



Legal proceedings brought in Germany against the Greek State by individuals following the forced exchange of their government bonds may be served on that State in accordance with the EU Regulation on service

It is not manifest that such actions fall outside the concept of civil or commercial matters

An EU regulation¹ aims to improve and accelerate the service of judicial and extrajudicial documents in civil or commercial matters. In that connection, the regulation provides, in particular, for the use of standard forms and for direct and rapid transmission between the bodies designated by the Member States for that purpose. However, the regulation expressly provides that it does not cover liability of the State for actions or omissions committed by it in the exercise of State authority.

The Landgericht Wiesbaden (Regional Court, Wiesbaden, Germany) and the Landgericht Kiel (Regional Court, Kiel, Germany) ask whether actions seeking compensation, contractual performance and damages, brought by private bondholders against the issuing State, are covered by the concept of 'civil or commercial matters' within the meaning of the regulation so that the latter is applicable.

Those courts are hearing actions brought against the Greek State by holders of Greek government bonds who are domiciled in Germany. Those bondholders consider they have suffered damage due to the fact that, in March 2012, they were allegedly forced to exchange their securities for new government bonds with a considerably reduced nominal value. In February 2012, in order to deal with a severe financial crisis, Greece adopted a law² providing for the submission of a restructuring offer to the holders of certain Greek government bonds. That law also provided for the introduction of a restructuring clause³ in the contracts for issue concerned, so that the initial conditions for issue of the securities could be adjusted by means of decisions adopted by the qualified majority of those holding the outstanding capital (which may thus be binding on the minority). None of the individuals concerned in the present case accepted the exchange offer proposed by the Greek State on the basis of that law. In the process of serving those actions on the Greek State (the defendant), the question arose as to whether they concern civil or commercial matters within the meaning of the regulation (in which case service may be effected on the basis of the regulation) or whether their subject-matter concerns actions or omissions in the exercise of State authority (in which case the regulation would not be applicable).

By today's judgment, the Court of Justice replies that legal proceedings, such as those at issue in the present case, brought by private bondholders against the issuing State, fall within the scope of the regulation since it is not manifest that they fall outside the scope of civil or commercial matters.

More specifically, as regards the actions brought before the Landgericht Wiesbaden and the Landgericht Kiel, the Court holds that it cannot be concluded with certainty that those cases are not

¹ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79).

² Law No 4050/2012 of 23 February 2012, entitled 'Rules relating to the adjustment of securities, the issue or guarantee by the Greek State with the agreement of the bond holders' (FEK A' 36/23.2.2012).

³ Also known as a 'CAC' (collective action clause).

civil or commercial matters within the meaning of that regulation. Therefore, the regulation is applicable to those cases.

The Court observes, first of all, that a court which is unsure as to the applicability of the regulation, like the two German courts, must limit itself to a preliminary review of the available evidence, which is necessarily incomplete, in order to decide whether the action brought before it is a civil or commercial matter or a matter not covered by that regulation. In order to determine whether Regulation No 1393/2007 is applicable, it suffices if the court hearing the case concludes that it is not manifest that the action brought before it falls outside the definition of civil and commercial matters. The result of that review is without prejudice to subsequent decisions that the court hearing the case will be required to make as regards, in particular, its own jurisdiction and the substance of the case concerned.

Next, the Court states that the issue of bonds does not necessarily presuppose the exercise of special powers which fall outside the scope of the ordinary legal rules applicable to relationships between individuals. Moreover, it is not obvious from the file that the financial conditions of the securities concerned were fixed unilaterally by the Greek State and not on the basis of market conditions which govern the exchange and profitability of those financial instruments.

It is true that the Greek law at issue falls within the framework of the management of public finances and, more specifically, the restructuring of public debt in order to deal with a severe financial crisis and it is for those purposes that it introduced the possibility to exchange the securities in the contracts concerned.

The Court notes, however, first, that the fact that that possibility was introduced by a law is not decisive in itself in order to conclude that the State acted in the exercise of State authority. Second, it is not obvious that the adoption of the Greek law concerned led directly and immediately to changes regarding the financial conditions of the securities in question and therefore caused the damage alleged by the private individuals. Those changes should have been made following a decision of the majority of the bondholders on the basis of the exchange clause incorporated by that law into the contract of issue, which, furthermore, confirms the intention of the Greek State to keep the management of borrowing within a regulatory framework of a civil nature.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell 📞 (+352) 4303 3355