



International Distribution Institute

Choice of court agreements and concurrent proceedings

Exclusive jurisdiction of the designated courts under EU regulation 1215/2012

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The new regulation 1215/2012

- Regulation 1215/2012 substantially changes the effectiveness of choice of forum clauses.
- The purpose: combating the “Italian torpedo”, i.e. the possibility to delay proceedings before the designated court by bringing a claim in a country where justice is “slow”

Why is this issue important?

- Choice of court clauses are an essential strategic tool in international/EU contracts
- In many cases the validity and effectiveness of these clauses may be disputed
- Within the new regulation only the designated court is entitled to decide this issue

The general framework of *lis pendens*

- The general rule (Article 29)

Without prejudice to Article 31(2), where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established

Concurrent proceedings under the general rule

- The above rule implies that the party that first seises the court will prevent any other court to deal with the same case, until the court first seised declines jurisdiction
- This rule applied under the previous regulation 44 even when another court was designated in a choice of court agreement

The new rules regarding choice of court agreements (1)

- Article 31(2)
 - Without prejudice to Article 26, where a court of a Member State on which an agreement as referred to in Article 25 confers exclusive jurisdiction is seised, any court of another Member State shall stay the proceedings until such time as the court seised on the basis of the agreement declares that it has no jurisdiction under the agreement.

The new rules regarding choice of court agreements (2)

- Article 31(3)
 - Where the court designated in the agreement has established jurisdiction in accordance with the agreement, any court of another Member State shall decline jurisdiction in favour of that court

The new rules regarding choice of court agreements (3)

Article 25(1) – Choice of forum

- 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.

Practical application

- Parties have signed a jurisdiction clause in favour of one of them, but the other party brings a claim before his courts arguing that the clause is not valid (e.g. not agreed in writing, not part of the contract)
- If the first party thereafter seises the designated court the court first seised must stay proceedings and the court designated in the choice of forum clause will decide if the clause is valid under its own law and if it has jurisdiction.

Importance of the rule on the applicable law

- Article 25 states that the validity of the choice of court agreement is to be decided under the law of the designated court.
- This means that in case the clause would not be valid under the law of the party which seised a court other than the designated court, but would be valid under the law of the designated court, this view will prevail.

Conclusions

- The new rule substantially strengthens the effectiveness of choice of court clauses.
- At the same time it weakens the right of the other party to invoke the invalidity of the clause, even when this is evident.
- We will discuss how this may impact on our contractual strategies.



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Thank you for your kind attention

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