Neutral Citation Number: [2025] EWHC 1903 (Comm)

Case No: FL-2024-000016

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**FINANCIAL LIST (COMMERCIAL COURT – KBD)**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/07/2025

**Before** :

**MR JUSTICE BUTCHER**

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**Between :**

**DEXIA S.A.** **Claimant**

**- and –**

**COMUNE DI TORINO** **Defendant**

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**Andrew Lodder and Matthew Hoyle** (instructed by **Bonelli Erede Lombardi Pappalardo LLP**) for the **Claimant**
**The Defendant** did not appear and was not represented

Hearing date: 11 July 2025

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# Approved Judgment

This judgment was handed down remotely at 10:15am on 25th July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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## Mr Justice Butcher:

1. On 11 July 2025 I heard a number of applications in this case, on most of which I gave my decisions at the time, and on one of which, namely the application for summary judgment, I reserved my decision. This judgment both gives or expands on the reasons for those matters I decided on 11 July 2025, and gives my decision and reasons in relation to the summary judgment application.

Introduction

2. The Claimant ('Dexia') is a company incorporated under the laws of France. The Defendant ('Torino') is an Italian municipal authority. Dexia's claim in the action relates to 11 interest rate swap transactions, entered into between 2001 and 2006 ('the Transactions'). The Transactions were aimed at hedging Torino's interest rate exposure and reducing its indebtedness under 20-year variable rates bonds in a total amount of c. €400 million. The Transactions were entered into pursuant to a 1992 ISDA Master Agreement, a bespoke schedule thereto and individual trade confirmations for each of the Transactions. The Transactions are governed by English law, and subject, as Dexia contends, to exclusive English jurisdiction clauses, to which I will return.

3. On 11 July 2007, Torino entered into a further interest rate swap with Dexia. This Torino decided to terminate early by way of a confirmation dated 1 December 2022. These transactions are not the subject of the relief sought by Dexia in the current proceedings.

4. On 18 June 2024, Torino issued proceedings ('the Italian Proceedings') in the Court of Turin against Dexia in relation to the Transactions. I will set out in more detail below the relief which Torino seeks in the Italian Proceedings.

5. Dexia describes the effect of the claims in the Italian Proceedings, should they succeed, as being that they would reverse the effect of the Transactions. Dexia has challenged the jurisdiction of the Court in Turin, and denies all the claims made in the proceedings there.

6. Dexia issued its Claim Form in the present proceedings on 18 October 2024, seeking, amongst other things, declarations as to the validity and enforceability of the Transactions and as to the extent of the jurisdiction of the English Court. No money claim is advanced by Dexia.

7. These English proceedings have been served on Torino, and the documents in them have continued to be served on Torino. Torino did obtain from the Court an extension of time to serve its Acknowledgement of Service. With that exception, however, it has taken no part in the proceedings and has not engaged in them. It did not file or serve an Acknowledgement of Service.

Dexia's Applications

8. Dexia brought before the Court, on 11 July 2025, a number of matters and applications relating to the proceedings here. They can be summarised as follows:

(1) Various Case Management Issues.

(2) An application to make certain amendments to the Claim Form and Particulars of Claim.

(3) An application for permission to make a summary judgment application in the absence of an Acknowledgement of Service or a Defence.

(4) An application for an abridgment of time to make a summary judgment application.

(5) An application for permission to rely on an expert report relating to Italian law.

(6) An application for summary judgment in relation to certain issues in the action, as explained below.

Proceeding in Torino's absence

9. The first question which needed to be addressed was whether it was appropriate to proceed in Torino's absence. As I indicated at the hearing, I was satisfied that it was appropriate to do so. My reasons for that decision may be briefly summarised as follows:

(1) Under CPR r. 39.3, the court has a discretion to proceed with a hearing or trial in the absence of a party;

(2) The right to be present at trial and to be legally represented can by waived by a defendant, including where, 'knowing, or having the means of knowledge as to, when and where his trial is to take place, he deliberately and voluntarily absents himself and/or withdraws instructions from those representing him' (R v Jones [2001] EWCA Crim 168, quoted in Banca Nazionale del Lavoro v Provincia di Catanzaro [2023] EWHC 3309 (Comm) at [3]).

(3) The discretion to permit a hearing to take place or continue in the absence of a defendant is one which should be exercised with great care. The judge should have regard to all the circumstances of the case, including: (a) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or hearing, including in particular whether it was deliberate, voluntary and such as plainly waived the right to appear; (b) whether an adjournment might result in the defendant attending voluntarily; and (c) whether the defendant is, or wishes to be, legally represented at the hearing.

(4) In the present case, it appears to me to be clear from the material set out in Mr Danusso's first witness statement and the Annex thereto that Torino has decided not to participate and has waived its right to legal representation and to participation in this hearing. Torino is clearly aware of these proceedings, as it instructed lawyers and requested the Court to make an order extending the time to file an Acknowledgement of Service. Since then, however, and notwithstanding that it has been sent the other documents in the proceedings,

Torino has taken no part. For completeness, and whether or not it would otherwise be an excuse, I note Mr Danusso's evidence that Torino is one of the wealthiest local authorities in Italy, and would be able to afford representation in England should it choose to do so.

(5) While it is clearly of importance that a defendant should be able to participate if it wishes to do so, it is also of importance that cases are proceeded with expeditiously and without undue delay. Not to do so is likely to prejudice the claimant, and also other court users, because court time and resources are inefficiently employed if hearings have to be adjourned for non-attendance.

(6) Having reminded myself of the need for caution, the present appears to me to be a clear case where it is appropriate to proceed in Torino's absence. That absence is deliberate and voluntary; I do not consider that an adjournment will lead to Torino's voluntarily appearing; and it is apparent that Torino does not wish to appear or be represented. Good case management, and furtherance of the overriding objective count in favour of proceeding in Torino's absence.

CMC Issues

10. Dexia is seeking only partial summary judgment, and wishes otherwise to pursue its claims to trial (absent settlement). It therefore sought a number of directions, including in relation to disclosure, the obtaining of expert evidence, costs budgeting, and directions for the other stages up to trial. I made orders in relation to these matters on 11 July 2025.

Amendments to Claim Form and Particulars of Claim

11. Dexia sought permission to make amendments to its Claim Form and Particulars of Claim pursuant to CPR r. 17.2(1)(b). The amendments sought related to clarifications of the declaratory relief sought by Dexia as to the English Court's jurisdiction, and an amendment to plead the December 2022 confirmation, referred to above. I could see no basis on which Torino could properly have objected to these amendments, and I gave permission to Dexia to make them.

Application for Permission to make Summary Judgment Application

12. A claimant may not seek summary judgment until the defendant has served an Acknowledgment of Service or a Defence unless the court gives permission (CPR r. 24.4(1)(a)). A party seeking such permission may apply for it at the same time as seeking summary judgment, and that is what Dexia did in this case.

13. The principles applicable to whether permission should be granted were identified in EU v Syrian Arab Republic [2018] EWHC 1712 (Comm) at [61], as follows (most citations omitted):

> '(1) The purposes of the rule are to ensure that no application for summary judgment is made before a defendant has had an opportunity to participate in the proceedings …; and to protect a defendant who wishes to challenge

> the Court's jurisdiction from having to engage on the merits pending such application …
>
> (2) Generally permission should be granted only where the Court is satisfied that the claim has been validly served and that the Court has jurisdiction to hear it … As was said in *Citicorp Trustee Company Limited v Al Sanea*, once those conditions are met there is generally no reason why the Court should prevent a claimant with a legitimate claim from seeking summary judgment.
>
> (3) The fact that a summary judgment may be more readily enforced in other jurisdictions than a default judgment is a proper reason for seeking permission under CPR 24.4(1)….'

14. As I indicated at the hearing on 11 July 2025, I am satisfied that the present is an appropriate case in which Dexia should have permission to make a summary judgment application notwithstanding that no Acknowledgement of Service or Defence has been served. I am satisfied, in particular, that Torino has been served with the proceedings and that the English court has jurisdiction. As I have already said, I am also satisfied that Torino is aware of these proceedings, but has deliberately chosen not to participate in them. Furthermore, in light of the commencement and nature of the Italian Proceedings, Dexia has a legitimate interest in seeking a judgment on the merits on the jurisdiction issue, and it is legitimate for it to seek that that judgment should be summary rather than default with a view to its being more readily enforceable.

15. For those reasons I gave Dexia permission to bring its summary judgment application.

Abridgement of Time

16. Dexia served its application for summary judgment on 2 July 2025, so that Torino had only 8 clear days formal notice of that application, rather than the 14 days specified in CPR r. 24.4(5). The Court has the power to abridge the period of 14 days if such abridgement, in a particular case, is compatible with the overriding objective.

17. As, again, I indicated on 11 July 2025, I was satisfied that it was appropriate to abridge time so that the summary judgment application could be heard on 11 July.

18. Dexia issued its application for summary judgment at a point at which it understood that the Court of Turin would rule on Dexia's challenge to Italian jurisdiction within four months. On 27 June 2025, Dexia notified Torino of its intention to make applications, including for summary judgment, at the CMC fixed for 11 July 2025, and filed and served those applications on 2 July 2025. It was after that, namely on 7 July 2025, that the Court of Turin notified the parties of a listing date for Dexia's jurisdiction challenge of January 2026. This meant that Dexia's summary judgment application was no longer of the same urgency. On the other hand, by then Dexia had taken steps to prepare for a hearing of its summary judgment application on 11 July 2025.

19. Against that background, the reasons why abridgement of time appeared to me to be appropriate in this case were these:

    (1) Torino was given informal notice of Dexia's intention to make an application for summary judgment in Dexia's CMIS served on 27 June 2025, and thus had 14 days' informal notice of the application;

    (2) Delaying the summary judgment application would have served no useful purpose, as I was and am satisfied that Torino would still not participate even if there were an adjournment;

    (3) To delay the summary judgment application would, by contrast, have risked wasting costs because Dexia had already incurred costs in anticipation of the hearing of the summary judgment application on 11 July 2025; and

    (4) Torino will be protected by a provision in the relevant orders, including both that abridging time and, should it eventuate, that giving summary judgment, that, those orders having been made without hearing from Torino, Torino may apply to set them aside or vary them within 21 days of service of the order on Torino.

The Application to rely on expert evidence of Italian law

20. Based on what has been put forward in the Italian Proceedings, one argument which Dexia anticipates that Torino may rely on, in relation to the subject matter of its application for summary judgment, is that under Article 4(2) of Italian Law No. 218/1995 (ie the Italian Private International Law Act) parties may only agree to submit to the jurisdiction of a foreign court or arbitral tribunal where the dispute concerns rights which are capable of being disposed of or waived (or are '*diritti disponibili*'); and that the Italian Proceedings engage Torino's 'non-disposable' rights.

21. Dexia accordingly sought permission to rely on an expert report of Prof. Emanuele Rimini, professor of Business Law at the University of Milan, to consider this argument.

22. The report appeared to me to be that of a properly qualified expert, and I gave permission for Dexia to rely on it in the context of its summary judgment application.

The Summary Judgment Application

23. Dexia seeks summary judgment in respect of two aspects of the case, as follows:

    (1) That by virtue of Clause 13(b) of the ISDA Master Agreement applicable to the Transactions, this Court has exclusive jurisdiction over the validity of the Transactions and any contractual or extra-contractual liability arising therefrom, whether or not such claims are subject to the 2005 Hague Convention. This is covered by Dexia's claim for 'Declaration 1(1)'.

(2) Each of Torino's claims in the Italian Proceedings has been commenced in breach of Clause 13(b). This is covered by Dexia's claim for 'Declaration 1(2)'.

24. The principles applicable to the grant of summary judgment are familiar. In summary, the Court will consider whether the defendant has a realistic, as opposed to a fanciful, prospect of successfully defending the case or part of the case in respect of which the application is made; and whether there is some other compelling reason for the case to be tried. Where there is an application for summary judgment in relation to a claim for a declaration, the correct approach is to determine whether the claimant has shown that the defendant has no real prospect of mounting a successful defence in relation to the underlying facts and matters to which the declaration relates (rather than the question of whether or not the defendant would have a real prospect of persuading a court after a full trial that it would be wrong to exercise its discretion to make the declaration); and if so, to exercise the discretion as to whether or not to make the declaration in the normal way (see Abaidildinov v Amin [2020] 1 WLR 5120, [2020] EWHC 2192 (Ch)).

*Dexia's claim and the Italian Proceedings*

25. To consider the application for summary judgment, it is necessary to examine in more detail the claim made by Dexia and the nature of points taken in the Italian Proceedings.

26. The facts on which Dexia's claim is based are dealt with in the first witness statement of Mr Danusso dated 2 July 2025. That evidence is to this effect:

(1) That in 1998 and 1999 Torino entered into a series of 20-year variable rate municipality bonds to finance investment expenditure for a total amount of almost € 400 million.

(2) Torino initiated a tender procedure by Municipal Board Resolution No. 2428/2000 for proposals to reduce the risks arising from its variable rate indebtedness under the 1998 and 1999 bonds. Following the conclusion of that tender process, Torino's Municipal Board approved, with Resolution No. 269 of 6 March 2001, the transactions proposed by Dexia, along with the entry into of an ISDA Master Agreement and Schedule, drafts of which were annexed to Resolution No. 269.

(3) By Executive Resolutions No. 200103581/24 of 18 April 2001 and No. 200103806/24 of 26 April 2001, Torino approved the execution of the ISDA Master Agreement ('the ISDA Master Agreement') and Schedule dated 19 April 2001, and the entry into of five transactions.

(4) During the course of 2002, following changes in the relevant Italian laws, and taking advantage of favourable movements in market interest rates, Torino's Municipal Council sought proposals from several financial institutions, including Dexia, for the active management of its existing indebtedness. On 11 February 2003, by Municipal Board Resolution No. 887/024 and Executive Resolution No. 13, Torino approved Dexia's

proposal to replace four of the 2001 Transactions with four fixed-rate interest rate swap Transactions 'to achieve the aim of reducing the costs of the swaps in place.'

(5) In or around July 2005, Torino requested, inter alia, that Dexia propose options to restructure its indebtedness and derivative portfolio. By Municipal Board Resolution 3026/2006 dated 11 April 2006 and Executive Resolution No. 3106 dated 12 April 2006, Torino approved two Transactions proposed by Dexia which respectively replaced the 2003 Transactions and the remaining 2001 Transaction.

(6) To date, Torino has complied with and/or discharged its payment obligations under the Transactions.

(7) The Transactions are governed by the standard terms of the 1992 ISDA Master Agreement (Multicurrency Cross-Border). The terms of the Transactions are contained in the ISDA Master Agreement, Schedule and the relevant trade confirmation for each of the Transactions.

(8) For present purposes, the following provisions are germane:

i) Under Clause 13(a) and (b) of the ISDA Master Agreement and paragraph (h) of Part 4 of the Schedule, it was provided that the Transaction Documents should be governed by and construed in accordance with English law.

ii) Clause 13(b) of the ISDA Master Agreement further provided, insofar as relevant:

> '… With respect to any suit, action, or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:-
>
> (i) submits to the jurisdiction of the English Courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the law of the State of New York …
>
> Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the 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) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.'

(9) By Clause 9(a) of the ISDA Master Agreement it was provided that the Transaction Documents constituted 'the entire agreement and understanding

of the parties with respect to its subject matter and supersedes all oral communications and prior writings with respect thereto.'

(10) By Clause 4 of Part 5 of the Schedule, which regulated the 'Relationship between the Parties', sub-clause (b) provided that Dexia was 'not acting as a fiduciary for or an advisor to [Torino] in respect of that Transaction.'

(11) By Clause 3(i) of the ISDA Master Agreement, as inserted by Clause 5(iv)(i) of Part 5 of the Schedule, it was provided that 'Each party represents to the other party (which representation will be deemed to be repeated by each party on each date on which a Transaction is entered into or amended, extended or otherwise modified) that it is acting for its own account, and has made its own independent decisions to enter into this Agreement and any Transaction hereunder and as to whether this Agreement and any Transaction hereunder is appropriate or proper for it based on its own judgment and upon advice from such advisors as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into this Agreement or any Transaction hereunder, it being understood that information and explanations related to the terms and conditions of this Agreement and any Transaction hereunder shall not be considered investment advice or a recommendation to enter into this Agreement or any Transaction hereunder. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of any Transaction.'

27. As already stated, Torino commenced the Italian Proceedings before the Courts of Turin on 18 June 2024. In those proceedings, Torino seeks:

(1) Damages for breach of an alleged advisory agreement between Dexia and Torino, which is said to have arisen from Torino's acceptance of Dexia's proposals for the Transactions in a PowerPoint presentation in 2001;

(2) Damages for alleged pre-contractual and tortious liability of Dexia for having structured and offered the Transactions to Torino negligently and without providing proper, transparent and diligent information;

(3) A declaration that the Transactions are or were void under Italian law and regulations;

(4) Damages for alleged breaches of the Transactions; and

(5) Termination of the extant Transactions and restitution of the amounts paid thereunder.

28. Dexia's case is that the Italian Proceedings have been brought in breach of the jurisdiction clause in the ISDA Master Agreement, which conferred exclusive jurisdiction on the English courts. By the declarations in relation to which it seeks summary judgment, Dexia seeks to have this case upheld and declared to be correct.

*Arguments Torino may raise*

29. Dexia has identified three arguments which, judging by what has been said in the Italian Proceedings, Torino might advance in opposition to the position as set out in the declarations sought by Dexia. I will consider each in turn.

Narrow construction of Clause 13(b)

30. The first argument is that Clause 13(b) should be construed narrowly, in line with the general approach to construing choice of court clauses in Italian law, and thus that the relief sought by Torino in the Italian Proceedings based upon alleged pre-contractual liability and/or tortious liability and the alleged breach of an advisory agreement fall outside its scope.

31. I do not consider that this argument stands a realistic prospect of success. The construction of the jurisdiction clause is a matter of its proper law. The proper law of a jurisdiction agreement is usually the law of the main body of the contract (Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb [2020] UKSC 38, at [53], [254]). In the present case, the law applicable to the jurisdiction clause must be English law: it is contained in a standard form contract originally drafted in English, expressly governed by English law, and which contains an English jurisdiction clause. It follows that Italian law, and the approach of the Italian courts to construing jurisdiction clauses, are not relevant.

32. The general approach of English law to construction of a jurisdiction clause was summarised by Thomas LJ in Sebastian Holdings Inc v Deutsche Bank AG [2010] EWCA Civ 998, [2010] 2 CLC 300, at [39] – [41] as follows:

> '[39] It is clear that in construing a jurisdiction clause, a broad and purposive construction must be followed: *Donohue v Armco* [2001] UKHL 64; [2002] CLC 440; *Fiona Trust & Holding Corp v Privalov* [2007] EWCA Civ 20; [2007] 1 CLC 144 affirmed *sub nom Premium Nafta Products v Fili Shipping* [2007] UKHL 40; [2007] 2 CLC 553 where Lord Hoffmann observed at paragraph 7;
>
> "If, as appears to be generally accepted, there is no rational basis upon which businessmen would be likely to wish to have questions of the validity or enforceability of the contract decided by one tribunal and questions about its performance decided by another, one would need to find very clear language before deciding that they must have had such an intention."
>
> [40] The Supreme Court emphasised in *Re Sigma Finance Corp* [2009] UKSC 2 the need, when looking at a complex series of agreements, to construe an agreement which was part of a series of agreements by taking into account the overall scheme of the agreements and reading sentences and phrases in the context of that overall scheme.
>
> [41] It is generally to be assumed on these principles that just as parties to a single agreement do not intend as rational businessmen that disputes under the same agreement be determined by different tribunals, parties to an

> arrangement between them set out in multiple related agreements do not generally intend a dispute to be litigated in two different tribunals.'

33. It is to be noted that, in the present case, the 'advisory agreement' which Torino alleges to have existed is not said to have contained a jurisdiction clause in favour of the courts of Italy (or elsewhere). This is accordingly not a case of 'competing' jurisdiction clauses.

34. The wording of the jurisdiction clause in the present case ('… with respect to any suit, action, or proceedings relating to this Agreement…') is wide. Especially in circumstances where the ISDA Master Agreement which contains the jurisdiction clause also includes (a) provisions expressly dealing with the (lack of an) advisory relationship and (b) an entire agreement clause, the clause is in my judgment wide enough to cover collateral, tortious and pre-contractual claims relating to the relevant contracts between the parties such as Torino has sought to bring in the Italian Proceedings. The position here appears to me to be materially the same as that which was found to pertain in Deutsche Bank AG v Comune di Savona [2018] EWCA Civ 1740, [2018] 4 WLR 151, which considered a 1992 ISDA Master Agreement with a similarly drafted law and jurisdiction provision. It was there held that the jurisdiction clause covered, and the English courts had jurisdiction over, claims for declaratory relief in respect of alleged liability arising from pre-contractual negotiations and advice.

Not an exclusive jurisdiction provision

35. The second argument is that Clause 13(b) does not confer exclusive jurisdiction on the English courts because, at least since Brexit, Italy is not a 'Contracting State' for the purposes of that clause.

36. The nub of this argument is expressed in Torino's Writ of Summons in the Italian Proceedings as follows (in translation):

> 'It is also self-evident that the second condition of the ISDA clause mentioned above [viz Clause 13(b)] (i.e. that the derogated jurisdictions are located in the "Contracting States" referred to in "Section 1(3) of the Civil Jurisdiction and Judgments Act 1982" is not met.
>
> As to the latter condition, whether or not it is met will have to be assessed … in the light of the factual and legal situation prevailing not at the date of the entering into of the clause, but at the date of the litigation.
>
> Therefore, assessing today the effectiveness and scope of the clause in question, it emerges *de plano* that the clause in question cannot be said to be exclusive and this not only by virtue of the inapplicability that, post Brexit, characterises Article 25 of EU Regulation 1215/2012 in the relationship between the Italian and United Kingdom courts, but also by virtue of the intervening irrelevance of the 1968 Brussels and 1988 Lugano Conventions which used to be referred to by the CJJA and which, on the other hand, no longer apply between Italy and the United Kingdom, so that

> under no circumstances can these Conventions … form the basis for the application of the aforementioned clause in an exclusive sense.
>
> For the sake of brevity, we also note that the definition of "Contracting States" relevant for our purposes … cannot include either the Contracting States to the 2005 Hague Convention, the only one referred to today by the CJJA … That is to say, in the current version of the CJJA the Contracting States of the Hague Convention are not included *hic et nunc* in the notion of Contracting States, but come within the definition of Contracting States of the CJJA, as is natural, only insofar as it is a matter of "the application of a provision in relation to the 2005 Hague Convention.".
>
> It should be noted in this regard that the 2005 Hague Convention clearly provides in its Art. 16(1) that "This Convention shall apply to exclusive choice of court agreements concluded after its entry into force in respect of the State of the chosen court", so that the ISDA clause in the present case (dating from 18-19/04/2001), i.e. even years before the Convention itself) is totally alien to it because the Convention only entered into force in the UK (as part of the EU) on 01/10/2015 and indeed more properly, following Brexit, only came into force for the UK on 01/01/2021 as a source of international law implemented by the "Private International Law (Implementation of Agreements) Act 2020".'

37. As I understand it, this argument involves the following key features:

(1) That the meaning of 'Contracting State' for the purposes of the second paragraph of Clause 13(b) depends on which countries are 'Contracting States' for the purposes of s. 1(3) of the CJJA in the terms current at the date of the litigation, not in the terms it had when either the ISDA Master Agreement was drafted, or when the Transactions were entered into.

(2) Italy is not a 'Contracting State' for the purposes of s. 1(3) of the CJJA in its current terms, because s. 1(3) no longer makes any reference to parties to the 1968 Brussels or 1988 Lugano Conventions, but makes reference (or at least made reference at the date of the Italian pleading) only to the 2005 Hague Convention. Italy is not a 'Contracting State' by reason of the Hague Convention because the Hague Convention only applies to choice of court agreements concluded after its entry into force in respect of the state of the chosen court, and that was not the case in relation to the Transactions; and s. 1(3) only makes the states bound by the Hague Convention relevant if the Hague Convention applies to the dispute in question.

38. There is a debate between the parties as to whether the Hague Convention is applicable to the Transactions, by reason of the confirmation issued in 2022 referred to above. That is an issue on which Dexia did not seek summary judgment. Accordingly I will proceed on the assumption, for present purposes, that the Hague Convention is not applicable to the Transactions.

Discussion

39. Under Clause 13(b), it is expressly provided that the courts of New York have 'non-exclusive jurisdiction' if the agreement is expressed to be governed by New York law. If, on the other hand, the agreement is expressed to be governed by English law, then the English Courts will have non-exclusive jurisdiction, subject to the proviso in the second paragraph which means that the parties are not entitled to commence proceedings in any 'Contracting State' as defined by s. 1(3) CJJA. Vis-à-vis those Contracting States, English jurisdiction is exclusive.

40. The definition in s. 1(3) CJJA of 'Contracting State' has changed over time. The various formulations are set out in Annex 1 to this judgment. As can be seen, the earliest definitions were in terms of '(a) one of the original parties to the 1968 Convention … or (b) one of the parties acceding to that Convention under the Accession Convention.' From May 1992, the wording of the definition changed, to cater for both the Brussels Conventions and the Lugano Convention. The definition now used the words 'in the application of the provision in relation to the [Brussels Conventions/Lugano Convention] a [Brussels/Lugano] Contracting State'. Similar wording appeared until 2015, when a further category was added, namely 'in the application of the provision in relation to the 2005 Hague Convention, a 2005 Hague Convention State.' After the withdrawal of the UK from the EU, the references to Brussels and Lugano Conventions have been deleted; and since 1 July 2025 a reference to the 2019 Hague Convention has been added.

41. Italy was a party to the Brussels Conventions and the Lugano Convention. It is also a state which is bound by the 2005 Hague Convention by virtue of its membership of the EU.

42. Torino's argument is, in my view, correct insofar as it says that the question of whether a state is a 'Contracting State' depends on the terms of s. 1(3) CJJA at the time of the litigation, and not at the time of the entry into of the Transactions. The second paragraph of Clause 13(b) makes express reference to modifications, extensions or re-enactments of s. 1(3) CJJA 'for the time being in force'.

43. The way in which Clause 13(b), taken with s. 1(3) CJJA, is to be read is, however, in my view simpler than the meaning contended for by Torino. The purpose of the reference to s. 1(3) CJJA is to identify specific states, namely those which are party to an identified multilateral judgment Convention (or Conventions) to which the UK is a party. 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. Had it been intended that the question of whether a state was a Contracting State depended on whether the Convention was applicable to the dispute under the relevant transactions, it could have been specified, but it is not.

44. That the meaning to be attached to 'Contracting State' for the purposes of Clause 13(b) of the ISDA Master Agreement does not depend on whether a Convention specified in s. 1(3) CJJA was applicable to the transaction(s) in

question in the proceedings has, for a considerable time, been assumed, and that assumption has been reflected in decided cases.

45. Thus, in 2002, the definition of 'Brussels Contracting State' within s. 1(3) CJJA, and thus the definition of 'Contracting State', was amended to remove from it any state which was bound by the Brussels I Regulation, which came to be called, in the Act, 'Regulation States'. From that date, Regulation States fell within the definition of 'Contracting States' not by virtue of their status as Regulation States, but only by virtue of their being Lugano Contracting States. Notwithstanding this, and notwithstanding that most relevant disputes were governed by the Regulation and not by the Lugano Convention, Italy was treated as a 'Contracting State' for the purposes of Clause 13(b), and the English jurisdiction clause as exclusive vis-à-vis Italy: see Nomura plc v Banca Monte dei Paschi SpA [2013] EWHC 3187 (Comm), [2014] 1 WLR 1584, esp at [16]-[17]. Equally, there was no suggestion in BNP Paribas S.A. v Trattamento Rifiuti Metropolitani SpA [2019] EWCA Civ 768 that the English jurisdiction clause provided for by Clause 13(b) of the ISDA Master Agreement was non-exclusive. Thus the non-applicability to the dispute of the Convention by reference to which Italy fell within the definition of 'Contracting State' was not regarded as a reason for its not being a 'Contracting State'.

46. Torino places reliance on the words in s. 1(3) CJJA 'in the application of the provision in relation to'. I do not, however, consider that those words in the statute have the effect of meaning that a state is a 'Contracting State' for the purposes of Clause 13(b) only if the relevant Convention applies to the dispute in question. The purpose of the quoted words in the Statute is that various provisions of the CJJA either apply only to a particular Convention, or can apply to more than one Convention, and these words enable the relevant provision to operate in relation to the particular Convention or to each Convention to which the provision relates. This wording is of no significance in the adoption in Clause 13(b) of the ISDA Master Agreement of the definition of 'Contracting State' from s. 1(3) CJJA. The 'provisions' referred to are provisions of the Act, not of the ISDA Master Agreement. The mechanism of how the definition is made to work in provisions of the Act other than s. 1(3) is of no relevance to how it works as incorporated into Clause 13(b).

47. In my judgment, the correct construction of Clause 13(b) is that 'Contracting States' are, relevantly, states which are bound by the 2005 Hague Convention. Italy is such a state. Accordingly Clause 13(b) confers, vis-à-vis Italy, exclusive jurisdiction on the English courts. Furthermore, this is neither surprising nor prejudicial to Torino. Since before the making of the Transactions Italy has counted as a 'Contracting State' for the purposes of Clause 13(b) of the ISDA Master Agreement. Although the definition has changed, Italy has been within the class of 'Contracting States', for changing reasons, throughout. Torino will have understood, from the outset of the Transactions, that the English courts were, vis-à-vis the courts of Italy, to have exclusive jurisdiction over disputes relating to the Transactions.

Non-disposable rights

48. The third argument relates to Article 4(2) of Italian Law No 218/1995, which provides:

> 'Italian jurisdiction may be waived in favour of a foreign court or foreign arbitration if such waiver is proven in writing and the case concerns rights that are disposable.'

49. The argument is that Torino could not have agreed to Clause 13(b) because the rights at issue here, concerned as they are with public finances, are not 'disposable' (or are *diritti indisponibili*).

50. In my view this argument is clearly wrong, and it stands no realistic prospect of success.

51. In the first place, at common law the material validity of a jurisdiction agreement is a matter for its applicable law, here English law. The only potentially relevant exception to this is that issues of corporate capacity are a matter for the law of incorporation. Whether a rule is characterised as one of capacity or material validity is a question for English law, applying a 'broad, internationalist' approach, and asking whether the corporation lacks substantive power to conclude a contract of a particular type: Haugesund Kommune v Depfa ACS Bank [2010] EWCA Civ 579, [2012] QB 549, esp at [47].

52. In seeking to distinguish issues which go to capacity from other attacks on the validity and efficacy of an English law contract, including issues of illegality, Foxton J in Banca Intesa Sanpaolo SpA v Comune di Venezia [2022] EWHC 2586 (Comm), in an analysis which was not criticised on appeal, suggested that it would be helpful to consider, inter alia, whether a statute said to affect the validity of the contract was one of general application, rather than relating to a particular type of legal person (for if it was, the argument for treating it as going to capacity would be weak), and whether the statute in question is both the source of the power to contract and the limitation, or whether the source of power is elsewhere (for if it is the former, the restrictions are more likely to constitute limitations on the legal ability of the corporation to enter a contract of that kind).

53. In this case, Article 4(2) of Italian Law No 218/1995 is a provision of general application, including to natural persons, rather than one dealing with corporations or public authorities. Article 4(2) is clearly not both the source of the power to contract and also of the putative limitation on the power to contract. Both these are indications that what is involved is not a question of capacity.

54. Furthermore, as stated in Professor Rimini's report:

(1) The effect of a breach of Article 4(2), as a matter of Italian law, is that the relevant agreement would be null and void for breach of a mandatory provision of Italian law, pursuant to Article 1418(1) of the Italian Civil Code, according to which 'The contract is null when it is contrary to mandatory rules, unless the law provides otherwise.' Professor Rimini states a lack of capacity to enter a particular kind of contract is different

from a breach of a mandatory rule which applies when entering into such contracts.

(2) Article 4(2) is liable to be disapplied by provisions of EU law. In particular, contracting parties are not prevented from entering into choice of court agreements relating to non-disposable rights when those agreements fall within the ambit of Brussels Regulation 1215/2012 (and prior to that Council Regulation (EC) No. 44/2001). That would not have been the case is Article 4(2) were concerned with capacity.

55. For these reasons, and applying a broad and internationalist approach, I conclude that the rule on jurisdiction agreements in respect of non-disposable rights raises an issue of material validity, not capacity.

56. In any event, and even if the rule as to non-disposable rights was one which could be said to go to capacity, it appears to me that the argument that it has any application in the present case is one which stands no realistic prospect of success. As explained by Professor Rimini, a 'non-disposable right' (or *diritto indisponibile*) is one 'in relation to which a waiver or a settlement is not possible'; and that non-disposable rights are very limited exceptions to the general rule that rights and obligations are disposable. The exceptions usually involve fundamental personal rights, and matters necessarily involving state power. Italian courts have consistently held that disputes involving private law rights and commercial contracts involve disposable rights. The logic of Torino's point would be that all the choice of court agreements in the very many derivative and other financial transactions entered into by Italian local authorities over the past decades are void under Italian law. As Professor Rimini says, this 'is a conclusion that I am not aware of any Court or academic having ever suggested.' Consistently with this, as Mr Danusso says in his second witness statement, by a decision of 3 July 2025 in a dispute between Dexia and Provincia di Brescia, the Italian Supreme Court recognised this court's decision in Dexia Crediop SpA v Provincia di Brescia [2023] EWHC 959 (Comm), which had found that the English court had jurisdiction over Dexia's claims by reason of a jurisdiction provision in the same terms as that relevant in the present case. The Italian Supreme Court recognised this court's decision notwithstanding an argument addressed to the Supreme Court that the swap contracts in that case – which were similar to the Transactions at issue here – involved non-disposable rights for the purposes of Article 4(2).

57. For this additional reason I conclude that the argument as to Article 4(2) does not stand any realistic prospect of success.

58. I am fortified in this conclusion by the fact that in Dexia v Patrimonio del Trentino [2024] EWHC 2717 (Comm) the defendant had raised an equivalent argument based on Article 4(2), but had dropped it shortly before its skeleton argument was served. At [54] Bryan J commented that this argument had been 'rightly' abandoned, 'did not bear examination' and was 'unmeritorious' for the reasons addressed in Dexia's skeleton argument in that case, which had been based on Professor Rimini's evidence there (which was to like effect as his evidence in this case).

*Conclusion on Summary Judgment*

59. Accordingly I conclude that Torino has no defence which stands a realistic prospect of success in relation to Declarations 1(1) or 1(2). There is no other compelling reason for a trial of Dexia's entitlement to those declarations, and I will make them.

60. After this judgment is handed down I will invite further submissions in relation to matters consequential upon it and which have not already been the subject of an order embodying the decisions which I pronounced at the hearing on 11 July 2025.

## Annex 1: The definition of "*Contracting State*" in s.1(3) CJJA over time

| Date range | Definition |
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| 13 July 1982<br>-<br>30 November 1989 | In this Act *"Contracting State"* means—<br>(a) one of the original parties to the 1968 Convention (Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands); or<br>(b) one of the parties acceding to that Convention under the Accession Convention (Denmark, the Republic of Ireland and the United Kingdom),<br>being a state in respect of which the Accession Convention has entered into force in accordance with Article 39 of that Convention. |
| 1 October 1989<br>-<br>30 November 1991 | In this Act *"Contracting State"* means—<br>(a) one of the original parties to the 1968 Convention (Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands); or<br>(b) one of the parties acceding to that Convention under the Accession Convention (Denmark, the Republic of Ireland and the United Kingdom), or under the 1982 Accession Convention (the Hellenic Republic),<br>being a state in respect of which the Accession Convention has entered into force in accordance with Article 39 of that Convention, or being a state in respect of which the 1982 Accession Convention has entered into force in accordance with Article 15 of that Convention, as the case might be. |
| 1 December 1991<br>-<br>30 April 1992 | In this Act "*Contracting State*" means –<br>(a) one of the original parties to the 1968 Convention (Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and The Netherlands); or<br>(b) one of the parties acceding to that Convention under the Accession Convention (Denmark, the Republic of Ireland and the United Kingdom), or under the 1982 Accession Convention (the Hellenic Republic), or under the 1989 Accession Convention (Spain and Portugal),<br>being a state in respect of which the Accession Convention has entered into force in accordance with Article 39 of that Convention, or being a state in respect of which the 1982 Accession Convention has entered into force in accordance with Article 15 of that Convention, or being a state in respect of which the 1989 Accession Convention has entered into force in accordance with Article 32 of that Convention, as the case might be. |
| 1 May 1992<br>- | In this Act— |

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| 31 December 2000 | "*Contracting State*", without more, in any provision means —<br><br>(a) in the application of the provision in relation to the Brussels Conventions, a Brussels Contracting State; and<br><br>(b) in the application of the provision in relation to the Lugano Convention, a Lugano Contracting State;<br><br>"*Brussels Contracting State*" means —<br><br>(a) one of the original parties to the 1968 Convention (Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and The Netherlands); or<br><br>(b) one of the parties acceding to that Convention under the Accession Convention (Denmark, the Republic of Ireland and the United Kingdom), or under the 1982 Accession Convention (the Hellenic Republic), or under the 1989 Accession Convention (Spain and Portugal),<br><br>being a state in respect of which the Accession Convention has entered into force in accordance with Article 39 of that Convention, or being a state in respect of which the 1982 Accession Convention has entered into force in accordance with Article 15 of that Convention, or being a state in respect of which the 1989 Accession Convention has entered into force in accordance with Article 32 of that Convention, as the case might be;<br><br>"*Lugano Contracting State*" means one of the original parties to the Lugano Convention, that is to say— Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, the Hellenic Republic, Iceland, the Republic of Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom, being a State in relation to which that Convention has taken effect in accordance with paragraph 3 or 4 of Article 61. |
| 1 January 2001<br>-<br>28 February 2002 | In this Act—<br><br>"*Contracting State*", without more, in any provision means —<br><br>(a) in the application of the provision in relation to the Brussels Conventions, a Brussels Contracting State; and<br><br>(b) in the application of the provision in relation to the Lugano Convention, a Lugano Contracting State;<br><br>"*Brussels Contracting State*" means —<br><br>(a) one of the original parties to the 1968 Convention (Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and The Netherlands); or<br><br>(b) one of the parties acceding to that Convention under the Accession Convention (Denmark, the Republic of Ireland and the United Kingdom), or under the 1982 Accession Convention (the Hellenic Republic), or under the 1989 Accession Convention (Spain and Portugal), or under the 1996 Accession Convention (Austria, Finland and Sweden) |

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| | being a state in respect of which the Accession Convention has entered into force in accordance with Article 39 of that Convention, or being a state in respect of which the 1982 Accession Convention has entered into force in accordance with Article 15 of that Convention, or being a state in respect of which the 1989 Accession Convention has entered into force in accordance with Article 32 of that Convention, or being a state in respect of which the 1996 Accession Convention has entered into force in accordance with Article 16 of that Convention, as the case might be<br><br>*"Lugano Contracting State"* means–<br><br>(a) one of the original parties to the Lugano Convention, that is to say Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, the Hellenic Republic, Iceland, the Republic of Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom; or<br><br>(b) a party who has subsequently acceded to that Convention, that is to say, Poland,<br><br>being a State in relation to which that Convention has taken effect in accordance with paragraph 3 or 4 of Article 61. |
| 1 March 2002<br>-<br>30 June 2007 | In this Act—<br><br>"*Contracting State*", without more, in any provision means —<br><br>(a) in the application of the provision in relation to the Brussels Conventions, a Brussels Contracting State; and<br><br>(b) in the application of the provision in relation to the Lugano Convention, a Lugano Contracting State;<br><br>"*Brussels Contracting State*" means Denmark (which is not bound by the Regulation, but was one of the parties acceding to the 1968 Convention under the Accession Convention);<br><br>"*Lugano Contracting State*" means–<br><br>(a) one of the original parties to the Lugano Convention, that is to say Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, the Hellenic Republic, Iceland, the Republic of Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom; or<br><br>(b) a party who has subsequently acceded to that Convention, that is to say, Poland,<br><br>being a State in relation to which that Convention has taken effect in accordance with paragraph 3 or 4 of Article 61 |
| 1 July 2007<br>-<br>31 December 2009 | In this Act—<br><br>"*Contracting State*", without more, in any provision means —<br><br>(a) in the application of the provision in relation to the Brussels Conventions, a Brussels Contracting State; and |

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| | (b) in the application of the provision in relation to the Lugano Convention, a Lugano Contracting State;<br>"*Brussels Contracting State*" means a state which is one of the original parties to the 1968 Convention or one of the parties acceding to that Convention under the Accession Convention, or under the 1982 Accession Convention, or under the 1989 Accession Convention, but only with respect to any territory–<br>(a) to which the Brussels Conventions apply; and<br>(b) which is excluded from the scope of the Regulation pursuant to Article 299 of the Treaty establishing the European Community;<br>"*Lugano Contracting State*" means–<br>(a) one of the original parties to the Lugano Convention, that is to say Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, the Hellenic Republic, Iceland, the Republic of Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom; or<br>(b) a party who has subsequently acceded to that Convention, that is to say, Poland,<br>being a State in relation to which that Convention has taken effect in accordance with paragraph 3 or 4 of Article 61 |
| 1 January 2010<br>-<br>30 September 2015 | "*Contracting State*", without more, in any provision means —<br>(a) in the application of the provision in relation to the Brussels Conventions, a Brussels Contracting State; and<br>(b) in the application of the provision in relation to the Lugano Convention, a State bound by the Lugano Convention;<br>"*Brussels Contracting State*" means a state which is one of the original parties to the 1968 Convention or one of the parties acceding to that Convention under the Accession Convention, or under the 1982 Accession Convention, or under the 1989 Accession Convention, but only with respect to any territory–<br>(a) to which the Brussels Conventions apply; and<br>(b) which is excluded from the scope of the Regulation pursuant to Article 299 of the Treaty establishing the European Community;<br>[…]<br>"*State bound by the Lugano Convention*" in any provision, in the application of that provision in relation to the Lugano Convention has the same meaning as in Article 1(3) of that Convention |
| 1 October 2015<br>- | In this Act— |

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| 30 December 2020 | "*2005 Hague Convention State*", in any provision, in the application of that provision in relation to the 2005 Hague Convention, means a State bound by that Convention<br><br>...<br><br>*"Contracting State"*, without more, in any provision means —<br><br>(a) in the application of the provision in relation to the Brussels Conventions, a Brussels Contracting State;<br><br>(b) in the application of the provision in relation to the Lugano Convention, a State bound by the Lugano Convention; and<br><br><u>(c) in the application of the provision in relation to the 2005 Hague Convention, a 2005 Hague Convention State;</u><br><br>"*Brussels Contracting State*" means a state which is one of the original parties to the 1968 Convention or one of the parties acceding to that Convention under the Accession Convention, or under the 1982 Accession Convention, or under the 1989 Accession Convention, but only with respect to any territory–<br><br>(a) to which the Brussels Conventions apply; and<br><br>(b) which is excluded from the scope of the Regulation pursuant to Article 299 of the Treaty establishing the European Community;<br><br>[…]<br><br>"*State bound by the Lugano Convention*" in any provision, in the application of that provision in relation to the Lugano Convention has the same meaning as in Article 1(3) of that Convention |
| 31 December 2020<br><br>-<br><br>30 June 2025 | In this Act—<br><br>[…]<br><br>"*Contracting State*", without more, in any provision means —<br><br>~~(a)~~<br><br>~~(b)~~<br><br>(c) in the application of the provision in relation to the 2005 Hague Convention, a 2005 Hague Convention State |
| 1 July 2025 onwards | In this Act—<br><br>[…] |

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| | "*Contracting State*", without more, in any provision means —<br>(c) in the application of the provision in relation to the 2005 Hague Convention, a 2005 Hague Convention State; and<br>(d) in the application of the provision in relation to the 2019 Hague Convention, a 2019 Hague Convention State. |