To the Pre-Trial Judge of the
Judicial Court of Paris

4ème Chamber, 1ère Section
RG n°21/11358
Hearing of 6 December 2022
Submissions served on 5 December 2022 by AVR

INCIDENTAL FINDINGS

FOR :

BlackRock Fund Advisors, a company incorporated under the laws of the United States, having its registered office at 400 Howard Street San Francisco CA 94105 (United States), in the person of its legal representatives domiciled in that capacity at the said office,

Defendant,

Represented by: Diego de Lammerville Attorney at law, Paris Bar (K 112) Clifford Chance Europe LLP
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AGAINST :

Mr Murat Hakan UZAN, born on 30 May 1967, in Istanbul (Turkey), of Turkish nationality, residing at 32 avenue Foch 75016 Paris (France),

Mr Cem Cengiz UZAN, born on 26 December 1960, in Istanbul (Turkey), of Turkish nationality, residing at 32 avenue Foch 75016 Paris (France),

Applicants,

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Defendants

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PLEASE THE PRE-TRIAL JUDGE

This dispute arises in the context of a long-running litigation between Messrs Murat Hakan UZAN and Cem Cengiz UZAN (the "**Claimants**" or "**Messrs UZAN**"), two Turkish businessmen, and the Turkish Savings Deposit Guarantee Fund "*Tasarruf Mevduatı Sigorta Fonu*" ("**TMSF")** and the US-based Motorola Solutions Credit Company LLC ("**Motorola**").

On 19 July 2021, the Plaintiffs filed a lawsuit in the Paris Court against these two entities, as well as against fifty other defendants. They allege that they have been victims of an "*asset grab*" of their companies resulting in a financial loss estimated at the astronomical sum of approximately **68 billion US dollars** (the "**Summons**").

To its surprise, BlackRock, a US-based multinational investment management company, discovered that it was one of the many defendants, even though it had never been involved in the dispute, which has been going on for almost **20 years**.

The Plaintiffs have addressed this Summons to a company called "BlackRock" at "400 Howard Street San Francisco CA 94105" even though no such entity exists at that address. It is the company called "BlackRock Fund Advisors" that is domiciled there.

This inaccuracy testifies to the non-serious nature of the action initiated by Messrs UZAN, which accumulates inconsistencies.

Among the various awards sought, the Claimants seek an order *in solidum* against TMSF, Motorola and BlackRock Fund Advisors in the amounts of **US$42,831,896** and **US$32,172,300, for** a total of **US$75,004,196**.

BlackRock Fund Advisors (nor any BlackRock entity) was ever contacted by the Plaintiffs regarding any harm prior to the service of this Summons:

- the Summons does not make it possible to understand what is alleged against BlackRock Fund Advisors;
- the French courts are manifestly incompetent;
- the action is inadmissible, in particular time-barred.

Before any defence on the merits, BlackRock Fund Advisors intends to raise *in limine litis* the lack of jurisdiction of the French courts and at the same time the irregularity of the document initiating the proceedings, as well as, in any event, the inadmissibility of the action against it.

1. PRESENTATION OF THE PARTIES AND FACTS

1.1 The Parties

1.1.1 BlackRock Fund Advisors

BlackRock Fund Advisors is a U.S. investment advisory firm headquartered in San Francisco, California1 . It is a subsidiary of BlackRock, Inc. a multinational asset management company incorporated in 1988 and headquartered in New York2.

BlackRock, Inc. and BlackRock Fund Advisors will hereinafter be jointly referred to as the "**BlackRock Entities**".

1.1.2 Messrs UZAN

Murat Hakan Uzan and Cem Cengiz Uzan are both Turkish businessmen.

In 2010, the press reported that Mr Cem Cengiz UZAN, then on the run, was sentenced for "corruption" to 23 years imprisonment by the Turkish courts3.

1.2 Background

1.2.1 Recovery measures taken by TMSF

Reference is made here to the submissions served on 12 September 2022 by the co-defendant TMSF in these proceedings (the "**TMSF Submissions**").

TMSF reports that in the summer of 2003, a massive fraud is found in the Turkish private bank *Türkiye İmar Bankası T.A.Ş.* (the "**Imar Bank"**)[4].

Bank Imar had been controlled since 1984 by the UZAN family, then considered one of the most powerful family "*empires"* in Turkey5.

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1 **Exhibit 1:** Extract from the BlackRock Fund Advisors register.

2 **Exhibit 2**: Orbis (BlackRock Fund Advisors).

3 **Exhibit 3**: AFP, "23 ans de prison pour un Turc en fuite", *Le Figaro*, 15 April 2010. See also **TMSF Exhibit 34**, Judgment of 15 April 2010 of the 7ème Correctional Chamber of the Istanbul Court of First Instance; TMSF Conclusions, §§ 54-56 ("[t]*hese convictions were confirmed by a judgment of the 5ème Criminal Chamber of the Court of Cassation of 28 September 2011, Case No. 2011/7664.* [...]"). In 2013, Cem Cengiz UZAN will be sentenced to 18 years, 5 months and 20 days imprisonment under another criminal procedure (**TMSF Exhibit No. 35**, Judgment of 29 March 2013, 8ème Istanbul Court of First Instance Correctional Chamber, p. 383).

4 TMSF Conclusions, §§ 7, 36 et seq.

5 **Exhibit 4:** Benoît Angelini, "La chute de l'empire familial turc Uzan", *Les Echos*, 21 August 2003.

The Turkish Banking Regulation and Supervision Agency (the "**BRSA"**) has reportedly uncovered a system of double accounting6 :

> "...] *the Bank hid more than 90% of the accumulated deposits and did not disclose this in its official statements and public balance sheets. As a result of these findings, it was noted that the difference between the actual and visible deposits on the assets side of the Bank is not reflected on the assets side of the balance sheets prepared by the Bank and made public and/or notified to the Banking Supervision and Regulation Agency. "*[7].

The authors of the ARSB report found that deposits collected by Banque Imar, but not declared in the official records, had been "*diverted* "[8].

Following this discovery, the ARSB withdrew Bank Imar's banking licence9 and it was placed under state supervision10 . Its management and control was transferred to TMSF - one of the Turkish government agencies - under Turkish law11.

Criminal proceedings have been initiated - including by TMSF, Bank Imar and ARSB12 - against the former directors and majority shareholders of Bank Imar (including Mr UZAN and certain members of the UZAN family) in the Istanbul courts13 .

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6 **Exhibit 4**: Benoît Angelini, "La chute de l'empire familial turc Uzan", *Les Echos*, 21 August 2003.

7 **TMSF Exhibit 31**, ARSB Report of 22 September 2003 (unofficial translation), p. 3; TMSF Conclusions, § 46.

8 **TMSF Exhibit 31**, ARSB Report of 22 September 2003 (unofficial translation), p. 43; TMSF Conclusions, § 47.

9 **TMSF Exhibit 27**, ARSB Resolution 1085 of 3 July 2003 (unofficial translation); TMSF Conclusions, § 41.

10 **Exhibit 5**: "Imar Bankasi: la banque privée turque a été placée vendredi sous tutelle de l'Etat", *Le Monde*, 5 July 2003.

11 TMSF Conclusions, §§ 41, 70 et seq. The legislative provisions relating to the functioning and powers of the TMSF are now set out in Turkish Banking Law No. 5411 of 19 October 2005 (which replaces Banking Law No. 4389 of 18 June 1999).

12 **TMSF Exhibit No. 33**, Judgment of 21 February 2006 of the 8th Correctional Chamber of the Istanbul Court of First Instance, No. 2004/1; **TMSF Exhibit No. 34**, Judgment of 15 April 2010 of the 7th Correctional Chamber of the Istanbul Court of First Instance, No. 2005/13; **TMSF Exhibit No. 35**, Judgment of 29 March 2013 of the 8th Correctional Chamber of the Istanbul Court of First Instance, No. 2008/10

13 TMSF Conclusions, §§ 50-57.

TMSF states that three judgments handed down by Turkish criminal courts have confirmed "*(i) the existence of the Imar Fraud; (ii) the amount of funds embezzled; (iii) the fact that this embezzlement took place with the active participation of members of the Uzan Family (including Kemal, Cem and Murat Uzan); and (iv) that the Imar Fraud benefited the Uzan Family and the Uzan Group* "[14].

An arrest warrant was issued for Mr Murat Hakan UZAN, who could not be arrested as he had fled abroad15 , and judgements sentenced Mr Cem Cengiz UZAN to 23 years and then more than 18 years in prison, notably for embezzlement16.

TMSF reports that in the second half of 2003, the Turkish authorities '*took a series of decisions*' to enable TMSF to repay most of the depositors of Bank Imar17 . The repayment was reportedly financed by "*funds provided by the* Turkish *Treasury*".18

TMSF would then have "*exercised the powers granted to it by law to recover the debts arising from these repayments (in accordance with the regime applicable to public debts under Banking Acts 4389 and 5411)* "[19].

On 24 December 2003, under its legal mandate, TMSF thus started the process of recovering the debts related to Bank Imar20 .

[14] TMSF Conclusions, § 57; **TMSF Exhibit No. 33**, Judgment of 21 February 2006 of the 8th Correctional Chamber of the Istanbul Court of First Instance, No. 2004/1; **TMSF Exhibit No. 34**, Judgment of 15 April 2010 of the 7th Correctional Chamber of the Istanbul Court of First Instance, No. 2005/13; **TMSF Exhibit No. 35**, Judgment of 29 March 2013 of the 8th Correctional Chamber of the Istanbul Court of First Instance, No. 2008/10

[15] **TMSF Exhibit 33**, Judgment of 21 February 2006 of the 8th Correctional Chamber of the Istanbul District Court, Case No. 2004/1, p. 2.

[16] **TMSF Exhibit 34**, Judgment of 15 April 2010 of the 7ème Correctional Chamber of the Istanbul Court of First Instance (sentencing Mr Cem Cengiz UZAN to 23 years imprisonment); **TMSF Exhibit 35**, Judgment of 29 March 2013 of the 8th Correctional Chamber of the Istanbul Court of First Instance (sentencing Mr Cem Cengiz UZAN to more than 18 years imprisonment), p. 383.

[17] TMSF Conclusions, §§ 59 et seq.

[18] TMSF findings, § 62.

[19] TMSF Conclusions, § 59; **TMSF Exhibit 18**, Banking Law No 4389 of 18 June 1999, Article 15(3); **TMSF Exhibit 14**, Banking Law No 5411 of 19 October 2005, Article 132.

[20] TMSF Conclusions, §§ 74 et seq.; **TMSF Exhibit 46**: TMSF Council Decision No. 673 of 24 December 2003.

This recovery took place under the Turkish Law No. 6183 on the Recovery of Public Debts[21] , which gives public administrations certain powers, including the power to seize and sell property, rights and assets belonging to natural and legal persons owing money[22] .

It is in this context that TMSF organised the auction of numerous assets and companies belonging to the UZAN family.

1.2.2 Auction sales

Between 2005 and 2008, at auctions (which received considerable publicity in the local and international press[23]), TMSF sold many assets and companies that had belonged to the UZAN family to various buyers.

In particular, between December 2005 and January 2006, TMSF allegedly arranged the following transactions involving several Turkish companies[24] :

- On December 26, 2005, Cimsa Çimento Sanayi ve Ticaret A.S ("**Cimsa**") acquired Standart Çimento San A.S. ("**Standart Çimento**");
- On 28 December 2005, Çimentaş İzmir Çimento Fabrikası Türk A.Ş. ("**Çimentaş İzmir"**) acquired the "*assets and b*usiness" Edirne Lalapaşa Çimento A.Ş. ("**Edirne Lalapaşa**");
- On 31 January 2006, Akçansa Çimento Sanayi ve Ticaret A.S ("**Akçansa**") acquired "the *assets and undertakings*" of Ladik Çimento San. Tic. A.S. ("**Ladik Çimento**").

Standart Çimento, Edirne Lalapaşa and Ladik Çimento are hereinafter collectively referred to as the "**Companies**".

Cimsa, Çimentaş Izmir and Akçansa are hereinafter collectively referred to as the "**Transferee Companies**". These companies listed on the Istanbul Stock Exchange have legal personality[25].

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[21] The proceedings were continued in accordance with Article 15 of the repealed Law No. 4839 (Adverse Exhibit 5, p. 47).

[22] Adverse Exhibit 5, p. 47.

[23] **Exhibit 6**: "Turkish authorities seize and place under trusteeship 219 companies of the Uzan group", *Le Monde*, 17 February 2004; **Exhibit 7**: "TMSF hands over cement plants to new owners", *Cement News*, 1er January 2006; **Exhibit 8**: Ercan Ersoy, "Turkey about to issue call to sell indebted Telsim", *eKathimerini*, 24 August 2005; **Exhibit 9**: Frédéric Schaeffer, "Vodafone buys Turkish Telsim", *Les Echos*, 14 December 2005.

[24] Adverse Exhibit 7, pp. 1-3; Adverse Exhibit 18, Table 1.01.

[25] **Exhibit 10**: Orbis (Assignee Companies).

1.2.3 The Applicants' shareholdings in the Companies

The Claimants claim to act as "*ultimate economic beneficiaries*" of the Companies, of which they say *they* "*hold, directly or indirectly, more than 25% of the capital or voting rights* "[26].

In support of this assertion, Messrs UZAN produce a document dated 28 June 2021 prepared by a natural person, "Selahattin Bal "[27].

More specifically, Messrs UZAN claim that, at the time of the auctions, they each held 27.5% of the shares in each company, i.e. 55% between them in each company.

This document dated 28 June 2021, which does not contain any supporting documentation, does not demonstrate that the Claimants would have held any interest in the Companies (and the question of whether this was a personal or indirect holding remains unanswered).

The Claimants further allege that their father, Mr Kemal UZAN, owned 29.5% of each of the Companies, of which he assigned all corresponding rights, including the right to sue, to Mr UZAN29.

Mrs Ayşegül UZAN, sister of Messrs UZAN, is said to hold 14% of each of the companies, of which she has assigned all the rights to her brother Mr Murat Hakan UZAN30.

Again, there is no evidence to support these alleged detentions. Simple certificates of transfer drawn up by the father and sister of Mr UZAN on 30 May 2021 are submitted to the debates.

It is therefore on the basis of assertions that are not supported by anything that Messrs UZAN indicate that they are intervening in the rights of their sister and father and specify that they are "*ultimately the sole ultimate economic beneficiaries of the Companies* "[31].

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[26] Assignment, § 3.

[27] Adverse Exhibit 4.

[28] Adversary Exhibit 4, p. 1.

[29] Summons, § 4; Opposing document no. 3.

[30] Opposite Exhibit 3.

[31] Assignment, § 4.

1.2.4 Shareholdings in the Transferee Companies

BlackRock Fund Advisors and its parent company, BlackRock, Inc. manage assets for a range of funds and clients.

The funds managed by BlackRock Fund Advisors invest in securities purchased and held on behalf of investors. Investors subscribe to units or units of account within the funds.

BlackRock Fund Advisors, which provides investment management services to investment funds, does not itself own or hold these securities.

As will be discussed below (see 2.3.2), as a management company, BlackRock Fund Advisors does not have standing to defend this action[32].

2. DISCUSSION

The present action faces numerous procedural obstacles, which indicate its abusive nature.

Their assessment falls within the competence of the Pre-Trial Judge (**2.1)** on procedural objections (**2.2)** and on the grounds for dismissal (**2.3**).

2.1 On the competence of the Pre-Trial Judge

Article 789 of the Code of Civil Procedure states:

> *"When the application is presented after his designation, the Pre-Trial Judge has, until he relinquishes jurisdiction,* ***sole competence****, to the exclusion of any other court formation, to*: *1°* ***rule on procedural objections*** [...] *6°* ***rule on the grounds of non-admissibility*** ***[...]***".

In accordance with the provisions of Article 791 of the Code of Civil Procedure[33] , BlackRock Fund Advisors submits the present incidental claim to the juge de la mise en état.

[32] **Exhibit 10**: Orbis (Transferee Companies)

[33] Article 791 of the Code of Civil Procedure: '*The pre-trial judge is seised by submissions specially addressed to him which are distinct from submissions within the meaning of Article 768, subject to the provisions of Article 1117.*

2.2 *In limine litis*, on procedural objections

2.2.1 The French courts do not have jurisdiction to hear this dispute

This case obviously never had any connection with France.

All the elements of the dispute converge on Turkey, which is both (i) the place of occurrence of the harmful event - the disputed auctions in 2005 -, (ii) the place of occurrence of the alleged damage, and (iii) the place of domicile of TMSF, the main defendant in this action.

As BlackRock Fund Advisors is not domiciled in a Member State, the French court will in principle verify its jurisdiction in application of its rules of domestic law extended to the international order.

The Claimants rely on Articles 42 and 46 of the Code of Civil Procedure ("**CCP**").

The French courts do not have jurisdiction under Article 42 CPC, and the fact that some of the financial consequences of the damage allegedly suffered in Turkey are felt in France cannot be a basis for jurisdiction under Article 46 CPC (**2.2.1(a)**).

In the alternative, Messrs UZAN invoke Article 14 of the Civil Code, which establishes a jurisdictional privilege for claimants of French nationality, which is inapplicable in this case. This attempt is inoperative, as Messrs UZAN have not demonstrated that they are domiciled on French territory.

The Applicants attempt to overcome this inapplicability by requesting the combined application of Article 14 of the Civil Code with Article 6§2 of the Brussels I bis Regulation34. Their criteria are not met either, insofar as the mere alleged presence of Mr UZAN on French territory is insufficient (**2.2.1(b)**).

(a) Articles 42 and 46 of the CPC do not allow the jurisdiction of the French courts to be based on

In the absence of an international convention, the criteria for international jurisdiction are those of domestic territorial jurisdiction extended to the international order.

However, the Paris Court has no international jurisdiction to hear this action on the basis of Article 42 CPC (**(i)**).

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[34] Summons, §§ 126-135.

Nor does the option of jurisdiction open to it in matters of tort by Article 46 of the CPC allow it to have jurisdiction, contrary to what Mr UZAN indicate ((**ii)**).

i. The lack of jurisdiction of the French courts under Article 42 of the CPC

In domestic law, Article 42 of the CPC lays down the principle of the territorial jurisdiction of the court of the place where the defendant lives.35 The court of the place of residence of the defendant has jurisdiction over the case.

It specifies that "[i]f there are *several defendants, the plaintiff shall bring the case, at his option, before the court of the place where one of them resides*".

The same Article adds, by way of exception, that "**[*i]f the defendant has no known domicile or residence**, the plaintiff may bring the case before the court for the place where he resides or the court of his choice if he resides abroad*". This exception does not apply where the defendant has a known domicile or residence.

In this case, none of the 52 co-defendants is domiciled in France.

Also, the domicile of BlackRock Fund Advisors is known, so that the Plaintiffs cannot claim to initiate an action before the court of their *"choice" on the* basis of Article 42 CPC.

ii. The lack of jurisdiction of the French courts under Article 46 of the CPC

In law, a special alternative rule is provided for tort cases by Article 46 of the CPC:

> *"The claimant may bring an action at his or her option, in addition to the court of the place where the*
> *defendant:* [...]
>
> *-In **matters relating to tort**, the court of the place where the damage occurred or the court within whose **jurisdiction the damage was suffered [...***]".

The case law has consistently held that the court "within *whose jurisdiction the damage was suffered is the one where the damage occurred* "[36] , and not "*the one* [of the place] *where the financial consequences of the alleged conduct could subsequently be measured [...*]"[37] , which generally corresponds to the victim's residence.

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35 Article 42 of the CPC states:

"The court with territorial jurisdiction shall*, unless otherwise provided, be that of the place where the defendant [...]".*

36 **Exhibit J-1**: Cass. com. 8 February 2000, n°98-13.282.

37 **Exhibit n° J-2.1**: Cass. com. 8 April 2021, n°19-16.931; **Exhibit n°J-2.2**: CA Aix-en-Provence, 1er April 2021, n°20/10954. See also **Exhibit n°J-2.3**: Cass. civ. 2ème , 28 February 1990, n°88-11.320.

The Court of Cassation thus quashed a judgment of appeal which had declared that the court of the place of the registered office, where the financial losses were recorded in the accounts of a company, had jurisdiction, on the grounds *that* "*by thus assimilating the place where the damage was suffered to the place where the financial consequences of the alleged acts could subsequently be measured, the court of appeal violated* [Article 46 of the CPC] *mentioned above* "[38].

This position is regularly reiterated by the courts of appeal39.

In the present case, as detailed below (cf. *infra* 2.2.1(b)(i)), the Applicants have not demonstrated the existence of a real domicile in France. Article 46 CPC is therefore not applicable for this reason alone.

The place of the harmful event (due to the disputed transfers made by TMSF), **but also the place of occurrence of the main damage** (alleged loss of the market value of the assets of the Companies) alleged by the Claimants is Turkey.

This location of the damage in Turkey is recognised by Mr UZAN themselves:

> "...] *the fraudulent acts pursued by the Plaintiffs were committed in* ***Turkey****, where* ***the damage*** *resulting from the wrongdoings of TMSF, MOTOROLA and the other defendants* ***occurred****, through the fraudulent capture of the Companies' assets.* "[41]

Mr UZAN nevertheless claim that "*at least part of* [their] ***financial loss***" would be suffered from France as a result of the loss of dividends they claim (over a period of 19 years), which they justify by the fact that this would be their place of residence42.

However, if they were recognised, *quod non*, the loss of dividends allegedly suffered by Mr UZAN from France would only be the financial consequence of the main damage suffered in Turkey.

"Having regard to Article 46 of the New Code of Civil Procedure; Whereas the court within whose jurisdiction the damage was suffered is that of the place where the damage occurred; [...]

Whereas, however, in thus assimilating to the place where the damage was suffered the place where the financial consequences of the alleged acts could subsequently be measured, the Court of Appeal violated the above-mentioned text; [...]**"**. See also **Exhibit 2.4**: CA Paris, 7 January 2020, n°19/12553; **Exhibit 1**: Cass. com., 8 February 2000, n°98-13.282; **Exhibit 3**: CJEU, 16 June 2016, C-12/15; **Exhibit 4**: ECJ, 19 September 1995, C-364/93.

[38] **Exhibit J-1**: Cass. com., 8 February 2000, n°98-13.282.

[39] **Exhibit n°J-5.1**: CA Colmar, 29 January 2021, n°20/01233; **Exhibit n°J-5.2**: CA Paris, 19 December 2018, n°17/20652; **Exhibit n°J-5.3**: CA Versailles, 27 March 2008, n°07/03935

[40] Summons, § 274.

[41] Summons, § 153.

[42] Summons, §§ 128-129.

Furthermore, Mr UZAN, who do not demonstrate the existence of a real domicile in France, even less so provide evidence of an effective residence there over a period of 19 years. This implies that any financial loss suffered from that territory could not have lasted 19 years as they claim.

In any event, according to the Claimants' argument, at the date of their alleged arrival in France, in 2009 and 2014, **Mr UZAN were no longer the owners of the assets and companies transferred**, due to the auctions that took place in 2005 and 2006. No damage was thus suffered in France.

The alleged loss of dividends over a period of 19 years - never claimed before - was fabricated by Mr UZAN for the purposes of this action.

Consequently, the Pre-Trial Judge can only declare the French courts incompetent in favour of the Turkish courts, on the grounds that Turkey is the place where the damage occurred.

(b) Articles 14 of the Civil Code and 6§2 of the Brussels I bis Regulation do not allow the jurisdiction of the French courts to be based alternatively

In the alternative, the Claimants invoke the combined application of Article 6§2 of the Brussels I bis Regulation with Article 14 of the Civil Code, which states:

> *"A foreigner, even one not residing in France, may be summoned before the French courts for the performance of obligations contracted by him in France with a French person; he may be brought before the courts in France for obligations contracted by him in a foreign country towards French persons*.

This privilege of jurisdiction reserved for French nationals is inapplicable in this case.

In an attempt to overcome this inapplicability, Messrs UZAN rely on its combined application with Article 6§2 of the Brussels I bis Regulation, which states:

> "[...] *2. Any person, whatever his nationality, who is* ***domiciled*** *in a Member State may, like the nationals of that Member State, invoke in that Member State against that defendant the rules of jurisdiction in force in that State, and in particular those which the Member States are required to notify to the Commission pursuant to Article 76(1)(a)*.

It follows from this article that a foreign plaintiff **domiciled** on French territory may invoke Article 14 of the Civil Code43 to sue a person domiciled in a third State before the French courts.

However, this requires that the applicant is ***actually*** **domiciled in** a Member State, i.e. France in this case, which is not the case for Mr UZAN (**(i)**).

Article 14 of the Civil Code is in any case not applicable by extension (**(ii)**).

(i) *Article 6§2 of the Brussels I bis Regulation is not applicable: the Applicants do not demonstrate the existence of a real domicile on French territory*

In law, Article 6 of the Brussels I bis Regulation is only applicable on the strict condition that the applicant's domicile is in France.

The Brussels I bis Regulation does not define the concept of domicile. Adopting the principle of "*territoriality of domicile* "[44] , Article 62 refers to the domestic law of the States, indicating that the court seised applies its own law to determine whether the domicile is on its territory45.

Domicile is a distinct concept from '*residence*': a person may have several residences (or temporary places of stay) while the domicile remains unique.

In French law, Article 102 of the Civil Code defines domicile as the place of the "*principal place of business* "[46] .

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43 Articles 14 and 15 of the Civil Code are the jurisdictional rules which were notified by France to the Commission under Article 76(a) of the Brussels I bis Regulation, which states:

"1. Member States shall notify the Commission of: a) the rules on jurisdiction referred to ***in Article 6 (2)*** *[…] **[...]***".

44 **Exhibit n°J-6**: Gaudemet-Tallon H., Ancel M.-E., Compétence et exécution des jugements en Europe, Dec. 2018, Lextenso, § 90.

45 Article 62 of the Brussels Ia Regulation states:

"In determining whether a party is domiciled in the Member State whose courts are seised, the court shall apply its internal law.

46 Article 102 of the Civil Code states:

"The domicile of any Frenchman, as regards the exercise of his civil rights, is the place where he has his main establishment.

This establishment must be "***real and lasting***"[47] in France, which is verified through the stability of several indicators (including professional activity) demonstrating the desire to remain there permanently, and which excludes taking into account "*occasional considerations relating to* [the] *family situation or the state of* [the] *business* "[48].

In particular, it is well established case law that the possession of a **residence permit** on French territory, which may correspond to certain temporary interests and concerns, does not characterise the existence of the principal place of business in France (in particular when certain factual elements make domicile abroad plausible)[49].

Similarly, certain elements may attest to the existence of a **domicile** in France (i.e. an address), but are insufficient to demonstrate a **real domicile** at the address indicated within the meaning of Article 102 of the Civil Code.

This is particularly the case for EDF bills, tax notices, or a place where correspondence is received. By way of illustration, tax residence in France depends on alternative criteria, such as the exercise of a professional activity or the centre of economic interests, which do not necessarily include the existence ofa real domicile in France50.

In the present case, Mr Murat Hakan UZAN and Mr Cem Cengiz UZAN claim that they "*have been resident in France since 3 September 2014 and 3 September 2009 respectively* "[51].

In support of this claim, they produce temporary residence permits, both of which have now expired, issued for a period of one year on 5 April 2019 and 17 December 2020 respectively52.

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47 **Exhibit n°J-7**: CA Paris, 28 May 2014, n°13/11876.

48 **Exhibit n°J-8.1**: CA Paris, 17 March 2021, n°20/05574. See also **Exhibit J-8.2**: Cass. civ. 2eme , 3 July 1991, n°91-60.050 :

"But whereas, in holding that the documents submitted to it showed that Agnès Y... lived in another town, worked there and paid her taxes there, the Court, which was not required to take into account the material and emotional ties of this voter with this town, was sovereign in considering that she no longer had her real domicile there.

49 **Exhibit #J-7**: CA Paris, 28 May 2014, No. 13/11876 (for a ten-year residence permit deemed insufficient); **Exhibit J-9**: CA Paris, 13 March 2012, n°11/16622 (for a one-year residence permit deemed insufficient).

50 **Exhibit J-10**: Cass. civ. 1ère, 8 July 2015, no. 14-15.618: "[T]he *tax and administrative domicile, as well as some invoices, did not characterise a habitual, effective and permanent residence*". See also Article 4B of the General Tax Code.

51 Summons, § 1.

52 Adverse Exhibit 1-1.

Mr. Cem Cengiz UZAN also produced a residence permit valid from 6 September 2016 to 5 September 202353 (for an address that is not the one mentioned in the Summons54), while Mr. Murat Hakan UZAN added an EDF contract certificate dated 7 December 2020, for a flat located at 32 avenue Foch, 75116 Paris55.

These elements show at most the existence of a domicile (i.e. an address) and certain interests and concerns in France, but they are insufficient to characterise the real domicile of Mr UZAN, in the absence of any other factual element corroborating them.

No evidence was provided regarding the exercise of a professional activity on French territory.

The submissions served by Motorola on 12 September 2022 (the "**Motorola Submissions**"), state that :

- Mr. UZAN does not have a professional activity in France56 ;
- Messrs UZAN have no real estate assets in France57 ;
- Messrs UZAN do not have a funded bank account in France58 ;
- Both Mr. UZAN and Mr. UZAN are actively preparing for the Turkish general elections in June 2023, which reveals their intention to return to Turkey permanently59 (the Turkish political party founded by Mr. Cem Cengiz UZAN, called "*Genç Party*∀ of which Mr. Murat Hakan UZAN is the "*General Chairman*∀ has been authorised by the Turkish Supreme Electoral Commission to run in the campaign)[60] ;
- Mr Murat Hakan UZAN has used pseudonyms and possesses several identity documents and business cards from various countries (including passports, identity cards or visas from Jordan, Guatemala, Singapore, Spain, Moldova, Bulgaria, and Norway), which were disclosed by the English courts in an order of 1er February 201961 ;

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[53] Adverse Exhibit 2.

[54] Opposite Exhibit 2 mentions an alleged address of "*36 avenue Raphael, 75116 Paris*", whereas the address of the Claimants, as stated in the Summons, is 32 avenue Foch, 75116 Paris.

[55] Adverse Exhibit 1-3.

[56] **Motorola Exhibits 23 and 25**; Motorola's Submission, §§ 86-87.

[57] Motorola's submissions, §§ 80-81.

[58] Motorola's submissions, §§ 82-84.

[59] Motorola's submissions, §§ 88-91; **Motorola Exhibits 41-44.**

[60] **Motorola Exhibits n°42 and 43**. Mr. Cem Cengiz UZAN was already developing his electoral programme on 2 July 2020.

[61] Motorola's submission, § 78; **Motorola Exhibit 31**.

- Mr. Cem Cengiz UZAN's wife is originally from Monaco, where she lives and works62.

Consequently, Mr UZAN fail to demonstrate that France is the place of their principal place of business in a real and lasting way.

The Pre-Trial Judge can only find that the elements reported do not demonstrate the existence of a real domicile of the Claimants in France, so that Article 6 of the Brussels I bis Regulation is not applicable.

(ii) *Article 14 of the Civil Code is not applicable: the Claimants do not demonstrate the existence of an obligation on the part of BlackRock Fund Advisors*

In law, case law strictly interprets the terms of Article 14 of the Civil Code, which only applies in the event that "*a foreigner is likely to be under an obligation to a French person*", its application being ruled out if the summons does not make it possible to determine the content of such an obligation63.

This solution is logical in that it makes it possible to guard against opportunistic requests to submit a dispute to the French courts, when there is absolutely no direct or indirect connection (of the case or the parties) with French territory.

The Claimants do not identify any obligation on the part of BlackRock Fund Advisors towards them.

They merely refer to the provisions applicable to tort liability in French and Turkish law.

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62 **Motorola parts #28 to 30**.

63 **Exhibit n°J-11**: CA Aix-en-Provence, 20 May 2021, n°18/20115 :

"In this respect, CMA-CGM [...] *cannot, without contradicting itself, invoke for its benefit the provisions of the aforementioned Article 14 relating to the obligations contracted by a foreigner in France, since it is clear from the terms of this article that a foreigner can only be sued before a French court in the event that he is likely to be bound by an obligation to a French person.*

In the absence of a legal basis for CMA-CGM's claims, ***it does not appear possible to determine the nature of the obligations to which the Saint Maarten companies could be held, so that the application of the provisions of Article 14 of the Civil Code must be rejected in this particular case***.

Messrs UZAN also refer to an alleged improper recovery of a claim which is attributable to TMSF64 , and which does not concern any obligation on the part of BlackRock Fund Advisors (or any of the BlackRock entities), and even less on the part of BlackRock Fund Advisors towards Messrs UZAN.

Article 14 of the Civil Code is therefore not applicable, as the Plaintiffs have not specified the nature of the obligation that BlackRock Fund Advisors would have towards them.

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As a consequence of the above, both the Brussels I bis Regulation and French law (in this case, Articles 42, 46 of the CPC and 14 of the Civil Code) require a minimum connection of the dispute or the parties with French territory in order to found the jurisdiction of its courts.

A simple address of the applicant in France cannot in itself serve as an anchor point when all the elements converge towards a foreign jurisdiction, contrary to what the Applicants try to establish.

The Pre-Trial Judge will declare the French courts incompetent in favour of the Turkish courts.

2.2.2 Nullity of the summons due to lack of purpose

In law, Article 54 of the Code of Civil Procedure provides that "*on pain of nullity, the initial application shall mention* [...] *2° the subject matter of the application*".

The doctrine defines the subject matter of the claim as "*all the claims of the the claimant*"; the claimant must be "*sufficiently precise, as the summons is equivalent to a statement of claim* "[65].

This requirement of precision is explained by the need (i) on the one hand, for the court to be able to decide the case on the basis of the summons alone in the event that the defendant does not appear and (ii) on the other hand, to enable the defendant to organise his defence in satisfactory conditions.

[64] Summons, p. 8. The Claimants refer to Article L. 111-7 of the Code of Civil Enforcement Procedures, which states that the recovery of a claim may not exceed what is necessary to pay an obligation (Summons, §§ 176-181).

[65] **Exhibit n°J-12**: N. Cayrol, *Dalloz action Droit et pratique de la procédure civile*, 10ème ed., 2021-2022, §282.42.

The lower courts consider that the summons is null and void when, in the absence of a textual legal basis, '*the defendants had the greatest difficulty in understanding the reasons for* the *proceedings, especially as they are of foreign origin and know nothing about French procedure. It was therefore essential that they be informed in detail of their opponent's claims*'.[66]

It has also been held that a writ of summons which does not make it possible to understand the legal basis of the claim is invalid where, "*by drafting incomprehensible grounds and operative part*", the plaintiff has forced the defendant to "*organise his defence on the basis of mere suppositions*", thus depriving him of "*the right to defend himself effectively* "[67].

The defendant is unable to discuss his opponent's arguments and consequently *"to ensure his defence in sufficient conditions*".[68].

In this context, according to well-established case law, "***the imprecision of the summons, causing a real and serious grievance to*** *the* [defendants] ***who did not know exactly what was being raised against them, must lead to its nullity***".[69].

In the present case, an examination of the Summons reveals that the Claimants do not specify the legal basis of the alleged wrongdoing against BlackRock Fund Advisors (or the BlackRock entities).

The only defendants targeted by the Summons are TMSF and Motorola, against whom it lists a certain number of imprecise facts which, according to Messrs. UZAN a "*fraudulent capture*" *of* the Companies' assets by the TMSF fund, as well as a "*fraudulent collusion*" by Motorola.

The other defendants - including BlackRock Fund Advisors - are referred to as the "*ultimate economic beneficiaries*" of the Transferee Companies, about whom the Summons elliptically and incomprehensibly states:

> *"The economic beneficiaries of the purchasers of the fraudulently captured assets, who are all investors and informed professionals, are also liable, jointly and severally with TMSF and MOTOROLA, since they necessarily acted, as fences, with full knowledge of the facts and in bad faith, essentially to*

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66 **Exhibit J-13**: CA Aix en Provence, 20 September 2007, n°05/20391.

67 **Exhibit n°J-14**: CA Montpellier, 11 December 2018, n°18/02908.

68 **Exhibit n°J-15.1**: TGI de Paris 10 December 2015, n°14/16892; **Exhibit n°J-15.2**: CA Toulouse, 21 July 2011, n °10/02634.

69 **Exhibit n°J-13**: CA Aix en Provence, 20 September 2007, n°05/20391. See also: **Exhibit n°J-16**: Cass. civ. 1ère , 5 April 2012, n°11-10.463; **Exhibit n°J-15.1**: TGI Paris, 10 December 2015, n°14/16892 (invalidity for lack of description of works claimed to be protected by copyright and models claimed to be infringing).

because of the notoriously fraudulent circumstances of the transfers of the Companies' assets, which they could not possibly have been unaware of.

Thus, far from specifying the conduct alleged against the BlackRock entities and BlackRock Fund Advisors, the Summons mentions them only once by name70 and thus leaves the latter unable to defend itself effectively.

Moreover, the writ does not characterise the fault it seeks to punish (and the notion of "*economic beneficiary*", used in abundance, is not even defined).

Under Turkish law, which the Claimants claim is applicable to the substance of the dispute, not a single textual legal basis is indicated in the Summons.

The operative part refers vaguely to '*Turkish law applicable to the merits*' while a lacunar and elliptical wording is developed under the heading '*the rules of Turkish law applicable to the merits*': 'the rules of *Turkish law applicable to the merits'*.[71] :

"According to Turkish law, the violation of one of these fundamental rights is likely to characterise a tort involving the civil liability of its perpetrator.72 Turkish law even provides for a radical consequence in such a case: all acts resulting from this serious infringement are considered non-existent. [...] All the rules relating to the action for non-existence are essentially derived from Turkish case law and doctrine "[72].

No details are given as to the violations or "*rules*" referred to, even though the reader is led to understand that the acts in question, which would be vitiated by "*non-existence"*, remain those reproached by Mr UZAN to TMSF73.

As regards French law, the Claimants limit themselves to a brief reference to Articles 1240 of the Civil Code and L. 111-7 of the Code of Civil Enforcement Procedures ("**CPCE**").

The lapidary reference to Article 1240 of the Civil Code, the general rule in matters of tort, does not allow BlackRock Fund Advisors to understand what it is accused of.

As for Article L. 111-7 of the CPCE, which sets out the measures that a creditor may take to ensure the enforcement or preservation of his claim, it again refers to abuses attributed by Mr. UZAN to TMSF.

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70 Assignment, p. 13 (table).

71 Summons, §§ 160-172.

72 Summons, §§ 160-161, 166.

73 Assignment, p. 7.

The Summons confusingly attempts to evade the legal basis of the Claimants' claims, which is clearly non-existent.

Neither the provisions nor the case law cited by the Claimants (regarding allegedly abusive legal actions by creditors) allow BlackRock Fund Advisors to understand the reasons for these proceedings against it and thus to defend itself effectively.

The names "BlackRock" and "BlackRock Fund Advisors" are only mentioned in a table and nowhere in the Summons[74]The names "BlackRock" and "BlackRock Fund Advisors" are only mentioned in a table and nowhere in the Summons, as all co-defendants - except TMSF, Motorola and Vodafone - are lumped together, although they are all in different situations.

This lack of precision is all the more prejudicial as Messrs UZAN are seeking a joint and several condemnation of BlackRock Fund Advisors alongside TMSF and Motorola, to the exorbitant total sum of **75,004,196 US dollars**.

The Claimants have failed to set out the legal and factual grounds for BlackRock Fund Advisors' liability and the conduct they allege, which does not allow BlackRock Fund Advisors to respond meaningfully.

The Summons should therefore be declared null and void.

If by any extraordinary means, Madame or Monsieur le Juge de la Mise en Etat were to declare the Tribunal de céans competent to hear the present action, and the Summons not vitiated by nullity, she/he would not be able to declare this action admissible for the following reasons

2.3 On the grounds of inadmissibility

The claims of Mr. Uzan are inadmissible due to their lack of interest and standing (**2.3.1**), but also due to the lack of standing of BlackRock Fund Advisors (**2.3.2**).

The action will also be declared inadmissible on the grounds of prescription (**2.3.3**).

[74] Assignment, p. 13.

2.3.1 The lack of interest and standing of Messrs UZAN

In law, in order for the claim to be admissible, the litigants, both in the claim and in the defence, must have standing to sue, i.e. to raise or fight a claim75 , as well as to argue on the merits76.

Article 32 of the CPC states that "*any claim made by or against a person without the right to act is inadmissible*".

Article 122 of the CPC provides that "[a] *plea of inadmissibility is any plea which tends to declare the adversary inadmissible in his claim, without examination of the merits, for lack of right to act, such as lack of capacity, lack of interest, prescription, time limit, res judicata*".

When suing to defend their personal interests, both legal persons and natural persons have standing if they claim direct and personal damage.

A plea of inadmissibility for lack of personal interest and lack of standing shall constitute a plea for a declaration that the applicant is acting to defend the interests of a separate natural or legal person.

The Court of Cassation considers that an action initiated by a partner or shareholder who is unable to demonstrate the existence of a personal, direct and distinct prejudice to the company is inadmissible77 :

> *"But whereas the judgment notes, without distorting its conclusions, that Mr Y... does* ***not explain what the damage would be, distinct from that of the company, resulting from the faults he alleges****; that, by this reason alone, the decision is justified [...]; DISMISSES the appeal* "[78].

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75 Article 31 of the CPC states:

"The action is open to all those who have a legitimate interest in the success or rejection of a claim, subject to the cases in which the law attributes the right to act only to those persons whom it qualifies to raise or combat a claim, or to defend a specific interest.

76 Article 30 of the CPC states:

"The action is the right of the author of a claim to be heard on the merits of the claim so that the judge can decide whether it is well-founded or not. For the opponent, the action is the right to discuss the merits of the claim".

77 **Exhibit J-17**: Cass. com. 10 March 2009, n°07-21.410.

78 **Exhibit J-18**: Cass. com. 17 January 2018, n°16-10.266.

This solution is well established in case law[79] . Recently, the Court of Cassation was able to reaffirm that :

> *"Having regard to Articles 1382, now 1240, of the Civil Code and 31 of the Code of Civil Procedure :*
>
> *7. It follows from these texts that the admissibility of an action for damages brought by a partner against a third party is subject to the allegation of a* ***personal loss distinct from that which could be suffered by the partnership itself****, that is to say a loss which cannot be made good by compensation for the loss suffered by the company*. [80]

In particular, it has been held that a shareholder's claim for loss of opportunity to receive dividends is inadmissible81 .

In any event, claimants who initiate proceedings to claim damages on the basis of their alleged status as partners, shareholders or "*beneficial owner"* must prove this alleged status. If they fail to do so, their claim must be declared inadmissible for lack of legal interest82.

In the present case, Mr Uzan and Mr Uzan seek compensation for (i) the alleged loss of market value of "*the businesses and assets* "[83] of the Companies under the management of TMSF, (ii) "including *present and future dividends generated by these businesses and assets now held by third parties, representing to date more than US$68 billion* "[84].

It is on this basis that Messrs UZAN are now claiming from BlackRock Fund Advisors (jointly and severally with TMSF and Motorola), as damages, the sums of USD **42,831,896** and USD **32,172,300**, i.e. a total of **USD 75,004,196**.

In the light of the above, the Claimants rely on losses that they have not personally suffered.

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[79] See in particular **Exhibit 19.1**: Cass. com, 26 January 1970, No. 67-14.787; **Exhibit 19.2**: Cass. com, 8 February 2011, No. 09-17.034; **Exhibit 19.3**: CA Paris, 18 February 2016, No. 15/06253.

[80] **Exhibit n°J-20**: Cass. com., November 4, 2021, n°19-12.342, published in the bulletin ("*In so determining, without investigating, as it was invited to do, whether the financial loss alleged by Mr. [X] in his capacity as a shareholder was not, in whole or in part, the corollary of the loss suffered by the company [X] Group as a result of the alleged depreciation in value of the catalogue of works that constituted its main asset, the court of appeal deprived its decision of a legal basis.* ").

[81] **Exhibit n°J-21**: CA Rennes, 16 February 2021, n°18/01762.

[82] **Exhibit J-22**: Cass. com., 2 December 2008, No. 07-19.061 (the plaintiff "*had no further interest in acting after having* [...] *lost his status as a shareholder;* [...]").

[83] Summons, § 124.

[84] Summons, § 124.

If any loss had been established (which is disputed), it would have been suffered by the Companies. These Companies, of which Messrs UZAN claim to be the "*ultimate economic beneficiaries*" (without proving it) are the only ones to have an interest in acting in relation to the alleged losses, in place of Messrs UZAN.

It is therefore requested that the Pre-Trial Judge declare the present action inadmissible, in that Mr. Uzan has neither interest nor capacity to act for compensation for the hypothetical prejudice suffered by the Companies.

2.3.2 BlackRock Fund Advisors' quality defect to defend

In law, as indicated, standing is a condition for the admissibility of legal action.

A plea that the defendant is not the opponent against whom the claim should have been brought is also a plea of inadmissibility, as the doctrine recalls:

> *"It is necessary to have legal standing to bring a claim or a defence. However, the notion does not have the same meaning when it defines the ability of a defendant to fight the claim made. Instead of positively conditioning the opening of the defendant's action, it is analysed as the title justifying action by the plaintiff. It then serves as an instrument for filtering claims by* ***eliminating those whose addressee has been badly targeted*** "[85].

It is well-established case law that a legal action against a person who was not the correct addressee is inadmissible.

For example, the entity that does not own a given asset does not have standing to be sued in place of the legal owner.86

The Cour de cassation and the judges of the court of first instance distinguished very early on between the action to be brought against a company and that brought against its individual chairman87 , because of their respective legal personalities.

Similarly, the Paris Court of Appeal held that an action against the director of a parent company was inadmissible where it was established that it related to the liability of "*subsidiaries which enjoy the legal autonomy of legal persons* "[88].

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[85] **Exhibit n°J-23**: Serinet, YM, La qualité du défendeur, RTD Civ. Dalloz, 2003, p. 203.

[86] **Exhibit n°J-24.1**: CA Orléans, 8 October 2018, n°17/02260. See also **Exhibit n°J-24.2**: CA Rouen, 30 June 2021, n°19/03145; **Exhibit n°J-24.3**: CA Grenoble, 16 January 2018, n°14/05418; **Exhibit n°J-24.**4: CA Saint- Denis, 5 February 2011, n°19/02200

[87] **Exhibit J-25:** Cass. com. 13 November 1972, n°71-12.393.

[88] **Exhibit n°J-26**: CA Paris, 26 November 2013, n°12/05351.

In the present case, the Claimants present the BlackRock entities as the alleged "*beneficial owners"* of the Assignee Companies (without however bothering to define this notion).

To be continued by Mr UZAN - who do not provide any evidence to support their allegations - ;

- BlackRock Fund Advisors would be the *beneficial owner* of Çimentaş Izmir, while ;
- "BlackRock is said to be *the beneficial owner* of Cimsa and Akçansa89 ;
- The co-defendants jointly and severally liable with TMSF and Motorola would be "*investors* "[90].

This is not the case.

BlackRock Fund Advisors and its parent company, BlackRock, Inc. provide **investment management services** to a range of clients and investment funds.

Investments are made on behalf of funds and clients, and it is the clients who are the investors and legal owners of the assets concerned, not the BlackRock entities.

Accordingly, BlackRock Fund Advisors has no standing to defend this action.

In any event, even if it were proven that BlackRock Fund Advisors was the *beneficial owner* of Çimentaş Izmir, only the latter could be held liable for the purchase of the assets and the Edirne Lalapaşa91 company.

Indeed, the Claimants seek compensation for the loss of value of the assets of the Companies (Standart Çimento, Edirne Lalapaşa and Ladik Çimento), as well as the dividends generated by them.

However, as indicated (see 1.2.2 *above*), the assets of the Companies were acquired, not by BlackRock Fund Advisors (nor a BlackRock entity), but by the Transferee Companies (Cimsa, Çimentaş Izmir and Akçansa).

The Transferee Companies are all listed companies with legal personality92.

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89 Assignment, table p. 13.

90 Summons, p. 8.

91 Adverse Exhibit 7, pp. 1-3.

92 **Exhibit 10**: Orbis (Assignee Companies).

No BlackRock entity is liable for any hypothetical liability relating to this assignment in which they were never involved, especially since the Assignee Company Çimentaş Izmir is separate and has its own legal personality.

Consequently, the only entities from which the Claimants can validly claim compensation for their alleged loss are the Assignee Companies.

The claim that BlackRock Fund Advisors is allegedly the "*beneficial owner*" of Çimentaş Izmir (which is disputed) is insufficient to give it standing.

The Claimants do not, in any event, provide any evidence that BlackRock Fund Advisors is the "*ultimate beneficiary*" of Çimentaş Izmir.

It will therefore be held that the action of Messrs UZAN, directed against BlackRock Fund Advisors, which has no standing to defend, is inadmissible.

2.3.3 The limitation period for the Claimants' action

The Claimants' action is time-barred (**2.3.3 (c)**) - irrespective of the law applicable to the merits (**2.3.3 (a)**), i.e. under French and Turkish law (**2.3.3 (b)**).

(a) Introductory remarks on the law applicable to prescription

In law, under Article 2221 of the Civil Code, the law applicable to the merits of the case also governs extinctive prescription.93 The law applicable to the merits of the case also governs extinctive prescription.

In the present case, Mr UZAN request that Turkish law be applied to the merits of the case in accordance with Article 4 of Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (the "**Rome II Regulation"**):

> *"Unless otherwise provided in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the* ***country in which the damage occurs****, irrespective of the country in which the event giving rise to the damage occurs and irrespective of the country or countries in which the indirect consequences of that event occur* [...].

The Claimants consider that "*Turkish law is therefore applicable to the merits of the present dispute, insofar as it concerns compensation for damage that occurred in Turkey*".

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93 Article 2221 of the Civil Code states:

"Extinctive prescription is subject to the law governing the right it affects. "

94 Summons, § 154.

They state that French law is also applicable with regard to the '*deprivation of fruits*' (loss of dividends) that they allegedly suffered from France as a result of the auctions95.

According to its Article 32, the Rome II Regulation only applies to events that occurred after 11 January 200996 , which means that Mr UZAN cannot rely on this text for their claims relating to events that occurred in 2005 or 2006.

In any event - and BlackRock Fund Advisors does not dispute the application of Turkish law to the merits of the case - this action must be declared inadmissible as it is time-barred under French and Turkish law.

(b) The action of Messrs UZAN is time-barred under both French and Turkish law

In French law, Article 2224 of the Civil Code, which was enacted by Law No. 208-561 of 17 June 2008 (the "**Law of 17 June 2008**"), states that "*personal or movable actions are prescribed by **five years** from the day on which the holder of a right knew or should have known the facts enabling him to exercise it*".

This five-year limitation period replaced, inter alia, the 30-year period97 that previously applied to tort actions.

Under Article 2222 of the Civil Code, the Act of 17 June 2008 applies directly from its entry into force (19 June 2008) where the limitation period then applicable
(i) had not expired or (ii) when it is reduced.98

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95 Summons, § 155.

96 Article 32 of the Rome II Regulation states:

"This Regulation shall apply from 11 January 2009, with the exception of Article 29, which shall apply from 11 July 2008.

97 Former Article 2262 of the Civil Code.

98 Article 2222 of the Civil Code states:

"A law which extends the duration of a limitation or foreclosure period has no effect on an existing limitation or foreclosure period. It shall apply where the limitation period or the period of foreclosure had not expired on the date of its entry into force. In such cases, account shall be taken of the period which has already elapsed. In the event of a reduction in the duration of the limitation period or the period of foreclosure, the new period shall run from the date of entry into force of the new law, without the total duration exceeding the duration provided for by the previous law. "

It is settled case law that the limitation period runs from the day when the holder of a right knew or should have known the facts enabling him to exercise it, even if the amount of the losses suffered could not yet be quantified:

> *"The manifestation of damage that is certain in principle is sufficient to start the limitation period running even if the loss cannot yet be quantified, regardless of whether the exact extent of the losses suffered is unknown once the person concerned has become aware of the harmful nature of the situation*.[99]

According to Articles 2240, 2241 and 2245 of the Civil Code, only the acknowledgement of the debtor, the legal action or the act of compulsory execution can interrupt the prescription. The interruption then erases the acquired prescription period100.

Under Turkish law, according to Article 60 of the Turkish Code of Obligations ("**TCO"**), in the version applicable to the present case, the limitation period for tort actions is **one year from the** knowledge of the damage.101

This limitation period is capped at **ten years** from the date of commission of the offence102.

(c) In fact

The Claimants claim that the basis for their legal action is the auction of their assets by TMSF in 2005. However, they did not take the initiative to initiate legal action until July 2021, **16 years after the events they deplore**.

The Claimants could not have been unaware of the sale by TMSF of the Companies' assets in 2005, which received extensive press coverage103.

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[99] **Exhibit n°J-27**: CA Versailles, 15 October 2020, n°19/06993.

[100] Article 2231 of the Civil Code.

[101] **TMSF Exhibit 164**, Article 60 of the COT in the version applicable before 1er July 2012 ("*An action for payment of a sum of money for loss and damage or for non-material loss **may not be heard after the expiry of a period of one year from the** date on which the injured party became aware of the damage and its perpetrator, and **in any case after the expiry of a period of ten years** from the occurrence of the event which caused the damage.* [...]") (automatic translation).

[102] **TMSF Exhibit 164**.

[103] See in particular: **Exhibit 6**: "Turkish authorities seize and place under trusteeship 219 companies of the Uzan group", *Le Monde*, 17 February 2004; **Exhibit 7**: "TMSF hands over cement plants to new owners", *Cement News*, 1er January 2006; **Exhibit 8**: Ercan Ersoy, "Turkey about to issue call to sell indebted Telsim", *eKathimerini*, 24 August 2005; **Exhibit 9**: Frédéric Schaeffer, "Vodafone buys Turkish Telsim", *Les Echos*, 14 December 2005.

In the words of the Plaintiffs' Summons :

> *"TMSF's actions in this regard **were public knowledge**, if only because they simultaneously targeted a large number of companies and assets whose **links with the UZAN family were known, even to the general public**;*
>
> *For some of the fraudulently captured assets, TMSF conducted sales **by publishing invitations to tender, so the circumstances of these disposals were necessarily disclosed and known**. "*[104]

Messrs UZAN were aware, as early as 2005, of the sales that they are denouncing today.

The statute of limitations applicable to the facts wrongly attributed to BlackRock Fund Advisors is five years under French law, and the ten-year limit under Turkish law has largely expired.

Consequently, the Pre-Trial Judge should declare the Claimants' action time-barred.

In the light of these elements, the Pre-Trial Judge is asked to declare the action of Mr UZAN inadmissible for lack of standing and prescription.

*

Finally, it would be unfair to leave BlackRock Fund Advisors to bear the irreducible costs it has had to incur in defending its interests in the present proceedings.

Mr. UZAN took the brutal initiative to sue BlackRock Fund Advisors without ever contacting this company beforehand.

Consequently, and taking into account the fully abusive nature of this action, Messrs UZAN will be ordered to pay the sum of 50,000 euros on the basis of Article 700 of the Code of Civil Procedure, as well as all costs.

*

[104] Summons, § 267.

THEREFORE

Having regard to Articles 30, 31 et seq., 42 et seq., 54, 74, 75, 76, 78, 81, 122, 700, 789 and 791 of the Code of Civil Procedure,
Having regard to Articles 14, 102, 2222 et seq., 2240 et seq. of the Civil Code, Having regard to Article 114 of the Turkish Civil Procedure Code,
Having regard to Articles 60, 153 and 154 of the Turkish Code of Obligations, Having regard to Regulation No. 1215/2012 of 12 December 2012

The Pre-Trial Judge is requested to :

In limine litis, primarily,

- **Granting** the plea of lack of competence raised by BlackRock Fund Advisors ;

- *Consequently*, **refer** Mr Murat Hakan UZAN and Mr Cem Cengiz UZAN to the Turkish courts for further proceedings;

In limine litis, in the alternative,

- **Declare** that the summons of Murat Hakan UZAN and Cem Cengiz UZAN is null and void;

In a very minor way,

- **Declare** Mr Murat Hakan UZAN and Mr Cem Cengiz UZAN inadmissible in their claims for lack of standing and interest to act;

- **Declare** Mr Murat Hakan UZAN and Mr Cem Cengiz UZAN inadmissible in their claims against BlackRock Fund Advisors for lack of standing to defend the latter;

- **Declare** the action of Murat Hakan UZAN and Cem Cengiz UZAN to be time-barred;

In any case,

- **Order** Messrs Murat Hakan UZAN and Cem Cengiz UZAN to pay to BlackRock Fund Advisors the sum of 50,000 euros under Article 700 of the Code of Civil Procedure, as well as all costs.

WITHOUT PREJUDICE

LIST OF

DOCUMENTS

FACTUAL

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Part 1	Extract from the BlackRock Fund Advisors register
Exhibit 2	Orbis (BlackRock Fund Advisors).
Exhibit 3	AFP, "23 ans de prison pour un Turc en fuite", *Le Figaro*, 15 April 2010.
Exhibit 4	Benoît Angelini, "La chute de l'empire familial turc Uzan", *Les Echos*, 21 August 2003.
Exhibit 5	"Imar Bankasi: la banque privée turque a été placée vendredi sous tutelle de l'Etat", *Le Monde*, 5 July 2003.
Exhibit 6	Les autorités turques se saisirissent et mettent sous tutelle 219 sociétés du groupe Uzan", *Le Monde*, 17 February 2004.
Exhibit 7	"TMSF hands over cement plants to new owners", *Cement News*, 1er January 2006.
Exhibit 8	Ercan Ersoy, "Turkey about to issue call to sell indebted Telsim", *eKathimerini*, 24 August 2005.
Exhibit 9	Frédéric Schaeffer, "Vodafone buys Turkish Telsim", *Les Echos*, 14 December 2005.
Exhibit 10	Orbis (Assignee Companies).

LEGAL DOCUMENTS

Exhibit J-1	Cass. com. 8 February 2000, n°98-13.282.
Exhibit J-2	Cass. com. 8 April 2021, n°19-16.931; CA Aix-en-Provence, 1er April 2021, n°20/10954; Cass. civ. 2ème , 28 February 1990, n°88-11.320; CA Paris, 7 January 2020, n°19/12553.
Exhibit J-3	CJEU, 16 June 2016, C-12/15.
Exhibit J-4	ECJ, 19 September 1995, C-364/93.
Exhibit J-5	CA Colmar, 29 January 2021, n°20/01233; CA Paris, 19 December 2018, n°17/20652; CA Versailles, 27 March 2008, n°07/03935.
Exhibit J-6	Gaudemet-Tallon H., Ancel M.-E., Compétence et exécution des jugements en Europe, Dec. 2018, Lextenso, § 90.
Exhibit J-7	CA Paris, 28 May 2014, n°13/11876.
Exhibit J-8	CA Paris, 17 March 2021, n°20/05574; Cass. civ. 2ème , 3 July 1991, n°91-60.050.
Exhibit J-9	CA Paris, 13 March 2012, n°11/16622.
Exhibit J-10	Cass. civ. 1ère , 8 July 2015, n° 14-15.618.
Exhibit J-11	CA Aix-en-Provence, 20 May 2021, n°18/20115.
Exhibit J-12	N. Cayrol, *Dalloz action Droit et pratique de la procédure civile*, 10ème ed, 2021-2022, §282.42.
Exhibit J-13	CA Aix en Provence, 20 September 2007, n°05/20391.
Exhibit J-14	CA Montpellier, 11 December 2018, n°18/02908.
Exhibit J-15	TGI de Paris 10 Dec. 2015, n°14/16892; CA Toulouse, 21 Jul. 2011, n °10/02634.

Exhibit J-16 Cass. civ. 1ère , 5 April 2012, n°11-10.463.

Exhibit J-17 Cass. com. 10 March 2009, n°07-21.410.

Exhibit J-18 Cass. com., 17 January 2018, n°16-10.266.

Exhibit J-19 Cass. com., 26 January 1970, n° 67-14.787; Cass. com., 8 February 2011, n° 09-17.034; CA Paris, 18 February 2016, RG n° 15/06253.

Exhibit J-20 Cass. com., 4 November 2021, n°19-12.342.

Exhibit J-21 CA Rennes, 16 February 2021, n°18/01762.

Exhibit J-22 Cass. com. 2 December 2008, n°07-19.061.

Exhibit J-23 Serinet, YM, La qualité du défendeur, RTD Civ. Dalloz, 2003, p. 203.

Exhibit J-24 CA Orléans, 8 October 2018, n°17/02260; CA Rouen, 30 June 2021, n°19/03145; CA Grenoble, 16 January 2018, n°14/05418; CA Saint Denis, 5 February 2011, n°19/02200.

Exhibit J-25 Cass. com., 13 November 1972, n°71-12.393.

Exhibit J-26 CA Paris, 26 November 2013, n°12/05351.

Exhibit J-27 CA Versailles, 15 October 2020, n°19/06993.