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**INspIRE – European Integration –  
Rule of Law and Enforcement**

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**Court of Cassation – Commercial Chamber (Cour de cassation)  
Public hearing, 20 September 2017, No. of final appeal: 16-14812  
– Proutheau –**

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**Procedural History**

Preceding judgement *Cour d'appel de Paris, Judgment of 15 December 2015*

**Facts:**

On the sole ground of appeal:

Considering that, according to the appealed judgment (Court of Appeal of Paris, 15 December 2015) delivered after a challenge of jurisdiction, the Belgian company AVR BVBA (the AVR company) – which designs and manufactures farming equipment – had been conducting business with the Établissements Proutheau-Laboute company (the Proutheau company), a distributor, since 2003; as this business relationship ended in January 2010, the Proutheau company summoned the AVR company before the Paris commercial court, claiming for compensation based on article L. 442-6, I, 5° of the Commercial Code; the AVR company objected on grounds of a lack of jurisdiction, arguing that Belgian courts had jurisdiction, whereas the Paris commercial court ruled that it had jurisdiction;



## **Rationale:**

Considering that the Proutheau company criticises the challenged judgment for having declared the lack of jurisdiction of the Paris commercial court and for having invited the parties to seize the adequate court, whereas, according to the ground of appeal:

1/ compensation for the abrupt termination of an established business relationship – at least when it is not regulated by a framework contract – is a tort, both in French and in European laws; in the present case, the Court of Appeal observed that the business relationship between the parties was not regulated by such a framework contract; by considering – in order to declare that the Paris commercial court does not have jurisdiction – that the claim for compensation of the Établissements Proutheau-Laboute company against the AVR BVBA company on grounds of the termination of an established business relationship was a contractual matter, the Court of Appeal violated Article L. 442-6, I, 5° of the Commercial Code and Article 5, no. 3, of the EC Regulation no. 44/2001 of 22 December 2000;

2/ the Établissements Proutheau-Laboute company's legal action was based on the abrupt termination of an established business relationship by the AVR BVBA company and not on a breach of contract; by ruling – in order to assert the lack of jurisdiction – that the “breach of contractual relationships” was a contractual matter as defined in Article 5, no. 1, of Regulation no. 44/2001, the Court of Appeal overlooked the terms of the dispute and violated Articles 4 and 5 of the Code of Civil Procedure;

But under Article 7 (2) of the EU Regulation no. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of decisions in civil and commercial matters – as interpreted by the European Court of Justice (ECJ, 14 July 2016, C-196/15 – Granolo SpA vs Ambroisi Emmi France SA), – an action for damages founded on an abrupt termination of a long-standing business relationship is not a matter relating to tort, delict or quasi-delict within the meaning of that regulation if a tacit contractual relationship existed between the parties based on a body of consistent evidence, which may include in particular the existence of a long-standing business relationship, the good faith between the parties, the regularity of the transactions and their development over time expressed in terms of quantity and value, any agreements as to prices charged and/or discounts granted, and the correspondence exchanged; the judgment notes that for several years – from 2003 to 2010 – the AVR company sold farming equipment to the Proutheau company which distributed it in France; it also stresses that article 5 of the general terms of the business contract established between the parties, entitled “Place of delivery”, states that “the goods are supposed to be delivered from our stores before shipping”; following these observations and assessments which bring to light the existence of a tacit contractual relationship, the Court of Appeal – which did not overlook the terms of the dispute – was legally entitled to rule that the legal action was a contractual matter and – the goods being delivered



to Belgium – declared that the Paris Commercial Court lacked jurisdiction; the ground of appeal is unfounded;

**Holding:**

FOR THESE REASONS:

The appeal is DISMISSED.