

PEOPIL
The Pan-European Organisation of
Personal Injury Lawyers

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PEOPIL RESPONSE



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PEOPIL COMMENT ON PROPOSAL FOR A
REGULATION OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL ON JURISDICTION AND THE
RECOGNITION AND ENFORCEMENT OF JUDGMENTS
IN CIVIL AND COMMERCIAL MATTERS

To:

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From:

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Regarding:

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

Date:

28 April 2011

Introduction**PEOPIL**

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.**

PEOPIL is Member of the Commission's Justice Forum

**PEOPIL COMMENT ON PROPOSAL FOR A REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL ON JURISDICTION AND THE RECOGNITION
AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS**

1. The explanatory memorandum dated 14 December 2010 sets out that the proposal is for a recasting of Council Regulation (EC) no. 44/2001 of 22 December 2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels 1). Eight years following its entry into force in March 2002 the Commission has reviewed its operation and considered appropriate amendments.
2. Whilst in general terms the Regulation is considered to work successfully, four main shortcomings are identified following consultation with stakeholders and a number of studies commissioned by the Commission. These are identified as follows:-
 - 2.1 That the existing procedure for recognition and enforcement of a judgement in another Member State results in unnecessary cost and delay and remains an obstacle to the free circulation of judgments.
 - 2.2 That difficulties remain in relation to disputes involving defendants from outside the EU given that in most respects the current Regulation only applies where the defendant is domiciled inside the EU, resulting in unequal access to justice for consumers and companies transacting with parties in third countries
 - 2.3 That the workings of the current Regulation oblige the court designated by the parties in a choice of jurisdiction agreement to stay proceedings if another court has been seised first, resulting in additional cost and delay.
 - 2.4 That the interface between arbitration and litigation needs to be improved.
3. The proposed reforms include:-
 - 3.1 The abolition of the intermediate procedure for the recognition and enforcement of judgments (exequatur) other than in cases involving defamation and what is described as collective compensatory proceedings.
 - 3.2 The extension of jurisdiction rules to disputes involving third country defendants including the regulation of situations where the same issues are pending before a court inside and outside the EU.

- 3.3 Enhancement of the effectiveness of choice of jurisdiction agreements.
- 3.4 An improvement of the interface between the regulation and arbitration.
- 3.5 Improved co-ordination of proceedings before the Court's Member States.
- 3.6 Improvement of access to justice for certain specific disputes.
- 3.7 Clarification of the conditions under which provisional protective measures can circulate in the EU.

4. **The abolition of exequatur.**

The proposal is to abolish the exequatur procedure for all judgments covered by the Regulation with exception of judgments in defamation and compensatory collective redress cases. Abolition is to be accompanied by procedural safeguards. In such cases the defendant would enjoy three main remedies to challenge a judgment given in one Member State taking effect in another. Firstly he would be able to contest the judgment in the Member State of origin if he was not properly informed about the proceedings. Secondly the proposal creates a remedy in the Member State of enforcement which would enable a defendant to contest any other procedural defects which may have arisen during the proceedings before the court of origin and which may have infringed a right to a fair trial. A third remedy would enable a defendant to challenge the enforcement of a judgment in a case in which the judgement in question is irreconcilable with another judgment which has been issued in the Member State of enforcement or, in certain instances, in another country. Subject to the proposal the right to oppose recognition of a judgement on grounds of public policy would be abolished, Standard forms would facilitate the enforcement of a judgment and assist with the calculation of interest and costs. Exequatur would remain for judgments in defamation cases and also in group actions as a result of current national procedural differences.

Peopil Comment

The proposals under this heading are welcomed. The decision of the European Court of Justice in the case of 'Odenbreit' [C-347/08] has already resulted in a significant number of civil actions where individuals have suffered injury or loss in a Member State other than that of their domicile. Such actions can now be brought in many instances before the court of the victim's Member State of domicile by means of a direct action against a liability insurer based in another Member State. It is clearly important in those cases that judgments obtained following such proceedings together with ancillary costs orders are capable of swift and certain enforcement in other Member States. The proposals provide greater certainty (by removing grounds for opposition to enforcement on the basis of public policy) and seem likely to

accelerate and reduce the cost of enforcement proceedings, increasing certainty and enhancing the free circulation of judgments.

5. **Extension of jurisdiction against defendants domiciled outside the EU.**

New provisions creating jurisdiction over defendants domiciled outside of the EU are provided by Articles 25 and 26 in favour of the courts of a Member State where property belonging to a defendant is located, provided that the value of the property is not disproportionate to the value of the claim and the dispute has sufficient connection with the Member State of the court seised. By Article 26 a new exceptional jurisdictional forum is created if proceedings cannot reasonably be brought or conducted in a third state or where a judgment given in a third state would not normally be recognised and enforced. Once again there is a requirement that the dispute has a sufficient connection with the Member State of the court seised.

Peopil Comment

The proposal appears to enhance the rights of EU citizens and is as a consequence welcomed.

6. **Greater freedom for parties to rely upon choice of jurisdiction agreements**

Peopil Comment

New Article 32 appears to allow greater freedom of choice and is thus welcomed.

7. **Improved interface between the Regulation and Arbitration**

Peopil Comment

The proposed new provisions contained in Article 29 are welcomed.

8. **Improved co-ordination of proceedings before the courts of Member States**

Peopil Comment

Insofar as the proposal simplifies and accelerates the general lis pendens provisions the proposal is welcomed.

9. **Improving access to justice**

Peopil Comment

The proposals are welcomed.

10. **Co-operation between courts of Member States in respect of provisional and protective measures**

The new arrangements as set out in Article 31 allow for protective measures by the courts of a Member State other than that first seised.

Peopil Comment

These are welcomed