



## Reports of Cases

### JUDGMENT OF THE COURT (Second Chamber)

7 July 2016\*

(Reference for a preliminary ruling — Jurisdiction clause — Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation (EC) No 44/2001 — Article 23 — Clause inserted in the general conditions — Consent of the parties to those conditions — Validity and precision of such a clause)

In Case C-222/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Pécsi Törvényszék (Court of Pécs, Hungary), made by decision of 4 May 2015, received at the Court on 15 May 2015, in the proceedings

**Hőszig Kft.**

v

**Alstom Power Thermal Services,**

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, C. Toader (Rapporteur), A. Rosas, A. Prechal and E. Jarašiūnas, Judges

Advocate General: M. Szpunar,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 21 January 2016,

after considering the observations submitted on behalf of

- Alstom Power Thermal Services, by S.M. Békési, ügyvéd,
- the Hungarian Government, by M.Z. Fehér and G. Koós, acting as Agents,
- the European Commission, by A. Tokár and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 April 2016,

gives the following

\* Language of the case: Hungarian.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 10(2) of Regulation (EC) No 593/2008 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), and Article 23(1) 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 (OJ 2001 L 12, p. 1) ('the Brussels I Regulation').
- 2 The request has been made in the context of a dispute between Hőszig Kft. and Alstom Power Thermal Services ('Alstom'), which succeeded to the rights of Technos et Compagnie ('Technos'), concerning the performance of contracts concluded between the parties, and in respect of which it is contested, under a jurisdiction clause, that the referring court has jurisdiction to settle that dispute.

### Legal context

#### *The Rome I Regulation*

- 3 Article 1 of the Rome I Regulation defines the material scope of that regulation. Article 1(2) provides that a number of matters are excluded from that scope, including, under Article 1(2)(e), 'arbitration agreements and agreements on the choice of court'.
- 4 Article 3(1) of that regulation provides that:  
  
'A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or part only of the contract.'
- 5 Article 4(1) of the regulation provides:  
  
'To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:  
  
...  
  
(b) a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence;  
  
...'
- 6 Article 10 of that regulation, entitled 'Consent and material validity', is worded as follows:  
  
'1. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Regulation if the contract or term were valid.  
  
2. Nevertheless, a party, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.'

*The Brussels I Regulation*

7 Recitals 11 and 14 of the Brussels I Regulation state:

‘(11) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant’s domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject matter of the litigation or the autonomy of the parties warrants a different linking factor. ...

...

(14) 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, must be respected subject to the exclusive grounds of jurisdiction laid down in this Regulation.’

8 Article 5 of that regulation provides:

‘A person domiciled in a Member State may, in another Member State, be sued:

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

...’

9 Under Chapter II, entitled ‘Jurisdiction’, Article 23 of that regulation, in Section 7, entitled ‘Prorogation of jurisdiction’, provides as follows:

‘1. If the parties, one or more of whom is domiciled in a Member State, 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. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:

(a) in writing or evidenced in writing; or

(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.

2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to “writing”.

...’

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

10 Technos, a legal person based in France, expressed a wish to take part in a number of works in several existing power generating plants located in France. To that effect, it invited Hőszig to submit various tenders to it, with a view to contributing to those works as subcontractor. Thus, on 18 August 2009,

Technos sent to Hőszig, by email, a list of the metal structures that it would, where appropriate, be asked to manufacture, a description of the technical requirements and the general terms and conditions of Technos (December 2008 version) ('the general conditions').

11 Following the tender submitted by Hőszig on the basis of that information, several business contracts for the preparation of metallic structures, to be manufactured in Hungary and integrated in electrical power plants, were concluded remotely between the parties. It is common ground between the parties that the earliest of those contracts was dated 16 December 2010 ('the first contract').

12 Those parties concluded several additional contractual provisions or agreed on contractual changes with a view to carrying out the work. In the list entitled 'Documentation used' in the instrument witnessing the first contract, the following was set out:

'(1) The present order,

(2) Technical specification with reference T91000001/1200, C,

(3) General terms and conditions of Technos (December 2008 version),

Those documents are applicable in this order.'

13 On the last page of that contract, drafted in English, it was also stated that 'the order lists all the most important documents and information necessary for its execution. You must ensure that you have these documents with the appropriate references and the documents required by them. If you do not have them, do not hesitate to request the missing documents from us in writing'.

14 The last paragraph of that contract stated, moreover, that 'the supplier declares that he has read and accepts the conditions of this order, the general terms and conditions in force as annexed and any conditions of framework agreements or contracts'.

15 Pursuant to Clause 23.1 of the general conditions:

'The order and its interpretation shall be subject to French law. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply.

Any dispute arising from or relating to the validity, limitation, performance or termination of the order which cannot be settled amicably between the parties shall be subject to the exclusive and final jurisdiction of the Courts of Paris, including expedited proceedings, orders for a stay of proceedings and interim measures.'

16 A legal dispute arose between the parties concerning the performance of the contracts, following which, on 31 October 2013, Hőszig brought legal proceedings before the referring court, as the court having jurisdiction according to the place of performance of the agreed service.

17 In support of its action, Hőszig argues, essentially, that it clearly would not be reasonable to determine the effect of its conduct, within the meaning of Article 10(2) of the Rome I Regulation, in accordance with French law, because the subject matter of the contract was the products it manufactured and the place of performance of those contracts was its establishment in Hungary, with the result that the whole of the process of manufacture until the supply to the customer took place in that country.

18 Thus, Hőszig claims that the relationship between the general conditions and the various contracts concluded between the parties must be examined in the light of Hungarian law. Relying on that legislation, it considers that the general conditions do not form an integral part of those contracts.

Therefore, the designation of the applicable law included in those general conditions, it is claimed, is not relevant and, Hungarian law must be applied, in accordance with Article 4(1)(b) of the Rome I Regulation.

- 19 Next, as regards jurisdiction, Hőszig argues that, given that the general conditions do not form part of the contractual framework, that jurisdiction must be conferred on the Hungarian courts, in accordance with Article 5(1)(a) of the Brussels I Regulation.
- 20 Hőszig argues, finally, that, even supposing that the general conditions form an integral part of the contracts concluded between the parties, the jurisdiction clause included in it does not meet the requirements of Article 23(1) of the Brussels I Regulation, given that that clause refers to ‘the Courts of Paris’. As the city of Paris (France) is not a State, that expression does not designate a specific court, but rather a collection of courts within the administrative limits of that city.
- 21 Alstom raised a plea of lack of jurisdiction of the referring court. It refers, in that regard, to the general conditions which, according to it, form an integral part of the contracts. However, the referring court does not, in accordance with Clause 23.1 of the general conditions, have jurisdiction to rule on the dispute in the main proceedings.
- 22 According to Alstom, Article 10(2) of the Rome I Regulation enables Hőszig to establish that it did not consent to the contract or to one of its provisions by relying, in that regard, upon the law of the country in which it has its habitual residence, namely Hungary, if it appears from the circumstances that it would not be reasonable to determine the expression of its consent regarding the law applicable, in principle, under that regulation. In the present case, it is contended, it is entirely reasonable ‘to determine the effect of [the] conduct’, within the meaning of Article 10(2) of the Rome I Regulation, of Hőszig under French law, since it was a subcontractor of the successful tenderer in a public procurement procedure conducted in France for works to be carried out in a French power generating plant.
- 23 Furthermore, the jurisdiction clause set out in Clause 23.1 of the general conditions is completely consistent with Article 23(1) of the Brussels I Regulation, in so far as the courts of the city of Paris are courts of a Member State, namely the French Republic. The restrictive interpretation proposed by Hőszig, it is contended, does not take into account recital 14 of that regulation, according to which the autonomy of the parties to a contract must be respected.
- 24 The referring court considers, with regard to the plea of lack of jurisdiction raised by Alstom, that it is necessary to establish whether the standard contract terms form part of the contractual framework agreed between the parties. In that regard, it would be important to determine which ‘circumstances’, within the meaning of Article 10(2) of the Rome I Regulation, must be taken into consideration in order to assess to what extent Hőszig gave its consent in relation to the applicability of the general conditions.
- 25 If, on the basis of the law of the country in which Hőszig has its habitual residence, that court came to the conclusion that those general conditions form an integral part of that contractual framework, it would then be appropriate to determine if the jurisdiction clause contained in Clause 23.1 of those general conditions meets the requirements of Article 23(1) of the Brussels I Regulation.

26 In those circumstances, the Pécsi Törvényszék (Court of Pécs) decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) With regard to the Rome I Regulation:

- May a court or tribunal of a Member State interpret the expression “it appears from the circumstances”, used in Article 10(2) of the Rome I Regulation, as meaning that the examination of “the circumstances which must be taken into consideration” in order to determine whether it is reasonable to find that a party did not consent, under the law of the State in which the party has his habitual residence, must cover the circumstances of the conclusion of the contract, the subject matter of the contract and the performance of the contract?
- Must the “effect” referred to in Article 10(2) of the Rome I Regulation resulting from the situation described in the first insert above be interpreted as meaning that when, having regard to the law of the country in which the party concerned has his habitual residence, it appears from the circumstances that consent to the law applicable pursuant to paragraph 1 was not a reasonable effect of that party’s conduct, the national court must determine the existence and validity of the contractual clause pursuant to the law of the country of habitual residence of that party?
- May the court of that Member State interpret Article 10(2) of the Rome I Regulation as meaning that the court has a discretion — having regard to all the circumstances of the case — if, in the light of those circumstances, consent to the law applicable under Article 10(1) was not a reasonable effect of the party’s conduct?
- If a party — under Article 10(2) of Regulation No 593/2008 — refers to the law of the country in which he has his habitual residence in order to establish that he did not consent, must the court of a Member State take that law into account in order to determine whether, because of the “circumstances” mentioned, the consent of that party to the law chosen in the contract was not reasonable conduct?
- In that case, is an interpretation by a court of a Member State contrary to EU law if, according to that interpretation, the examination of the “circumstances” in order to determine whether it is reasonable to find that a party did not consent covers the circumstances of the conclusion of the contract, the subject matter of the contract and the performance of the contract?

(2) With regard to the Brussels I Regulation:

- Is the interpretation of a court of a Member State contrary to Article 23(1) of the Brussels I Regulation if, according to it, a specific court must be designated or — having regard to the content of recital 14 of that regulation — is it sufficient if the wish or intention of the parties can be deduced unequivocally from the wording?
- Is the interpretation of a court of a Member State consistent with Article 23(1) of the Brussels I Regulation if, according to it, a jurisdiction clause, included in the standard contract terms of one of the parties, under which the parties stipulate that disputes arising from or connected with the validity, performance or termination of the order which cannot be settled amicably between the parties are to be subject to the exclusive and final jurisdiction of the courts of a city of a specific Member State — specifically, the courts of Paris — is sufficiently precise, given that the wish or intention of the parties in relation to the designated Member State can be deduced unequivocally from its wording — having regard to the content of recital 14 of the Regulation?’



## Consideration of the questions referred

### *The second question*

- 27 By its second question, which it is appropriate to consider first, the referring court asks, in essence, whether Article 23(1) of the Brussels I Regulation must be interpreted as meaning that a jurisdiction clause, such as that at issue in the main proceedings, which, first, is set out in the client's general terms and conditions, referred to in the instruments witnessing the contracts between those parties and forwarded upon their conclusion, and, secondly, designates as courts with jurisdiction those of a city of a Member State, meets the requirements of that provision relating to the consent of the parties and the precision of the content of such a clause.
- 28 It must be pointed out, at the outset, that whereas it is for the national court to interpret the jurisdiction clause invoked before it in order to determine which disputes fall within its scope (judgment of 21 May 2015 in *CDC Hydrogen Peroxide*, C-352/13, EU:C:2015:335, paragraph 67 and the case-law cited), the jurisdiction of a court or courts of a Member State, agreed by the contracting parties in such a clause, is, according to the terms of Article 23(1) of the Brussels I Regulation, in principle exclusive (see, to that effect, judgment of 21 May 2015 in *El Majdoub*, C-322/14, EU:C:2015:334, paragraph 24).
- 29 Next, taking account of the objectives and the general scheme of that regulation, and in order to ensure the uniform application of that instrument, the concept of 'agreement conferring jurisdiction', referred to in Article 23 thereof, must be interpreted not as a simple reference to the national law of one or other of the States concerned, but as an independent concept (judgment of 7 February 2013 in *Refcomp*, C-543/10, EU:C:2013:62, paragraph 21 and the case-law cited).
- 30 Lastly, in so far as the Brussels I Regulation replaces the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), as amended by the successive accession conventions for the new Member States ('the Brussels Convention'), in the relations between Member States, the interpretation provided by the Court in respect of the provisions of that convention is also valid for those of the regulation whenever the provisions of those instruments may be regarded as equivalent (judgment of 23 October 2014 in *flyLAL-Lithuanian Airlines*, C-302/13, EU:C:2014:2319, paragraph 25 and the case-law cited).
- 31 With regard to the first paragraph of Article 17 of that convention, which was replaced by Article 23 of the Brussels I Regulation, the Court held that a jurisdiction clause, which serves a procedural purpose, is governed by the provisions of that convention, whose aim is to establish uniform rules of international jurisdiction (judgment of 3 July 1997 in *Benincasa*, C-269/95, EU:C:1997:337, paragraph 25).
- 32 The Court also had occasion to make it clear that that provision is intended to lay down itself the conditions as to form which jurisdiction clauses must meet, so as to ensure legal certainty and to ensure that the parties have given their consent (see, to that effect, judgment of 16 March 1999 in *Castelletti*, C-159/97, EU:C:1999:142, paragraph 34 and the case-law cited).
- 33 With regard to the requirements set out in Article 23(1) of the Brussels I Regulation, it must be pointed out that that provision provides, in substance, the formal requirements and mentions a substantive condition relating to the subject matter of the clause, which must concern a particular legal relationship (see, to that effect, judgment of 20 April 2016 in *Profit Investment SIM*, C-366/13, EU:C:2016:282, paragraph 23 and the case-law cited).
- 34 In the present case, the substantive condition is fulfilled since it is evident from the decision to refer that the parties in the main proceedings are bound by various works contracts.

- 35 Regarding the formal requirements, it should be recalled, first, that according to the wording of Article 23(1) of the regulation, an agreement conferring jurisdiction must, in order to be valid, be in writing or evidenced in writing, in a form which accords with practices which the parties have established between themselves or, in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware. Pursuant to Article 23(2) ‘any communication by electronic means which provides a durable record of the agreement’ must be regarded as ‘equivalent to writing’ (see, to that effect, judgment of 21 May 2015 in *El Majdoub*, C-322/14, EU:C:2015:334, paragraph 24).
- 36 Furthermore, ensuring the real consent of the parties is one of the aims of Article 23(1) of the Brussels I Regulation (see, to that effect, judgment of 21 May 2015 in *El Majdoub*, C-322/14, EU:C:2015:334, paragraph 30 and the case-law cited). That is justified by the concern to protect the weaker party to the contract by avoiding jurisdiction clauses, incorporated in a contract by one party, going unnoticed (see, to that effect, judgment of 16 March 1999 in *Castelletti*, C-159/97, EU:C:1999:142, paragraph 19 and the case-law cited).
- 37 The court before which the matter is brought has the duty of examining, in *limine litis*, whether the jurisdiction clause was in fact the subject of consensus between the parties, which must be clearly and precisely demonstrated, the purpose of the requirements as to form imposed by Article 23(1) of the Brussels I Regulation being, in that regard, to ensure that consensus between the parties is in fact established (judgments of 6 May 1980 in *Porta-Leasing*, 784/79, EU:C:1980:123, paragraph 5 and the case-law cited, and 21 May 2015 in *El Majdoub*, C-322/14, EU:C:2015:334, paragraph 29 and the case-law cited).
- 38 Thus, as the Advocate General emphasised in points 33 and 34 of his Opinion, it follows from the case-law of the Court that the existence of an ‘agreement’ between the parties within the meaning of Article 23(1) of the Brussels I Regulation can be inferred from the fact that the formal requirements laid down in Article 23(1) of that regulation have been complied with.
- 39 As regards a situation such as that at issue in the main proceedings, in which the jurisdiction clause is stipulated in the general conditions, the Court has already held that such a clause was lawful where the text of the contract signed by both parties itself contains an express reference to general conditions which include a jurisdiction clause (see, to that effect, judgments of 16 March 1999 in *Castelletti*, C-159/97, EU:C:1999:142, paragraph 13, and 20 April 2016 in *Profit Investment SIM*, C-366/13, EU:C:2016:282, paragraph 26 and the case-law cited).
- 40 This applies, however, only in case of an explicit reference, which can be controlled by a party applying normal diligence and where it is established that the general conditions containing the jurisdiction clause was actually communicated to the other contracting party (see, to that effect, judgment of 14 December 1976 in *Estasis Saloti di Colzani*, 24/76, EU:C:1976:177, paragraph 12).
- 41 In the present case, it is apparent from the decision to refer that the jurisdiction clause was stipulated in the general terms and conditions of Technos, themselves contained in the instruments witnessing the contracts between the parties and forwarded upon their conclusion.
- 42 Therefore, it follows from the above that a jurisdiction clause, such as that at issue in the main proceedings, meets the formal requirements set out in Article 23(1) of the Brussels I Regulation.
- 43 As regards the precision of the content of a jurisdiction clause, in relation to determining a court or courts of a Member State to settle any disputes which have arisen or which may arise between the parties, the Court has held, with regard to Article 17 of the Brussels Convention, that the terms of that provision cannot be interpreted as meaning that it is necessary for such a clause to be formulated in such a way that the competent court can be determined on its wording alone. It is sufficient that the clause 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. 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 (judgment of 9 November 2000 in *Coreck*, C-387/98, EU:C:2000:606, paragraph 15).

- 44 Such an interpretation, inspired by the common practice in the course of trade, is justified by the fact that Article 23 of the Brussels I Regulation, as confirmed by recitals 11 and 14 of that regulation, is based on a recognition of the independent will of the parties to a contract in deciding which courts are to have jurisdiction to settle disputes falling within the scope of that regulation (see, to that effect, judgments of 9 November 1978 in *Meeth*, 23/78, EU:C:1978:198, paragraph 5, and 21 May 2015 in *El Majdoub*, C-322/14, EU:C:2015:334, paragraph 26).
- 45 In the present case, according to the findings of the referring court, under the jurisdiction clause at issue in the main proceedings, ‘the Paris Courts [have exclusive and final jurisdiction]’ to settle disputes which may arise between the parties.
- 46 Thus, if that clause does not explicitly designate the Member State in respect of which the parties have agreed the courts are to have jurisdiction, the courts referred to are those of the capital of a Member State, which, in the present case, is also the Member State whose law has been designated by the parties as applicable to the contract, so that there is no doubt that that clause, contained in a contract such as that at issue in the main proceedings, seeks to confer exclusive jurisdiction on the courts belonging to the judicial system of that Member State.
- 47 Therefore, it follows from the circumstances of the situation in the present case, as found by the referring court, that a jurisdiction clause, such as that at issue in the main proceedings, meets the requirements of precision set out in paragraph 43 above.
- 48 Moreover, as the Advocate General emphasised in point 44 of his Opinion, it should be noted that a jurisdiction clause referring to ‘the courts’ of a city of a Member State refers implicitly but necessarily, for the exact determination of the court before which an action must be taken, to the system of jurisdiction rules in force in that Member State.
- 49 Having regard to the foregoing considerations, the answer to the second question is that Article 23(1) of the Brussels I Regulation must be interpreted as meaning that a jurisdiction clause, such as that at issue in the main proceedings, which, first, is set out in the client’s general terms and conditions, referred to in the instruments witnessing the contracts between those parties and forwarded upon their conclusion, and, secondly, designates as courts with jurisdiction those of a city of a Member State, meets the requirements of that provision relating to the consent of the parties and to the precision of the content of such a clause.

#### *The first question*

- 50 The Rome I Regulation is, pursuant to Article 1(2)(e) thereof, inapplicable to jurisdiction clauses.
- 51 Furthermore, as is apparent from the answer to the second question, the referring court has no jurisdiction to settle the dispute in the main proceedings. That court cannot, therefore, rule on the validity of the clause that specifies that the contracts at issue are subject to French law, which Hőszig also contests by invoking Article 10(2) of the Rome I Regulation.
- 52 Consequently, there is no need to answer the first question.

## Costs

- <sup>53</sup> 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 (Second Chamber) hereby rules:

**Article 23(1) 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 a jurisdiction clause, such as that at issue in the main proceedings, which, first, is set out in the client's general terms and conditions, referred to in the instruments witnessing the contracts between those parties and forwarded upon their conclusion, and, secondly, designates as courts with jurisdiction those of a city of a Member State, meets the requirements of that provision relating to the consent of the parties and the precision of the content of such a clause.**

[Signatures]