

Impact of CJEU case on asymmetric jurisdiction clauses in bond documentation

On 27 February 2025, the Court of Justice of the European Union (CJEU) handed down its judgment in the *Lastre SpA v. Agora SARL* case. In its [decision](#), the CJEU held that asymmetric EU jurisdiction clauses are only valid under EU law if they designate with sufficient precision the alternative jurisdictions in which proceedings may be brought.

Asymmetric jurisdiction clauses are widely used in the international debt capital markets (even though their validity in the EU has been uncertain due to various cases). These asymmetric clauses typically require issuers to refer disputes to a designated court but give the dealers and bondholders the choice to bring proceedings in any competent court. Following on from this judgment:

- Parties with EU law governed asymmetric jurisdiction clauses will want to consider the impact of this judgment on the wording of the clause.
- Asymmetric jurisdiction clauses under English governing law designating the English courts are not directly impacted by the decision, but the court's findings may have a bearing on how Member State courts assess the validity of these clauses. For example, for EU issuers submitting to English courts under English governing law

documents, a local law opinion is typically required as to (i) effectiveness of the submission to English courts, and (ii) an English court judgment being enforceable under local law. The impact (if any) of the judgment on these related legal issues and how they are addressed in local law opinions, as well as the consequent potential impact on the drafting of the English jurisdiction clause, is still being worked out in different Member States, and views may vary among law firms.

ICMA is aware that this issue has impacted recent deals, and the concerns raised by this judgment have been discussed by ICMA underwriter members. However, there is not likely to be an ICMA recommendation (certainly not in the near future), as the judgment's impact is still being analysed and assessed in each Member State. Nuanced decision making will need to take place on a transaction-by-transaction basis taking into account the specific fact pattern at hand and the relevant jurisdictions in question in order to decide what the best option is. Options include (i) narrowing the jurisdictions in the flexible limb of the asymmetric jurisdiction clause and (ii) moving to a mutually exclusive clause. Parties should seek legal advice as appropriate.



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