



# SLM Insights

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## INTERNATIONAL LITIGATION: WHO IS THE COMPETENT COURT?

By a recent judgement issued on June 25<sup>th</sup>, 2021, the Joint Sections of the Italian Supreme Court clarified two important questions concerning jurisdiction pursuant to article 41 of the Italian Code of Civil Procedure.

The first issue concerns the interpretation of Article 3(2) of the Italian Law No. 218/1995, according to which Italian jurisdiction exists *"on the basis of the criteria established by sections 2, 3 and 4 of Title II of the [1968 Brussels] Convention, even when the defendant is not domiciled in the territory of a Contracting State, when it concerns a matter falling within the scope of the Convention"*.

The Court first clarified that the reference made by Article 3(2) to the 1968 Brussels Convention is to be understood as referring the Regulation (EU) No. 1215/2012 ("the Regulation"). However, Article 6 of the

Regulation provides that *"if the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall [...] be determined by the law of that Member State"*. In this regard, the Court stated that the relevant law of the Italian State is Article 3 of Law No. 218/1995.

Therefore, where the dispute concerns matters covered by the 1968 Brussels Convention and subsequent acts (such as Regulation (EU) No. 1215/2012), a non-European defendant can therefore be summoned in Italy, not through a direct application of the Convention/Regulation, but by virtue of the reference that Italian law makes to them.

Having clarified this first question, the Court ruled on the second one, concerning the interpretation of Article 7 of Regulation (EU) No. 1215/2012. This article provides that, in matters relating to a contract, a person

domiciled in a Member State may be sued in another Member State, at the "*place of performance of the obligation in question*". The same Article 7 specifies that, in the case of the sale of goods, the place of performance of the obligation in question is the place "*where, under the contract, the goods were delivered or should have been delivered*".

In this respect, the Joint Sections of the Italian Supreme Court clarified that, for the

purposes of Article 7(1) of Regulation (EU) No. 1215/2012, the place of delivery of the goods is to be understood as the place where the buyer derives the power to dispose of them effectively at the final destination of the sales transaction.



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