



ASSOCIATION INTERNATIONALE DE L'ASSURANCE DE PROTECTION JURIDIQUE  
INTERNATIONALE VEREINIGUNG DER RECHTSSCHUTZ-VERSICHERUNG  
INTERNATIONAL ASSOCIATION OF LEGAL EXPENSES INSURANCE

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**International Association of Legal Expenses Insurance  
on the  
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 (COM(2009)175)**

The European Commission intends to revise the Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. With its Green Paper and the Report on the application of Regulation (EC) No 44/2001 (the Regulation) the Commission launches a broad consultation among interested parties on possible ways to develop the operation of the Regulation further.

RIAD, the International Association of Legal Expenses Insurance, wants to improve access to law and justice for the clients of its Members and therefore takes this opportunity to reflect and express its opinion on two selected issues.

**Question 1: the abolition of all intermediate measures to recognise and enforce foreign judgments ("*exequatur*")**

RIAD objects the general abolition of the existing *exequatur* procedure. This procedure aims at safeguarding the procedural rights of defendants, a decisive guarantee with regard to judgments from third countries which do not sufficiently respect procedural or other rights. The Commission itself sees this risk when raising the question whether the special jurisdiction rules of the Regulation could be applied to third State defendants: the application of national rules on jurisdiction may cause an unequal access to justice for EU citizens, i.e. in particular if a party does not get a fair hearing or adequate protection before the courts of third States. Subsequently, with regard to judgments issued by courts of third countries the *exequatur* procedure must be maintained.

**Question 5: *lis pendens* and related actions**

RIAD has repeatedly expressed its opposition against the creation of a legal instrument for collective redress at European level. This position remains unchanged.

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At the same time legal expenses insurers have called for measures to facilitate and coordinate the co-existence of the respective national systems aimed at the enforcement of consumer claims. Consequently, RIAD supports the proposal to strengthen the cooperation and communication mechanism between the courts involved. A first step in this respect could be to introduce a European electronic register of claims which lists all proceedings involving more than one claimant. The information should be given in a standardised and precise form, i.e. naming and describing the claimants, the defendant, the facts of the case as well as the claims. This register could be consulted by judges if there is reasonable evidence that a case brought before their courts has cross-border relevance and claimants from other Member States might be involved.

In addition, RIAD is in favour of providing procedural means to facilitate the coordination of parallel proceedings before the courts of different Member States in order to avoid the risk of irreconcilable judgments resulting from separate proceedings. However, a big challenge in this context is how to maintain the protection for consumers derived from Articles 9 1.(b) and 16 1. of the Regulation which state that a consumer has the choice to bring proceedings against the other party either in the courts of the Member State in which the other party is domiciled or where the consumer is domiciled (to be noted it will not be possible to solve this problem with the introduction of a European instrument for consumer collective redress). Other problems are how to address the risk of negative conflicts of jurisdiction and prevent forum shopping.

The only practicable answer seems to be the introduction of a new jurisdiction for collective redress actions in the courts of the Member State in which the defendant is domiciled. If there are several defendants who are domiciled in different Member States Article 6 1. of the Regulation would apply. Without this specific jurisdiction forum shopping and the race to the courts by the claimants would determine which court had jurisdiction. As a supplement to this provision and to make it workable RIAD agrees that it could be considered to introduce an obligation on the part of the court which declined jurisdiction to re-open the case if the court first seized declines jurisdiction.

### **The importance of legal protection insurance**

Last but not least, RIAD would like to point out the important role legal protection insurance plays in supporting and advising claimants and defendants when they have to cope with the complexity of different jurisdictions and cross-border implications of litigations. Therefore, litigants who are covered by legal protection insurance can rely on legal expertise and do not run a financial risk regardless which court of which Member State has jurisdiction.

#### ***RIAD***

***RIAD is the representative body of some 60 legal expenses insurers and service providers in the field of legal expenses insurance from 16 European countries, Canada, and South Africa. The Association's members offer their customers affordable, efficient and effective access to law and justice in providing them actively with legal advice and other legal services needed for pursuing their rights and in covering costs incurred by the insured persons.***