



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

8 February 2024*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters – Regulation (EU) No 1215/2012 – Scope – Article 25 – Agreement conferring jurisdiction – Parties to a contract established in the same Member State – Jurisdiction of the courts of another Member State to settle disputes arising from that contract – International element)

In Case C-566/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší soud (Supreme Court, Czech Republic), made by decision of 14 June 2022, received at the Court on 26 August 2022, in the proceedings

Inkreal s.r.o.

v

Dúha reality s.r.o.,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, T. von Danwitz, P.G. Xuereb, A. Kumin (Rapporteur) and I. Ziemele, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Dúha reality s.r.o., by J. Mráz, advokát,
- the Czech Government, by M. Smolek, A. Edelmannová and J. Vláčil, acting as Agents,
- the Swiss Government, by M. Kähr and L. Lanzrein, acting as Agents,
- the European Commission, by S. Noë and K. Walkerová, acting as Agents,

* Language of the case: Czech.

after hearing the Opinion of the Advocate General at the sitting on 12 October 2023,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 2012 L 351, p. 1).
- 2 The request has been made in proceedings between Inkreal s.r.o. and Dúha reality s.r.o. concerning the designation of the court having territorial jurisdiction to settle an application for payment brought on the basis of Inkreal's acquisition, by means of subrogation, of two claims held by FD against Dúha reality.

Legal context

European Union law

- 3 In accordance with recitals 3, 15, 19, 21, 22 and 26 of Regulation No 1215/2012:

‘(3) The [European] Union has set itself the objective of maintaining and developing an area of freedom, security and justice, inter alia, by facilitating access to justice, in particular through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.

...

(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject matter of the dispute or the autonomy of the parties warrants a different connecting factor. ...

...

(19) The autonomy of the parties to a contract, other than an insurance, consumer or employment contract, where only limited autonomy to determine the courts having jurisdiction is allowed, should be respected subject to the exclusive grounds of jurisdiction laid down in this Regulation.

...

- (21) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in different Member States. There should be a clear and effective mechanism for resolving cases of *lis pendens* and related actions, and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. ...
- (22) However, in order to enhance the effectiveness of exclusive choice-of-court agreements and to avoid abusive litigation tactics, it is necessary to provide for an exception to the general *lis pendens* rule in order to deal satisfactorily with a particular situation in which concurrent proceedings may arise. This is the situation where a court not designated in an exclusive choice-of-court agreement has been seised of proceedings and the designated court is seised subsequently of proceedings involving the same cause of action and between the same parties. ...

...

- (26) Mutual trust in the administration of justice in the Union justifies the principle that judgments given in a Member State should be recognised in all Member States without the need for any special procedure. In addition, the aim of making cross-border litigation less time-consuming and costly justifies the abolition of the declaration of enforceability prior to enforcement in the Member State addressed. As a result, a judgment given by the courts of a Member State should be treated as if it had been given in the Member State addressed.'

4 Article 25(1) of that regulation provides:

'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, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:

- (a) in writing or evidenced in writing;
- (b) in a form which accords with practices which the parties have established between themselves;
or
- (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.'

Czech law

5 Paragraph 11(3) of zákon č. 99/1963 Sb., občanský soudní řád (Law No 99/1963 establishing the Code of Civil Procedure; 'the Code of Civil Procedure') is worded as follows:

'If the matter falls within the jurisdiction of the courts of the Czech Republic but the conditions for the determination of territorial jurisdiction are lacking or they cannot be established, the Nejvyšší soud

[(Supreme Court, Czech Republic)] shall rule which court shall deliberate on the matter and decide on it.’

The dispute in the main proceedings and the question referred for a preliminary ruling

- 6 FD, resident in Slovakia, and Dúha reality, a company governed by Slovak law and domiciled in Slovakia, the former acting as the creditor and the other in its capacity as the debtor, concluded two pecuniary loan contracts on 29 June 2016 and 11 March 2017 respectively.
- 7 Each of those two contracts includes an agreement conferring jurisdiction with identical content, under which, in the event of a dispute that cannot be resolved by negotiation, that dispute ‘shall be settled by a court of the Czech Republic having substantive and territorial jurisdiction’.
- 8 By means of an agreement on the assignment of receivables dated 8 December 2021, FD assigned the receivables arising from those two pecuniary loan contracts, amounting to a total of EUR 153 740, to Inkreal, a company governed by Slovak law and domiciled in Slovakia.
- 9 Since Dúha reality had not repaid the pecuniary loans, on 30 December 2021 Inkreal brought an action before the Nejvyšší soud (Supreme Court), the referring court, seeking first, payment of the debts owed by Dúha reality and, secondly, the determination of a Czech court having territorial jurisdiction to rule on the merits pursuant to Paragraph 11(3) of the Code of Civil Procedure, on the basis of the agreement conferring jurisdiction contained in the two pecuniary loan contracts.
- 10 Inkreal submits that the agreement conferring jurisdiction is valid and complies with the requirements under Article 25(1) of Regulation No 1215/2012, and that there is indeed no other special or exclusive jurisdiction of a court under that regulation.
- 11 In that regard, the referring court states that, according to the case-law of the Court, the applicability of Regulation No 1215/2012 is subject to the existence of an international element. The referring court is uncertain whether the regulation is applicable to the situation at issue in the main proceedings, where the international element is limited to an agreement conferring jurisdiction on the courts of a Member State other than that in which the contracting parties are established. There are divergent answers to the issue in both academic legal literature and the national case-law of the Member States.
- 12 According to the referring court, although the applicability of Regulation No 1215/2012 could be justified, *inter alia*, by the need for a uniform interpretation thereof and by the intention, expressed by the EU legislature, to respect the contractual autonomy of the parties, the fact remains that a situation such as that at issue in the main proceedings could be classified as purely national on the ground that the mere will of the parties cannot suffice to confer an international character on their contractual relationship.

- 13 In those circumstances, the Nejvyšší soud (Supreme Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘From the perspective of the existence of an international element, which is required for [Regulation No 1215/2012] to apply, [can] the application of [that regulation] be based solely on the fact that two parties with their seat in the same Member State agree on the jurisdiction of courts of another EU Member State?’

Consideration of the question referred

- 14 By its question, the referring court asks, in essence, whether Article 25(1) of Regulation No 1215/2012 must be interpreted as meaning that that provision covers an agreement conferring jurisdiction by which the parties to a contract who are established in the same Member State agree on the jurisdiction of the courts of another Member State to settle disputes arising out of that contract, even if that contract has no other connection with that other Member State.
- 15 In order to answer that question, it should be borne in mind, as a preliminary point, that the interpretation of a provision of EU law requires that account be taken not only of its wording, but also of its context and the objectives and purpose pursued by the act of which it forms part (judgment of 22 June 2023, *Pankki S*, C-579/21, EU:C:2023:501, paragraph 38 and the case-law cited).
- 16 As regards the wording of Article 25(1) of Regulation No 1215/2012, it is clear from that provision, first, that 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, that court or those courts are to have jurisdiction, unless the agreement conferring jurisdiction is null and void as to its substantive validity under the law of that Member State. Secondly, that provision stipulates that such jurisdiction is to be exclusive, unless the parties have agreed otherwise. Finally, subparagraphs (a) to (c) of that provision specify the manner in which the agreement conferring jurisdiction must be concluded.
- 17 In that respect, it should be noted that the wording of Article 25(1) of Regulation No 1215/2012 does not preclude an agreement conferring jurisdiction, by which the parties to a contract who are established in the same Member State agree on the jurisdiction of the courts of another Member State to settle disputes arising out of that contract, from being covered under that provision, even if that contract has no other connection with that other Member State.
- 18 As regards the context of Article 25(1) of Regulation No 1215/2012, it is settled case-law that for the jurisdiction rules of that regulation to apply the existence of an international element is required (see, to that effect, judgments of 1 March 2005, *Owusu*, C-281/02, EU:C:2005:120, paragraph 25, and of 8 September 2022, *IRnova*, C-399/21, EU:C:2022:648, paragraphs 27 and 29).
- 19 In that regard, it should be noted that while Regulation No 1215/2012 uses, in recitals 3 and 26 thereof, the terms ‘civil matters having cross-border implications’ and ‘cross-border litigation’, it contains no definition of the international element, the existence of which is a precondition for the application of that regulation (see, to that effect, judgment of 3 June 2021, *Generalno konsultstvo na Republika Bulgaria*, C-280/20, EU:C:2021:443, paragraph 30).

- 20 However, Article 3(1) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ 2006 L 399, p. 1) defines the equivalent concept of ‘cross-border litigation’ as ‘one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised’ (judgment of 3 June 2021, *Generalno konsulstvo na Republika Bulgaria*, C-280/20, EU:C:2021:443, paragraph 31 and the case-law cited).
- 21 Since those two regulations both relate to judicial cooperation in civil matters having cross-border implications, it is necessary to harmonise the interpretation of the equivalent concepts used by the EU legislature in those areas (judgment of 3 June 2021, *Generalno konsulstvo na Republika Bulgaria*, C-280/20, EU:C:2021:443, paragraph 32 and the case-law cited).
- 22 It should also be noted that it is clear from the case-law of the Court that an international element exists, in addition, where the situation of the dispute concerned is such as to raise questions relating to the determination of international jurisdiction (see, to that effect, judgment of 8 September 2022, *IRnova*, C-399/21, EU:C:2022:648, paragraph 28 and the case-law cited).
- 23 In the present case, it should be stated that, first, the dispute in the main proceedings meets the definition of the concept of ‘cross-border litigation’ set out in paragraph 20 of the present judgment since the parties to that dispute are established in a Member State other than the Member State of the court which was seised on the basis of the agreement conferring jurisdiction at issue.
- 24 Secondly, as the Czech Government and the [European] Commission submit, the dispute in the main proceedings raises a question relating to the determination of international jurisdiction, more specifically whether the courts having jurisdiction to settle this dispute are those of the Czech Republic, or those of the Slovak Republic as the Member State in which the two parties are established.
- 25 In those circumstances, a legal situation such as that at issue in the main proceedings has an international element within the meaning of the case-law as referred to in paragraph 18 of the present judgment, since the existence of an agreement conferring jurisdiction on the courts of a Member State other than that in which the parties are established in itself demonstrates the cross-border implications of the dispute in the main proceedings.
- 26 The interpretation of Article 25 of Regulation No 1215/2012 must also be carried out in the light of the objectives of respecting the autonomy of the parties and enhancing the effectiveness of exclusive choice-of-court agreements, as referred to in recitals 15, 19 and 22 of that regulation.
- 27 In addition, as regards the purpose of Regulation No 1215/2012, the Court has repeatedly held that that regulation seeks to unify the rules on conflict of jurisdiction in civil and commercial matters by way of rules of jurisdiction which are highly predictable and thus pursues an objective of legal certainty which consists in strengthening the legal protection of persons established in the European Union, by enabling both the applicant to identify easily the court before which he or she may bring proceedings and the defendant reasonably to foresee the court before which he or she may be sued (judgment of 14 September 2023, *EXTÉRIA*, C-393/22, EU:C:2023:675, paragraph 26 and the case-law cited). In that context, the aim of legal certainty requires the national court seised to be able readily to decide whether it has jurisdiction, without having to consider the substance of the case (judgment of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 61 and the case-law cited).

- 28 In that regard, it should be pointed out that the interpretation of Article 25(1) of Regulation No 1215/2012, according to which an agreement conferring jurisdiction such as the one at issue in the main proceedings is covered under that provision, meets the aim of legal certainty pursued by that regulation.
- 29 First, inasmuch as the parties to a contract who are established in the same Member State may legitimately agree on the jurisdiction of the courts of another Member State to settle disputes arising out of that contract, without it being necessary for that contract to have additional connections with that other Member State, such a possibility helps the applicant to ascertain the court before which he or she may bring proceedings and the defendant to foresee the court before which he or she may be sued, and enables the national court seised to be able readily to decide whether it has jurisdiction.
- 30 Secondly, the applicability of Article 25(1) of Regulation No 1215/2012 to an agreement conferring jurisdiction such as that at issue in the main proceedings minimises the possibility of concurrent proceedings and ensures that irreconcilable judgments will not be given in different Member States, as required by the objective of the harmonious administration of justice referred to in recital 21 of the regulation.
- 31 If, in the present case, the court with jurisdiction were determined not in accordance with the provisions of Regulation No 1215/2012 but in accordance with the national rules of private international law of the Member States concerned, there would be an increased risk of conflicts of jurisdiction arising which would be detrimental to legal certainty, since the application of those national rules would be likely to lead to divergent answers.
- 32 It should be added that the aim of legal certainty would also be compromised if, in circumstances such as those at issue in the main proceedings, Article 25(1) of Regulation No 1215/2012 were applicable only on condition that, over and above the agreement conferring jurisdiction on the courts of another Member State, there were additional elements capable of demonstrating the cross-border impact of the dispute concerned.
- 33 Since such a condition implies that the court seised would have to verify the existence of such additional factors and assess their relevance, not only would the predictability for the contracting parties of the court having jurisdiction to settle their dispute be reduced, but the examination by the court seised of its own jurisdiction would be made more complex.
- 34 The Court has already held, in that context, that the choice of court designated in an agreement conferring jurisdiction may be assessed only in the light of considerations connected with the requirements laid down in Article 25 of Regulation No 1215/2012, and that considerations about the links between the court designated and the relationship at issue or about the validity of the agreement conferring jurisdiction are unconnected with those requirements (see, to that effect, judgment of 16 March 1999, *Castelletti*, C-159/97, EU:C:1999:142, point 5 of the operative part).
- 35 It should also be pointed out that the applicability of Article 25(1) of Regulation No 1215/2012 to an agreement conferring jurisdiction such as the one at issue in the main proceedings reflects mutual trust in the administration of justice in the European Union, as referred to in recital 26 of that regulation, and thus contributes to maintaining and developing an area of freedom, security and justice, inter alia, by facilitating access to justice, as referred to in recital 3 of that regulation.

- 36 Finally, the rule set out in Article 1(2) of the Hague Convention of 30 June 2005 on Choice of Court Agreements, which is set out in Annex I to Council Decision 2009/397/EC of 26 February 2009 on the signing on behalf of the European Community of the Convention on Choice of Court Agreements (OJ 2009 L 133, p. 1), and approved by Council Decision 2014/887/EU of 4 December 2014 (OJ 2014 L 353, p. 5), does not cast doubt on that interpretation. Pursuant to that provision, ‘a case is international unless the parties are resident in the same Contracting State and the relationship of the parties and all other elements relevant to the dispute, regardless of the location of the chosen court, are connected only with that State’.
- 37 In that regard, it should be noted that, as the Commission has pointed out, the rule laid down in Article 1(2) of that convention reflects a choice made by its authors, in the light of the need for a solution which could command broad international support.
- 38 Unlike the authors of that convention, however, the EU legislature chose not to include a similar rule in Regulation No 1215/2012, while stressing, in recital 3 of that regulation, the objective of maintaining and developing an area of freedom, security and justice by adopting measures relating to judicial cooperation in civil matters having cross-border implications.
- 39 Having regard to all the foregoing considerations, the answer to the question referred is that Article 25(1) of Regulation No 1215/2012 must be interpreted as meaning that an agreement conferring jurisdiction by which the parties to a contract who are established in the same Member State agree on the jurisdiction of the courts of another Member State to settle disputes arising out of that contract is covered under that provision, even if that contract has no other connection with that other Member State.

Costs

- 40 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (First Chamber) hereby rules:

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

must be interpreted as meaning that an agreement conferring jurisdiction by which the parties to a contract who are established in the same Member State agree on the jurisdiction of the courts of another Member State to settle disputes arising out of that contract is covered under that provision, even if that contract has no other connection with that other Member State.

[Signatures]