



Advocate General Bot proposes that the Court of Justice rule that the 'Brussels Ia' Regulation is not applicable in determining which Member State's courts have jurisdiction to rule on claims brought against the Greek State by an individual holding Greek sovereign bonds following their forced exchange in exceptional circumstances and under exceptional conditions

Such a case is not a 'civil or commercial' matter for the purposes of that regulation

Mr Leo Kuhn, domiciled in Vienna (Austria), purchased, through an Austrian custodian bank, Greek sovereign bonds with a nominal value of €35 000.¹ The bonds are bearer securities which confer entitlement to repayment of the capital on maturity and to the payment of interest. Pursuant to the forced exchange carried out by Greece in March 2012, the bonds held by Mr Kuhn were replaced with new bonds with a lower nominal value.²

Mr Kuhn then brought an action against Greece before the Austrian courts for enforcement of the initial borrowing terms or compensation. Greece objected that the Austrian courts lack jurisdiction to rule on such disputes.

The Oberster Gerichtshof (Supreme Court, Austria) asks the Court of Justice, in that context, to interpret the 'Brussels Ia' Regulation on jurisdiction in civil and commercial matters.³ That regulation lays down as a general rule that jurisdiction lies with the courts of the Member State in which the defendant is domiciled. However, in matters relating to a contract, that regulation lays down a rule of special jurisdiction, according to which the courts for the place of performance of the obligation in question also have jurisdiction. Mr Kuhn claims in that regard that, until the day of the forced exchange of the bonds, Greece paid interest into his account with a bank in Austria.

The Oberster Gerichtshof therefore wishes to know whether the place of performance is determined by the borrowing terms when those bonds were issued, notwithstanding subsequent transfers of those bonds, or by the actual performance of the borrowing terms, such as the payment of interest.

In today's Opinion, **Advocate General Yves Bot considers that the case at issue does not fall within the scope of the Brussels Ia Regulation, since it is not a 'civil or commercial' matter.**⁴

¹ Those sovereign bonds were offered by Greece for subscription as follows: the Greek State entered into a contract with managers or participants in the primary market system who, as the first holders of the securities, were able to liquidate them on the secondary market.

² In accordance with Greek Law No 4050/2012 of 23 February 2012, the original securities were cancelled and replaced by new securities with a lower nominal value, leading to a capital loss of 53.5%, or even more if account is taken of the change to the date on which the earlier securities should have matured (some of them being due to mature between 2023 and 2042). The annual rates for the payment of coupons were revised. Finally, the securities are no longer subject to Greek law, but to UK law.

³ 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).

⁴ The Advocate General notes that, in the judgment of 11 June 2015, [C-226/13](#), [C-245/13](#), [C-247/13](#) and [C-578/13](#) *Fahrenbrock and Others* see also Press Release No [67/15](#), the Court held, in a case which arose in quasi-analogous facts, that it does not appear that such a case is manifestly outside the scope of civil or commercial matters within the meaning of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the

The substantive origin of the case at issue is an act of public authority by which the conversion of securities and the adjustment of the initial borrowing terms were imposed retroactively, in exceptional circumstances and under exceptional conditions, in order to prevent the Greek State from defaulting and to ensure the stability of the euro zone.

The Advocate General therefore proposes that the Court answer the Oberster Gerichtshof that an action brought against a Member State by a natural person who has purchased bonds issued by that State does not fall within the scope of 'civil and commercial matters' within the meaning of the Brussels Ia Regulation where, by that action, the natural person in question seeks to enforce the initial borrowing terms or seeks damages for their non-performance on account of his bonds having been exchanged for bonds of a lesser value, that exchange having been imposed on him by a law adopted by the national legislature in exceptional circumstances, which unilaterally and retrospectively amended the conditions applicable to the bonds by inserting a collective action clause enabling the majority of the bond holders to impose such an exchange on the minority.⁵

If the Court does not share that analysis, and rules that the case does actually fall within the scope of 'civil or commercial matters' within the meaning of the Brussels Ia Regulation, the Advocate General continues his analysis and proposes that the Court rule that an action by which the purchaser of bonds issued in a Member State seeks to assert claims arising from those securities against that State (in particular following the unilateral and retroactive adjustment of the borrowing terms by that State) is a matter 'relating to a contract' for the purposes of the abovementioned rule of special jurisdiction.

However, according to the Advocate General, jurisdiction of the Austrian courts cannot be based, in the present case, on that rule.

According to Advocate General Bot, the place of performance of a government bond is determined by the borrowing terms when that bond was issued, notwithstanding subsequent transfers of that bond or the actual performance in a different place of the borrowing terms relating to the payment of interest or the repayment of capital. In the present case, the place of performance of the obligation (payment of coupons and the repayment of capital), which forms the basis of Mr Kuhn's claim, is in Greece.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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.

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

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service in the Member States of judicial and extrajudicial documents in civil or commercial matters, and repealing Council Regulation (EC) No 1348/2000 (OJ 2007, L 324, p. 79). Nevertheless, the Advocate General takes the view that the analysis of jurisdiction under the Brussels Ia Regulation must be established on different bases.

⁵ The Advocate General notes in that regard that natural persons, who formed only a minority of the holders of Greek State bonds and who accounted for approximately 1% of Greece's overall public debt, did not participate in those negotiations with institutional investors, such as, inter alia, banks and credit agencies.