

**Debt Capital Markets Focus Team**

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**Key takeaways**

- In a recent summary judgment, Butcher J has provided an authoritative analysis of the jurisdiction clause in the 1992 ISDA Master Agreement.
- Butcher J confirmed that the 1992 ISDA jurisdiction clause is still exclusive after Brexit, if the Master Agreement is governed by English law, vis-à-vis Italy and the other signatories of the 2005 Hague Convention.
- The ISDA jurisdiction clause was also found to be wide in scope, able to also cover claims under separate but related contracts.
- Overall, the ruling reaffirms the parties' choice of court and provides significant protection to derivatives dealers against the risks associated with parallel proceedings.

## ***Dexia S.A. v Comune di Torino* [2025] EWHC 1903 (Comm): High Court of England and Wales finally provides clarity on ISDA jurisdiction clause(s) after Brexit**

For decades, the market for over-the-counter (OTC) derivatives has hugely relied on the documentation drafted by the International Swaps and Derivatives Association (ISDA). From currency options to asset swaps, and from pension funds to local authorities, market participants have widely adopted the standardised ISDA documentation, and especially the ISDA Master Agreement.

The ISDA Master Agreement is estimated to govern 90% of OTC transactions worldwide and, for this reason, is regarded as “probably the most important standard market agreement used in the financial world”.<sup>1</sup> Published in two versions – in 1992 and 2002 – it has at its core a single function: to set out the general terms and conditions governing the trading relationship, including provisions on payment netting, termination events, and dispute resolution.

The recent decision in *Dexia S.A. v Comune di Torino* [2025] EWHC 1903 (Comm) (**Torino**) provides crucial insights into the proper interpretation of the jurisdiction clause under Section 13(b) of the 1992 Master Agreement where the parties have chosen English law.

In short, the judgment confirms, post-Brexit, that English courts remain the exclusive forum for resolving ISDA-related disputes as opposed to the courts of member states of the EU. It therefore provides much-needed clarity to market participants in the uncertain post-Brexit world, and it goes a long way towards protecting derivatives dealers from vexatious parallel proceedings in other jurisdictions.

### **1. Background**

*Torino* is the latest in a long-running series of disputes involving Italian local authorities seeking to challenge certain interest rate swap (IRS) transactions entered into in the early 2000s with international financial intermediaries.

<sup>1</sup> *Lomas v JFB Firth Rixson Inc* [2010] EWHC 3372 (Ch) [53].

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These Master Agreements almost always subject these IRS transactions to English law and to the jurisdiction of the English courts, yet the Italian local authorities have routinely brought their claims in the Italian courts. In response, the financial intermediaries commence proceedings in England, typically seeking declarations affirming the *exclusive* jurisdiction of the English courts under the terms of the Master Agreement and the validity and enforceability of the underlying transactions.

In this case, Dexia duly responded by suing in England and applying for a summary judgment on its claim that the English court has exclusive jurisdiction.

The outcome of the summary judgment application, however, was by no means obvious. Before Brexit, the UK was a party to the Brussels Recast Regulation, which provided a streamlined and reciprocal framework for determining jurisdiction and recognizing judgments across EU Member States.<sup>2</sup> But Brexit has fundamentally altered that legal landscape, and the Brussels Recast Regulation no longer applies to the UK.

As a result, the operation of the ISDA jurisdiction clause depends on the delicate interaction of the wording of Section 13(b) and UK legislation incorporating international conventions. And it is against this complex cross-border backdrop that Butcher J's summary judgment is to be read.

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## 2. The scope of section 13(b) of the ISDA master agreement

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In the first place, Butcher J considered how wide the wording of the jurisdiction clause in the ISDA Master Agreement is.<sup>3</sup>

Following a well-established line of case law, Butcher J found that jurisdiction clauses are to be interpreted in light of their proper law, which is usually the law of the contract. The Master Agreement was governed by English law, so Section 13(b) is to be read through the lens of English law.<sup>4</sup>

According to a related line of authorities, the general approach of English law is to read choice-of-court clauses broadly and in light of the overall scheme of the parties' agreements – because that is what rational businessmen would intend.

On this basis, Butcher J found that Torino's claims in Italy for pre-contractual, extra-contractual (tortious), and contractual liability of the bank

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<sup>2</sup> 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 (recast).

<sup>3</sup> In particular, the following wording: '... with respect to any suit, action, or proceedings relating to this Agreement...')

<sup>4</sup> See paragraph [31] of the summary judgment and *Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb* [2020] UKSC 38 at [53], [254].

in relation to the structuring and entering into of the derivative transactions were covered by Section 13(b) <sup>5</sup>. In addition, Butcher J found that Torino's claim under a separate (but related) advisory agreement – which, according to Torino, the parties allegedly entered into – fell within the jurisdiction of the English court, particularly because the Master Agreement contains: (i) provisions expressly dealing with the (lack of an) advisory relationship<sup>6</sup>; and (ii) an entire agreement clause according to which the Master Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter<sup>7</sup>.

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### 3. Section 13(b) of the 1992 ISDA master agreement as an exclusive jurisdiction agreement

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Butcher J then considered whether the English courts' jurisdiction under the standard terms of the 1992 ISDA Master Agreement is *exclusive* or *non-exclusive*.

It is generally accepted that, under the terms of the 1992 version of Section 13(b) of the Master Agreement, the jurisdiction of English courts is:

- i. *exclusive* vis-à-vis the courts of “*Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force*”; and
- ii. *non-exclusive* vis-à-vis all other courts.

When Dexia commenced the English proceedings – after Brexit – “*Contracting State*” was defined by statute as “*in the application of [a] provision in relation to the 2005 Hague Convention, means a State bound by that Convention*”<sup>8</sup>.

The local authority contended that the 2005 Hague Convention does not apply to the transactions in question; that the proceedings lay outside of the “*Contracting States*”; and, therefore, that Section 13(b) did not confer exclusive jurisdiction to the English courts. This is despite the fact that, before Brexit, English courts were the exclusive forum under countless OTC derivatives entered into under English law.

Butcher J flatly rejected this contention. “*Contracting States*” is to be read in a simpler way. As put by the Judge at paragraph [43]:

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<sup>5</sup> See paragraphs [32]-[34] of the summary judgment and *Sebastian Holdings Inc v Deutsche Bank AG* [2010] EWCA Civ 998, [2010] 2 CLC 300 at [39]-[41].

<sup>6</sup> See Part 5, Clause 4 (a) and (b) of the Schedule to the Master Agreement, as well as Section 3(i) of the Master Agreement.

<sup>7</sup> See Section 9(a) of the Master Agreement

<sup>8</sup> That is, the Convention on Choice of Court Agreements concluded on 30th June 2005 at The Hague.

***Whether a state is a ‘Contracting State’ for the purposes of Clause 13(b), and thus falls within the ambit of exclusivity for English jurisdiction, does not depend on whether the identified Convention is applicable to the dispute under the relevant transactions, but only on whether that state is a party to, or is bound by, that Convention.***

Vis-à-vis Italian courts, Section 13(b) of the 1992 Master Agreement is therefore an exclusive jurisdiction clause, because Italy is a party to the 2005 Hague Convention.<sup>9</sup> And the same can be said in relation to the courts of all the states that are a party to that convention, including most importantly, the member states of the EU.

On this basis, the Judge declared that each of Torino’s claims in the Italian proceedings has been commenced in breach of the Master Agreement.

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#### **4. The significance for the market**

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This is a truly momentous ruling, for the Italian swaps saga as well as the European OTC markets more broadly. This is so for at least three reasons.

- i. *Torino* establishes continuity, at least in the eyes of English judges, in the European jurisdictional framework pre- and post-Brexit. The summary judgment upholds certainty, predictability, and stability, working to ensure that legacy contracts continue to operate as expected.
- ii. Butcher J upheld the parties’ choice of court firmly and decisively, establishing that English courts have *exclusive* jurisdiction over a wide range of disputes connected to ISDA transactions. The wide interpretation of Section 13(b) prevents counterparties from deploying shrewd tactics to circumvent the jurisdiction clause, while the affirmation that English courts’ jurisdiction is exclusive should, at least in principle, stop parallel proceedings in their tracks. Also, there is an expectation that foreign courts, and in particular Italian courts, will follow the guidance of the English courts when asked to interpret a Master Agreement – and its jurisdiction clause – governed by English law.
- iii. The Judge’s declaration that Torino breached Section 13(b) of the Master Agreement opens the door to financial intermediaries seeking substantive remedies against counterparties who disrupt the proper functioning of their contracts by unlawfully bringing actions in inappropriate courts.<sup>10</sup> These remedies include damages for breach of

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<sup>9</sup> See paragraph [47].

<sup>10</sup> Though this was recognised in other cases, such as *Deutsche Bank AG London v Provincia di Brescia* [2024] EWHC 2967 (Ch) and *Dexia SA v Regione Emilia Romagna* [2024] EWHC 3236 (Comm).

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Section 13(b) and – since Brexit – anti-suit injunctions, restraining parties from bringing proceedings in EU courts in breach of Section 13(b).



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The Focus Team is a constellation of expertise in different business areas with a focus on debt capital markets.

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