



EUROPEAN COMMISSION

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Mr. Philippos PETSALNIKOS
President
Vouli ton Ellinion
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Dear President,

I would like to thank the Hellenic Parliament for its opinion on the Commission Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast) {COM(2010) 748 final}.

The Commission welcomes the favourable opinion of the Hellenic Parliament as regards the proposal's compliance with the principle of subsidiarity.

In reply to the main points raised in your submissions, the Commission would like to provide the following clarifications:

As to abolition of substantial public policy as a ground to refuse the recognition and enforcement of the judgment, according to data available to the Commission¹, in cases where the declaration of enforceability is challenged, the ground of refusal of recognition and enforcement most frequently invoked is the lack of appropriate service pursuant to Article 34(2) of Council Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation). Our studies show that the ground of public policy is frequently invoked but rarely accepted. These studies have recently been confirmed in the Study on Interpretation of the Public Policy Exception as referred to in the EU Instruments of Private International and Procedural Law², commissioned by the European Parliament. This confirms the approach of the Commission that substantial public policy as a ground to refuse the recognition and enforcement of foreign judgments can be abolished in Brussels I Regulation, as it was already done in other EU instruments.

As to the subsidiary jurisdiction rule based on the location of assets (Article 25), the Commission would like to point out that such a rule (as general or special jurisdiction

¹ Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(2009) 174 final).

² Available at <http://www.europarl.europa.eu/studies>

ground) already exists in the laws of a number of Member States. In the Commission's proposal, the rule is carefully circumscribed and limited by certain conditions for its application. As to bilateral agreements of the Member States with third states, it has to be noted that these are preserved under Article 351(1) of the TFEU.

The proposal for the recast Regulation provides a second additional forum for disputes involving third state defendants, i.e. forum necessitatis rule in Article 26. The concepts used in Article 26 – "proceedings cannot reasonably be brought or conducted" and "would be impossible in a third State with which the dispute is closely connected" – are already used in Union law, namely, in Article 7 of Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

Finally, as regards the proposed new rule on the interface between court and arbitration proceedings, the Commission would like to refer to the explanations given in the Impact Assessment accompanying the Commission proposal {SEC(2010) 1547 final}. The proposed rule in Article 29(4) provides that a court seized with a dispute involving an arbitration agreement should stay proceedings if a court at the seat of the arbitration or an arbitral tribunal is seized with the question of the existence, validity or effects of the arbitration agreement. As a result, it will always be possible for the parties to an arbitration agreement to ensure that only the arbitral tribunal or the court at the seat of the arbitration is hearing the case. This will prevent parallel proceedings.

The Commission hopes that the clarifications provided above address the main concerns expressed in your Opinion, and apologises for the undue delay in replying to it.

Yours faithfully,

Maroš Šefčovič
Vice-President