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Brussels I Regulation (recast)
(Introduction, scope of application, jurisdiction, lis pendens)[1]

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Case study

Mr Vittorio is a citizen of Canada and works as a dentist in Milan (Italy). He wants to buy a new computer for his Dental Clinic. Surfing online, he discovers that "L'ordinateur", a company with its seat in Paris, offers discounts for the type of computer he is looking for. In October 2022 he bought it through the company's website, which specified that the delivery could take place anywhere in the EU. "L'ordinateur" agreed to deliver the computer to Milan.

The delivery did take place, but when the computer arrived in Milan, it appeared that it was not the one which Mr Vittorio had ordered and did not fit the requested requirements. Frustrated that the product does not meet the requirements, he wrote a comment in the website which rates technological companies that "L'ordinateur" has destroyed its commercial reputation and professionalism by cheating consumers and selling false products. Approximately 10 000 visitors of the website have seen the comment.

Mr Vittorio refused to pay and quickly bought a new computer, which was much more expensive, through a local retailer. He wants to sue the French company for damages. Also, Mr Vittorio found on the website of the French company what it has recently encountered with insolvency problems and is planning to apply to the competent national court for the opening of restructuring proceedings. To secure the smooth enforcement of the future judgment against the "L'ordinateur" in his favour Mr. Vittorio considers filing an application for the provisional measure (attachment of the bank account of "L'ordinateur").

However, he is not sure which court will have jurisdiction against the French company.

Questions

1. Is the Brussels I Regulation (recast) applicable? Would your answer be the same if "L'ordinateur" had its seat in Toronto (Canada)?

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2. Where can Mr Vittorio sue L'ordinateur? Explore the possible grounds of jurisdiction.

3. Is Mr. Vittorio entitled to demand application of provisional measures against "L'ordinateur"?
    a. Where can Mr Vittorio submit the application of provisional measures against "L'ordinateur"?
    b. Assume that "L'ordinateur" has a bank account in the bank in Belgium. Does Mr Vittorio have a right to ask to seize the bank account in this country?

4. "L'ordinateur" seeks to file a claim against Mr Vittorio for defamation and reputational damage it suffered because of the comments on the Internet website.
    a. Can company file a claim in France for rectification of the information?
    b. Can the company file a claim in France for the suffered reputational damage?

5. Suppose now that Mr Vittorio did not buy the computer for his dental clinic, but for his family.
    a. Where can Mr Vittorio sue L'ordinateur? Explore the possible grounds of jurisdiction available.
    b. Does this have an impact on the choice of court agreement?
    c. Does this have an impact on the possible action brought by L'ordinateur?

Methodological advice

Training Aims:

- Familiarise the participants with the scope of application of the regulations.
- Explain the objectives underlying the main rules in the regulations.
- Clarify the functioning of the various jurisdiction rules.
- Explain the potential difficulties of multiple actions.
- Explain the various possibilities of decision circulations.
- Make the participants feel at ease with the application of the European instruments.
- Familiarise the participants with some key decisions of relevant EU case law.

Questions for advanced training:

- What is the notion of provisional measures under EU law?
- What are the rules on jurisdiction for a request to apply provisional measures in EU law?
- What are the recent developments of the case law of the CJEU in determination of jurisdiction of claims for defamatory information published on the Internet?
- Does Brussels I (recast) Regulation establish any specific rules on jurisdiction of such claims?

- What are the rules on jurisdiction for a claim to compensate for damages resulting from defamatory information published on the Internet and (or) rectification of such defamatory information? Are the rules on jurisdiction for such claims different?

Methodology

In any case with a cross-border component, the following steps can assist in finding the right provisions to be applied:

Step 1. Identify the area of law concerned.

Step 2. Consider which aspect of private international law is at issue.

Step 3. Find the relevant EU and international legal sources.

Step 4. Check the substantive, geographical and temporal scope of the respective EU and international instruments; where more than one instrument is relevant, check their relation to each other.

Step 5. Find the correct provisions.

Please note, where no EU, international, multilateral or bilateral instrument is applicable in a cross-border case, the autonomous private international law rules of the State concerned will have to be considered.

Suggested solution

1. Is the Brussels I Regulation (recast) applicable? Would your answer be the same if "L'ordinateur" had its seat in Toronto (Canada)?

Jurisdiction for civil and commercial matters within the EU is subject to 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 (the "Brussels I Regulation (recast)").

Material scope of application

As determined by Article 1, the Regulation applies to "civil and commercial matters". This is a key concept of the Regulation, which led to important cases from the Court of Justice. In particular, the Court decided that the concept should be given an "autonomous meaning", *i.e* that:

"reference must not be made to the law of one of the States concerned but, first, to the objectives and scheme of the [Regulation]" (CJEU, 14 October 1976, 29/76, Eurocontrol, n°5).

In case of doubt, the scope will have to be interpreted by the Court itself, mostly following the public/private law division known to many legal systems in Europe. More precisely, the Court excludes the applicability of the Brussels Regulation if a public authority is involved and "is acting in the exercise of its public authority powers" (CJEU, 16 December 1980, 814/79, Rüffer, n°8).

The Regulation exempts matters from its scope of application, as for instance "revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*)", cf Article 1.

The dispute between Mr Vittorio and "L'ordinateur" is a private contractual dispute, and therefore falls within the scope of "civil and commercial matters".

Geographical scope of application

The general rule is that the provisions of the Regulation on jurisdiction are exclusively applicable if the defendant is domiciled in the EU (Articles 4 and 5).

However, if the defendant is domiciled outside the EU, the jurisdiction is determined by the law of each state, subject to some exceptions (Article 6).

As the defendant is domiciled in a Member State, the Regulation will apply *ratione personae*. Therefore, if Mr Vittorio wants to sue before a Court in the EU, the only applicable rules can be those of the Regulation. No jurisdiction rules other than those provided for in the Regulation can be applied.

Please note that the nationality of the defendant is irrelevant to determine the scope of application of the Brussels I Regulation (recast).

However, if the defendant company had its seat in Canada (*ie*: outside the EU), then the Regulation would not apply, rather the national rules of each country where Mr Vittorio wants to sue would be applicable. For instance, if Mr Vittorio wanted to sue the Canadian company in France, French national jurisdiction rules would apply.

Temporal scope of application
Article 66 Section 1 states that:
"This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015".
Therefore, since the contract was concluded in 2018, the lawsuit will take place after 10 January 2015, the Regulation is applicable *ratione temporis*.

Conclusion: The situation falls within the material, geographical and temporal scope of application of the Regulation. The Brussels I Regulation (recast) is therefore applicable and the jurisdiction of the tribunal of a Member State should be established following its provisions.

Note: As the applicability of the national rules, according to Article 6 of the Regulation, is "subject to Article 18(1), Article 21(2) and Articles 24 and 25", the applicability of these provisions must be carefully checked. In the present situation, the existence of a choice of court agreement (see question 3) and the hypothesis that Mr Vittorio is a consumer (see question 5) would imply that these provisions of the Regulation and not national rules are applicable to determine jurisdiction – even if the defendant is domiciled outside the EU (see in more detail questions 3 and 5).

2. Where can Mr Vittorio sue L'ordinateur? Explore the possible grounds of jurisdiction.

The applicable rules are in Article 4 Section 1 (jurisdiction of the courts of the domicile of the defendant) or Article 7 Section 1 (jurisdiction for actions relating to a contract).
First, according to Article 4 Section 1, "persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State." Accordingly, Mr Vittorio can sue **"**L'ordinateur" in France, the place of its domicile pursuant to Article 4 Section 1 of the Regulation.
As L'ordinateur is a company, its domicile has to be determined in accordance with Article 63.

Note: Article 4 provides only for international jurisdiction (i.e. which country) and not for internal jurisdiction (i.e. which city). Therefore, only French law can determine which the specific competent court in France is (e.g. Paris or Marseille). Internal jurisdiction on the basis of domicile is, however, common. Therefore, the courts of Paris are likely to have jurisdiction.
Secondly, Article 7 adds several optional grounds of jurisdiction and gives the possibility of suing in the courts of another Member State different than the domicile of the defendant.
As far as contracts are concerned, the relevant provision is Article 7 Section 1.
According to Article 7 Section 1, the claimant can, in addition to the court of the domicile of the defendant, sue before "the courts for the place of performance of the obligation in question".
The terms "contracts" and "obligation in question" are complex and depend on the nature of the contract. The Court decided that, as for the concept of "civil and commercial matters" they should be given an autonomous meaning, independent of the national laws.

The term “contract” is a European concept. As the Court said in numerous cases:

> “the phrase 'matters relating to a contract' ….is to be interpreted independently, having regard primarily to the objectives and general scheme of the Convention, in order to ensure that it is applied uniformly in all the Contracting States” (CJEU, 17 June 1992, C-26/91, Jakob Handte, n° 10).

Moreover, the very definition of contract, according to the Court, implies that there is an obligation freely assumed by one party towards another.

As the court decided, once again in various cases:

“the expression *matters relating to contract* …is not to be understood as covering a situation in which there is no obligation freely assumed by one party towards another” (CJEU, 17 September 2002, C-334/00, Tacconi, n°23).

In the present situation, the contract concluded falls into the category of “matters relating to a contract” according to Article 7.

According to Article 7 Section 1, a specific solution is set up for sales: the place of performance of the “obligation in question” is “the place in a Member State where, under the contract, the goods were delivered or should have been delivered”.

This is to say in a sales contract, the place of performance is the place of delivery. This criterion reinforces legal certainty, since it is a clear and, in most cases, simple connecting factor to use.

> As the Court puts it:
> “Under that rule of special jurisdiction, the defendant may also be sued in the court for the place of performance of the obligation in question, since that court is presumed to have a close link to the contract. In order to reinforce the primary objective of legal certainty which governs the rules of jurisdiction which it sets out, that criterion of a link is defined autonomously by Regulation No 44/2001 in the case of the sale of goods”. (CJEU, *Falco*, 23 April 2009, C-533/07, n° 25 and 26).

In the present situation, the place of delivery is according to the terms of the contract in Milan (Italy). Therefore, the Italian courts should be considered as having jurisdiction pursuant to Article 7 Section 1 of the Regulation.

Note: Article 7 Section 1 provides not only for general international jurisdiction of the courts of a specific Member State (as is the case in Article 4) but also, more specifically, to the courts of the designated place (“in the courts for the place of performance of the obligation in question”). Therefore, the courts in Milan (as opposed to any another city in Italy) have jurisdiction.

Both French courts, (pursuant to Article 4 Section 1) and Milan courts (pursuant to Article 7 Section 1) have jurisdiction. Mr Vittorio therefore has the choice to sue **“**L’ordinateur” in either jurisdiction.

3. **Is Mr. Vittorio entitled to demand application of provisional measures against “L’ordinateur”?**

   a. **Where can Mr Vittorio submit the application of provisional measures against “L’ordinateur”?**

The Regulation establishes the rules on jurisdiction for provisional measures in cross-border civil matters. According to Article 35 of the Regulation, application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter. This rule should be interpreted in accordance with Recital 33 of the Regulation which establishes that where provisional, including protective, measures are ordered by a court having jurisdiction as to the substance of the matter, their free circulation should be ensured under this Regulation. However, provisional, including protective, measures which were ordered by such a court without the defendant being summoned to appear should not be recognised and enforced under this Regulation unless the judgment containing the measure is served on the defendant prior to enforcement. This should not preclude the recognition and enforcement of such measures under national law. Where provisional, including protective, measures are ordered by a court of a Member State not having jurisdiction as to the substance of the matter, the effect of such measures should be confined, under this Regulation, to the territory of that Member State.

The Regulation does not define provisional measures and it remains the matter of the national law of the Member States. However, Recital 25 of the Regulation establishes that the notion of provisional, including protective, measures should include, for example, protective orders aimed at obtaining information or preserving evidence as referred to in Articles 6 and 7 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

The CJEU in *van Uden* case found that such measures should be perceived as they "are intended to preserve a factual or legal situation so as to safeguard rights the recognition of which is otherwise sought from the court having jurisdiction as to the substance of the case" (CJEU, 17 November 1998, C-391/95, para. 37). Pursuant to the case law CJEU, the measure shall be provisional or protective measure (CJEU, 28 April 2005, C-104/03, para. 24).

When the court does not have jurisdiction to the subject matter of the case the real connecting link (un lien de rattachement réel; eine reale Verknüpfung) between the case and territorial jurisdiction shall be established. Pursuant to the case law of the CJEU in Paul Dairy case "<...> the granting of provisional or protective measures on the basis of Article 24 is conditional on, inter alia, the existence of a real connecting link between the subject-matter of the measures sought and the territorial jurisdiction of the Contracting State of the court before which those measures are sought" (CJEU, 17 November 1998, C-391/95, para. 34).

In this case Mr. Vittorio has the right to demand the court in Italy which has jurisdiction to hear the substance of the case to apply provisional measures. Also, the application can be submitted in the court of other Member State which have a real connecting link between the subject-matter of the measures sought and the territorial jurisdiction of the Member States.

b. Assume that "L'ordinateur" has a bank account in the bank in Belgium. Does Mr Vittorio have a right to ask to seize the bank account in this country?

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In case "L'ordinateur" had a bank account in Belgium, the courts in Belgium would have jurisdiction hear the application for imposition of provisional measure. The necessary real connecting link should be established since the object of a provisional measure (a bank account) is located in Belgium. However, it should be discussed that in such case the effects of the provisional measure are restricted to the territory of Belgium.

4. "L'ordinateur" seeks to file a claim against Mr Vittorio for defamation and reputational damage it suffered because of the comments on the Internet website.
   a. Can the company file a claim in France to rectify the information published by Mr Vittorio?
   b. Can the company file a claim in France for the suffered reputational damage?

a) Can company file a claim in France to rectify the information published by Mr Vittorio?

The question concerns the application of the rules on jurisdiction for defamation claims in the EU civil law. The Regulation does not establish any specific rules for defamation claims. Thus, the jurisdiction of such claim should be determined under Article 7(2) of the Regulation which establishes that a person domiciled in a Member State may be sued in another Member State in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur.

To analyze the question, it would be necessary to discuss the relevant case law of the CJEU which provides solution to the jurisdiction problem in case defamatory information is published online (Internet website).

In case *eDate Advertising* the CJEU held that "<…> the internet reduces the usefulness of the criterion relating to distribution, in so far as the scope of the distribution of content placed online is in principle universal. Moreover, it is not always possible, on a technical level, to quantify that distribution with certainty and accuracy in relation to a particular Member State or, therefore, to assess the damage caused exclusively within that Member State. The difficulties in giving effect, within the context of the internet, to the criterion relating to the occurrence of damage which is derived from Shevill and Others contrasts, as the Advocate

General noted at point 56 of his Opinion, with the serious nature of the harm which may be suffered by the holder of a personality right who establishes that information injurious to that right is available on a world-wide basis" (CJEU, 25 October 2011, C-509/09 and C-161/10, para. 46, 47).

Also, the CJEU established in the *eDate Advertising* case that "Article 5(3) of the Regulation must be interpreted as meaning that, in the event of an alleged infringement of personality rights by means of content placed online on an internet website, the person who considers that his rights have been infringed has the option of bringing an action for liability, in respect of all the damage caused, either before the courts of the Member State in which the publisher of that content is established or before the courts of the Member State in which the centre of his interests is based. That person may also, instead of an action for liability in respect of all the damage caused, bring his action before the courts of each Member State in the territory of which content placed online is or has been accessible. Those courts have jurisdiction only in respect of the damage caused in the territory of the Member State of the court seised" (CJEU, 25 October 2011, C-509/09 and C-161/10, para. 52).

The *Bolagsupplysningen OÜ* case should be also discussed which is relevant to discuss the place of rectification of defamatory information and removal of defamatory comments: "Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that a legal person claiming that its personality rights have been infringed by the publication of incorrect information concerning it on the internet and by a failure to remove comments relating to that person can bring an action for rectification of that information, removal of those comments and compensation in respect of all the damage sustained before the courts of the Member State in which its centre of interests is located. When the relevant legal person carries out the main part of its activities in a different Member State from the one in which its registered office is located, that person may sue the alleged perpetrator of the injury in that other Member State by virtue of it being where the damage occurred" (CJEU, 17 October 2017, 194/16, para. 44).

Considering the relevant case law of the CJEU, "L'ordinateur" has the right to file a claim for rectification of the information in the place of domicile of Mr. Vittorio (Italy) according to the general rule on jurisdiction (Article 4(1) of the Regulation) or the place of the centre of interests of "L'ordinateur" (France) according to the special rule on jurisdiction (Article 7(2) of the Regulation). Since "L'ordinateur" has the seat in Paris (France) (63(1)(1) of the Regulation) and there is no indication that the company pursues the main part of activities in another Member States, it should be presumed that its centre of interests is in France. Thus, pursuant to *Bolagsupplysningen OÜ* case, the courts of France have also jurisdiction to hear the claim for rectification of the information.

b. Can the company file a claim in France for the suffered reputational damage?

Jurisdiction of the court of the Member States may be divided for the claim for rectification of the information published online and damage suffered because of such publication. Though the Regulation does not provide the rules for jurisdiction for the claim when different legal

remedies are sought, for instance award for damages and rectification of defamatory information.

To answer this question it is relevant to discuss a more recent *Gtflix Tv* case which provides solutions which Member State courts have jurisdiction to hear a claim when the person considering that his or her rights have been infringed by the dissemination of disparaging comments on the Internet, seeks not only the rectification of the information and the removal of the content placed online but also compensation for the damage resulting from that placement may claim. In case Gtflix Tv the CJEU established that "Article 7(2) 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 a person who, considering that his or her rights have been infringed by the dissemination of disparaging comments concerning him or her on the internet, seeks not only the rectification of the information and the removal of the content placed online concerning him or her but also compensation for the damage resulting from that placement may claim, before the courts of each Member State in which those comments are or were accessible, compensation for the damage suffered in the Member State of the court seised, even though those courts do not have jurisdiction to rule on the application for rectification and removal (CJEU, 21 December 2021, Gtflix Tv, para. 43).

The idea behind the explanation of in the *Gtflix Tv* case is that the jurisdiction for damages deriving from publishment of defamatory information on the Internet for rectification of defamatory information can be filed to the court which has jurisdiction to hear the claim for rectification of information or the court of each Member State in which those comments are or were accessible, compensation for the damage suffered in the Member State of the court seised. In other words, such claims for different legal remedies can be accumulated in the court of one Member State of the court of different Member States.

In this case "L'ordinateur" has the right to file a claim for damages against Mr. Vittorio in the French courts. However, it should be discussed that the company would also have a right to file a claim in the court of other Member States where the defamatory information was submitted.

Note.
It should be also discussed what does a defamatory claim mean in EU law. The Regulation does not define such concept and it remains a matter of the national laws of the Member States. It should be discussed whether the information published by Mr. Vittorio can be indeed defamatory under the case law of the CJEU and various national laws of the Member States.

4. Suppose now that Mr Vittorio did not buy the computer for his dental clinic, but for his family.

a) Where can Mr Vittorio sue L'ordinateur? Explore the possible grounds of jurisdiction available.

If Mr Vittorio had bought the computer for his family, he could be considered a consumer and therefore be granted specific jurisdictional protection.
Pursuant to Article 17 Section 1 "in matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section."
However, the functioning of Article 17 raises some difficult issues.
First, it must be established that Mr Vittorio is indeed a consumer.
Article 17 defines a consumer as a person having concluded a contract "for a purpose which can be regarded as being outside his trade or profession". It is frequently stated by the CJEU that the interpretation of the concept of "consumer" should be restrictive (see, recently, CJEU, 25 January 2018, C-498/16, Schrems, n°29).
Therefore, it must be clearly established that the reason why Mr Vittorio bought the computer was for family leisure. The context must be analysed and, should Mr Vittorio have both professional and personal activity with the computer, it must be proven that the professional activity is negligible in the context of the contract signed.

As the Court put it in the Gruber case (CJEU, 20 January 2005, C-464/01, J. Gruber, n°47):
"it is therefore for the court seised to decide whether the contract was intended, to a non-negligible extent, to meet the needs of the trade or profession of the person concerned or whether, on the contrary, the business use was merely negligible. For that purpose, the national court should take into consideration not only the content, nature and purpose of the contract, but also the objective circumstances in which it was concluded."

Second, it must also be argued that the contract falls within the scope of application of Article 17 and that "the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State", as stated in Article 17 Section 1 lit. c.
This concept of "direct such activities" has led to some important case law, particularly in the context of e-commerce.
The Court affirmed that:
"In order to determine whether a trader whose activity is presented on its website or on that of an intermediary can be considered to be 'directing' its activity to the Member State of the consumer's domicile (…) it should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with them" (CJEU, 7 December 2010, C-585/08 and C-144/09, Pammer and Alpenhof).
Following this jurisprudence, certain criteria have been established:
"namely the international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by

consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States. It is for the national courts to ascertain whether such evidence exists." (CJEU, 7 December 2010, C-585/08 and C-144/09, Pammer and Alpenhof, para 93-94).
The website of L'ordinateur provides that delivery can take place anywhere in the EU, so the company clearly looks for customers from abroad. "L'ordinateur" has entered into a contract with a person domiciled in Italy and, moreover, has agreed to deliver the goods to Italy. The company can be considered, therefore, to be directing their activities towards the Member State of the consumer's domicile.
In that situation, Article 18 Section 1 opens for the consumer the choice between "the courts of the Member State in which that party [*i.e.*: the defendant] is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled".
Therefore, Mr Vittorio can choose between the courts of the defendant's domicile (France) and the courts of his own domicile (Italy).

It should be noted that the consumer must not show a causal link between the fact that the company directed its activities to the Member State of the consumer's domicile and the conclusion of the contract with the consumer (CJEU, C-218/12, Emrek).

Note: If "L'ordinateur" is domiciled outside the EU, the provisions of Brussels I (recast) on jurisdiction in consumer matters will be applicable only if the company has a branch in Europe. As Article 17 Section 2 puts it:
"Where a consumer enters into a contract with a party who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State."
If the company has no branch in Europe, jurisdiction of the courts will be decided for upon national law.

b) Does this have an impact on the choice of court agreement?

Consumers are protected from entering into a choice of court agreement providing jurisdiction outside their home jurisdiction.
As stated in Article 19, the specific jurisdiction rules can only be departed from by an agreement either entered into "after the dispute has arisen" or "which allows the consumer to bring proceedings in courts other than those indicated in this section".
Therefore, the consumer cannot be deprived of the specific and protective jurisdiction rule set forth in Article 17.
In the present case, if Mr Vittorio wishes to sue in Milan, the existence of a choice of court agreement in favour of the courts in Paris cannot be raised against him pursuant to Article 19 of the Regulation.

Note: Following the case law of the CJEU, it could also be argued that a choice of court agreement in a consumer contract is an unfair term according to the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

As the Court clearly said (CJEU, 4 June 2009, Pannon, C-243/08, n° 40):
"in a contract concluded between a consumer and a seller or supplier within the meaning of the Directive, a term, drafted in advance by the seller or supplier – which was not subject to individual negotiation – the purpose of which is to confer jurisdiction in respect of all disputes arising under the contract on the court in the territorial jurisdiction of which the seller has his principal place of business, satisfies all the criteria necessary for it to be judged unfair for the purposes of the Directive."

If this solution is followed, the choice of court agreement should be completely disregarded as invalid.

c) Does this have an impact on the possible action brought by L'ordinateur?

Yes. If the action is brought by "L'ordinateur", then proceedings can be brought only in the courts of the Member State where the consumer is domiciled (Article 18 Section 2). Therefore, "L'ordinateur" can only bring proceedings in the Italian courts.

Note: However, this does not affect the right to bring a counter-claim in the court in which the original claim is pending (Article 18-3). Therefore, if the Paris courts were seised by Mr Vittorio, a counter-claim could be brought before those courts by "L'ordinateur".

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