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Scope of application of the jurisdiction clause in a chain of contracts under EU law

In a civil or commercial dispute that concerns a chain of contracts under EU law, the applicable jurisdiction rules are set forth in Chapter II of the Council Regulation 44/2001 of December 22, 2000 (commonly referred to as the “Brussels I Regulation”)^[1].

Article 23 of Chapter II of the Brussels I Regulation stipulates that if the parties to a contract, at least one of whom is domiciled in a Member State, have agreed that a court of a Member State shall have jurisdiction to settle any contractual disputes among them, such court shall have **exclusive jurisdiction**, unless otherwise stipulated by the parties.

As such, pursuant to Article 23, the jurisdiction clause prevails over all other jurisdiction rules (in particular in contractual and tort matters) insofar as the relevant jurisdiction clause meets the validity requirements set out in said Article.

In the commented decision^[2], a French company had renovation works carried out on a building complex located in France. As part of these works, air-conditioning units were installed. Each unit was equipped with a series of compressors which were manufactured by an Italian company, purchased from that company and fitted by another Italian firm, then sold to a French distributor that ultimately resold such compressors to the French company responsible for the renovation works.

Dysfunctions occurred in the air-conditioning system and an expert's report established that those dysfunctions were caused by a defect in the manufacturing of the compressors.

The French company's insurer - that had been subrogated to the rights of the latter - summoned the Italian

manufacturer, the Italian fitter and the French distributor before the Paris First Instance Court. It asked the Court to order these companies to pay it *in solidum* compensation for the damage suffered.

The Italian manufacturer, relying on a jurisdiction clause conferring jurisdiction to Italian courts stipulated in the contract concluded between it and the fitter, challenged the jurisdiction of the Paris First Instance Court. This plea of lack of jurisdiction was dismissed. The case was brought to the Paris Court of Appeals, and then to the *Cour de Cassation* (French Supreme Court).

The Italian manufacturer argued, in particular, that a jurisdiction clause, applicable to the relationships between the parties to the initial contract, prevailed over the rules of jurisdiction for contractual and tort matters provided for by the Brussels I Regulation, and was enforceable against a third-party to the original contract, insofar as, as per the applicable national law, such third-party had been subrogated to the rights and obligations of one of the parties to the original contract.

The *Cour de Cassation* decided to stay the proceedings and to refer a question to the Court of Justice of the European Union (“CJEU”) for a preliminary ruling. Specifically, it asked the CJEU whether such a jurisdiction clause agreed upon in a chain of contracts under EU law, in accordance with Article 23 of the Brussels I Regulation, was effective vis-a-vis the sub-buyer.

The CJEU firstly noted that the Brussels I Regulation did not specify whether such a jurisdiction clause may be transmitted, beyond the circle of the parties to an initial contract, to a third-party that is a party to a subsequent contract and the successor to the rights and obligations of one of the parties to the initial contract^[3].

The CJEU also recalled that the court before which the matter is brought has the duty of examining whether the jurisdiction clause had in fact been **agreed upon** by the parties, as ensuring the real consent of the parties is one of the aims of the Brussels I Regulation.

It finally held that a **jurisdiction clause incorporated in a contract may produce effects only in the relationships between the parties who have given their agreement to the conclusion of that contract**. Because the manufacturer and the sub-buyer were not bound by a contractual link, they could not be considered as having agreed to the court designated as having jurisdiction in the initial contract.

This is the principle applied by the First Civil chamber of *Cour de Cassation* in the commented decision: the dispute between the insurer subrogated to the rights of the French sub-buyer and the Italian manufacturer that was not the direct seller of the defaulting products, did fall within the jurisdiction of the Paris First Instance Court as the sub-buyer had not agreed on the jurisdiction clause set forth in the initial contract.

With these two decisions, the CJEU and the French Supreme Court have specified the limits of the principle of precedence of jurisdiction clauses: such principle may be applied only if two conditions are fulfilled: the relevant jurisdiction clause must **meet the validity requirements** laid down by Article 23 of the Brussels I Regulation and must be **expressly accepted** by all parties to the dispute.

[1] Council Regulation (EC) No 44/2001 of December 22, 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

[2] 1st Civil Chamber of the *Cour de Cassation* (French Supreme Court), September 11, 2013, n°09-12442.

[3] CJEU, February 7, 2013, C-543/10

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