



HELLENIC PARLIAMENT

Opinion

**On the 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
COM (2010) 748 FIN**

**Joint session of
the Special Standing Committee for European Affairs and
the Standing Committee on Public Administration, Public Order and Justice,
of the Hellenic Parliament**

The abovementioned Committees were convened to a joint session, on March the 1st 2011, in order to examine the proposal for a regulation of the European Parliament and the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

The members of the aforementioned committees, considering:

- the draft regulation text
- informational reports by the Ministry for Justice, Transparency and Human rights and by the Directorate for European Affairs of the Hellenic Parliament
- the oral briefing by the Minister for Justice, Transparency and Human rights, mi. Haralambos Kastanidis,

Adopted by majority the following opinion:

Subsidiarity Principle

Subsidiarity control relates only to revised elements/sections of Regulation 44/2001. Procedures such as the abolition of the exequatur , the enhancement of existing jurisdiction norms, procedure coordination between member-states, are improvements of already established provisions of the Brussels I Regulation. In the same perspective, that is, at the EU level, their revision is already under way, therefore there is no question of subsidiarity. The harmonization of concurrent

jurisdiction aims at eradicating inequalities within the European Market regarding its interaction with third countries, due to domestic legislations' discrepancies, and, in this sense, single regulation can only take place at the EU level. In what concerns connection with the arbitration procedure, member-states alone cannot guarantee appropriate coordination of arbitration procedures in their territory with court proceedings conducted in another member-state, since national legislation effects are limited by the principle of territoriality.

Proportionality Principle

In the same spirit, the Proposal for Regulation's content complies with the proportionality principle as not exceeding what is necessary for achieving its objective, that is, to guarantee respect and protection of citizens' right for access to justice at minimum cost.

COMMENTS-REMARKS

The Brussels I Regulation has been assessed as balanced and as containing accurate provisions generally bringing about the expected outcome. It is clear that free market rules call for rapidity and directness. The safe, yet, time-consuming foreign judgments' recognition and enforcement process, was the basis for reflection that led to the proposal for Regulation's 44 revision. The Proposal for regulation under discussion constitutes a qualified text in the right direction. Nevertheless, provisions included give rise to a series of issues relating to rights' safekeeping, mainly of the defaulting party, as well as to issues of case-law/jurisprudential regimes' convergence.

More specifically:

- exequatur abolishment requires the merging of rules producing res judicata and contested judicial decisions' enforcement suspension. Proposal's for

Regulation implementation impregnates the danger of overextending implementation of guarantees, already provided anyway by the regulation under discussion-for the parties' protection, to a point that shall eventually lead to hindering of decision implementation.

- Abolishment of public order substantial control requires the strengthening of fair civil proceedings at the total of member-states, as well as the further convergence of substantive and procedural law.

- In what concerns article 25 of the Regulation (ancillary jurisdiction), establishing jurisdiction over the existence of assets of the defendant debtor may be deemed abusive by third country court called for decision implementation, particularly in cases of Regulation's conflict with bilateral conventions.

- Similar problems might rise during article's 26 implementation (forum necessitatis). Respectively, establishing jurisdiction in vague legal concepts , such as those proposed in the Regulation ("cannot be reasonably be brought or conducted", "would be impossible in a third state with which the dispute is closely connected") may be contested by third-country courts.

- The proposal for introduction of a special rule on the regulation of court and arbitration procedures may give rise to problems, as the final judgment on procedural issues shall be reached by the arbitration court , regardless of the member-state's court decision. Therefore, the eventuality of court and arbitrary authorities' procedures' duplication does not seem to be actually deterred.