

Published on 29 October 2025



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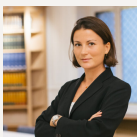
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Abrupt termination of long-standing business relationships: the legal characterization of the action for damages under review before the CJEU

The ongoing debate on the contractual or tortious nature of the action for damages arising from the abrupt termination of a long-standing business relationship continues to rage among legal scholars and before the courts.

Two recent decisions issued by the *Cour de Cassation* (French supreme Court) have indeed revived this controversy, which can have very concrete practical implications for business relationships between two companies, especially when they are established in different countries.

Whether the French regime under Article L. 442-1, II of the French Commercial Code may be invoked, the law applicable to the dispute, or the competent court to rule on the damage suffered - these are all questions faced by companies suffering from an abrupt termination of business relationships. And the answers may vary depending on the legal characterization of the action.

This article offers a review of these recent decisions and their practical implications.

The legal characterization of an action for damages arising from the abrupt termination of long-standing business relationships has long been the subject of intense controversy among legal scholars, fueled by conflicting court decisions depending on whether the dispute falls within the national, European, or international legal systems.

Under French law, the legal characterization of an action for damages based on Article L. 442-1, II of the French Commercial Code is undisputed: it is linked to restrictive trade practices and, as a matter of principle, falls under tort law.

By contrast, when considering the EU legal system, this characterization proves to be more uncertain.

In two decisions issued in 2025, the *Cour de Cassation* first confirmed its stance regarding disputes with non-EU parties, and reignited the debate on this topic for intra-EU disputes, by referring a question to the Court of Justice of the European Union (CJEU) for a preliminary ruling, the answer to which could be pivotal.

These two decisions provide an opportunity to briefly review the issue of the legal characterization of the action for damages arising from the abrupt termination of long-standing business relationships, which varies depending on whether the dispute falls within the national legal system (1), the international legal system (2), or the European legal system (3).

1/ The undisputed tortious nature under French domestic law

The position of the *Cour de Cassation* is clear when the business relationships terminated without notice, or with insufficient notice, involved two French parties.

In such cases, it holds that the terminating party is liable in tort, with the result that the rules of territorial jurisdiction applicable to tort matters apply^[1].

2/ Under international law: extending French domestic rules to disputes with non-EU parties

In a decision issued on March 12, 2025^[2], the First Civil Chamber of the *Cour de Cassation* confirmed that, in disputes arising from the abrupt termination of long-standing business relationships between a French party and a non-EU party, jurisdiction is determined by extending the domestic rules of territorial jurisdiction, i.e. by applying Article 46 of the French Code of Civil Procedure.

Above all, it reaffirmed that an action based on Article L. 442-1, II of the French Commercial Code is a tort action, even when it occurs within the framework of an implicit international contractual relationship.

3/ Under European law: a revived debate before the CJEU

At the European level, case law does not offer such a clear line.

In its *Granarolo*^[3] judgment, the CJEU held that an action for damages arising from the abrupt termination of long-standing business relationships was a matter relating to a contract whenever a contractual relationship – even tacit – existed between the parties.

Subsequently, the *Wikingenhof*^[4] judgment appeared, according to some legal scholars, to outline a potential shift in case law, as the CJEU held that where a plaintiff invokes the breach of an obligation imposed by law and it is not necessary to examine the content of the contract to assess whether the conduct of the defendant is lawful or unlawful, the cause of the action is a matter relating to tort.

The CJEU had been asked to rule on a question referred for a preliminary ruling by the German Federal Court of Justice in a dispute where the company *Wikingenhof*, a hotel operator, alleged that Booking.com had abused its dominant position under their contractual relationship.

Booking.com relied on a jurisdiction clause contained in the contract.

The CJEU responded by recalling that the nature of the action is a matter relating to a contract if the interpretation of the contract is indispensable to establish the lawfulness of the conduct complained of, and a matter relating to tort if the action is exclusively based on the breach of an obligation imposed by law. Consequently, in that particular dispute, the CJEU held that the action was a matter relating to tort.

Some legal scholars considered that, through this judgment, the CJEU was endorsing the position of the *Cour de Cassation*: since the action for damages arising from the abrupt termination of long-standing business relationships is based exclusively on the breach of Article L. 442-1, II of the French Commercial Code, it is necessarily a tort action.

It is in this uncertain context that the *Cour de Cassation*, in a decision dated April 2, 2025^[5], asked the CJEU whether, in light of the interpretation that had been given to its *Granarolo* judgment, it now considered that an action for damages arising from the abrupt termination of long-standing business relationships was a matter relating to tort within the meaning of EU law.

The CJEU's decision is eagerly awaited, but some legal scholars already rule out a reversal of case law, pointing out that, in its *Wikingenhof* judgment, the CJEU did not indicate that it intended to go back on its *Granarolo* judgment, as it usually does when it departs from its case law.

4/ Practical implications

The question referred to the CJEU goes far beyond a purely theoretical debate: it raises major practical implications for economic operators engaged in cross-border business relationships.

The current uncertainty regarding the legal characterization of this action undermines contractual certainty, hampers risk predictability, and exposes businesses to litigation risk difficult to anticipate and control.

The forthcoming judgment of the CJEU will have decisive consequences for:

- The jurisdiction of courts asked to adjudicate such disputes;
- The law applicable to such actions;
- The effectiveness of contractual clauses (jurisdiction or choice-of-law clauses) in intra-EU business relationships;
- And, more broadly, the liability regime available to the aggrieved party.

In other words, the clarification expected from the CJEU could mark a decisive turning point, permanently reshaping the legal framework governing the abrupt termination of long-standing business relationships within the European Union.

[1] Commercial Chamber of the *Cour de Cassation*, February 6, 2007, No. 04-13.178; Commercial Chamber of the *Cour de Cassation*, May 20, 2014, No. 12-26.705.

[2] First Civil Chamber of the *Cour de Cassation*, March 12, 2025, No. 23-22.051.

[3] CJEU, July 14, 2016, Case C-196/15, Granarolo SpA c. Ambrosi Emmi France SA.

[4] CJEU, November 24, 2020, Case C-59/19, Wikingerhof

[5] First Civil Chamber of the *Cour de Cassation*, April 2, 2025, No. 23-11.456

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