



IDENTIFICATION OF THE COURT OF COMPETENT JURISDICTION IN INTERNATIONAL SALE OF GOODS DISPUTES WITHIN THE EUROPEAN UNION

When an international commercial dispute arises, one of the first and most important issues to tackle is to identify what court has jurisdiction on the case.

In the presence of a jurisdiction clause in the contractual documents, this is usually a straightforward task, although arguments about the effectiveness of the clause itself may always be around the corner.

In the absence of a jurisdiction clause, instead, the court having jurisdiction on the case is to be identified on the basis of the rules laid down by Regulation (EU) No 1215/2012 of 12 December 2012 (the “Recast Brussels Regulation”).

Article 4 of the Recast Brussels Regulation states, as a general rule, that persons domiciled in a Member State can be sued in the courts of that Member State. Article 7(1) states in addition that, in a dispute related to the sale of goods, persons domiciled in a Member State may also be sued in the Member State “where, under the contract, the goods were or should have been delivered”.

The meaning of “place of delivery of the goods” has been hotly debated in the UE national courts.

Initially, Italian courts mainly supported the interpretation according to which the place of delivery is (and thus the jurisdiction lies with the courts of) the place where the goods were physically transferred or should have been physically transferred to the purchaser at their final destination; other national courts, instead, backed the interpretation according to which the place of delivery is (and the jurisdiction lies with the courts of) the place in which the seller is discharged of his obligation to deliver the goods, in accordance with the substantive rules applicable to the individual case.

Later, two landmark judgments of the European Court of Justice ruled on the matter (judgement of 25 February 2010, *Car Trim*, case C-381/08; judgement of 9 June 2011,

Electrosteel, case C-87/10), and Italian courts have progressively revised their interpretation in accordance with the above-mentioned judgements.

Now, it is becoming settled case-law of the Italian Supreme Court of Cassation that the place where the goods were or should have been delivered:

- a. shall be determined on the basis of the terms and clauses provided by the sale contract, including the Incoterms rules drawn up by the International Chamber of Commerce, provided that those terms and clauses:
 - have been effectively included in the contract by the parties;
 - are not included (only) in one-sided documents issued after the conclusion of the contract, such as invoices, bills of lading, etc.;
 - are capable to clearly identify the place where the goods were or should have been delivered;
- b. whenever it is not possible to determine the place where the goods were or should have been delivered on the basis of the terms and clauses provided by the contract, shall be identified in the place of physical delivery of the goods to the purchaser, and therefore the place of final destination of the goods where the purchaser acquires the material possession of the same.

It is undisputed in the international litigation attorneys' community that no matter how strong your case is, since you may always run into a judge who is not acquainted with international issues and needs to be guided step by step to the solution. For this and many other reasons, taking the advice of a cross-border litigation attorneys is always a wise choice to make.

The International Litigation and Arbitration Team of Bacciardi and Partners is led by the Senior Partner Avv. Enzo Bacciardi and it is also composed by the Senior associate Avv. Marco Cioce and two other associates.

The Team provides judicial assistance in litigation cases before domestic and foreign judicial Courts as well as domestic and foreign arbitration Tribunals, in connection with corporate cross-border transactions, joint-venture relations, international construction projects, procurement of goods from foreign sources, transfer or licensing of technology and know-how and other relationship of international commercial nature.

The International Litigation and Arbitration Team handles all stages of the international litigation procedures, including: the assessment of the governing law, the assessment of the competent jurisdiction and forum, the presence of two or more proceedings involving the same cause of action and the same parties as well as the recognition and enforcement of domestic judgements abroad or foreign judgements in Italy.