

PEOPIL

The Pan-European Organisation of Personal Injury Lawyers

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**PEOPIL RESPONSE TO THE EUROPEAN COMMISSION
«GREEN PAPER ON THE REVIEW OF COUNCIL
REGULATION (EC) NO 44/2001 ON JURISDICTION AND
THE RECOGNITION AND ENFORCEMENT OF
JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS»**

JUNE 2009

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The *Pan European Organisation of Personal Injury Lawyers* (PEOPIL) was founded in 1996

and formally established as a charitable entity in 1998 to improve and promote co-operation

and communication between European jurisdictions in the field of personal injury law. The development and expansion of PEOPIL is recognition that the issues involved in personal injury litigation frequently extend beyond national boundaries and require an international perspective and knowledge.

Currently PEOPIL has about 550 members from jurisdictions within the European Union, Non-European Union jurisdictions within Europe and 5 jurisdictions outside Europe.

The aims of PEOPIL are:

- To develop co-operation and networking of personal injury lawyers within Europe;
- To promote access to the legal system for consumers suffering personal injury;
- To promote higher standards of care and safety for consumers;
- To promote proper and fair compensation for all personal injury victims;
- To support and encourage the exchange of information and knowledge

PEOPIL is interested in the harmonisation process which is being carried out by the European

Commission and European Parliament. In this respect PEOPIL has formulated written submissions in response to matters, including the European Commission's Green Papers on

Liability for defective products, Compensation of Victims of Crime, Proposals for a Fifth Directive on Insurance against Civil Liability in respect of the use of motor vehicles, on proposals for reform of Legal Aid, in response to the Commission's staff working paper on the

rights of passengers in international bus and coach transport, and in respect of the European

Parliament and the European Commissions proposals for "Rome II".

PEOPIL has received grants from the European Commission to fund its continuing work including research in Comparative Law under the Grotius Project and under the Framework

Programme for Judicial Co-operation in Civil Matters.

A. THE ABOLITION OF ALL INTERMEDIATE MEASURES TO RECOGNISE AND ENFORCE FOREIGN JUDGMENTS (“EXEQUATUR”)

PEOPIL is in favour of the free circulation of judgments in the internal market and thus of the abolition of exequatur.

However, this abolition should be accompanied by an harmonized review procedure enabling the party negatively affected by the judgment to protect his rights of defence. This procedure should be managed by a special court common to all Member States in order to guarantee a uniform approach (for example, a special division of the EU Court of Justice).

B. THE OPERATION OF THE REGULATION IN THE INTERNATIONAL LEGAL ORDER

PEOPIL is in favour of the application of the jurisdiction rules of the Regulation to third State defendants.

PEOPIL, being an organization aiming to a better protection of personal injury victims, suggests that among the grounds of jurisdiction against such defendants there should be the inclusion of the following cases: *a)* when the victim is injured, or develops his/her illness or dies in one of the Member States as a consequence of an activity or omission carried out by the third State defendant;

b) regardless the place of accident causing the injury or death, when the third State defendant is a potential co-liaible party together with a Member State defendant.

Proceedings already pending before the courts of third States should not prevent the injured party or, in the case of fatal accidents, his/her heirs or relatives to bring proceedings under the Regulation before a Member State court against the third State

defendant or a Member State defendant, whenever the victim or his/her heirs or relatives are not claiming damages in the proceedings pending before the courts of third States.

A common regime of recognition and enforcement of third State judgments should be established, providing for a preliminary review procedure managed by a special court common to all Member States in order to guarantee a uniform approach (for example, a special division of the Court of Justice).

C. CHOICE OF COURT

In the event the jurisdiction of two or more courts (parallel proceedings) is challenged on the basis of one or more “choice-of-court” agreements, all parallel proceedings should be suspended and the decision on jurisdiction should be taken by a special court common to all Member States (for example, a special division of the Court of Justice) in order to guarantee a uniform approach. This court, in order to guarantee the efficiency of jurisdiction agreements, should also be able to award damages for breach of such agreements, whenever it is required by a party to do so.

D. LIS PENDENS AND RELATED ACTIONS

PEOPIL finds that:

- in the case of related actions any court other than the court first seised should not stay its proceedings or decline jurisdiction, but should suspend its proceedings in order to obtain a decision by a special court common to all Member States (for example, a special division of the Court of Justice), whenever the court is required to do so by one of the parties;

- in Article 30 it should be added that the authorities responsible for service and the courts should note when exactly they receive the documents for purposes of service or when exactly the document instituting proceedings is lodged with the court.

Furthermore PEOPIL fully agrees that there should be a limited extension of the rule in Article 6 (1), allowing for a consolidation if the court has jurisdiction over a certain quorum of defendants.

In cross-border road traffic accidents, given the possibility, provided by the Council Regulation [EC] No 44/2001¹, for the victim to claim damages against the insurance company of the liable party before the courts in the Member State where he is domiciled, such an extension would enable the victim to issue the action where he is domiciled not only against the insurance company, but also against the person liable, at least whenever this is necessary for establishing liability (disputed liability).

E. PROVISIONAL MEASURES

PEOPIL regards provisional measures as an essential tool for the protection of victims' rights.

The ways suggested in the Report and in the Green Paper are likely to improve the present system and PEOPIL supports them.

Nevertheless:

¹ Recital 25 to the preamble to the Fifth Motor Directive [2005/14/EC] asserted that “*injured parties may bring legal proceedings against the civil liability insurance provider in the Member State in which they are domiciled*”, stating that this proposition is a proper understanding of Articles 9.1 [b] and 11 [2] of Regulation 44/2001. Accordingly to the Fifth Motor Directive the decision rendered by the European Court of Justice (Second Chamber) on 13th December 2007 (Case C-463/06) ruled that: “*The reference in Article 11(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to Article 9(1)(b) of that regulation is to be interpreted as meaning that the injured party may bring an action directly against the insurer before the courts for the place in a Member State where that injured party is domiciled, provided that such a direct action is permitted and the insurer is domiciled in a Member State*”.

- the category of “provisional, including protective, measures” should be defined in the Regulation; PEOPIIL finds that the definition provided by the ECJ in the case *Van Uden* (paragraph 37) - “*measures which are intended to preserve a factual or legal situation so as to safeguard rights the recognition of which is otherwise sought from*” - can constitute a model for such a purpose;
- this definition should also include interim payments (PEOPIL suggests that future initiatives shall be taken by EC legislature in order to develop uniform provisions on interim payments for the benefit of personal injury victims, eventually within the projects concerning a 6th Motor Insurance Directive);
- Article 31 should make clear that the court required of a provisional measure should carry on a test based on the question whether such measures are sought in support of proceedings issued or to be issued in that Member State (Art. 31 restrictions should not apply) or in support of proceedings in another Member State (Art. 31 restrictions should apply);
- a Recital should be introduced making clear that the requirement of a “real connecting link” to the territorial jurisdiction of the Member State court granting the measure is abandoned;
- provisional measures should be expressly included within the definition of judgment in Article 32, even if it should be added, following the Commission’s suggestion, that the court seised of the main dispute should have the power to revoke a provisional measure granted by another Member State court whenever this is imposed by the findings subsequent to the emission of the provisional measure.

