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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**COMMUNITY OF INDEPENDENT STATES**

**STATUS OF THE COURT CONCEPT**

**Request for an Opinion submitted by  
Mr L.A. DASHUK,  
Chairman  
of the Community of Independent States  
Economic Court**

## COMMUNITY OF INDEPENDENT STATES STATUS OF THE COURT CONCEPT

Economic and political processes which are taking place in member-states of the Community of Independent States<sup>\*</sup> urge the necessity to deepen cooperation between them, to implement steadily the agreements and documents adopted by the bodies (institutions) of the Community of Independent States<sup>\*\*</sup>. This aim can be achieved in case there is an effective independent instrument, which would be able to provide for execution of obligations, undertaken by member-states of the Community of Independent States and other persons in a civilized way.

The Community Court of Independent States<sup>\*\*\*</sup> shall become such an instrument, the activity of which shall be aimed at promotion of integration processes among member-states of the Community in different spheres of interstate relations, strengthening the Community of Independent States, as well as its bodies (institutions) by unbiased and just court settlement of disputes and other issues which are in the terms of reference of the Community Court.

Analysis of the existing status of the Community of Independent States Economic Court evidences that regardless of its broad potential in the area of finding effective solutions to disputable issues, related to various spheres of interstate relations, for the time being activity of the Economic Court is limited to resolution of disputes arising from economic obligations assumed by member-states of the Community of Independent States. Alongside with it, the available resource base, organisational structure and skilled judges and personnel enable this Court to consider disputes not only in the area of economy, but also in other spheres of activity of the Community of Independent States

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<sup>\*</sup> Hereinafter referred to as member-states of the Community of Independent States or member-states of the Community.

<sup>\*\*</sup> Hereinafter referred to as bodies (institutions) of the Community of Independent States or bodies (institutions) of the Community.

<sup>\*\*\*</sup> Hereinafter referred to the Community Court.

The Present Concept is framed in order to justify the necessity of broadening of the Economic Court terms of reference and creation of the Community Court on its basis.

### **Competence of the Community Court**

The following issues listed below shall be in the terms of reference of the Community Court:

**1. Settlement of disputes**

**a) in order of obligatory jurisdiction:**

arising from execution of obligations, assumed by member-states in accordance with agreements, concluded within the framework of the Community of Independent States, as well as implementation of acts adopted by bodies (institutions) of the Community;

on correspondence of acts adopted by bodies (institutions) of the Community to the agreements, concluded within the framework of the Community of Independent States, as well as to the acts, passed by the superior bodies of the Community of Independent States;

related to sojourning of a body (an institution) of the Community of Independent States (excluding the Community Court) on the territory of the corresponding member-state;

arising from property and labour relations with participation of bodies (institutions) of the Community of Independent States (excluding the Community Court), in case a natural person acts as a plaintiff and a body (an institution) of the Community acts as a defendant; in case a body (an institution) of the Community acts as a plaintiff and a defendant is a natural person, who does not fall within jurisdiction of the state a body (an institution) of the Community resides thereat, or the state the said person is citizen thereof, because of the agreements concluded within the framework of the Community of Independent States; in case legal person of the Community member-state acts as a plaintiff or a defendant, except cases when there is an agreement between the parties to submit the dispute for consideration of other judicial or arbitral body;

b) in order of elective jurisdiction (in case there is an agreement between the parties to submit the dispute for consideration of the Community Court):

related to execution of obligations, assumed by member-states in accordance with agreements, concluded outside the Community of Independent States;

related to execution of contractual obligations, assumed by the states which are not members of the Community of Independent States

related to execution of obligations, assumed in accordance with agreements concluded between member-states and the states which are not members of the Community of Independent States;

related to compensation for damage, inflicted by one member-state of the Community to another member-state of the Community as a result of interstate conflicts, ecological disasters, other situations of natural and technogenic character;

arising from execution of agreements on civil and legal issues, concluded between legal and natural persons (economic entities) of different member-states of the Community.

So in order of obligatory and elective jurisdiction the Community Court shall consider issues between:

member-states of the Community;

states and bodies (institutions) of the Community of Independent States;

bodies (institutions) of the Community;

legal and natural persons (as arbitration legal procedure).

2. Interpretation of international agreements, as well as acts adopted by bodies (institutions) of the Community of Independent States:

when decision is taken on definite issues;

in accordance with requests of bodies (institutions) of the Community;

on requests of heads of member-states of the Community, as well as superior bodies of legislative, executive and judicial power of member-states of the Community.

3. Submission of conclusions on legal side of the draft agreements, concluded within the framework of the Community of Independent States, as well as by bodies (institutions) of the Community to see whether there is a mechanism of dispute settlement in case of requests from member-states of the Community, bodies (institutions) of the Community.

4. Submission of conclusions on correspondence of legislative and other acts adopted by member-states of the Community to the obligations assumed in accordance to the agreements, concluded within the framework of the Community of Independent States, as well as to the acts, passed by the constituent bodies of the Community of Independent States; upon requests of state bodies and natural persons of the Community member-states.

### **Organisational structure of the Community Court**

The Community Court shall consider cases at meetings of boards and Plenum of the Community Court.

Members of boards (three to five per each case) shall be appointed by the Chairman of the Community Court.

Plenum of the Community Court shall be the highest joint body of the Community Court.

Plenum of the Community Court shall comprise all judges of the Community Court.

Plenum of the Community Court shall:

consider case decisions taken by the boards of the Community Court as a supervisory body (except decisions, taken as arbitration legal procedure);

consider cases on interpretation of agreements concluded within the framework of the Community of Independent States, as well as acts adopted by bodies (institutions) of the Community;

adopt Regulations of the Community of Independent States Court, other standard acts of the Community Court;

elect Secretary of the Plenum among members thereof;

establish, in cases of necessity, chambers of the Community Court, define personal composition and appoint chairmen of chambers of the Community Court;

determine legal arbitration procedure of the Community Court;

establish rates of legal expenses for requests to the Community Court;

deal with other issues, related to its jurisdiction by the Provision on the Community of Independent States Court, Regulations of the Community of Independent States Court and other standard acts of the Community Court.

### **Procedural rights of the Community Court**

Procedure of consideration of cases in the Community Court shall be determined by the Regulations of the Community of Independent States Court.

The Community Court shall be entitled to request materials necessary for consideration of cases from bodies of the member-states of the Community, economic entities and officials within the terms, established by the Community Court. Requirements of the Community Court, set within its terms of reference shall be stringent.

### **Legal expenses**

Entities applying to the Community Court shall be subject to legal expenses.

Exemption from legal expenses shall be granted for:

member-states of the Community - on issues, related to their participation in the Community of Independent States;

bodies (institutions) of the Community - on all issues;

superior bodies of the legislative, executive and judicial power of the Community member-states - on requests on interpretation;

natural persons - on all issues.

### **Decisions of the Community Court and implementation thereof**

In its decision, which follows consideration of a case, the Community Court shall determine the measures to be taken by the defendant in order to eliminate the infringements and consequences thereof.

In case of non-fulfilment or improper fulfilment of the Community Court decision by the state in breach, the Community Court shall be entitled, in accordance with Article 10 of the Community Statute, to introduce the issue for consideration of the heads of the Community of Independent States Council to take measures, admissible by the international law towards this state.

Forced implementation of decisions, taken by the Community Court as a result of consideration of disputes between bodies (institutions) of the Community and

natural (legal) persons shall be done by the competent bodies of member-states of the Community in accordance with the procedure, provided for implementation of court decisions in the national legislation.

### **Status of the Community Court judges and employees**

The Community Court shall be formed by the equal number of judges, delegated by member-states in accordance with internal procedures of these states. The Community Court judge shall have a degree in law, as well, working experience in that field of at least 5 years and high moral qualities are requested. The Community Court judge term of office shall be 10 years.

In order to provide for the Community Court independence, the immunities, privileges and benefits corresponding to the international practice shall be established for the Community Court, its members, and in certain cases, for employees thereof.

### **Conclusive provisions**

To set up and provide for the activities of the Community Court in accordance with the suggested Concept it is necessary to:

conclude an agreement on creation of the Community of Independent States Court;

introduce changes into:

Community of Independent States Statute, adopted by the heads of the Community of Independent States Council decision, dated January 22, 1993;

Agreement on creation of the Economic Union, dated September 24, 1993;

Convention on legal assistance and legal relations in civil, criminal cases and cases related to family issues, dated January 22, 1993.

Agreement on procedure of consideration of disputes, related to economic activity, dated March 20, 1992, as well as into other agreements/decisions, concluded/adopted within the framework of the Community of Independent States relating to the Economic Court of the Community of Independent States.

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# COMMUNITY OF INDEPENDENT STATES

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## ECONOMIC COURT

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28.06.1996

European Council  
TO: Mr. Giovanni Buckviccio,  
Secretary of the European Commission  
on Democratic Law

Esteemed Mr. Secretary,

As per recommendations of the European Council Director on Legal Issues Mr. Guy de Vel we would like to kindly ask You to look through the enclosed draft of the Community of Independent States Court Concept and to express Your opinion, related to the extension of the Court's competence.

The Community of Independent States Economic Court was created by the Agreement on measures to improve settlement of accounts between economic entities of the Community of Independent States, concluded by the heads of the Community of Independent States Council on May 15, 1992.

The Court acts to provide for homogenous application of agreements of member-states of the Community of Independent States and economic obligations and agreements as well as to eliminate gaps in legislation of member-states of the Community of Independent States by means of creation of court precedents.

The Economic Court competence is as follows: settlement of interstate economic disputes arising from execution of obligations, provided for in the agreements/decisions concluded/adopted by the heads of the Community States Council, the heads of Government of the Community of Independent States Council and other institutions;

on correspondence of standard and other acts of the Community of Independent States adopted on economic issues to the agreements and other acts, concluded within the framework of the Community of Independent States.

As well, the Economic Court performs interpretation how to apply provisions of agreements, other acts of the Community of Independent States and its institutions: legislative acts of the Former Soviet Union for the mutually agreed period of application, including possibility of application thereof, as they do not contradict to the agreements and other acts of the Community adopted on the their basis.

In the course of its activities the Economic Court considered a number of cases on interpretation of agreements between the heads of the Community States Council, as well as economic disputes, arising from improper fulfilment of the intergovernmental decisions.

Analysis of mechanisms to settle interstate disputes, stipulated in the acts of the Community of Independent States and generalization of the Community of Independent States Economic Court practices were used as a basis for a decision of the heads of the Community States Council on activity of the Economic Court. The necessity to improve its activity was admitted. In accordance with this decision it is considered necessary to extend the jurisdiction of the Economic Court and to create the Community of Independent States Court on its basis by gradual reorganisation of the Economic Court utilizing its organisational infrastructure and personnel.

The main idea of this document is to broaden competence and terms of reference of the Court, to change its organisational structure, to make decisions of the Court stringent and binding (in the existing Provision decisions of the Court are of recommendatory nature). In our opinion, approval of the Community of Independent States Court Concept by the heads of the Community States Council shall make the basis for creation of a authoritative interstate judicial body as a necessary condition for viability and efficiency of the other bodies and institutions of the Community Independent States.

Creation of the Community of Independent States Court would provide for real unique legal territory, implementation of acts of the Community, execution of obligations assumed in accordance with concluded agreements on the level of the heads of the Community States Council and the heads of Government of the Community of Independent States Council.

We hope You will find this information of practical interest, it may open vistas for further cooperation with the European Council. Therefore we would like to invite You to get acquainted with the Economic Court activities at Your convenience.

Enclosure: draft of the Community of Independent States Court Concept (6 pages).

Very truly Yours

L.A. Dashuk



Chairman