Regulation No 44/2001 provides:

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

which is entered into after the dispute has arisen; or

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

B. Regulation (EEC) No 3922/91

12. In the words of Article 1(1) thereof, Regulation (EEC) No 3922/91 (5) 'shall apply to the harmonisation of technical requirements and administrative procedures in the field of civil aviation safety … with respect to … operation and maintenance of aircraft [and] persons and organisations involved in these tasks'.

13. Annex III to Regulation No 3922/91, entitled 'Common technical requirements and administrative procedures applicable to commercial transport by aircraft', was introduced by Regulation (EC) No 1899/2006. (6)

14. Annex III contains subpart Q, entitled 'Flight and duty time limitations and rest requirements'. Within subpart Q, standard OPS 1.1095, point 1.7, defines 'home base' as follows:

'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.'

15. Standard OPS 1.1090, point 3.1, states, in addition, that an operator is to nominate a home base for each crew member.

16. Annex III has been replaced twice, by Regulations (EC) No 8/2008 (7) and (EC) No 859/2008 (8) respectively, although the wording of the abovementioned standards has not been altered.

C. Regulation (EC) No 883/2004

17. Under Title II, 'Determination of the legislation applicable', Article 11(1) of Regulation (EC) No 883/2004 (9) provides:

'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.'

18. Article 11(5) of Regulation No 883/2004, inserted by Regulation (EU) No 465/2012, (10) states:

'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 [No 3922/91], is located.'

19. It should be pointed out that that amendment does not apply, *ratione temporis*, in the circumstances of the main proceedings.

III. The main proceedings and the questions for a preliminary ruling

20. Ryanair is a company established under Irish law whose registered office is in Ireland; it is active in the international passenger air transport sector.

21. Crewlink (Case C-168/16) is a company established under Irish law whose registered office is in Ireland; it specialises in the recruitment and training of cabin crew for airlines.

22. All the contracts of employment between Crewlink and the appellants in Case C-168/16 provided that the worker was to be assigned to Ryanair as a member of the cabin crew.

23. Ms Nogueira (Case C-168/16) is Portuguese. She was recruited by Crewlink as an air hostess on 8 October 2009 under a fixed-term contract of three years. She resigned on 4 April 2011.

24. Mr Perez-Ortega (Case C-168/16) is Spanish. He was recruited by Crewlink as a steward under a fixed-term contract of three years, signed in Porto (Portugal). He resigned on 15 June 2011.

25. Ms Mauguit (Case C-168/16) is Belgian. She was recruited by Crewlink as an air hostess under a fixed-term contract of three years signed in Dublin (Ireland). She was dismissed on 24 June 2011.

26. Ms Sanchez-Odogherty (Case C-168/16) is Spanish. On 1 April 2010 she was recruited by Crewlink as an air hostess under a fixed-term contract of three years. She resigned on 20 June 2011.

27. Mr Sanchez-Navarro (Case C-168/16) is Spanish. On 8 October 2009 he was recruited by Crewlink as a steward under a fixed-term contract of three years, signed in Dublin. He was dismissed on 10 November 2011.

28. Mr Moreno Osacar (Case C-169/16) is Spanish. On 21 April 2008 he entered into a contract of employment with Ryanair as a 'cabin services agent'. His activities began on 1 May 2008 and he resigned on 16 June 2011.

29. All the contracts of employment concluded between the appellants and Crewlink or Ryanair ('the contracts of employment at issue') were drafted in English.

30. Under those contracts, the appellants' duties included, inter alia, passenger safety, care, assistance and control, boarding assistance, on-board sales and cleaning of the interior of the aircraft.

31. The contracts of employment at issue stated that they were governed by Irish law.

32. In addition, the contracts contained a choice of forum clause which conferred jurisdiction on the Irish courts. According to the referring court, that clause, in accordance with Article 21 of Regulation No 44/2001, cannot be relied on against the appellants.

33. The contracts further stipulated that the appellants' services were deemed to be performed in Ireland, since the appellants carried out their duties on board aircraft registered in Ireland.

34. Nonetheless, the referring court points out in that regard that the aircraft on which the appellants carried out their duties were parked at Charleroi (Belgium) and that it was irrelevant in that respect that the aircraft were registered in Ireland.

35. The contracts of employment at issue designated Charleroi as the appellants' home base, but also allowed the employers to transfer them to another airport. However, it is not disputed that Charleroi Airport was the appellants' only home base while those contracts were applicable.

36. The appellants were contractually required to live less than one hour from their home base and therefore lived in Belgium while performing those contracts.

37. All the appellants started and ended their day's work at Charleroi Airport. More specifically, it is apparent from the findings of the referring court that:

the appellants received their instructions at Charleroi Airport by consulting the employers' intranet site;

the appellants always took off from Charleroi Airport for a particular destination;

on leaving that destination airport, they always returned to Charleroi; and

when a number of return flights were scheduled on the same day, flights within Europe departed from Charleroi and returned to Charleroi at the end of the day.

38. Ryanair (Case C-169/16) denied having a branch office in Belgium but acknowledged having a 'crew room' there.

39. Crewlink (Case C-168/16) claimed before the referring court that it did not have a branch office or an office in Belgium from which the work was organised and that instructions relating to the appellants' work were given from offices located in Ireland. The referring court states, however, that Crewlink acknowledged at the hearing that it shared a 'crew room' in Belgium with Ryanair.

40. When they were unfit for work, the appellants were required to attend Charleroi Airport in order to complete a form which was then forwarded to their employer's 'head office' in Dublin.

41. In the event of disciplinary problems, the worker was summoned to an initial meeting with a senior staff member of the management in the crew room at Charleroi Airport. The subsequent stages of the disciplinary proceedings were carried out from Dublin.

42. The appellants maintain that the provisions of Irish law applied to their employment relationship by Crewlink and Ryanair are less advantageous than the provisions of Belgian law. In their submission, there is no link between them and Ireland, since they have never lived there, have never worked there and, in the case of some of the appellants, have visited there only once, in order to sign their contract and open a bank account.

43. Taking the view that Crewlink and Ryanair were required to comply with and apply the provisions of Belgian law, and that the Belgian courts have jurisdiction to hear and determine their claims, the appellants brought actions before the tribunal du travail de Charleroi (Labour Court, Charleroi, Belgium), seeking an order, in application of the provisions of Belgian labour law, that the employers pay a sum provisionally evaluated for each of the appellants at EUR 20 000, representing unpaid wages, enhanced payment for night work, payment for overtime, reimbursement of transport costs, costs associated with the purchase, use and cleaning of the uniform, training fees, damages corresponding to the exchange value of meal vouchers, amounts representing the difference between the guaranteed wage and the wage actually paid and severance pay.

44. Ms Mauguit and Mr Sanchez-Navarro, who were dismissed by Crewlink (Case C-168/16), also seek payment of compensation in lieu of notice, corresponding to three months' remuneration.

45. Crewlink and Ryanair contend, on the other hand, that the Irish courts have jurisdiction to determine these disputes.

46. By two judgments delivered on 4 November 2013, the tribunal du travail de Charleroi (Labour Court, Charleroi) held that the Belgian courts did not have jurisdiction to hear and determine those claims.

47. On 28 November 2013, the appellants lodged appeals against those judgments, claiming, in particular, that the Belgian courts have jurisdiction in the main proceedings pursuant to Articles 18 to 21 of Regulation No 44/2001 and that Belgian law governs the employment relationships at issue in the main proceedings pursuant to Article 6 of the Rome Convention.

48. The referring court considers that there is some doubt as to the interpretation to be given to Article 19(2) of Regulation No 44/2001, and more particularly to the concept of 'place where the employee habitually carries out his work', having regard to the specific features of the air navigation sector.

49. It was in that context that the cour du travail de Mons decided to stay the proceedings before it and to refer to the Court for a preliminary ruling a question in Case C-168/16 and a question in case C-169/16 which, read, in terms

which are almost identical, as follows: (11)

'Taking into account:

the need for predictability of approach and legal certainty, which governed the adoption of the rules of jurisdiction and the enforcement of judgments in civil and commercial proceedings laid down in the [Brussels Convention] and Regulation No 44/2001 …,

the particular features of the European air navigation sector, in which air crews [assigned to or employed by an] airline … whose registered office is [on the territory of a Member State], 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 [on the territory of another Member State],

the particular circumstances [of the disputes in the main proceedings],

the criterion derived from the concept of "home base" [as defined in Annex III to Regulation No 3922/91, as amended by Regulation No 1899/2006], 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],

may the concept of the "place where the employee habitually carries out his work" referred to in Article 19(2) of [Regulation No 44/2001] be interpreted as being comparable to that of "home base" defined in Annex III to Regulation No 3922/91 …,

for the purpose of determining [the Member State] on whose territory employees habitually carry out their work where those employees [are, as members of the air crew, assigned to or employed by] an airline, subject to the laws of a [Member State,] that transports passengers internationally by air throughout the territory of the European Union,

since that criterion of attachment, based on the "home base", in the sense of "the effective centre of the work relationship", inasmuch as all the employees systematically begin and end their working day at that place, organise their daily work there and, throughout the period of their contractual relationship, maintain their residence there, is the criterion which both indicates the closest connection with a [Member] State and ensures the most satisfactory protection of the weaker party in the contractual relationship?'

IV. Procedure before the Court

50. The requests for a preliminary ruling were registered at the Court Registry on 25 March 2016.

51. Written observations were submitted by the appellants, Ryanair, the Belgian, French, Netherlands and Swedish Governments and the European Commission.

52. The appellants, Crewlink, Ryanair, the Belgian Government, Ireland, the French and Swedish Governments and the Commission appeared and submitted observations at the hearing on 2 February 2017.

V. Analysis

53. By its question, the referring court asks the Court whether Article 19(2) of Regulation No 44/2001 must be interpreted as meaning that, so far as a worker employed in the international air transport sector as a member of the cabin crew is concerned, the 'place where the employee habitually carries out his work' may be assimilated to the 'home base' as defined in Annex III to Regulation No 3922/91 as amended by Regulation No 1899/2006.

54. To my knowledge, the Court has not yet had the opportunity to interpret Article 19(2) of Regulation No 44/2001 in a context such as that of the main proceedings, namely that of workers employed in the international air transport sector and performing their contract of employment on the territory of more than one Member State.

55. Several different components of an answer may however be identified in the Court's case-law on the performance of a contract of employment on the territory of more than one State, both within the framework of the Brussels Convention (Title A) and, by analogy, within that of the Rome Convention (Title B) and those components can usefully be transposed within the framework of Regulation No 44/2001 (Title C).

56. Before I proceed to describe those components of an answer, I would point out that, according to settled case-law, the interpretation of the provisions relating to contracts of employment, both within the framework of Regulation No 44/2001 and within that of the two abovementioned conventions, must take account of the desire to ensure adequate protection for the contracting party who is weaker from the social viewpoint, in this instance the worker. (12)

57. In addition, I would emphasise that the clauses in the contracts of employment at issue that confer jurisdiction on the Irish courts cannot be relied on against the appellants, in application of Article 21 of Regulation No 44/2001, as the referring court, the appellants, the French and Swedish Governments and the Commission have emphasised.

58. In fact, those clauses do not come within either of the two situations envisaged by that provision, namely that of a clause which is entered into after the dispute has arisen or a clause which allows the employee to bring proceedings in courts other than those indicated in Section 5 of Chapter II of that regulation.

A. The performance of a contract of employment on the territory of more than one State within the framework of the Brussels Convention

59. Before examining the Court's case-law relating to the Brussels Convention, I recall that, in so far as Regulation No 44/2001 replaces that Convention, the interpretation provided by the Court in respect of the provisions of that convention is valid also for those of that regulation, whenever the provisions of those instruments may be regarded as equivalent. (13)

60. In that regard, I would point out that Article 19(2) of Regulation No 44/2001 is drafted in virtually identical terms to those of the second and third sentences of Article 5(1) of the Brussels Convention in the version resulting from the San Sebastián Convention. (14)

61. Having regard to that similarity, it is necessary to ensure, in accordance with recital 19 of Regulation No 44/2001, continuity in the interpretation of those two instruments, as the appellants and the French Government have observed. (15)

62. I recall that, in its initial version, the Brussels Convention did not include any specific provision relating to contracts of employment. (16) The Court nonetheless held that disputes arising out of a contract of employment were subject to that convention (17) and came, more particularly, under Article 5(1) of that convention, which provides that the defendant may be sued, in matters relating to a contract, in the courts for the place where the obligation forming the basis of the claim has been or is to be carried out. (18)

63. The Court then made clear that the criterion established in Article 5(1) of the Brussels Convention must be interpreted, in the context of disputes arising from contracts of employment, as being the courts of the place where the obligation to carry out the work is to be performed. (19)

64. In the judgment in Mulox IBC (20) the Court was required to refine that criterion in relation to the performance of a contract of employment on the territory of more than one Member State.

65. The Court held that, where the work entrusted to the employee is performed on the territory of more than one Contracting State, that provision must be interpreted as designating 'the place where or from which the employee principally discharges his obligations towards his employer' (paragraph 24 of that judgment).

66. In paragraph 25 of that judgment, the Court set out a number of indicia that might be taken into account by the national court in order to determine that place, in particular the fact that the work entrusted to the employee was carried out from an office in a Contracting State, where he had established his residence, from which he performed his work and to which he returned after each business trip.

67. That case-law was codified in part when the San Sebastián Convention was concluded, mentioned in point 60 of this Opinion. On that occasion, Article 5(1) of the Brussels Convention was supplemented by a specific rule relating to contracts of employment and reflecting the Court's case-law cited above. (21) Under that new rule, the employer may be sued in the courts for the place where the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee was or is now situated.

68. The Court has been required to interpret that new rule in connection with contracts of employment performed on the territory of more than one Member State.

69. Thus, in Rutten, (22) the Court held that the 'place where the employee habitually carries out his work', for the purposes of Article 5(1) of the Brussels Convention, refers to the place where the employee has established the effective centre of his working activities and where, or from which, he in fact performs the essential part of his duties vis-à-vis his employer (paragraph 23 of that judgment).

70. In paragraph 25 of that judgment, the Court set out the indicia that might be taken into account by the national court in order to identify that place, and in particular the fact that the employee had an office in that State where he organised his work for his employer and to which he returned after each business trip abroad.

71. The judgment in *Weber* (23) concerned a different situation from that which had given rise to the judgments in Mulox IBC and Rutten, in that the employee did not have an office in a Contracting State that constituted the effective centre of his working activities or from which he performed the essential part of his duties vis-à-vis his employer (paragraph 48 of that judgment).

72. The Court nonetheless held that, even in those circumstances, the Mulox IBC and Rutten case-law remains relevant to the extent that it means that, where a contract of employment is performed in more than one Contracting State, 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 (paragraph 49 of that judgment). (24)

B. The performance of a contract of employment on the territory of more than one State within the framework of the Rome Convention

73. Before I examine the case-law developed by the Court within the framework of the Rome Convention, it is necessary to explain the reasons why that case-law is capable of constituting a relevant authority for the purposes of interpreting the Brussels Convention or Regulation No 44/2001, as the appellants, Ryanair, the French Government and the Commission have maintained.

74. Admittedly, those instruments have different objectives. The purpose of the Rome Convention and Regulation (EC) No 593/2008 (25) is to identify the State whose laws are applicable to the contractual obligations, whereas the purpose of the Brussels Convention and Regulation No 44/2001 is to determine the State whose courts have jurisdiction to determine a dispute in civil and commercial matters.

75. In spite of their different objectives, there are several reasons why the Court's interpretation of the Rome Convention and the Rome I Regulation may be considered relevant for the interpretation of the Brussels Convention and Regulation No 44/2001.

76. First, recital 7 of the Rome I Regulation states that the substantive scope and the provisions of that regulation should be consistent with Regulation No 44/2001. The preamble to the Rome Convention already made clear, in that regard, that that Convention was intended to continue in the field of private international law the work of unification of law which had already been done within the Union, in particular in the field of jurisdiction and enforcement of judgments.

77. Second, the Court has already undertaken a parallel interpretation of those instruments on several occasions, in particular as regards the provisions relating to contracts of employment set out in the Rome Convention and the Brussels Convention. (26)

78. Third, the provisions relating to contracts of employment in those instruments pursue the same objective, namely that of ensuring adequate protection to the worker as the weaker contracting party. (27)

79. Fourth, I observe that Article 6(2)(a) and (b) of the Rome Convention is drafted in virtually the same terms as Article 19(2) of Regulation No 44/2001. (28)

80. Having regard to the foregoing, I consider that the Court's case-law relating to Article 6(2)(a) and (b) of the Rome Convention must be taken into consideration when interpreting Article 19(2) of Regulation No 44/2001.

81. The Court has interpreted Article 6(2)(a) and (b) of the Rome Convention, in particular, in the judgments in Koelzsch and Voogsgeerd. (29) Those judgments, which concerned workers active in the road transport and maritime transport sectors, respectively, are particularly relevant in the present cases, which concern workers active in the air transport sector.

82. When faced with situations in which a contract of employment is performed on the territory of more than one State, the Court held that Article 6(2) of the Rome Convention established a hierarchy of the criteria to be taken into account in order to determine the law applicable to the contract of employment. (30) In fact, and having regard to the objective of protecting the worker, the criterion of the country in which the employee 'habitually carries out his work', set out in Article 6(2)(a) of the Rome Convention, must be given a broad interpretation, while the criterion of 'the place of business through which [the employee] was engaged', in Article 6(2)(b) of that convention, can apply only if the court seised is not in a position to determine the country in which the work is habitually carried out. (31)

83. Thus, Article 6(2)(a) of the Rome Convention should also be applied in a situation where the employee carries out his activities in more than one Contracting State when it is possible for the court seised to determine the State with which the work has a significant connection. (32)

84. In such a case, the criterion of the country in which the work is habitually carried out must be understood as referring to the place where or from which the employee actually carries out his working activities and, if there is no centre of activities, to the place where he carries out the majority of his activities. (33)

85. Having regard to the particular nature of work in the road transport and maritime transport sectors, the Court then set out a number of indicia that might be taken into consideration by the national court in application of the abovementioned criteria. The national court must, in particular, determine in which State the place from which the employee carries out his transport-related tasks, receives the instructions concerning his tasks and organises his work is situated, and also the place where his work tools are to be found. (34) It must also determine, where appropriate, the places where the transport is principally carried out, where the goods are unloaded and the place to which the employee returns after completion of his tasks. (35)

C. The determination of the 'place where the employee habitually carries out his work' in the circumstances of the main proceedings

86. The referring court asks the Court about the interpretation of Article 19(2)(a) of Regulation No 44/2001, the applicability of which in the circumstances of the main proceedings has not been disputed by the parties who have submitted observations to the Court.

87. I have already set out the reasons why the case-law relating to the corresponding provisions of the Brussels Convention and the Rome Convention is relevant for the purposes of the interpretation of that provision. (36)

88. It now remains to me to determine, on the basis of that case-law, the criteria which allow the 'place where the employee habitually carries out his work', within the meaning of Article 19(2)(a) of Regulation No 44/2001 to be identified in the circumstances of the main proceedings.

1. The place 'where or from which' the employee principally carries out his duties vis-à-vis his employer

89. It follows from the judgments cited above that, when the work is carried out on the territory of more than one Member State, the criterion established in Article 19(2)(a) of Regulation No 44/2001 must be interpreted as meaning that it designates the 'place where or from which' the employee principally performs his obligations vis-à-vis his employer. (37)

90. The Court has thus established a two-fold criterion (the 'place where' or the 'place from which') for the purposes of the application of that provision with regard to employees carrying out their duties in more than one Member State. Having regard to the need to give that provision a broad interpretation, (38) and to the Court's use of the conjunction 'or', I consider that when applying that two-fold criterion the national court should take an 'either/or' approach. In other words, and as Ryanair and the Commission have correctly observed, the national court must attempt to identify, in the light of all of the relevant circumstances:

either the 'place where' the employee principally carries out his obligations vis-à-vis his employer, or

the 'place from which' he principally carries out those obligations.

91. It will be recalled that the main proceedings concern workers who were employed as cabin crew (air hostesses or stewards) on aircraft operated by Ryanair. Those employees performed their work in more than one Member State, namely in Belgium, where the airport of departure (Charleroi) was situated, the Member State of the airport of arrival and any other Member States crossed during the flight.

92. I consider that it is not possible, in such circumstances, to identify a 'place where' those employees principally carried out their obligations vis-à-vis their employers. To my mind, it is difficult to attach greater weight to the tasks carried out by those employees in the airport of departure, on board the aircraft or in the airport of arrival.

93. On the other hand, I believe that it is possible, on the basis of the findings of fact set out by the referring court in the request for a preliminary ruling, to identify a 'place from which' those employees principally carried out their obligations vis-à-vis their employers.

94. I find confirmation of that interpretation in the *travaux préparatoires* for the Rome I Regulation. In fact, and as the French Government and the Commission have emphasised, it is apparent from those *travaux préparatoires* that the

words 'country from which' in Article 8(2) of that regulation were specifically (but not exclusively) aimed at personnel working on board aircraft. (39)

95. While it is of course for the national court to assess all the relevant factual circumstances in order to identify that place, the Court nonetheless has the power to guide that assessment by identifying the indicia that may be taken into account in that regard. (40)

2. The relevant indicia for the purposes of identifying the place 'from which' the worker principally carries out his obligations in the circumstances of the main proceedings

96. Although I do not claim to provide an exhaustive list, I consider that a number of circumstances identified by the referring court and summarised in points 34 to 42 of this Opinion constitute relevant indicia for the purposes of identifying, in the context of the main proceedings, the 'place from which' the appellants principally carried out their obligations vis-à-vis their employers.

97. First, the appellants started and ended their working day at Charleroi Airport. To my mind, that fact is of overriding importance, which is confirmed by the Court's consistent case-law. (41)

98. Second, the appellants received the instructions relating to their tasks and organised their work at Charleroi Airport, by consulting their employers' intranet. The relevance of that criterion has also been emphasised by the Court on several occasions. (42)

99. Ryanair claimed that that criterion must be interpreted as meaning that it refers to the place where the employer is when he sends the instructions and organises his employees' work. That diametrically opposite approach must be rejected, for the following reasons.

100. First, it runs counter to the terms used by the Court in the judgments referred to above, which expressly refer to the place where the *employee* receives the instructions and organises his work, not to the place from which the *employer* sends the instructions and organises his employees' work.

101. Second, and as the French Government has correctly pointed out, that opposite approach would run counter to the objective of protecting the employees. It would expose the employees to a risk of forum shopping on the part of the employer, who could choose the place from which he sends the instructions and organises his employees' work, so that the criterion established in Article 19(2)(a) of Regulation No 44/2001 would designate the courts of that place.

102. Third, the aircraft operated by Ryanair, and on board which the appellants worked as cabin staff, were based at Charleroi. In that regard, the Court has already had the opportunity to make clear that, in the international transport sector, the place where the work tools are located constitutes a relevant indicium for the purposes of determining the place from which the worker principally fulfils his obligations vis-à-vis his employer. (43)

103. Fourth, the appellants were contractually required to live less than one hour from Charleroi Airport. In the judgment in Mulox IBC, the Court observed that the worker had established his residence in the State in which the office from which he carried out his activities and to which he returned after each business trip was located. (44) I would point out, having regard to the wording of the questions for a preliminary ruling, that that factor refers not to the worker's actual place of residence but rather to the place of work near which he lives, namely Charleroi Airport in the main proceedings. (45) To my mind, the relevance of that factor is also significantly reinforced by the existence of a contractual clause requiring the workers to live near that place of work.

104. Fifth, the referring court noted that Ryanair and Crewlink jointly had a 'crew room' at Charleroi Airport. The existence of an office made available by the employer is another factor the relevance of which has been emphasised in the Court's case-law. (46)

105. Sixth, the referring court stated that the appellants were required to attend Charleroi Airport if they were unfit for work and in the event of disciplinary problems. Although the Court has not yet been required to adjudicate on the relevance of that fact, I consider that it may help to identify the place from which the appellants principally performed their obligations.

106. I consider that those six indicia are relevant for the purposes of identifying, in application of Article 19(2)(a) of Regulation No 44/2001, the place from which the appellants principally performed their obligations in the circumstances of the main proceedings.

107. While it is for the Court to determine those indicia, it is for the referring court to apply them in the main proceedings. As an indication, I am of the view that, on the basis of the findings of fact communicated by that court in its request for a preliminary ruling, those six indicia unequivocally designate the courts of the place where Charleroi Airport is situated, as, moreover, the Commission submits.

108. I would further point out that the fact that the worker is directly employed by Ryanair (Case C-169/16) or assigned to Ryanair by Crewlink (Case C-168/16) is irrelevant for the purposes of identifying the place where the work is habitually carried out, within the meaning of Article 19(2)(a) of Regulation No 44/2001, as the appellants, Ryanair and the French Government have claimed. That place must be the same for both categories of workers if their obligations under their contracts of employment are similar, which is not disputed in the circumstances of the main proceedings. In other words, that place is independent of the legal link between the worker and the person who benefits from the work done.

3. The 'home base' as an indirectly relevant indicium

109. As the questions referred by the national court refer expressly to the 'home base' as a criterion for identifying the place where the contract of employment is habitually performed, within the meaning of Article 19(2)(a) of Regulation No 44/2001, it is appropriate at this point to examine its relevance.

110. The 'home base' is defined in standard OPS 1.1095, point 1.7, which is to be found in Annex III to Regulation No 3922/91 as amended by Regulation No 1899/2006, 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.

111. According to the explanations provided by Ryanair and the Commission, the home base is used, in particular, as a reference point for calculating the rest time of the personnel working on board the aircraft. In addition, it was stated by the referring court that Charleroi Airport was the appellants' only home base for the entire period of their contracts of employment.

112. I would make clear at the outset that it does not seem to be possible, in the absence of an express reference to that effect, that the scope of the concept of 'place where the employee habitually carries out his work', used in Article 19(2) of Regulation No 44/2001, should have to depend on a concept in an act of Union law which belongs to a quite different area, namely that of the harmonisation of rules in the civil aviation sector, as Ireland has correctly maintained.

113. In that regard, the scope of Article 19(2) of Regulation No 44/2001 is significantly different from that of Article 11(5) of Regulation No 883/2004, mentioned in the questions for a preliminary ruling, since the latter provision contains an express reference to the 'home base, as defined in Annex III to Regulation No 3922/91'.

114. Accordingly, and in order to provide an explicit answer to the questions submitted by the referring court, it does not seem to me to be possible to assimilate the concept of 'place where the employee habitually carries out his work' as referred to in Article 19(2) of Regulation No 44/2001 to the concept of 'home base' defined in Annex III to Regulation No 3922/91 as amended by Regulation No 1899/2006.

115. Nonetheless, the home base is not irrelevant for the purposes of interpreting Article 19(2) of Regulation No 44/2001. In fact, having regard to its definition, that concept overlaps, at least in part, with the first indicium which I identified in the preceding section, namely the place where the workers start and end their working day, as the Netherlands Government and the Commission have claimed. In my view, the home base may also correspond, as the Commission has maintained, with the place where the worker's residence is to be found, since the employer is not as a rule responsible for the accommodation of the worker there.

116. It should be emphasised that the relevance of the home base, for the purposes of identifying the place where the contract of employment is habitually carried out, is only indirect. Indeed, it should be taken into account only in so far as it supports the indicia mentioned above as relevant for the purposes of identifying that place.

117. I would add that, in practice, it cannot be precluded that the home base within the meaning of Annex III to Regulation No 3922/91 as amended by Regulation No 1899/2006 is situated, in most cases, at the place where the employee habitually carries out his work, within the meaning of Article 19(2) of Regulation No 44/2001, identified in accordance with those indicia.

4. The irrelevance of the nationality of the aircraft

118. Crewlink and Ryanair claimed that the nationality of the aircraft on board which the appellants worked should be taken into account for the purposes of determining the place where they habitually carried out their work, within the meaning of Article 19(2)(a) of Regulation No 44/2001.

119. In the circumstances of the main proceedings, it is common ground that the aircraft operated by Ryanair, and on board which the appellants worked, were registered in Ireland and therefore had Irish nationality, pursuant of Article 17 of the Chicago Convention. (47)

120. According to the arguments constructed by Crewlink and Ryanair, the appellants' working time on board those aircraft should, owing to the Irish nationality of the aircraft, be regarded as being spent on Irish territory under Article 19(2)(a) of Regulation No 44/2001.

121. Before I explain the reasons why that argument is unfounded, I consider it appropriate to emphasise its strategic importance. In fact, it is possible that the working time on board the aircraft is often longer then the working time in the airport of origin and the working time in the airport of destination. Therefore, if the working time on board an Irish aircraft were carried out on Irish territory for the purposes of the application of Article 19(2)(a) of Regulation No 44/2001, the aircrew might in many cases be regarded as habitually carrying out their work on Irish territory, in accordance with the outcome sought by Crewlink and Ryanair in the main proceedings.

122. The referring court, the French Government, Ireland and the Commission submit that that argument is unfounded, a view which I share, for the following reasons.

123. In the first place, no provision of Regulation No 44/2001 contains any reference to the Chicago Convention or to the nationality of the aircraft on board which the workers carry out their work.

124. In the second place, no provision of the Chicago Convention provides that the work carried out on board an aircraft must be regarded as being carried out on the territory of the State whose nationality the aircraft has.

125. In the third place, the concept of 'nationality of an aircraft', provided for in Article 17 of the Chicago Convention, has neither the object nor the effect of assimilating the space inside an aircraft to the territory of the State whose nationality that aircraft has. That concept of nationality of aircraft is used (i) to define the scope of a number of provisions of that convention which apply only to aircraft having the nationality of one of the Contracting States (48) and (ii) to prohibit certain distinctions on the basis of that nationality. (49)

126. Since no provision of the Chicago Convention has the effect of assimilating the space within an aircraft to the territory of the State whose nationality that aircraft has, I see no good reason why work on board an Irish aircraft should be regarded as being carried out on Irish territory for the purposes of the application of Article 19(2)(a) of Regulation No 44/2001.

127. I infer from the foregoing that the nationality of an aircraft within the meaning of Article 17 of the Chicago Convention is irrelevant and cannot be taken into account by the national court for the purposes of determining the

place where the cabin crew habitually carry out their work within the meaning of Article 19(2)(a) of Regulation No 44/2001.

5. The objective of protecting workers

128. I must still examine briefly an argument put forward by Crewlink and Ryanair based on the objective of protecting workers.

129. According to those parties, that objective requires that Article 19(2)(a) of Regulation No 44/2001 be interpreted as referring to the employer's place of establishment, namely Ireland in the main proceedings, in so far as those workers would not always have a command of the language of procedure of the courts of the place where their contract of employment is habitually performed, in this instance French before the referring court.

130. Apart from the fact that that argument is contrary to the express wording of that provision, it is also irrelevant, since the workers are always able, if they so wish, to bring proceedings before the courts of the Member State in which their employer is domiciled, in application of Article 19(1) of Regulation No 44/2001. I therefore find it difficult to understand how the removal of the right to bring proceedings before the courts of the place where the contract of employment is habitually carried out would contribute to the protection of the workers.

131. I would add, incidentally, that, according to settled case-law, the objective of protecting workers is best assured if disputes relating to a contract of employment fall within the jurisdiction of the courts of the place where the worker discharges his obligations towards his employer, as that is the place where it is least expensive for the worker to commence or defend court proceedings. (50)

VI. Conclusion

132. Having regard to the foregoing, I propose that the Court should answer the questions for a preliminary ruling submitted by the cour du travail de Mons (Belgium) as follows:

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 must be interpreted as meaning that, so far as a worker employed in the international air transport sector as a member of cabin crew is concerned, the 'place where the employee habitually carries out his work' cannot be assimilated to the 'home base' as defined in 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 No 1899/2006, but is at the place where or from which that worker principally carries out his obligations vis-à-vis his employer.

That place must be identified by the national court in the light of all the relevant circumstances, and in particular:

the place where the worker starts and ends his working days;

the place where the aircraft on board which he carries out his work are habitually based;

the place where he is made aware of the instructions communicated by his employer and where he organises his working day;

the place where he is contractually required to live;

the place where an office made available by the employer is situated; and

the place which he must attend when he is unfit for work or in the event of disciplinary problems.

Original language: French.

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2 Council Regulation of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

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3 Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36; 'the Brussels Convention').

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4 Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1; 'the Rome Convention'). I propose that the Court should apply by analogy the case-law relating to that Convention: see points 73 to 80 of this Opinion.

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5 Council Regulation 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).

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6 Regulation of the European Parliament and of the Council of 12 December 2006 amending Council Regulation No 3922/91 (OJ 2006 L 377, p. 1).

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7 Commission Regulation of 11 December 2007 amending Council Regulation No 3922/91 (OJ 2008 L 10, p. 1).

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8 Commission Regulation of 20 August 2008 amending Council Regulation No 3922/91 (OJ 2008 L 254, p. 1).

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9 Regulation 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).

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10 Regulation of the European Parliament and of the Council of 22 May 2012 amending Regulation No 883/2004 and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation No 883/2004 (OJ 2012 L 149, p. 4).

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11 I should point out that this formulation combines the question referred in Case C-168/16 and the question referred in Case C-169/16. The only difference between the two questions, which is reflected in the question as thus reformulated, relates to the fact that the appellants in Case C-168/16 are assigned to Ryanair while the appellant in Case C-169/16 is directly employed by Ryanair. However, that fact has no relevance to the question referred: see point 108 of this Opinion.

12 As regards Regulation No 44/2001, see recital 13 of that regulation and, in particular, and to that effect, judgments of 22 May 2008, Glaxosmithkline and Laboratoires Glaxosmithkline (C-462/06, EU:C:2008:299, paragraph 17); of 19 July 2012, Mahamdia (C-154/11, EU:C:2012:491, paragraphs 44 to 46 and 60); and of 10 September 2015, Holterman Ferho Exploitatie and Others (C-47/14, EU:C:2015:574, paragraph 43). As regards the Brussels Convention, see, in particular, judgments of 13 July 1993, Mulox IBC (C-125/92, EU:C:1993:306, paragraphs 18 to 20); of 27 February 2002, Weber (C-37/00, EU:C:2002:122, paragraph 40); and of 10 April 2003, Pugliese (C-437/00, EU:C:2003:219, paragraph 18). As regards the Rome Convention, see in particular, and to that effect, judgments of 15 March 2011, Koelzsch (C-29/10, EU:C:2011:151, paragraphs 40 to 42), and of 15 December 2011, Voogsgeerd (C-384/10, EU:C:2011:842, paragraph 35).

13 Judgments of 16 July 2009, Zuid-Chemie (C-189/08, EU:C:2009:475, paragraph 18); of 10 September 2015, Holterman Ferho Exploitatie and Others (C-47/14, EU:C:2015:574, paragraph 38); and of 16 June 2016, Universal Music International Holding (C-12/15, EU:C:2016:449, paragraph 22).

14 Convention 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), signed in San Sebastián on 26 May 1989.

15 See, to that effect, judgments of 16 July 2009, Zuid-Chemie (C-189/08, EU:C:2009:475, paragraph 19), and of 16 June 2016, Universal Music International Holding (C-12/15, EU:C:2016:449, paragraph 23).

16 See, in that regard, judgment of 26 May 1982, Ivenel (133/81, EU:C:1982:199, paragraphs 12 to 14), and Opinion of Advocate General Trstenjak in Koelzsch (C-29/10, EU:C:2010:789, paragraphs 71 to 73).

17 Judgment of 13 November 1979, Sanicentral (25/79, EU:C:1979:255, paragraph 3).

18 See judgment of 26 May 1982, Ivenel (133/81, EU:C:1982:199, paragraph 7 et seq.).

19 See, to that effect, judgments of 15 January 1987, Shenavai (266/85, EU:C:1987:11, paragraph 16); of 15 February 1989, Six Constructions (32/88, EU:C:1989:68, paragraphs 14 and 15); and of 13 July 1993, Mulox IBC (C-125/92, EU:C:1993:306, paragraph 17).

20 Judgment of 13 July 1993 (C-125/92, EU:C:1993:306).

21 See, in that regard, judgments of 29 June 1994, Custom Made Commercial (C-288/92, EU:C:1994:268, paragraph 25), and of 9 January 1997, Rutten (C-383/95, EU:C:1997:7, paragraphs 19 to 21).

22 Judgment of 9 January 1997 (C-383/95, EU:C:1997:7).

23 Judgment of 27 February 2002 (C-37/00, EU:C:2002:122).

24 See also judgments of 19 February 2002, Besix (C-256/00, EU:C:2002:99, paragraph 38), and of 10 April 2003, Pugliese (C-437/00, EU:C:2003:219, paragraph 19).

25 Regulation of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6, the 'Rome I Regulation').

26 As regards the provisions relating to contracts of employment set out in the Rome Convention and the Brussels Convention, see judgment of 15 March 2011, Koelzsch (C-29/10, EU:C:2011:151, paragraphs 33, 41, 42 and 45). As regards other provisions, see judgments of 7 December 2010, Pammer and Hotel Alpenhof (C-585/08 and C-144/09, EU:C:2010:740, paragraphs 41 to 43); of 21 January 2016, ERGO Insurance and Gjensidige Baltic (C-359/14 and

C-475/14, EU:C:2016:40, paragraphs 40 to 43); and of 28 July 2016, Verein für Konsumenteninformation (C-191/15, EU:C:2016:612, paragraphs 36 to 39).

27 See, in that regard, judgment of 15 March 2011, Koelzsch (C-29/10, EU:C:2011:151, paragraphs 40 to 45).

28 Article 6(2) of the Rome Convention is worded as follows: 'Notwithstanding the provisions of Article 4, a contract of employment shall, in the absence of choice in accordance with Article 3, be governed:
(a) by the law of the country in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country; or
(b) if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated; unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.'

29 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).

30 See, to that effect, judgment of 15 December 2011, Voogsgeerd (C-384/10, EU:C:2011:842, paragraph 34).

31 See, to that effect, judgments of 15 March 2011, Koelzsch (C-29/10, EU:C:2011:151, paragraphs 42 and 43), and of 15 December 2011, Voogsgeerd (C-384/10, EU:C:2011:842, paragraph 35).

32 Judgments of 15 March 2011, Koelzsch (C-29/10, EU:C:2011:151, paragraph 44), and of 15 December 2011, Voogsgeerd (C-384/10, EU:C:2011:842, paragraph 36).

33 Judgments of 15 March 2011, Koelzsch (C-29/10, EU:C:2011:151, paragraph 45), and of 15 December 2011, Voogsgeerd (C-384/10, EU:C:2011:842, paragraph 37).

34 See judgments of 15 March 2011, Koelzsch (C-29/10, EU:C:2011:151, paragraphs 48 and 49), and of 15 December 2011, Voogsgeerd (C-384/10, EU:C:2011:842, paragraphs 38 to 41).

35 See judgment of 15 March 2011, Koelzsch (C-29/10, EU:C:2011:151, paragraph 49).

36 See points 59 to 61 and 73 to 80 of this Opinion.

37 See, to that effect, judgments of 13 July 1993, Mulox IBC (C-125/92, EU:C:1993:306, paragraph 24); of 9 January 1997, Rutten (C-383/95, EU:C:1997:7, point 23); of 27 February 2002, Weber (C-37/00, EU:C:2002:122, paragraph 58); of 15 March 2011, Koelzsch (C-29/10, EU:C:2011:151, paragraph 50); and of 15 December 2011, Voogsgeerd (C-384/10, EU:C:2011:842, paragraph 37). See points 65, 69, 72 and 84 of this Opinion.

38 See point 82 of this Opinion.

39 Proposal for a Regulation of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I), COM(2005) 650 final of 15 December 2005, p. 8, in which it is indicated that '[t]he basic rule … has been amplified and the reference is now to the 'country in or from which …' to take account of the law as stated by the Court … in relation to Article 18 of … Regulation [No 44/2001] and its broad interpretation of the habitual place of work. *This change will make it possible to apply the rule to personnel working on board aircraft, if there is a fixed base from which work is organised and where the personnel perform other obligations in relation to the employer (registration, safety checks)*' (emphasis added).

40 The Court adopted that approach, in particular, in the judgments of 13 July 1993, Mulox IBC (C-125/92, EU:C:1993:306, paragraph 25); of 9 January 1997, Rutten (C-383/95, EU:C:1997:7, paragraph 25); of 15 March 2011, Koelzsch (C-29/10, EU:C:2011:151, paragraphs 48 and 49); and of 15 December 2011, Voogsgeerd (C-384/10, EU:C:2011:842, paragraphs 38 to 41). See points 66, 70 and 85 of this Opinion.

41 See, to that effect, judgments of 13 July 1993, Mulox IBC (C-125/92, EU:C:1993:306, paragraph 25); of 9 January 1997, Rutten (C-383/95, EU:C:1997:7, paragraph 25); 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 40). See points 66, 70 and 85 of this Opinion.

42 See judgments of 9 January 1997, Rutten (C-383/95, EU:C:1997:7, paragraph 25); 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, paragraph 38). See points 70 and 85 of this Opinion.

43 See 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, paragraph 38). See point 85 of this Opinion.

44 See judgment of 13 July 1993 (C-125/92, EU:C:1993:306, paragraph 25) and point 66 of this Opinion.

45 To take a hypothetical example, if one of the appellants had established his residence in a French location less than one hour from Charleroi Airport, in accordance with his contract of employment, that would indicate that Charleroi Airport — and not the appellant's place of residence on French territory — is the place from which that worker principally fulfilled his obligations vis-à-vis his employer.

46 See judgments of 13 July 1993, Mulox IBC (C-125/92, EU:C:1993:306, paragraph 25), and of 9 January 1997, Rutten (C-383/95, EU:C:1997:7, paragraph 25). See points 66 and 70 of this Opinion.

47 Convention on International Civil Aviation, signed in Chicago on 7 December 1944 ('the Chicago Convention').

48 See Article 5 of that convention: 'Each contracting State agrees that *all aircraft of the other contracting States*, being aircraft not engaged in scheduled international air services shall have the right … to make flights into or in transit non-stop across its territory …' (emphasis added). See also Article 12 of that convention: 'Each contracting State undertakes to adopt measures to insure that every aircraft flying over or manoeuvring within its territory and that *every aircraft carrying its nationality mark*, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force' (emphasis added).

49 See Article 9(b) of that convention: 'Each contracting State reserves also the rights, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory, on condition that such restriction or prohibition shall be applicable *without distinction of nationality* to aircraft of all other States' (emphasis added). See also Article 11 of that convention: 'Subject to the provisions of this Convention, the laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation … shall be applied to the aircraft of all contracting States without distinction as to nationality' (emphasis added).

50 Judgments of 13 July 1993, Mulox IBC (C-125/92, EU:C:1993:306, paragraph 19); of 9 January 1997, Rutten (C-383/95, EU:C:1997:7, paragraph 17); of 27 February 2002, Weber (C-37/00, EU:C:2002:122, paragraph 40); and of 10 April 2003, Pugliese (C-437/00, EU:C:2003:219, paragraph 18).