



Press and Information

Court of Justice of the European Union
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Judgment in Case C-308/17
Leo Kuhn v Hellenic Republic

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 2012

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. 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 2012, the bonds held by Mr Kuhn were replaced with new bonds of a lower nominal value.

Mr Kuhn brought an action against Greece before the Austrian courts for enforcement of the initial borrowing terms or compensation. Greece claimed that the Austrian courts lacked 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 matters¹. That regulation lays down the 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 established when the sovereign bonds at issue were issued, or by the place of actual performance of those borrowing terms, such as the payment of interest.

In today’s judgment, the Court holds that the ‘Brussels Ia’ Regulation does not apply to the dispute at issue, as it is not a dispute of a ‘civil or commercial matter’ within the meaning of that regulation.

In fact, the origin of the case at issue stems from a manifestation of public authority and results from actions of the State in the exercise of that public authority.

The Greek legislator, in the exceptional circumstances and context of a serious financial crisis, adopted a law which provided for the retroactive introduction of a collective action clause allowing the imposition of an amendment to the initial borrowing terms of the sovereign bonds at issue on all of the bearers of those securities, including on those who would have sought to oppose that amendment.

In addition, that clause pursues the public interest objective of restructuring the Greek State’s public debt and preventing the risk of failure of that restructuring plan, to avoid that State’s payment default and ensure the stability of the euro zone.

¹ 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).

The Court of Justice observes, in that regard, that by declarations of 21 July and 26 October 2011, the Heads of State or Government of the euro zone stated that, as regards private sector involvement, the Greek situation required an exceptional solution.

The exceptional nature of that situation also results from the fact that, pursuant to the Treaty establishing the European Stability Mechanism, collective action clauses such as that at issue are included, as of 1 January 2013, in all new euro zone government securities with maturity above one year, in a way which ensures that their legal impact is identical.

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 judgment is published on the CURIA website on the day of delivery.

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