

Observation-files: Portugal 1

Thursday, 6 October

GERMANY 2 v THE NETHERLANDS 1

Subject of discussion:

Whether Regulation 44/2001 should be interpreted as to include arbitration and the recognition and enforcement of arbitral awards, instead of applying the New York Convention of 1958.

According to the very expressive presentation of **The Netherlands**, despite the legal *vacuum* in European legislation on arbitration, there is no need for more extensive interpretation or further legislation, in particular because the Convention of New York is a practical and broad instrument which is quite enough. The question posed is «why change a legal system already existing?».

Additionally, a practical dimension arises under this point of view: 95% of arbitration disputes are resolved in courts, what may lead to the conclusion that a change is unnecessary. The subsidiarity principle would also lead to the same conclusion, under this view, as the opposite position could be disproportionate, as well as the problem of differences between different legal cultures, which would turn a change difficult.

The team of **Germany** granted us with a very clear and deep presentation on the subject of discussion, arguing that the Brussels Regulation should be broadly interpreted, so as to support arbitration and the recognition and enforcement of arbitral awards.

Analysing the New York Convention, it contemplates the possibility to narrow its field of application and to challenge arbitral agreements on grounds of nullity, for instance what can weaken its efficiency, under this point of view.

Additionally, the New York Convention leaves room to the validity of further legal framework (article 7), like the Brussels I Regulation, which presents the huge advantage of providing automatic recognition of a judgment handed down in another member state.

As a conclusion, a broad interpretation of Brussels I would assure legal certainty, mutual trust and swiftness and efficiency.