



Ms Viviane Reding
Vice President of the European Commission
European Commission
200 Rue de la Loi
1049 Bruxelles

26 October 2011

Dear Vice-President,

We are writing to you with regard to the proposal by the Commission to recast the Brussels I regulation.

As you know BUSINESSEUROPE has always been supportive of measures aiming to strengthen the internal market and, in this context, it shares the fundamental objectives of the revision to address the free circulation of judgments in order to facilitate companies and citizens to make full use of the internal market.

However, BUSINESSEUROPE would like to share with you some concerns about this proposal.

Firstly, BUSINESSEUROPE is concerned about the complete abolition of the exequatur. By discarding this procedure, some indispensable procedural rules and guarantees might be lost (e.g. timely notification of the document instituting the proceedings, the assessment of the incompatibility of a court decision with that of another Member State, the jurisdiction of the court and the review of public order principles).

We agree with you that it is essential to maintain the exequatur procedure for collective cases even though we think that this rule should be applicable regardless of how many claimants there are in a group. Member States' legal systems are significantly different with regard to issues such as compensation mechanisms, legal standing and financing, making collective cases significantly more complex than other cases.

Secondly, BUSINESSEUROPE is also worried about the potential effects of allowing the courts of a Member State to exercise jurisdiction over defendants domiciled outside the EU when no other forum guaranteeing the right to a fair trial is available and the dispute has a 'sufficient connection' with the Member State concerned (extraterritoriality). We question the added value of such an extension. We fear that it produces legal uncertainty, increases litigation and generates unnecessary costs for companies.



It is key that these concerns are taken into account in order to avoid the revision of this regulation having a negative legal and economic impact.

We would thank you in advance for taking our position into account. We remain at your full disposal if you wish to discuss these or other points further.

Yours sincerely

Philippe de Buck



26 October 2011

ANNEX: BUSINESSEUROPE concerns on the revision of Brussels I Regulation

BUSINESSEUROPE is concerned about the following aspects of this proposal:

- Extension of European jurisdiction to third-country defendants ('extraterritoriality')
- The abolition of exequatur procedure
- Application of exequatur to collective action procedures

Extraterritoriality:

BUSINESSEUROPE questions the added value of allowing the courts of a Member State to exercise jurisdiction over defendants domiciled outside the EU if no other forum guaranteeing the right to a fair trial is available and the dispute has a 'sufficient connection' with the Member State concerned (extraterritoriality). We fear that it produces legal uncertainty, increases litigation and generates unnecessary costs for companies.

More specifically, BUSINESSEUROPE:

- Questions the added value for European businesses of creating additional fora for disputes involving defendants domiciled outside the EU (Art. 25 and 26). The possibility for a European company to bring a supplier from outside the EU to court within the EU will often be meaningless, because the ruling will not be enforceable in the home country of the supplier.
- Believes that the recast proposal opens up the possibility of 'forum shopping': a dispute can be brought directly before the court where enforcement is desired and it will no longer be necessary to request the judgment of a foreign judge.
- Fears that judges will be increasingly obliged to apply foreign law, with which they are unfamiliar, entailing complexity and costs.
- Some of the formulations used in article 26 (e.g. 'cannot reasonably be brought or be conducted' or 'fair trial') seem unclear and are liable to create legal uncertainty.
- The question of whether the possibility of a 'fair trial' exists in the country in question will probably be assessed in the light of Art. 6 of the European Convention on Human Rights. Many courts outside the EU will not meet these high standards. This may lead to an inflation of extraterritorial court cases.



Abolition of exequatur procedure

BUSINESSEUROPE is concerned about the complete abolition of the exequatur. This is a complex issue that should not be rushed.

By discarding this procedure, some indispensable procedural rules and guarantees might be lost (e.g. timely notification of the document instituting the proceedings, the assessment of the incompatibility of a court decision with that of another Member State, the jurisdiction of the court and the review of public order principles). In BUSINESSEUROPE's view, the current exequatur procedure is now much less complex than in the past.

Collective redress

We agree with the European Commission that it is essential to maintain the exequatur procedure for collective cases (Art. 37, paragraph 3, point (b)). Member States' legal systems are significantly different with regard to issues such as compensation mechanisms, legal standing and financing, making collective cases significantly more complex than other cases.

In addition, and as the Commission stresses the required level of trust and legal certainty necessary to abolish the exequatur principle in collective cases cannot be presumed at this stage.

We are aware that there are discussions in the European Parliament aimed at deleting the collective redress exception for the exequatur.

In our view, maintaining the exequatur procedure for collective cases is essential. Furthermore, we believe that this rule should be applicable regardless of how many claimants there are in a group. Around half of the EU Member States do not have collective redress systems. Many of those that do have it apply very different systems and standards. The U.S. experience has shown that collective redress cases can be of an entirely different scale and character to regular litigation between parties.

If, despite being the result of a legal process alien to much of the EU, collective redress judgments were automatically enforceable across the EU without any further judicial intervention, jurisdictions presenting the lowest safeguards against litigation abuse (and offering the highest rewards for speculative litigators) will quickly become destinations of choice for "forum shoppers".
