Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

11 December 2025*

(Reference for a preliminary ruling – Rome Convention on the law applicable to contractual obligations – Article 6 – Contract of employment – Choice made by the parties – Mandatory rules of the law which would be applicable in the absence of choice – Determination of the law applicable – Habitual place of work – Change of habitual place of work in the course of the employment relationship – Contract of employment more closely connected with another country – Criteria for assessment – Account to be taken of the most recent habitual place of work)

In Case C-485/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France), made by decision of 10 July 2024, received at the Court on 10 July 2024, in the proceedings

Locatrans Sàrl

v

ES,

THE COURT (First Chamber),

composed of F. Biltgen, President of the Chamber, I. Ziemele, A. Kumin (Rapporteur), S. Gervasoni and M. Bošnjak, Judges,

Advocate General: R. Norkus,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Locatrans Sàrl, by O. Coudray, M. Grévy and G. Thouvenin, avocats,

– ES, by A. Lyon-Caen, T. Lyon-Caen and F. Thiriez, avocats,

– the French Government, by B. Dourthe and M. Guiresse, acting as Agents,

* Language of the case: French.

– the Czech Government, by A. Pagáčová, M. Smolek and J. Vláčil, acting as Agents,

– the European Commission, by S. Noë and W. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 July 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 3 and 6 of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1; 'the Rome Convention').

2 The request has been made in proceedings between Locatrans Sàrl and ES, concerning various claims for compensation made by ES against Locatrans, his former employer, following the termination of his contract of employment.

Legal context

The Rome Convention

3 Article 3(1) of the Rome Convention provides:

'A contract shall be governed by the law chosen by the parties. The choice must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or a part only of the contract.'

4 Article 6 of the Rome Convention, entitled 'Individual employment contracts', provides:

'1. Notwithstanding the provisions of Article 3, in a contract of employment a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under paragraph 2 in the absence of choice.

2. Notwithstanding the provisions of Article 4, a contract of employment shall, in the absence of choice in accordance with Article 3, be governed:

(a) by the law of the country in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country; or

(b) if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated;

unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.'

5 Article 2 of the First Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1989 L 48, p. 1), provides:

‘Any of the courts referred to below may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning interpretation of the provisions contained in the instruments referred to in Article 1 if that court considers that a decision on the question is necessary to enable it to give judgment:

…

(b) the courts of the Contracting States when acting as appeal courts.’

The Rome I Regulation

6 Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6; ‘the Rome I Regulation’) replaced the Rome Convention. That regulation applies to contracts concluded as of 17 December 2009.

7 Article 8 of the Rome I Regulation, headed ‘Individual employment contracts’, provides:

‘1. An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.

2. To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.

3. Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.

4. Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply.’

The Brussels Convention

8 Article 5 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), as amended by the successive conventions on the accession of new Member States to that convention ('the Brussels Convention'), provides:

'A person domiciled in a Contracting State may, in another Contracting State, be sued:

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question; in matters relating to individual contracts of employment, this place is that where the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, the employer may also be sued in the courts for the place where the business which engaged the employee was or is now situated;

…'

The Brussels I Regulation

9 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1; 'the Brussels I Regulation') has replaced the Brussels Convention.

10 Article 19 of that regulation provides:

'An employer domiciled in a Member State may be sued:

1. in the courts of the Member State where he is domiciled; or

2. in another Member State:
   (a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or
   (b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.'

The Brussels Ia Regulation

11 The Brussels I Regulation was repealed and replaced by 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 (OJ 2012 L 351, p. 1; 'the Brussels Ia Regulation'). Article 19 of the Brussels I Regulation became Article 21 of the Brussels Ia Regulation.

The dispute in the main proceedings and the question referred for a preliminary ruling

12 Under a contract of employment concluded on 15 October 2002, ES was employed as a driver by Locatrans, a transport company established in Bettembourg (Luxembourg), for a monthly working time of 166 hours. The contract of employment stipulated that the law applicable was Luxembourg law and that the countries essentially covered by the transport performed by ES were Germany, the Benelux countries, Italy, Spain, Portugal and Austria.

13 By letter of 14 January 2014, Locatrans informed ES of its decision to reduce his number of weekly working hours to 35 hours, for a total of 151.55 hours per month from 16 July 2014. ES objected to that change.

14 By letter of 31 March 2014, Locatrans informed ES that, after analysing his employment activity over the last 18 months, it had found that he had carried out a substantial part of that activity, namely over 50%, in France and that, consequently, it was obliged to register him with the French social security system.

15 By letter of 17 April 2014, Locatrans confirmed that ES had an offer of employment in a French company and informed him that he would no longer form part of the staff of Locatrans from 16 July 2014 on account of his refusal to agree to the reduction in his working time.

16 On 8 January 2015, ES brought proceedings before the conseil de prud'hommes de Dijon (Labour Tribunal, Dijon, France) seeking to challenge the termination of his contract of employment and to obtain payment of certain sums by way of compensation.

17 By judgment of 4 April 2017, that tribunal dismissed the claims brought by ES on the grounds that Luxembourg law was applicable to the performance and termination of his contract of employment, that his dismissal was clear and unambiguous, and that there was no reason to reclassify it as wrongful termination.

18 ES brought an appeal against that decision before the cour d'appel de Dijon (Court of Appeal, Dijon, France) which, by judgment of 2 May 2019, set aside that decision.

19 The cour d'appel de Dijon (Court of Appeal, Dijon) observed that the parties to the contract at issue has chosen to apply Luxembourg law to the employment relationship but that, in the letter of 31 March 2014 referred to in paragraph 14 of the present judgment, Locatrans had acknowledged that ES was carrying out most of his work in France, which was confirmed by ES. Having regard to Article 6 of the Rome Convention, that court found that the choice of Luxembourg law made by the parties could not have the result of depriving ES of the protection afforded to him by the mandatory rules of French law, in particular the provisions concerning the amendment and termination of employment contracts.

20 Consequently, the cour d'appel de Dijon (Court of Appeal, Dijon) reclassified the termination of the employment contract as dismissal, held that the dismissal was not based on a genuine and serious reason, and ordered Locatrans to pay ES certain sums by way of compensation.

21 Locatrans brought an appeal against that judgment before the Cour de cassation (Court of Cassation, France), the referring court.

22 That court recalls that Article 6(1) of the Rome Convention provides that the choice of law made by the parties applicable to the employment contract cannot have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable to the contract in the absence of such a choice. It observes, moreover, that Article 6(2) sets out the connecting criteria of the employment contract on the basis of which the *lex contractus* is to be determined, in the absence of a choice made by the parties; the criterion laid down in Article 6(2)(a) is that of the country where the employee 'habitually carries out his work'.

23 The referring court also states that, in its judgment of 15 March 2011, *Koelzsch* (C-29/10, EU:C:2011:151, paragraph 50), the Court of Justice ruled that the latter provision was to be interpreted as meaning that, in a situation in which an employee carries out his activities in more than one Contracting State, the country in which the employee habitually carries out his work in performance of the contract, within the meaning of that provision, is that in which or from which, in the light of all the factors which characterise that activity, the employee performs the greater part of his obligations towards his employer.

24 In that judgment, the Court also referred to its case-law concerning the interpretation of Article 5(1) of the Brussels Convention, which, in the referring court's view, demonstrates an intention on the part of the Court to give an unequivocal interpretation of the connecting criteria concerning conflict of jurisdiction and conflict of laws.

25 However, in so far as concerns Article 5(1), the Court ruled, in its judgment of 27 February 2002, *Weber* (C-37/00, EU:C:2002:122), that in the case of an employment contract in the performance of which the employee carries out the same activities for his employer in more than one Contracting State, the full duration of the employment relationship must, in principle, be taken into account in order to determine the place where the person concerned habitually carried out his work, within the meaning of that provision. That said, weight will be given to the most recent period of work where the employee, after having worked for a certain time in one place, then takes up his or her work activities on a permanent basis in a different place, since the clear intention of the parties is for the latter place to become a new habitual place of work within the meaning of Article 5(1) of the Brussels Convention.

26 In the light of that case-law, the referring court asks whether, in the present case, in order to determine the law which is applicable in the absence of a choice made by the parties, it is necessary for the whole duration of the employment relationship to be taken into account in order to determine the place where the person concerned habitually carried out his or her work, within the meaning of Article 6(2)(a) of the Rome Convention, or whether the most recent period of work alone should be used.

27 According to that court, even if the criterion of the last place where the employee habitually carried out his or her work is relevant for the purposes of determining the court before which the employee may bring proceedings, in that it enables the employee to bring proceedings at least expense, doubts remain as to whether such an approach should also be taken in order to determine the law applicable to the contract of employment in the absence of a choice made by the parties, since such an approach could, in particular, lead to a single employment contract being successively subject to different mandatory rules depending on changes occurring as to the employee's place of work.

28 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Are Articles 3 and 6 of the [Rome Convention] to be interpreted as meaning that, in the case where the employee carries out the same activities for his [or her] employer in more than one Contracting State, the full duration of the employment relationship should, in order to determine the law which would be applicable in the absence of a choice made by the parties, be taken into account in order to determine the place where the person concerned habitually carried out his [or her] work or should the most recent period of work be taken into account where the employee, having worked for a certain time in one place, then carries out his [or her] activities in a lasting manner in a different place which is clearly intended by the parties to become a new habitual place of work?'

Consideration of the question referred

29 As a preliminary point, it should be noted that ES, without expressly raising a plea of inadmissibility of the question referred for a preliminary ruling, disputes the factual premiss on which that question is based, claiming that his place of work did not, in fact, change over the course of his employment relationship. On the contrary, he was called upon to take up his transportation activities in several places albeit in a context of a significant connection with France, and Locatrans had ultimately merely confirmed that factual situation on termination of his contract of employment. The question is therefore irrelevant.

30 In that connection, it should be borne in mind that, according to settled case-law, Article 267 TFEU establishes a procedure for direct cooperation between the Court and the courts of the Member States. In that procedure, which is based on a clear separation of functions between the national courts and the Court, any assessment of the facts of the case is a matter for the national court, which must determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court, whilst the Court is empowered to give rulings on the interpretation or the validity of an EU provision only on the basis of the facts which the national court puts before it (see, to that effect, judgments of 16 March 1978, *Oehlschläger*, 104/77, EU:C:1978:69, paragraph 4, and of 4 October 2024, *Schrems (Communication of data to the general public)*, C-446/21, EU:C:2024:834, paragraph 42 and the case-law cited).

31 Consequently, an answer should be given to the question referred, taking into account the facts on which that question is based, as set out by the referring court.

32 By its question, the referring court is asking, in essence, whether Articles 3 and 6 of the Rome Convention must be interpreted as meaning that, where an employee, after having worked for a certain time in one place, is called upon to take up his or her activities in a different place, which is intended to become the new habitual place of work for that employee, account should be taken of that latter place in determining the law which would be applicable in the absence of a choice made by the parties.

33 In order to answer that question, it must first of all be recalled that, in accordance with the general rule contained in Article 3 of the Rome Convention, the contract is to be governed by the law chosen by the parties.

34 Article 6 of the Rome Convention lays down special conflict rules relating to individual contracts of employment which derogate from that general rule: first, in Article 6(1), by limiting the parties' freedom of choice of law and, second, in Article 6(2), by laying down the criteria for determining that law in the absence of such a choice.

35 Thus, under Article 6(1), in a contract of employment a choice of law made by the parties is not to have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable, in the absence of choice, pursuant to Article 6(2).

36 The latter paragraph sets out the connecting factors contained in the contract of employment on the basis of which the *lex contractus* is to be determined, in the absence of a choice made by the parties. Nevertheless, it follows from the reference made by Article 6(1) of the Rome Convention to Article 6(2) thereof that the factors referred to by the latter paragraph are also relevant where the parties have chosen the law applicable to the contract. Even in such a scenario, those factors in fact serve to determine which law that is, so as to guarantee, in accordance with Article 6(1) of the Rome Convention, the protection for workers afforded by the mandatory rules of the law which would be applicable by virtue of those factors. The application of those factors can therefore result in the application of a law other than that chosen by the parties to the contract.

37 Those factors are (i) the country in which the employee 'habitually carries out his work', referred to in Article 6(2)(a) of the Rome Convention and, in the absence of such a place, (ii) 'the place of business through which he was engaged', as provided in Article 6(2)(b) of that convention.

38 Moreover, according to the last limb of Article 6(2), those two connecting factors are not applicable where it appears 'from the circumstances as a whole that the employment contract is more closely connected with another country, in which case the contract will be governed by the law of that country'.

39 Accordingly, when a court is called upon to apply Article 6 of the Rome Convention, it must first determine the applicable law by reference to the specific connecting factors under Article 6(2)(a) and (b), which satisfy the general requirement of predictability of the law and therefore of legal certainty in contractual relationships (judgment of 12 September 2013, *Schlecker*, C-64/12, EU:C:2013:551, paragraph 35 and the case-law cited).

40 As regards, in that connection, Article 6(2)(a) of the Rome Convention, the Court has ruled that the criterion of the country in which the employee 'habitually carries out his work', set out in that point, must be given a broad interpretation, while the criterion of 'the place of business through which [the employee] was engaged', set out in Article 6(2)(b) thereof, ought to apply in cases where the court dealing with the case is not in a position to determine the country in which the work is habitually carried out (judgments of 15 March 2011, *Koelzsch*, C-29/10, EU:C:2011:151, paragraph 43, and of 15 December 2011, *Voogsgeerd*, C-384/10, EU:C:2011:842, paragraph 35).

41 Thus, the factor in Article 6(2)(a) of the Rome Convention can apply also in a situation, such as that at issue in the main proceedings, where the employee carries out his activities in more than one Contracting State, if it is possible, for the court seised, to determine the State with which the work has a significant connection (judgments of 15 March 2011, *Koelzsch*, C-29/10, EU:C:2011:151, paragraph 44, and of 15 December 2011, *Voogsgeerd*, C-384/10, EU:C:2011:842, paragraph 36).

42 In such a case, the factor of the country in which the work is habitually carried out must be given a broad interpretation and be understood as referring to the place in which or from which the employee actually carries out his or her working activities and, in the absence of a centre of activities, to the place where he or she carries out the majority of his or her activities (judgments of 15 March 2011, *Koelzsch*, C-29/10, EU:C:2011:151, paragraph 45, and of 15 December 2011, *Voogsgeerd*, C-384/10, EU:C:2011:842, paragraph 37).

43 It should, however, be observed that the cases that gave rise to the judgments of 15 March 2011, *Koelzsch* (C-29/10, EU:C:2011:151), and of 15 December 2011, *Voogsgeerd* (C-384/10, EU:C:2011:842), each concerned an employee who had, during the entirety of his employment relationship, carried out his activities in more than one Contracting State and in respect of whom the connecting factor served to determine a single habitual place of work. By contrast, having regard to the factual context as described by the referring court, the case in the main proceedings concerns the situation of an employee who also carries out his activities in several States, although for whom the habitual place of work moved to the territory of another Contracting State during the most recent period of the performance of his contract of employment.

44 As regards a situation such as that referred to in the preceding paragraph, it should be noted that the wording of Article 6(2)(a) of the Rome Convention provides no clarification as to the period of the employment relationship to be relied upon in order to determine the country in which the employee habitually carries out his work, for the purposes of that provision. In the absence of such clarification, it is therefore necessary, in making that determination, to take the employment relationship into consideration as a whole.

45 However, where, over the course of the employment relationship as a whole, a change has occurred with regard to the habitual place of work, no country, within the meaning of Article 6(2)(a) of the Rome Convention, can be identified.

46 It is in that context that the referring court asks whether the factor of the country in which the employee 'habitually carries out his work', for the purposes of Article 6(2)(a) of the Rome Convention, can be interpreted in a manner similar to the factor of 'the place where the employee habitually carries out his work', set out in Article 5(1) of the Brussels Convention, as interpreted by the Court of Justice in its judgment of 27 February 2002, *Weber* (C-37/00, EU:C:2002:122).

47 The referring court states that, in the latter connection, the Court has ruled that in the case of contracts of employment under which an employee performs for his or her employer the same activities in more than one Contracting State, it is necessary, in principle, to take account of the whole of the duration of the employment relationship in order to identify the place where the employee works, within the meaning of Article 5(1) (judgment of 27 February 2002, *Weber*, C-37/00, EU:C:2002:122, paragraph 58). However, weight will be given to the most recent period of work where the employee, after having worked for a certain time in one place, then takes up his work activities on a permanent basis in a different place, since the clear intention of the parties is for the latter place to become a new habitual place of work within the meaning of Article 5(1) of the Brussels Convention (judgment of 27 February 2002, *Weber*, C-37/00, EU:C:2002:122, paragraph 54).

48 In that regard, it is admittedly true that, in paragraph 33 of its judgment of 15 March 2011, *Koelzsch* (C-29/10, EU:C:2011:151), the Court referred to the interpretation of Article 5(1) of the Brussels Convention for the purposes of interpreting Article 6(2) of the Rome Convention.

49 While it is certainly desirable that the material scope and provisions of the Rome Convention should be consistent with the Brussels Convention, it is not necessary to interpret those provisions in the light of those of the Brussels Convention (see, to that effect, judgment of 3 October 2019, *Petruchová*, C-208/18, EU:C:2019:825, paragraph 63 and the case-law cited).

50 The Rome Convention and the Brussels Convention in fact pursue different objectives. While the provisions of the Rome Convention are to apply, in accordance with Article 1(1) thereof, in situations involving a conflict of laws, to contractual obligations, in order to determine the material law applicable, the Brussels Convention establishes rules for determining the court having jurisdiction to rule on disputes in civil and commercial matters.

51 By the same token, even though, in the field of individual employment contracts, both conventions lay down rules intended to protect employees as the weaker party in the contractual relationship, it is not always possible to transpose the interpretation of the provisions of one convention to those of the other.

52 In particular, it is not possible to interpret the criterion of the country in which the employee 'habitually carries out his work', within the meaning of Article 6(2)(a) of the Rome Convention, in a manner similar to the interpretation given by the Court in its judgment of 27 February 2002, *Weber* (C-37/00, EU:C:2002:122), to the criterion of the 'place where the employee habitually carries out his work', within the meaning of Article 5(1) of the Brussels Convention.

53 It should be noted that Article 5(1) became Article 19 of the Brussels I Regulation, before becoming Article 21 of the Brussels Ia Regulation; the latter two provisions refer expressly to both 'the place where the employee habitually carries out his work' and 'the last place where he did so'. By contrast, as for Article 6 of the Rome Convention, this became Article 8 of the Rome I Regulation, which does not make such a distinction since the EU legislature refrained from aligning that provision with that under Article 19 of the Brussels I Regulation.

54 In so far as it is not possible to determine the country in which the employee habitually carries out his work, within the meaning of Article 6(2)(a) of the Rome Convention, reference must therefore be made to the factor of 'the place of business through which he was engaged' referred to in Article 6(2)(b) of the Rome Convention, which is situated in Bettembourg, in the present case.

55 However, and in accordance with the last limb of Article 6(2) of the Rome Convention, where it is apparent from the circumstances as a whole that the contract of employment is more closely connected with another country, it is for the national court to disregard the connecting factors referred to in Article 6(2)(a) and (b) of the Rome Convention and to apply the law of that other country (see judgment of 12 September 2013, *Schlecker*, C-64/12, EU:C:2013:551, paragraph 36). The same applies where the parties have, as in the present case, made the choice of law in the contract, if that choice deprives the employee of the protection afforded by the mandatory rules of that other law.

56 To that end, the referring court must take account of all the elements which define the employment relationship and single out one or more as being, in its view, the most significant. These include the country where the employee pays taxes and contributions relating to the income from his activity and that in which he is covered by the social security scheme and the various pension, sickness insurance and invalidity schemes. The national court must also take

account of all the circumstances of the case, such as the parameters relating to salary determination and other working conditions (see, to that effect, judgment of 12 September 2013, *Schlecker*, C-64/12, EU:C:2013:551, paragraphs 40 and 41).

57 In that connection, the place where the employee has carried out his work during the most recent period of the performance of his contract of employment, which place is intended to become a new habitual place of work, constitutes a relevant factor to be taken into consideration as part of the examination of all the circumstances to be carried out under the last limb of Article 6(2) of the Rome Convention.

58 That interpretation of the last limb of Article 6(2) of the Rome Convention is in line with the objectives pursued by that provision and by that convention as a whole.

59 First, in so far as the objective of Article 6 of the Rome Convention is to guarantee adequate protection for the employee, that provision must ensure that the law applied to the employment contract is the law of the country with which that contract is most closely connected (judgment of 12 September 2013, *Schlecker*, C-64/12, EU:C:2013:551, paragraph 34).

60 Taking into consideration, amongst the relevant factors in the context of the examination of all of the circumstances carried out under the last limb of Article 6(2) of that convention, the place where the employee has carried out his or her work on a permanent basis during the most recent period of the performance of his or her contract of employment, which place is intended to become a new habitual place of work, is in line with that objective.

61 The objective of the Rome Convention as a whole is to raise the level of legal certainty by fortifying confidence in the stability of the relationships between the parties to the contract, which presupposes that the system for determining the applicable law is clear and that that law can be predicted with some degree of certainty (see, to that effect, judgment of 6 October 2009, *ICF*, C-133/08, EU:C:2009:617, paragraph 44).

62 In that regard, it should be observed that the application of the connecting factor provided for in the last limb of Article 6(2) of the Rome Convention must, in accordance with the requirement of legal certainty and foreseeability, be based on objective evidence. The fact that the employee, having carried out his or her work for a certain period in a specific place, then takes up his or her work activities on a permanent basis in a different place, which is intended to become a new habitual place of work, constitutes just such evidence.

63 In the present case, it is thus for the referring court to determine whether, in accordance with the last limb of Article 6(2) of the Rome Convention, it follows from all of the circumstances that the contract of employment at issue in the main proceedings is more closely connected with France than with Luxembourg, the law of which was chosen by the parties as the law applicable to that contract and on the territory of which the place of business through which ES was engaged is situated. In the context of that examination, it will be necessary to take into consideration all the factors that characterise the employment relationship, such as the most recent habitual place of work of ES and the obligation to pay social security contributions in France.

64 In the light of all the foregoing considerations, the answer to the question referred is that Articles 3 and 6 of the Rome Convention, and in particular the last limb of Article 6(2), must be interpreted as meaning that where an employee, after having worked for a certain time in one place, is called upon to take up his or her work activities in a different place, which is intended to

become the new habitual place of work for that employee, account should be taken of that latter place, in the context of the examination of all the circumstances, with a view to determining the law which would be applicable in the absence of a choice made by the parties.

Costs

65 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Articles 3 and 6 of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, and in particular the last limb of Article 6(2), must be interpreted as meaning that where an employee, after having worked for a certain time in one place, is called upon to take up his or her work activities in a different place, which is intended to become the new habitual place of work for that employee, account should be taken of that latter place, in the context of the examination of all the circumstances, with a view to determining the law which would be applicable in the absence of a choice made by the parties.

[Signatures]