CJEU, Case C-566/22, Inkreal v. Dúha reality: Choice of another Member State's court in an otherwise purely domestic case is sufficient to apply Art. 25 Brussels Ibis Regulation

In its judgment of 8 February 2024, the CJEU had to decide whether "the application of the Brussels Ibis Regulation be based solely on the fact that two parties with their seat in the same Member State agree on the jurisdiction of courts of another EU Member State."

The case concerned two loans granted to *Dúha reality*, a Slovak company, by a third party also domiciled in Slovakia, in 2016 and 2017 respectively. Both loan contracts contained an identical choice of forum clause stating that any 'dispute shall be settled by a court of the Czech Republic having substantive and territorial jurisdiction'. In 2021, the receivables arising from those loan agreements were assigned to *Inkreal*, another purely Slovak business corporation, who upon non-payment by the debtor brought action in the Czech Republic. Seeking, *inter alia*, to determine the specific Czech court having territorial jurisdiction, the Czech Supreme Court (*Nejvyšší soud*) referred the question to the CJEU.

The CJEU engaged in an almost textbook-like analysis of not only the clear wording of Art. 25 Brussels Ibis, which does not contain any restrictictions whatsoever with regard to an additional connection to the chosen or another Member State (para. 17), but also of the purpose of the Regulation to provide legal certainty requiring that the designated court can easily assess its jurisdiction without recourse to the merits of the case (para. 27). Furthermore, the CJEU concluded by an *argumentum e contrario* to Art. 1(2) HCCH 2005 Choice of Court Convention that the EU legislator, who drew inspiration from the Hague instrument when drafting the recast, was well aware of the issue but deliberately decided against the adoption of a similar provision excluding choice

of court agreements in otherwise purely domestic cases from the scope of application (para. 38). As a result, the CJEU answered the question in the affirmative, thereby strengthening party autonomy and predictability in the context of international civil procedure. This is to be welcomed.

The Opinion of 12 October 2023 provided by AG Richard de la Tour had gone to the contrary, namely that an international element must be established "according to objective criteria" whereas the mere subjective choice of a foreign Member State's court may not suffice to trigger the application of the Brussels Ibis Regulation (para. 32). While elements of the underlying argumentation appear questionable, as discussed elsewhere, the Opinon, interestingly, also put forward that the Brussels systems should be harmonised with the Hague Convention ("the Hague system"?), which might be taken as a reminiscent of a light form of the principle of systemic integration, Art. 31 (3) (c) VCLT. In this respect, the Opinion could also be seen as evidence of a heightened awareness of the increasing role that the CJEU's decisions could play in the greater picture of international judicial cooperation in civil and commercial matters.