

## Anonymised version

Translation

C-537/23 – 1

Case C-537/23

### Request for a preliminary ruling

**Dated lodged:**

22 August 2023

**Referring court:**

Cour de cassation (France)

**Date of the decision to refer:**

13 April 2023

**Appellant in cassation:**

Societa Italiana Lastre SpA (SIL)

**Respondent in cassation:**

Agora SARL

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[...]

JUDGMENT OF THE COUR DE CASSATION, PREMIÈRE CHAMBRE  
CIVILE (COURT OF CASSATION, FIRST CIVIL CHAMBER), OF 13 APRIL  
2023

[...]

### Facts and procedure

- 1 According to the judgment under appeal (Rennes, 4 November 2021), in the context of a project commissioned by [two natural persons living as a couple (the project owners)], a French company, Agora, entered into a contract with an Italian company, SPA Italiana Lastre (SIL), for the supply of panelling which stipulated:

‘The court of Brescia will have jurisdiction over any dispute arising from or related to this contract. Societa Italiana Lastre reserves the right to bring proceedings against the purchaser before another competent court in Italy or elsewhere.’

- 2 In November 2019 and January 2020, the [project owners], claiming that defects existed, sued all of the contractors and the panelling supplier for damages.
- 3 SIL raised an objection to a guarantee claim brought against it by Agora, on the grounds of a lack of international jurisdiction.
- 4 The court of appeal rejected the plea of a lack of jurisdiction. It found that the clause enabled SIL to bring proceedings before a wider range of courts than Agora but that it did not state the objective factors on the basis of which the parties had agreed to determine the relevant court, that it thus conferred on SIL a discretion which was contrary to the objective of foreseeability with which jurisdiction clauses must comply and that it was, therefore, unlawful.

#### **Wording of the ground of appeal**

- 5 SIL criticises the judgment for confirming the order that had rejected its plea of a lack of territorial jurisdiction, in the following terms:

‘(1) that, by confirming the rejection of the plea of a lack of territorial jurisdiction raised by SIL, but without addressing the fundamental ground of appeal which alleged that, under Article 25(1) of Regulation No 1215/2012, the jurisdiction clause in question should have been assessed in the light of Italian law and not French law, the court of appeal infringed Article 455 of the Code of Civil Procedure;

(2) that the validity of a jurisdiction clause is to be assessed according to the law of the State whose courts have been designated; that, in finding that the choice-of-forum clause agreed on by the parties was unlawful, having noted that the clause designated the court of Brescia in Italy but having failed to apply Italian law, the court of appeal infringed Article 25(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.’

#### **Summary of the applicable legislation**

- 6 The Court of Justice of the European Communities held (C-387/98, *Coreck Maritime*, 9 November 2000) that the interpretation to be given to the first paragraph of Article 17 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters is that there is no requirement for a jurisdiction clause to be formulated in such a way that the competent court can be determined on its wording alone, it being sufficient for the

clause to state the objective factors on the basis of which the parties have agreed to choose a court or the courts to which they wish to submit disputes which have arisen or which may arise between them, and that those factors, which must be sufficiently precise to enable the court seised to ascertain whether it has jurisdiction, may, where appropriate, be determined by the particular circumstances of the case.

- 7 Under Article 25(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, known as Brussels Ia, if the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, those courts are to have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. That jurisdiction is to be exclusive unless the parties have agreed otherwise.

**Grounds for the reference for a preliminary ruling**

- 8 Article 25(1) introduced the need to refer to the law of the Member State of the designated court when assessing the ‘substantive’ validity of the jurisdiction clause.
- 9 This raises the question of the scope of such a reference, particularly in the case of asymmetric jurisdiction clauses which give only one of the parties the ability to select a court which is competent under the rules of ordinary law but which differs from the court named in the clause.
- 10 If the other party maintains that the clause is unlawful because it is too imprecise or because it is one-sided, should that matter be determined in accordance with autonomous rules derived from Article 25(1) of the Brussels Ia Regulation and the objective of foreseeability and legal certainty pursued by that regulation, or should it be determined by applying the law of the Member State designated by the clause? To put it another way, does it pertain to the substantive validity of the clause, within the meaning of that provision? Or should the substantive validity of the clause be interpreted strictly and regarded as relating purely to the material grounds for invalidity, which are principally fraud, error, deceit, violence and incapacity?
- 11 If the question of whether the clause is imprecise or one-sided is to be determined in the light of autonomous rules, must Article 25(1) of the Brussels Ia Regulation be interpreted as meaning that a clause should or should not be applied if it allows one party to bring proceedings before only one court but allows the other party to bring proceedings either before that same court or before any other court which has competence under ordinary law?

- 12 If the asymmetry of a clause amounts to a substantive condition, how is Article 25(1) of the Brussels Ia Regulation to be interpreted, in particular the requirement to refer to the law of the State of the designated court in a situation where multiple courts are designated by the clause, or where the clause designates one court but leaves it open to one of the parties to choose a different court but where this choice has not yet been exercised on the date when a court is seised of the matter:
- is the applicable national law that of the sole court to be expressly designated, even if proceedings could equally be brought before other courts?
  - if multiple courts have been designated, is it possible to refer to the law of the court before which proceedings have actually been brought?
  - lastly, in view of recital 20 of the Brussels Ia Regulation, should reference to the law of the Member State designated be understood to mean the material rules of the State or its conflict-of-law rules?

**ON THOSE GROUNDS**, the Court:

Having regard to Article 267 of the Treaty on the Functioning of the European Union;

REFERS the following questions to the Court of Justice of the European Union:

1) Where there is an asymmetric jurisdiction clause which gives only one of the parties the ability to select a court which is competent under the rules of ordinary law but which differs from the court named in that clause and where the other party maintains that the clause is unlawful because it is too imprecise and/or because it is one-sided, should that matter be determined in accordance with autonomous rules derived from Article 25(1) of the Brussels Ia Regulation and the objective of foreseeability and legal certainty pursued by that regulation, or should it be determined by applying the law of the Member State designated by the clause[?] To put it another way, does it pertain to the substantive validity of the clause, within the meaning of that provision? Or should the substantive validity of the clause be interpreted strictly and regarded as relating purely to the material grounds for invalidity, which are principally fraud, error, deceit, violence and incapacity?

2) If the question of whether the clause is imprecise or one-sided is to be determined in the light of autonomous rules, must Article 25(1) of the Brussels Ia Regulation be interpreted as meaning that a clause should or should not be applied if it allows one party to bring proceedings before only one court but allows the other party to bring proceedings either before that same court or before any other court which has competence under ordinary law?

3) If the asymmetry of a clause amounts to a substantive condition, how is Article 25(1) of the Brussels Ia Regulation to be interpreted, in particular the

requirement to refer to the law of the State of the designated court in a situation where multiple courts are designated by the clause, or where the clause designates one court but leaves it open to one of the parties to choose a different court but where this choice has not yet been exercised on the date when a court is seised of the matter:

- is the applicable national law that of the sole court to be expressly designated, even if proceedings could equally be brought before other courts?
- if multiple courts have been designated, is it possible to refer to the law of the court before which proceedings have actually been brought?
- lastly, in view of recital 20 of the Brussels Ia Regulation, should reference to the law of the Member State designated be understood to mean the material rules of the State or its conflict-of-law rules?

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WORKING DOCUMENT