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**A Review of the New Jurisdiction Rules  
for Electronic Consumer Contracts  
within the European Union**

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## Abstract

The Brussels 1 Regulation is a new Community Instrument that is set to replace the Brussels Convention on Jurisdiction and Recognition of Foreign Judgments. The new Regulation was approved by the European Union on 30th November 2000. (Regan, 2000 <<<http://www.EcommerceTimes.com/perl/story/5635.html>>>).

The approved Regulation can be found at:

<<[http://europa.eu.int/eur-lex/en/com/dat/2000/en\\_500PC0689.html](http://europa.eu.int/eur-lex/en/com/dat/2000/en_500PC0689.html)>> and has been published in the Official Journal as the 'Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,' OJ L12/1 2001. It can also be found at <<[http://europa.eu.int/eur-lex/en/oj/2001/l\\_01220010116en.html](http://europa.eu.int/eur-lex/en/oj/2001/l_01220010116en.html)>>. The new rules of jurisdiction are set to become law throughout Europe from March 2002 (Article 76, OJ L12/1 2001 infra at p.16, first confirmed by the European Council in Competence Judiciaire, Reconnaissance et Execution des Decisions Civiles et Commerciales - Version Provisoire, 30 November / 1 December 2000, <<<http://ue.eu.int/newsroom/main.cfm?LANG=2>>>).

The rules of this new Community Instrument have implications for electronic commerce. One of the most contentious and important set of rules to be replaced by the Regulation relate to consumer contracts. In Europe, the new Regulation (hereafter the Brussels 1 Regulation) will create specific rules of jurisdiction for electronic consumer contracts. This review paper considers the new rules provided by the Regulation for electronic consumer contracts conducted over the Internet and suggests what will be their impact. This paper will outline the new Regulation's provisions for electronic consumer contracts in the context of the European Union and the future of international private law and review how they came to be accepted. The provisions were agreed after rejection and amendment of several previous proposals. Whilst the paper is mainly written from the perspective of the United Kingdom, the potential implications of the new Regulation's provisions for businesses and consumers alike both within and outside the European Union will also be considered.

**Keywords:** Electronic Commerce, Consumers, Electronic Consumer Contracts, European Union, Jurisdiction, Choice of Law/Applicable Law, Private International Law, Brussels Convention, Brussels 1 Regulation, Rome Convention, Communitarisation, Harmonisation, Alternative Dispute Resolution, ADR, Global Rules, Hague Conference.

## 1. Introduction

### 1.1 The Brussels Convention

The Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (hereafter the Brussels Convention) (1968 OJ L299/32) was introduced in Europe after the six original Member States of the European Economic Community sought to:

‘...enter into negotiations with each other with a view to security for the benefit of their nationals the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts, tribunals and arbitration awards’ (Jenard Report, OJ 1979 C59).

The Brussels Convention was a double convention that provided rules for both jurisdiction and automatic recognition and enforcement of foreign judgments. This Convention created new international private law rules for the Member States who ratified the Convention. In matters between Member States, the Convention replaced rules of jurisdiction including those contained in any bilateral agreements that Member States had with each other. Matters involving states outwith the European Community (often referred to as ‘third states’) were, however, still to be determined by the international private law rules of each Member State.

### ***1.1.1 Rules of Jurisdiction in the Brussels Convention - General and Specific***

For the past thirty years or so, the Brussels Convention has provided general and specific grounds of jurisdiction for civil and commercial matters, including provisions for consumer contracts. The Convention has a general ground of jurisdiction, which is contained in Article 2. It enables a person domiciled in a Member States to be sued in that State. This Article could be used by consumers who might be unable to meet the requirements of the specific grounds in Articles 5, and in particular Articles 13-15.

The format and definitions of these grounds has been considered in detail by the European Court of Justice and up to now, we have been able to apply the grounds of jurisdiction in the Convention with a relative degree of confidence. The Convention provides specific grounds of jurisdiction in Articles 5, and in particular for consumers, Articles 13 -15 inclusive. The special grounds of jurisdiction in Article 5 state, inter alia, that:

‘A person domiciled in a Contracting State may, in another Contracting State, be sued:

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question;
2. ...
3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;
4. ...
5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated’.

For matters relating to contract, the European Court of Justice has determined that it ought to be given an 'independent meaning'. In the *Peters* case, the European Court limited further the ability of the forum's conflicts rules to be applied. For matters relating to contract, the European Court held that the obligation in question was essentially the basis of the case. The European Court subsequently held that it was for the court of the *principal* obligation to determine the dispute. The provisions of Article 5 could therefore apply to consumer contracts, excluding the provisions for consumer contracts provided for by Articles 13-15. Moreover, Article 5 could be used as a basis of jurisdiction when the provisions of Articles 13 -15 could not be established. For consumer contracts, specifically for the sale of goods on instalment credit terms, we must look at Articles 13-15.

## 1.2 Special Ground of Jurisdiction for Consumer Contracts

Amongst other special grounds of jurisdiction created for insurance and employment matters, special rules of jurisdiction for consumer contracts were provided in the 1978 Accession Convention to the Brussels Convention. These are contained in Articles 13 to 15 inclusive. These well-known Articles now amended by the Brussels 1 Regulation stated:

### *Article 13*

In matters relating to the sale of goods on instalment credit terms, or to loans expressly made to finance the sale of goods and repayable by instalments, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5 (5).

### *Article 14*

A seller or lender who is domiciled in a Contracting State may be sued either in the court of that State or in the courts of the Contracting State in which the buyer or borrower is domiciled.

Proceedings may be brought by a seller against a buyer or by a lender against a borrower only in the courts of the State in which the defendant is domiciled. These provisions shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

### *Article 15*

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen or
2. which allows the buyer or the borrower to bring proceedings in courts other than those indicated in this Section or
3. which is concluded between a buyer and a seller, or between a borrower and a lender, both of whom are domiciled or habitually resident in the same

Contracting State, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State’.

Essentially, the rules for jurisdiction in consumer contracts enable the consumer to sue the business in the consumer’s own domicile as long as the sale was one based on instalment credit terms. This special ground of jurisdiction was introduced to provide protection of the consumer as the contractually weaker party. The special grounds of jurisdiction for consumer contracts required to be interpreted independently based on the objectives of the Convention. Until now there has been no provision for rules of jurisdiction for new forms of business transactions now available, such as contracts that can be conducted and concluded on-line over the Internet, World Wide Web or by electronic mail (email). In Europe, the European Commission sought to address this important issue by drafting frameworks for electronic commerce and in the field of Justice and Home Affairs, by revising both the Brussels and Rome Conventions and replacing them with Community Instruments.

## **2. Jurisdiction, Electronic Commerce and the Brussels Convention**

### **2.1 Electronic Commerce in the European Union**

In the last five years the European Union has pursued several initiatives in a variety of areas of electronic commerce. These were recently considered in a detailed JILT Commentary by Julia Hörnle (Hörnle, 2000 <<<http://elj.warwick.ac.uk/jilt/00-3/hornle.html>>>). In recent months, the initiatives have included, inter alia, the ‘Directive on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market’ and the ‘Directive on the Protection of Consumers in respect of Distance Contracts,’ (hereafter the ‘Electronic Commerce Directive’ and the ‘Distance Selling Directive’ respectively). (Directive on electronic commerce, 2000 OJ L178, also at: <[http://www.europa.eu.int/eur-lex/en/lif/dat/2000/en\\_300L0031.html](http://www.europa.eu.int/eur-lex/en/lif/dat/2000/en_300L0031.html)> and Directive on Distance Selling, 1997 OJ L0007, at: <[http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397L0007.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0007.html)>). In addition, the replacement of the Brussels Convention makes provision for rules of jurisdiction in electronic consumer contracts and this is the focus for the present paper.

In the last five years, on-line trading between businesses and consumers (B2C) has grown enormously (Goldring, 1997). Most growth has been witnessed in the entertainment and gambling sectors. Regardless of the anticipated increase in B2C e-commerce, clear rules of jurisdiction (and indeed choice of law) are required for the protection of consumers and for the assistance to businesses contracting in an on-line environment. However, in the regional context, the replacement of the Brussels Convention has taken several years to negotiate. Over the past three years, the issue of special rules for consumer contracts and in particular those conducted electronically were seen as most controversial and much debate took place during the process leading to the recent approval of the new Regulation. What are the rules that have been finally approved for electronic consumer contracts in the new Brussels 1 Regulation and how did they come to be agreed? These are important

questions as new rules of jurisdiction have been approved for electronic consumer contracts. These have implications for consumers and businesses contracting online. These rules will also pave the way for the negotiations on the appropriate choice of law (or applicable law) rules when the Rome Convention comes to be replaced.

### ***2.1.1 The New Rules of Jurisdiction for Consumer Contracts in the European Union***

The Brussels 1 Regulation aims to provide for the free movement of judgments in civil and commercial matters in terms of the European Union's '*acquis communautaire*', (Preamble of Amended Proposal (presented by the Commission pursuant to Article 250 (2) of the EC-Treaty), Recital 5, <[http://europa.eu.int/eurlex/en/com/dat/2000/en\\_500PC0689.html](http://europa.eu.int/eurlex/en/com/dat/2000/en_500PC0689.html) <[http://europa.eu.int/eur-lex/en/com/dat/2000/en\\_500PC0689.html](http://europa.eu.int/eur-lex/en/com/dat/2000/en_500PC0689.html)>>).

This *acquis* extends to facilitating cooperation in civil and commercial matters throughout the European Union. The revision of the Brussels Convention is one such measure taken in the field of Justice and Home Affairs. Indeed, its replacement is being implemented on the basis of provisions of Title IV of the Treaty of Amsterdam. These measures amended the Treaty on European Union and extend the European Union's (internal) competencies. As Beaumont (1999 at p. 225) reports, the measures provided under the new Article 65 EC 'for the field of judicial cooperation in civil matters having cross-border implications...insofar as necessary for the proper functioning of the internal market' include,

- a) 'improving and simplifying:

...

the recognition and enforcement of decisions in civil and commercial cases, including decisions in extra judicial cases;

- a) promoting the compatibility of the rules applicable in the member States concerning the conflict of laws and jurisdiction;

...'

The Preamble to the new Regulation explains that a 'Community legal instrument' was required to achieve the objective of ensuring that rules of jurisdiction and enforcement of judgments would be dealt with consistently throughout the European Union. Basedow (2000) has recently suggested that the European Union has sought to 'communitarise' or 'harmonise' substantive and procedural rules of its Member States in line with the Union's increased competencies post Treaty of Amsterdam. International private law is one area in which harmonisation of procedural law is sought. Interestingly, Basedow suggests that the measures taken for communitarisation will enable the European Union to make collective representation at international level, whilst at the same time enabling the objective of the Internal Market's 'proper functioning' to be upheld. It is submitted that the effects of the Community's new competence is now beginning to emerge. If correct, this will have implications for the global nature of electronic commerce. The effect of communitarisation appears to illustrate the harmonisation of international private law at regional level, albeit whilst primarily fulfilling the aims of the European Union.

The rules of jurisdiction and choice of law for electronic contracts in Europe, especially consumer contracts, will have implications for the global nature of electronic commerce. In Europe, the application of jurisdiction and choice of law rules at national level depends upon what has been approved and adopted by the European Union collectively. The measures for Justice and Home Affairs detailed above certainly make express reference to international private law, despite the statement in the last Report on the draft Regulation stipulating that the draft Regulation will be ‘...legislating for the Internal Market’. (Committee on Legal Affairs and Internal Market Report, 18 September 2000, Justification for Amendment 11 (Recital 4a)

<http://www2.europarl.eu.int/omk/OMEuroparl?PROG=REPORT&L=EN&PUBREF=-//EP//NONSGML+REPORT+A5-2000-0253+0+DOC+PDF+V0//EN&LEVEL=2> <http://www2.europarl.eu.int/omk/OM-Europarl?PROG=REPORT&L=EN&PUBREF=-//EP//NONSGML+REPORT+A5-2000-0253+0+DOC+PDF+V0//EN&LEVEL=2>>>)

However, the new Regulation’s provisions will have implications for states outside the European Union. Whilst the issue of the European Union’s competence will not be considered in depth here, nevertheless its significance should be remembered firstly in order to consider the basis for the Brussels 1 Regulation within the European Union post Treaty of Amsterdam, and secondly what role the European Union will have in contributing towards global measures for electronic commerce. The European Union’s role in the development of jurisdiction and choice of law rules for electronic commerce is indeed significant, especially for the future application of international private law rules within the European Union and outwith the European Union. In the latter case this is demonstrated by Member States’ relations with other states globally, particularly where the provisions of the Brussels Regulation do not apply. The application (and effect) of communitarisation ought to be closely monitored.

## **2.2 Formulating New Rules of Jurisdiction for Electronic Consumer Contracts in the Brussels 1 Regulation**

According to Auf der Mar (1999):

‘(C)onsumer protection issues are particularly tricky for online merchants, since they routinely provide for jurisdiction of the courts at the consumer’s domicile and for the application of his or her national law’.

Certainly consumer protection, and by implication international private law, rules will be challenging for businesses if those rules provide that consumers are still entitled to raise proceedings in their own jurisdiction. This difficulty required to be dealt with during the negotiations to replace the Brussels Convention. After much national consultation, the following new rules were approved.

### ***2.2.1 The Brussels 1 Regulation’s New Provisions for Consumer Contracts***

### *Article 5*

The new provisions for consumer contracts are contained in Articles 5 and 15 to 17. These Articles replace the original Articles 5 and 13 to 15 and provide rules for, inter alia, on-line consumer contracts. Article 5 of the new Regulation states inter alia, that in matter relating to a contract, a person domiciled in a Member State can be sued in the courts for the place of performance of the obligation in question. The new Regulation provides clarification of the meaning of place of performance depending upon whether that performance is for goods or services. Article 5(1)(b) states that ‘the place of performance of the obligation in question shall be in the case of sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered.’ For services, the Regulation states that ‘the place in a Member State where, under the contract, the services were provided or should have been provided.’ This appears straightforward enough. Finally, Article 5(1)(c) affirms that if subparagraph (b) is not applicable, then subparagraph (a) is. Whilst it is to be applauded that the European Union sought to distinguish between the place of performance of goods and services, what definition will be given for the place of performance of digital goods or services purchased on-line has yet to be tested.

### *Articles 15 and 16*

These Articles replace the original Articles 13 to 15 and provide rules for on-line consumer contracts. The new Regulation states, inter alia,

#### *‘Article 15*

1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5, if:

- (a) it is a contract for the sale of goods on instalment credit terms; or
- (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer’s domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.

2. ...

3. ...

#### *Article 16*

1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.



2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

3. ...

*Article 17*

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen; or

2. which allows the consumer to bring proceedings in courts other than those indicated in this Section; or

3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State'.

The general rule that consumers are entitled to sue businesses either in the business' or the consumers' jurisdiction is retained in Article 16. Importantly, Article 15(3) makes Article 16 applicable for consumer contracts concluded over the Internet. These provisions state that jurisdiction will be established if by 'any means' businesses 'direct' their professional or commercial activities to the consumer's domicile or other States including 'individual Member States'. Any business that uses the World Wide Web to promote and provide their goods or services to consumers in Europe will have to consider the implications of the new Regulation's provisions. Whilst the phrase 'any means' is clearly very wide indeed, it will no doubt be the extent to which the business directs its activities to a consumer that will determine jurisdiction. The provisions of Article 15(4) are just as significant for business. This section allows for jurisdiction to be established if, in a dispute about the operation of the 'branch, agency or other establishment', that branch, agency or other establishment is situated in a Member State, even though the principle place of business is not located in a Member State. One very interesting question that follows from this is whether a web or host server located in a Member State will be deemed by the European Court of Justice in due course to be a 'branch, agency or other establishment'. Schu (1997) did not view a web server as a branch, agency or other establishment. In his comparison of jurisdictions in Europe and the United States, he maintains that the physical location of a server is irrelevant to a contract. The European Court will certainly be requested to give an autonomous definition of Article 15(4) to take account the position of web servers that are often located in different (or perhaps several) jurisdictions from the businesses using them. Despite the new Regulation the present position is by no means clear on the position of web servers and if jurisdiction can be found where they are located. Perhaps it may be asked why the drafters of the Regulation did not take the opportunity to clarify this important matter. Nevertheless, the point was affirmed however in the Electronic Commerce Directive which states, inter alia:

‘...the place of establishment of a company providing services via an Internet website is not the place at which the technology supporting its website is located’.

It is the present author’s view that the web server’s location will not find jurisdiction. Firstly, the web server is a conduit of information, similar to a telephone or a fax machine. It needs to information input from the web site itself if it is to make that site available and useful. That information may well come from another web server or servers. The server’s location is of secondary importance to the web site’s content. Indeed if jurisdiction could be established, difficulties will arise if more than one server was involved in transmitting the web site’s content? What is important is whether (the owner of) the web site is actively or passively directing its activities to consumers. Indeed, the web site owner’s actions might fall in between these two recognised parameters of web site activity and content (Epps, 1997). The web server’s location does not appear to have concerned those who proposed the Regulation. This Regulation makes it clear that it is where the activities on a web site are *directed to* (it is submitted as opposed to where they *come from*) that will enable jurisdiction to be established in the case of electronic consumer contracts. Given the labyrinth of networks that make up the Internet and the time and money that would be required to establish where a server or servers are located, this appears to be the most sensible approach. Indeed, in the time it could take for a server to be identified, another server could be used and the rule establishing jurisdiction could be subjected to a form of on-line forum shopping. The debate on the position of web servers will no doubt continue in Europe until a case raises this point.

### **2.3 The Impact of the New Provisions for Consumers Contracting On-line**

Previously in Europe, the EC Treaty provided for the protection of consumers. The European Union has upheld the traditional view of the consumer as the contractually weaker party by enabling them to raise proceedings in their own jurisdiction, and also by retaining the provision for consumers themselves to be sued in their own jurisdiction in terms of the new Article 16. The impact of this provision on businesses is now immediately clear. In order to take advantage of advertising and selling to consumers across borders in Europe, businesses will be required to comply with the jurisdiction and applicable laws of each of the European Union’s Member States. The effect on businesses is not so clear at present. When the new Regulation takes effect, businesses worldwide will have to consider the benefits and risks of conducting business on-line with consumers domiciled in Europe. It is perhaps too early to assess any effect on businesses. Small and medium sized businesses, those businesses that have been encouraged to take advantage of on-line advertising might be dissuaded from doing so with the introduction of the new Regulation. Nevertheless, the distinction between an active and a passive web site must be considered. The distinction between the types of web sites used by businesses in promoting their business activities have been considered in several decisions from the United States. It is to be expected that in due course the European Court of Justice will be called to provide guidance on the applicability of the Regulation anent active and passive web sites targeting consumers domiciled in Europe by virtue of

whether they are deemed to be directing their activities to consumers. How this assists businesses presently using the Internet as a marketing or selling tool is a significant question.

### **3. The Process of Approval of the Brussels 1 Regulation**

The new Regulation's proposals for on-line rules of jurisdiction for consumer contracts did not go without objection. Given the significance of these new rules to parties conducting business on the Internet, it is noteworthy to consider how these proposals contained in the Regulation were finally approved after several amendments and consultation with business and consumer representatives.

#### **3.1 1997 - Commencement of the Initial Proposal**

Why were these new rules finally agreed? Much debate surrounded the proposals to replace the Brussels Convention, especially in relation to electronic consumer contracts. Negotiations for the original proposal commenced in November 1997. The initial revision process was, according to the Commissioner for Justice and Home Affairs, to allow for:

‘...improv(ing) access to justice within the EU. This will strengthen the rights of the citizen as a consumer as well as in other roles. It will also contribute to a more stable legal framework for industry, in particular small and medium sized companies, and thereby give a positive impetus to the further development of the internal market’.

<<<http://www.europa.eu.int/comm/dg15/en/update/general/1038.html>>>

However this initial proposal was subsequently ‘lapsed / withdrawn’ by January 1999 <<[http://wwwdb.europarl.eu.int/oeil/oeil\\_viewdnl.ProcedureView?lang=2&procid=2511](http://wwwdb.europarl.eu.int/oeil/oeil_viewdnl.ProcedureView?lang=2&procid=2511)>>.

The proposals to replace the Brussels Convention later revived on the basis of the new Community *acquis* and draft proposals were issued in July 1999. The proposals put forward at that time were, for Articles 15 to 17 inclusive, the same as the Regulation recently accepted (Commission's Proposed Regulation, 14 July 1999, <<[http://europa.eu.int/eur-lex/en/com/pdf/1999/en\\_599PC0348.pdf](http://europa.eu.int/eur-lex/en/com/pdf/1999/en_599PC0348.pdf)>>).

#### **3.2 1999 - The Concerns of Consumers and Businesses Expressed**

The specific proposals for consumer contracts contained in the draft Regulation issued in 1999 were rejected. The concerns of consumer organisations and businesses and their representatives became apparent at European and global levels. Many organisations and businesses made strong representations to the European Commission at a Conference held on their behalf in November 1999 (‘Hearing on Electronic Commerce’, <<http://www.europa.eu.int/rapid/start/cgi/gues...ion.gettxt=gt&doc=IP/99/5100|RAPID&lg=EN>>). These organisations were concerned with the proposals that would subject businesses to the laws of every Member State. As a result of that Consultation it became clear that the proposals required to be reconsidered. In the United Kingdom for

example, the Department of Trade and Industry carried out a Consultation Exercise on Article 13 of the Brussels Convention. The response to that Consultation exercise largely approved the European Commission's proposals as well as reinforcing the desire for Alternative Dispute Resolution schemes to complement the rules of the proposed Regulation. What position would the European Union finally take on this matter? Would the EC Treaty's consumer protection provisions be upheld by enabling consumers to sue businesses in their own jurisdiction ('Country of Destination Principle') or would businesses be provided with rules of jurisdiction similar to the 'Country of Origin Principle' used in the Electronic Commerce Directive?

### **3.3 Development of the Proposed Regulation During 2000**

The proposals to replace the Brussels Convention were put forward in a report by Diana Wallis, Rapporteur, prepared after the Consultation with businesses and consumer organisations had taken place. However, the Economic and Social Committee held that 'directing such activities' in Article 15 was not 'clear enough' (Economic and Social Committee Opinion, 1999,

<[http://www.esc.eu.int/fr/docs/fr\\_docs\\_op\\_February.htm](http://www.esc.eu.int/fr/docs/fr_docs_op_February.htm)>).

The report was not approved and even Ms Wallis voted against it. Were consumers going to be provided with the protection generally accorded to them in off-line transactions? With the general increase in Internet trade, the desire of the European Union to implement rules to facilitate legal certainty and imminent introduction of the Electronic Commerce and Distance Selling Directives, the proposed Regulation required to provide definitive rules of jurisdiction for consumer contracts.

### **3.4 The Introduction of the Electronic Commerce Directive**

Between June and September 2000, the European Parliament was required to approve the proposed Regulation through the consultation procedure. The European Parliament eventually approved the draft regulation, subject to further amendments in respect of electronic consumer contracts. By June 2000 the Electronic Commerce Directive had been finalised. This Directive was created to provide guidance and rules for electronic commerce, including consumer contracts, within Member States. However, in Recital 23 of the Preamble, the Directive specifies that it would not seek to make provision for rules of international private law nor affect existing rules. The Directive allows for the regulation of information society providers by subjecting them to their own state's regulatory regimes, where they exist. It is not for the consumer to enforce these. This is known as the 'Country of Origin' Principle. At that time opposing views were expressed that the proposals for the Brussels 1 Regulation (based on the 'Country of Destination') would clash with the new Directive (Dutson; 2000 at p.106). However, it has been expressed by some international private law authors that the bases of jurisdiction for the Directive and the Regulation are different (Dutson, 2000 and Stone, 2000). Confusion and concern appeared to remain on this point. Meanwhile the proposals for the Brussels 1 Regulation were drafted to provide, and still do provide, that in consumer contracts the basis of jurisdiction is the consumer's domicile. Both Stone (2000) and Dutson (2000)

appear to agree that the basis of jurisdiction for the Directive and the proposed Regulation are in fact different and therefore not likely to conflict with each other. They maintain that the Brussels Regulation provides rules of *personal* jurisdiction whereby the Directive's basis of jurisdiction is in relation to *subject-matter*. It is submitted that this relates to the nature of these two pieces of Community legislation. The Electronic Commerce Directive is viewed as a *public* law measure essentially providing a framework for Member States to regulate their Internet Service Providers. The Brussels 1 Regulation provides rules for *private*, and in the sense of cross-border, international law for *individuals*, in particular including consumers. Indeed, as Stone points out, Article 3 of the Directive does not seek to limit or restrict private international law's provisions for consumer protection (Stone, 2000 at p.16). This view is reiterated here, since the Directive does not seek to create rules of jurisdiction (that is, personal jurisdiction) over matters that it seeks to monitor, there is perhaps no conflict. This would also appear to relate to the Union's aim in seeking harmonisation of international private law. For matters outwith the remit of personal jurisdiction, it would seem that the European Union's preference for the 'Country of Origin' principle to be applied by its Member States, for example the regulation Service Providers' conduct within Member States' territory, is maintained.

#### 4. Final Negotiations of the Brussels 1 Regulation

In September 2000, the European Parliament by one vote put forward a modified proposal including amended rules for jurisdiction in electronic consumer contracts. At the time, these new provisions essentially altered the jurisdiction rules enabling a business to determine jurisdiction '...so that it may only be sued where it has its registered office...'. <<[http://www.db.europarl.eu.int/oeil/oeil\\_viewdnl.ProcedureView?lang=2&procid=3726](http://www.db.europarl.eu.int/oeil/oeil_viewdnl.ProcedureView?lang=2&procid=3726)>> with the proviso that '(W)eb sites must, however, warn consumers about this'. In the end the proposals were amended further and in fact reflected the Commission's original position. The jurisdiction of the consumer would be the basis of consumer contracts in the final proposal to be put to the Commission. Article 15 of the proposed Regulation was also amended to take account of electronic consumer contracts. The European Parliament's proposal sought to add the following to Article 15.

##### *Article 15*

In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 4 and Article 5(5), ***if the consumer enters into the contract from his domicile and:***

- 1) it is a contract for the sale of goods on instalment credit terms; or
- 2) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- 3) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to

several countries including that Member State, and the contract falls within the scope of such activities *or the contract has been concluded at a distance with a consumer having his domicile in another Member State...*'.

These statements ensured that consumer contracts conducted over the Internet were addressed. The addition to Article 15(3) appeared to allow for the situation whereby the contract was concluded 'at a distance...', it is assumed, from the consumer's domicile. In the case of consumer contracts, this provision would allow consumers to bring proceedings in their own domicile. This would have conflicted with the provision in Article 17 requiring the consumer to raise proceedings in the business' jurisdiction.

#### **4.1 Article 17a - Agreements on Jurisdiction for Consumer Contracts Proposed**

The European Parliament also proposed a new Article 17a, which Article 17 would also be subject to. The basis of the proposal was to allow consumers to opt-out of Articles 16 and 17 and agree to raise proceedings where the business was domiciled. There were a number of requirements for this provision to be capable of use. Firstly, it applied to a contract that was conducted electronically 'at a distance'. Secondly, the consumer had to be alerted to the fact that he or she could not raise proceedings in their own domicile. Thirdly, and before the contract was finalised, there had to be an agreement in place for the matter to be referred to 'a recognised out-of-court dispute settlement system with binding effects'. Provisions for language and details of the parties would also have to be agreed or provided in advance. It was proposed that if any of the requirements of the Article were not met the agreement would be void.

The new Article was proposed as an alternative to Articles 16 and 17. Subject to the conditions stated, the consumer would have been allowed to agree with the other party to raise proceedings only in that party's domicile in the event of a dispute. It was also a means by which Alternative Dispute Resolution (ADR) procedures would (perhaps automatically) be invoked if a dispute arose. However it is perhaps questionable whether consumers would have wanted to use this provision, and for what benefit other than having recourse to ADR procedures that they could have used anyway. The only imposition on businesses appeared to be that it was for them to ensure and initiate ADR. However there is no mention in the Article how ADR is to be agreed and what form of ADR ought be used and, most significantly, where the ADR would occur (on-line or not). It is also unlikely that consumers would agree to a jurisdiction where they have neither experience of the language nor of the law. In essence, it appeared to cloak the business' jurisdiction as the place where a dispute would be determined. It was thereafter for the European Commission to either approve or amend the European Parliament's final proposals. The position remained unclear whether the European Commission would approve the European Parliament's proposals until October 2000. In the end the Commission did approve minor aspects, for example approving the 'special position of the United Kingdom and Ireland' (The Legislative Observatory, <[http://www.db.europarl.eu.int/oeil/oeil\\_viewdnl.ProcedureView?lang=2&procid=3726](http://www.db.europarl.eu.int/oeil/oeil_viewdnl.ProcedureView?lang=2&procid=3726)>) enabling them to opt-in to the proposed Regulation. However, the European Parliament's proposals for jurisdiction in electronic consumer contracts were rejected by the Commission.

The Commission certainly welcomed the proposals for ADR schemes to be used for the purposes of settling disputes in consumer contracts. However they were concerned with the introduction of measures for alternative dispute schemes that would not be operational in advance of the Regulation. The Rapporteur stated that from her research many consumers would not in fact resort to court when a dispute arose given the low value of most claims that often are outweighed by the cost of legal- representation. Additionally, the Commission took the view that further research and analysis of how ADR would work in practice was required before any Community Instrument would be able to provide ADR as an alternative to traditional forms of resolving disputes. The Commission wanted the proposed Regulation to contribute to dealing with consumer disputes, not to add to them. The European Commission altered the specific proposals anent electronic consumer contracts proposals to Articles 15 to 17 outlined at the beginning of this paper. Perhaps, for the time being, there will be no Article 17a.

## **4.2. The Purpose and Implications of the New Regulation's Rules for Electronic Consumer Contracts**

As stated earlier, the new Regulation's purpose is to ensure consistency of rules for on-line transactions conducted across borders. However given the final report from the Rapporteur, it appears that these measures are simply for the benefit of the Internal Market and are not to be treated either as an attempt at creating international private law rules nor to deal with the global issue of jurisdiction for electronic consumer contracts.

The impact on businesses located inside and outside the European Union is the same. The consumer has the right to sue them in their own jurisdiction. No matter where the business is located (whether in Europe or elsewhere), businesses are likely to encounter difficulties in knowing and understanding the consumer protection and private international laws of each Member State. Difficulties will arise for businesses branch in a EU Member State, such as many United States based companies. The difficulties will certainly be compounded if these companies are not located in Europe at all but have web sites that are available to contract with consumers domiciled in Europe. This is how the global issue of the Internet arises.

## **5. A Global Quest for Jurisdiction Rules for Electronic Consumer Contracts?**

Both Endeshaw (1998 at p.10) and Burnstein (1998) regard global measures as necessary for Internet regulation. Indeed Burnstein (1998 at p.34) states:

‘Nations must be willing to relinquish some measure of sovereignty in exchange for the benefits of the Internet, and ultimately nations should not allow national laws and local regulations to obstruct the thriving global Internet’.

The question is should rules of jurisdiction for consumer contracts of this type be global in nature and application. The conflict between national consumer protection laws, private international laws and the ‘virtual’, borderless nature of electronic commerce is

evident and must be addressed. Parties should have a reasonable expectation of their rights and duties towards each other and where these rights and duties can be enforced. This is evident in cross-border cases and now becoming more prevalent as the onset of electronic commerce enables cross-border transactions. It is submitted that the issue of whether global, regional or national regulatory measures for electronic consumer contracts should prevail over self-regulatory mechanisms remains a live one. Docherty and Fletcher (2000 at p.5) state that whatever system is used to regulate the Internet, 'it should not produce over-regulation'. Nevertheless, these authors also prefer a global solution.

The European Union has sought to achieve this at regional level. Admittedly, this is a step towards principles of jurisdiction in the on-line environment. The Brussels 1 Regulation largely ignores the extent and nature of on-line trading outside Europe. Will this affect the application of the Regulation? As stated earlier, the Regulation is to be implemented by March 2002. Therefore, it is perhaps too early at this stage to make assumptions. Nevertheless, the European Union has included in its Justice and Home Affairs Framework an assessment of the Brussels 1 Regulation five years after its implementation.

The role of other International Organisations should also be considered now that the European Union has approved the Brussels 1 Regulation. The Hague Conference on Private International Law is presently drafting a worldwide judgments Convention. It remains to be seen what role and to what extent that proposed Convention will impact upon enforceable rules of jurisdiction for electronic contracts. It also remains to be assessed how the proposed Convention will work in practice alongside regional instruments such as the Brussels 1 Regulation and what involvement the European Union and its Member States will have in its negotiation. In recent years a number of authors, (notably D'Oliviera H U J, 1992 at p.283, Beaumont, 1998, Dehousse, 1999 at 598, Walker, 1999 at p.232, Pernice, 1999 at p.705, and Von Bogdandy 1999, at p.894), have considered the issue of European Union competency in this matter.

<<http://www.europa.eu.int/scadplus/leg/en/lvb/l33079.htm>>  
<<<http://www.europa.eu.int/scadplus/leg/en/cig/g4000t.htm>>>.

<<<http://www.europa.eu.int/scadplus/leg/en/cig/g4000c.htm>>>) However, as stated earlier, Basedow maintains that the new Community competence will '...extend equally to third states,' justified if the proper functioning of the Internal Market is facilitated. Global discussions and negotiations for rules of jurisdiction and choice of law for electronic consumer contracts will no doubt illustrate this in due course. The Brussels Regulation is due to be implemented by 2002. Meantime, the next Hague Conference Special Commission Meeting on the proposed worldwide judgments Convention is to be held later this year. This will be a test of the new competency of the European Union.

## **6. On-Line Dispute Resolution Schemes - An Alternative to the Regulation's Rules for Determining Consumer Disputes?**

The European Union is seeking to implement on-line alternative dispute resolution



(ADR) mechanisms to be used by parties, such as consumers, in dispute instead of reverting to the courts. The proposals for 'extra judicial dispute resolution schemes' are to be provided for e-commerce transactions since '...recourse to the courts must be regarded as the last resort'. Nevertheless, it has been suggested that the use of these mechanisms will be encouraged more in practice, ensuring that parties have an alternative basis for their dispute to be considered. Indeed, it was stated last year in the European Committee's Draft Report that the Regulation itself will be delayed until these provisions have been worked out for the benefit of '...assisting industry, particularly credit-card providers and the banks...' <<http://www.savings-banks.com/esbg/pp0539.htm>>. Given the approval of the Brussels 1 Regulation this now appears unlikely. Nevertheless, measures for Alternative Dispute Resolution will no doubt be assessed after the Regulation has been in force for five years.

Around the same time the Consultation Paper prepared by the United Kingdom Department of Trade and Industry pointed out that:

'The [United Kingdom] Government is actively supporting initiatives to develop European self-regulatory schemes including codes of practice and cross border alternative dispute resolution (ADR). It believes that ADR is the practical answer to on-line disputes for many consumers and businesses' (DTI Consultation Paper, April 2000, <<http://www.dti.gov.uk/cacp/ca/ecommerce.htm>>).

The application and effectiveness of ADR schemes will have to be considered to assess the future effect of the Brussels 1 Regulation in respect of electronic consumer contracts. This would involve considering national, and possibly global, ADR schemes such as TrustUK and BBBOnline in the USA. The value and outcome of ADR schemes for consumer contract disputes compared to the rules provided in the new Regulation will have to be measured in due course, at regional level. It would appear that ADR must be borne in mind when considering the new Regulation's rules for electronic consumer contracts given the nature (and some would say value) of the (consumer) contract involved. At global level, the OECD has recently held a Conference in conjunction with the Hague Conference on Private International Law and the International Chamber of Commerce, specifically for the purposes of considering online ADR schemes. The Conference Press Release stated:

'Most experts agree that traditional dispute settlement methods, such as law courts, may not provide effective redress for e-commerce-related disputes due to the expense and time involved. Online alternative dispute resolution mechanisms, by contrast, hold the promise of providing fast, affordable redress for a large number of the small claims and low-value transactions arising in B2C e-commerce. In addition, new and developing online technologies may provide innovative and potentially more effective dispute resolution'.

The Conference considered several different methods of Alternative Dispute Resolution procedures and sought to consider how Alternative Dispute Resolution schemes were the most realistic method by which consumer would be able to seek redress from disputed

electronic contracts.

## **7. Final Remarks**

For the present time it is sufficient to say that the European Union leads the way in the development of regional rules of jurisdiction for electronic consumer contracts (Hörnle, 2000). This is due partly to the need for clarification of jurisdiction rules for electronic consumer contracts generally and partly to the European Union's particular desire to create a Framework for Judicial Co-operation in both Civil and Commercial Matters and, where relevant in the case of consumer contracts, Electronic Commerce. The latter reason indicates clearly how rules of jurisdiction have been developed in Europe. Elsewhere, such as in the United States of America, case decisions appear to be determining the basis of jurisdiction for Internet-related consumer contracts. Whilst these large regional areas have created Frameworks and now rules for electronic commerce, the question remains if the way in which these measures are implemented will ultimately lead to different principles for the same type of contract (ie consumer contracts), and correspondingly, potentially different results depending on where the consumer is domiciled. Whether this will be to the consumers' or the businesses' benefit or detriment remains to be seen.

Nevertheless, several questions require to be considered now this European Regulation has been approved. Firstly, as stated earlier, the European Member States involvement in the Hague Convention's proposed worldwide judgments Convention will be awaited with interest. At the time of writing it is also understood that Denmark will not accede to the new Regulation and accordingly for some Member States the Brussels Convention will remain. How the two Instruments will work together in practice remains to be seen. For consumer and other contracts the revision and replacement of the Rome Convention on Contractual Obligations will encourage much debate and discussion on how the applicable law in a consumer contract ought to be determined. In general terms, there will certainly be a demand for the creation of other jurisdictional principles to govern the Internet and specifically electronic commerce for example, rules of jurisdiction for matters of delict or tort will for areas such as privacy and defamation.

The formal response of other jurisdictions to the electronic consumer contract rules provided by the new Regulation, in particular the United States, is awaited. Immediately after the announcement of the approval of the Brussels 1 Regulation it was reported (Left S; 2000) that the US Internet Advertising Agency was demanding that the Regulation should not be implemented until a Global Summit (to be held later this year) considers the issue of jurisdiction for electronic commerce. The outcomes of that Summit as well as the Hague Conference's proposals for a worldwide Judgments Convention (which should incorporate rules for electronic commerce) will be eagerly awaited by businesses and consumers globally. Businesses and consumers now have new rules of jurisdiction for electronic consumer contracts within the framework of the European Union. In due course choice of law rules will follow. Whether this addresses the global quest for co-operation and creation of principles for electronic consumer contracts is a moot point.

## References

### Materials

Department of Trade and Industry Consultation Paper, 'European Commission Proposals for Changes to Article 13 of the 1968 Brussels Convention', Copyright Department of Trade and Industry, 12<sup>th</sup> April 2000, at <<<http://www.dti.gov.uk/cacp/ca/ecommerce.htm>>>.

Department of Trade and Industry Responses to the Consultation Paper 'European Commission Proposals for Changes to Article 13 of the 1968 Brussels Convention', Copyright Department of Trade and Industry, <<<http://www.dti.gov.uk/CACP/ca/consultation/brussels.htm>>>.

Economic and Social Committee, Opinion of the Economic and Social Committee on the Proposal for a Council Regulation (EC) on jurisdiction and enforcement of judgments in civil and commercial matters (COM (1999) 348 final - 99/0154 - (CNS)) at <<[http://www.esc.eu.int/fr/docs/fr\\_docs\\_op\\_February.htm](http://www.esc.eu.int/fr/docs/fr_docs_op_February.htm)>> and C117 26 April 2000 006.

Europa, SCADPlus 'Judicial Cooperation in Civil Matters. Current situation and outlook', at <<<http://www.europa.eu.int/scadplus/leg/en/lvb/l33079.htm>>>.

Europa, SCADplus Glossary 'Communitisation', <<<http://www.europa.eu.int/scadplus/leg/en/cig/g4000c.htm>>>.

Europa, SCADplus Glossary 'Title VI of the EU Treaty', <<<http://www.europa.eu.int/scadplus/leg/en/cig/g4000t.htm>>>.

European Commission 'Commission adopts draft Regulation on Jurisdiction, Recognition and Enforcement of Judgements in Civil and Commercial Matters', Document IP/99/510, 14<sup>th</sup> July 1999 at <<<http://www.europa.eu.int/rapid/start/cgi/gues...ion.gettxt=gt&doc=IP/99/510|IRAPID&lg=EN>>>

European Commission 'Hearing on Electronic Commerce: Jurisdiction and Applicable Law' Position Papers submitted to the European Commission at <<<http://www.europa.eu.int/comm/scic/conferences/991104/contributions.pdf>>>

European Commission 'Position Paper of the European Savings Banks Group on the Commission's Communication (COM(97) 609 final)', 30 April 1998 at <<<http://www.savings-banks.com/esbg/pp0539.htm>>>

European Commission, Preamble of the Amended proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (presented by the Commission pursuant to Article 250 (2) of the EC-Treaty), Recital 5 at <<[http://europa.eu.int/eurlex/en/com/dat/2000/en\\_500PC0689.html](http://europa.eu.int/eurlex/en/com/dat/2000/en_500PC0689.html)>> <<[http://europa.eu.int/eur-lex/en/com/dat/2000/en\\_500PC0689.html](http://europa.eu.int/eur-lex/en/com/dat/2000/en_500PC0689.html)>>

European Commission 'Procedural law: The Commission advocates more efficiency in obtaining and enforcing judgments in the European Union', in 'Update on the Single Market', at <<<http://www.europa.eu.int/comm/dg15/en/update/general/1038.html>>>

European Commission 'Proposal for a Council Regulation on Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters', (presented by the Commission) 14 July 1999 at <<<http://europa.eu.int/eur-lex/en/com/pdf/1999/en/599PC0348.pdf>>> C376 28 Dec 1999 001(E).

European Council 'Amended proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (presented by the Commission pursuant to Article 250 (2) of the EC-Treaty)' Document 500PC0689 at <<[http://europa.eu.int/eur-lex/en/com/dat/2000/en\\_500PC0689.html](http://europa.eu.int/eur-lex/en/com/dat/2000/en_500PC0689.html)>>

European Council 'Compétence Judiciaire, Reconnaissance et Exécution des Décisions Civiles et Commerciales - Version Provisoire, Communication à la Presse 2314ème session du Conseil - Justice, Affaires Intérieures et Protection Civile - Brussels, 30 November / 1 December 2000, at <<<http://ue.eu.int/newsroom/main.cfm?LANG=2>>>

European Parliament, Legislative Observatory 'Civil and commercial judicial cooperation, enforcement of judgments: Brussels I, Lugano Conventions, CNS/1999/0154', at <<[http://www.db.europarl.eu.int/oeil/oeil\\_viewdnl.ProcedureView?lang=2&procid=3726](http://www.db.europarl.eu.int/oeil/oeil_viewdnl.ProcedureView?lang=2&procid=3726)>>

European Parliament, Legislative Observatory 'Civil and commercial judicial cooperation, enforcement of judgments: revision of the Brussels, Lugano Conventions', CNS/1997/0339, <<[http://www.db.europarl.eu.int/oeil/oeil\\_viewdnl.ProcedureView?lang=2&procid=2511](http://www.db.europarl.eu.int/oeil/oeil_viewdnl.ProcedureView?lang=2&procid=2511)>>

European Parliament, Committee on Legal Affairs and the Internal Market, 'Report on the proposal for a Council regulation on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters', (COM(1999) 348 (E C5-0169/1999 (E 1999/0154(CNS))) 18 September 2000 at <<<http://www2.europarl.eu.int/omk/OM-Europarl?PROG=REPORT&L=EN&PUBREF=-//EP//NONSGML+REPORT+A5-2000-0253+0+DOC+PDF+V0//EN&LEVEL=2>>>

European Parliament, Committee on Legal Affairs and the Internal Market, 'Report on the proposal for a Council regulation on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters', (COM(1999) 348 (E C5-0169/1999 (E 1999/0154(CNS))) 18 September 2000 at <<<http://www2.europarl.eu.int/omk/OM-Europarl?PROG=REPORT&L=EN&PUBREF=-//EP//NONSGML+REPORT+A5-2000-0253+0+DOC+PDF+V0//EN&LEVEL=2>>> at Justification for Amendment 11 (Recital 4a).

European Parliament and Council, Directive 97/7/EC of the European Parliament and of

the Council of 20 May 1997 on the Protection of Consumers in respect of Distance Contracts, (Directive on Distance Selling), 1997 OJ L0007, <[http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397L0007.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0007.html)>

European Parliament and Council, Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, (Directive on electronic commerce), 2000 OJ L178, <[http://www.europa.eu.int/eur-lex/en/lif/dat/2000/en\\_300L0031.html](http://www.europa.eu.int/eur-lex/en/lif/dat/2000/en_300L0031.html)>

Foss M and Bygrave L A 'International Consumer Purchases through the Internet: Jurisdictional Issues pursuant to European Law', ECLIP ESPRIT Project 27028, Electronic Commerce Legal Issues Platform, <[http://www.jura.uni-muenster.de/eclip/documents/NRCCL\\_consumer\\_jurisdiction.pdf](http://www.jura.uni-muenster.de/eclip/documents/NRCCL_consumer_jurisdiction.pdf)> and also at Foss M and Bygrave L A (2000) 'International Consumer Purchases through the Internet: Jurisdictional Issues pursuant to European Law', Int J Law & Info Tech Vol 8 No 2, 99.

Hornle J (2000) 'The European Union Takes Initiative in the Field of E-Commerce', Commentary 2000 (3) <<http://elj.warwick.ac.uk/jilt/00-3/>> The Journal of Information, Law and Technology (JILT) <<http://elj.warwick.ac.uk/jilt/00-3/hornle.html>>>

Left S (2000) 'The Death of EU Commerce: MEP's Slam E-tail Regulation', <<http://www.silicon.com/bin/bladerunner?30REQEVENT=&REQAUTH=21046&14001REQSUB=REQINT1=41268>>>

OECD, 'OECD Conference to Examine Alternative Dispute Resolution Mechanisms for On-Line Commerce The Hague, 11-12 December 2000', Copyright OECD News Release, 23 November 2000 at <<http://www.oecd.org/media/release/nw00-121a.htm>>>

Regan K (2000) 'EU OK's E-Commerce Dispute Law', <<http://www.EcommerceTimes.com/perl/story/5635.html>>>

### **Books**

Burnstein M (1998) 'A Global Network in a Compartmentalised Legal Environment', in Boele - Woelki, K and Kessedjian, C (eds), Internet Law Which Court Decides, Which Law Applies? (The Hague: Kluwer Law International)

Goldring J (1997) 'Netting the Cybershark: Consumer Protection, Cyberspace, the Nation-State, and Democracy', in Kahin, B and Nesson, C (eds), Borders in Cyberspace Information Policy and the Global Information Infrastructure, (Massachusetts: The MIT Press)

### **Journal Articles**

Auf der Mar R (1999) 'Internet - Enabled Distribution Models', IBL 264.

Basedow J (2000) 'The Communitarisation of The Conflict of Laws Under The Treaty of Amsterdam', 37 CMLR 687.

Beaumont P (1998) 'A United Kingdom Perspective on the Proposed Hague Judgments Convention', XXIV Brook J Int'l L :1, 75.

Beaumont P (1999) 'European Court of Justice and Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters,' 48 ICLQ 223.

Dehousse R (1998) 'European Institutional Architecture After Amsterdam: Parliamentary System or Regulatory Structure?' 35 CMLR 595.

Docherty M and Fletcher R (2000) 'Responding the legal problems of electronic commerce', 5 Communications Law 2

D'Oliveira H U J (1992) 'Towards A 'European' Private International Law?' in De Witte, B and Forder, C (eds), The common law of Europe and the future of legal education, (Deventer: Kluwer Law and Taxation Publishers).

Dutson S (2000) 'E-Commerce - European Union Transnational E-Commerce', 16 CLSR 105.

Endeshaw A (1998) 'The Proper Law for Electronic Commerce', 1 Information and Communications Technology Law, 5.

Epps B K (1997) 'Maritz, Inc v Cybergold, Inc: The Expansion of Personal Jurisdiction in the Modern Age of Internet Advertising,' 32 Ga L Rev 237.

Hörnle J (2000) 'The European Union Takes Initiative in the Field of E-Commerce', Commentary [2000 \(3\) <http://elj.warwick.ac.uk/jilt/00-3/>](http://elj.warwick.ac.uk/jilt/00-3/) The Journal of Information, Law and Technology (JILT) <<<http://elj.warwick.ac.uk/jilt/00-3/hornle.html>>>.

Israël J (2000) 'Conflicts of Law and the EC after Amsterdam A Change for the Worse?' 7 MJ 81.

Pernice I (1999) 'Multilevel Constitutionalism and The Treaty of Amsterdam: European Constitution - Making Revisited?' 36 CMLR 703

Schu, R (1997) 'The Applicable Law to Consumer Contracts Made Over the Internet: Consumer Protection Through Private International Law?' International Journal of Law and Information Technology Vol 5 No 2 192

Stone P (2000) 'Internet Consumer Contracts and European Private International Law', 9 Information and Communications Technology Law 5.

Von Bogdandy A (1999) 'The Legal Case for Unity: The European Union as a Single Organisation with a Single Legal System', 36 CMLR 887.

Walker N (1998) 'Justice and Home Affairs', 47 ICLQ 231.

## **Cases**

Arcado v Haviland (9/87) [1998] ECR 1539.

Bertrand v Ott (150/70) [1978] ECR 1431.

Custom Made v Stawa [1994] ECR I-2913.

De Bloos v Bouyer [1976] ECR 1497.

Peters v ZNAV (34/82) [1983] ECR 987.

C-89/91 Shearson Lehman Hutton v TVB [1993] ECR I-139.

Shenavai v Kreischer (266/85) [1987] ECR 239.

Source Ltd v TUV Rheinland Holdings AG and Others, The Times, 28<sup>th</sup> March 1997.

Union Transport v Continental Lines SA [1992] 1 All ER 161.

## **Statutes**

### **European Conventions, Regulations and Reports**

The Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, signed at Brussels, 27 September 1968, 1968 OJ L299/32.

Council Report by Mr P. Jenard on the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ 1979 C59.

Report by Professor Dr Peter Schlosser on the Convention of 9 October 1978 on the Association of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice, 1979 OJ C59/71.

(1997) OJ C340/203.

Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L12/1 2001.

### **Links to Uniform Resource Locators (URLs)**

Department of Trade and Industry Consultation Paper, 'European Commission Proposals for Changes to Article 13 of the 1968 Brussels Convention', Copyright Department of Trade and Industry, 12<sup>th</sup> April 2000, at <http://www.dti.gov.uk/cacp/ca/ecommerce.htm>.

Department of Trade and Industry Responses to the Consultation Paper 'European Commission Proposals for Changes to Article 13 of the 1968 Brussels Convention',

Copyright Department of Trade and Industry,  
<<<http://www.dti.gov.uk/CACP/ca/consultation/brussels.htm>>>.

Economic and Social Committee, Opinion of the Economic and Social Committee on the Proposal for a Council Regulation (EC) on jurisdiction and enforcement of judgments in civil and commercial matters (COM (1999) 348 final - 99/0154 - (CNS)) at <<[http://www.esc.eu.int/fr/docs/fr\\_docs\\_op\\_February.htm](http://www.esc.eu.int/fr/docs/fr_docs_op_February.htm)>> and C117 26 April 2000 006.

Europa, SCADPlus Glossary, 'Judicial Cooperation in Civil Matters. Current situation and outlook', at <<<http://www.europa.eu.int/scadplus/leg/en/lvb/l33079.htm>>>.

Europa, SCADPlus Glossary, 'Communitisation', SCADplus Glossary, <<<http://www.europa.eu.int/scadplus/leg/en/cig/g4000c.htm>>>.

Europa, SCADPlus Glossary, 'Title VI of the EU Treaty', <<<http://www.europa.eu.int/scadplus/leg/en/cig/g4000t.htm>>>.

European Commission, 'Commission adopts draft Regulation on Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters', Document IP/99/510, 14<sup>th</sup> July 1999 at <<<http://www.europa.eu.int/rapid/start/cgi/gues...ion.gettxt=gt&doc=IP/99/510/IRAPID&lg=EN>>>.

European Commission, 'Hearing on Electronic Commerce: Jurisdiction and Applicable Law' Position Papers submitted to the European Commission at <<<http://www.europa.eu.int/comm/scic/conferences/991104/contributions.pdf>>>.

European Commission, 'Position Paper of the European Savings Banks Group on the Commission's Communication (COM(97) 609 final)', 30 April 1998 at <<<http://www.savings-banks.com/esbg/pp0539.htm>>>.

European Commission, Preamble of the Amended proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (presented by the Commission pursuant to Article 250 (2) of the EC-Treaty), Recital 5 at <<[http://europa.eu.int/eurlex/en/com/dat/2000/en\\_500PC0689.html](http://europa.eu.int/eurlex/en/com/dat/2000/en_500PC0689.html)>> <<[http://europa.eu.int/eur-lex/en/com/dat/2000/en\\_500PC0689.html](http://europa.eu.int/eur-lex/en/com/dat/2000/en_500PC0689.html)>>.

European Commission, 'Procedural law: The Commission advocates more efficiency in obtaining and enforcing judgments in the European Union', in 'Update on the Single Market', at <<<http://www.europa.eu.int/comm/dg15/en/update/general/1038.html>>>.

European Commission, 'Proposal for a Council Regulation on Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters', (presented by the Commission) 14 July 1999 at <<[http://europa.eu.int/eur-lex/en/com/pdf/1999/en\\_599PC0348.pdf](http://europa.eu.int/eur-lex/en/com/pdf/1999/en_599PC0348.pdf)>> C376 28 Dec 1999 001(E).



European Council, 'Amended proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (presented by the Commission pursuant to Article 250 (2) of the EC-Treaty)' Document 500PC0689 at <<[http://europa.eu.int/eur-lex/en/com/dat/2000/en\\_500PC0689.html](http://europa.eu.int/eur-lex/en/com/dat/2000/en_500PC0689.html)>>.

European Council, Competence Judiciaire, Reconnaissance et Execution des Decisions Civiles et Commerciales - Version Provisoire, Communication a la Presse 2314ème session du Conseil - Justice, Affaires Interieures et Protection Civile - Brussels, 30 November / 1 December 2000, at <<<http://ue.eu.int/newsroom/main.cfm?LANG=2>>>.

European Parliament, Legislative Observatory, 'Civil and commercial judicial cooperation, enforcement of judgments: Brussels I, Lugano Conventions, CNS/1999/0154', European Parliament Legislative Observatory at <<[http://wwdb.europarl.eu.int/oeil/oeil\\_viewdnl.ProcedureView?lang=2&procid=3726](http://wwdb.europarl.eu.int/oeil/oeil_viewdnl.ProcedureView?lang=2&procid=3726)>>.

European Parliament, Legislative Observatory, 'Civil and commercial judicial cooperation, enforcement of judgments: revision of the Brussels, Lugano Conventions', CNS/1997/0339, <<[http://wwdb.europarl.eu.int/oeil/oeil\\_viewdnl.ProcedureView?lang=2&procid=2511](http://wwdb.europarl.eu.int/oeil/oeil_viewdnl.ProcedureView?lang=2&procid=2511)>>.

European Parliament, Committee on Legal Affairs and the Internal Market, 'Report on the proposal for a Council regulation on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters', (COM(1999) 348 CE C5-0169/1999 CE 1999/0154(CNS)) 18 September 2000 at <<<http://www2.europarl.eu.int/omk/OM-Europarl?PROG=REPORT&L=EN&PUBREF=-//EP//NONSGML+REPORT+A5-2000-0253+0+DOC+PDF+V0//EN&LEVEL=2>>>.

Committee on Legal Affairs and the Internal Market, 'Report on the proposal for a Council regulation on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters', (COM(1999) 348 CE C5-0169/1999 CE 1999/0154(CNS)) 18 September 2000 at <<<http://www2.europarl.eu.int/omk/OM-Europarl?PROG=REPORT&L=EN&PUBREF=-//EP//NONSGML+REPORT+A5-2000-0253+0+DOC+PDF+V0//EN&LEVEL=2>>> at Justification for Amendment 11 (Recital 4a).

European Parliament, Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the Protection of Consumers in respect of Distance Contracts, (Directive on Distance Selling), 1997 OJ L0007, <<[http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397L0007.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0007.html)>>.

European Parliament, Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, (Directive on electronic commerce), 2000 OJ L178, <<[http://www.europa.eu.int/eur-lex/en/lif/dat/2000/en\\_300L0031.html](http://www.europa.eu.int/eur-lex/en/lif/dat/2000/en_300L0031.html)>>.

Foss M and Bygrave L A 'International Consumer Purchases through the Internet: Jurisdictional Issues pursuant to European Law', ECLIP ESPRIT Project 27028, Electronic Commerce Legal Issues Platform, <[http://www.jura.uni-muenster.de/eclip/documents/NRCCL\\_consumer\\_jurisdiction.pdf](http://www.jura.uni-muenster.de/eclip/documents/NRCCL_consumer_jurisdiction.pdf)> and also at Foss M and Bygrave L A (2000) 'International Consumer Purchases through the Internet: Jurisdictional Issues pursuant to European Law', Int J Law & Info Tech Vol 8 No 2, 99.

Hornle J (2000) 'The European Union Takes Initiative in the Field of E-Commerce', Commentary 2000 (3) <<http://elj.warwick.ac.uk/jilt/00-3/>> The Journal of Information, Law and Technology (JILT) <<http://elj.warwick.ac.uk/jilt/00-3/hornle.html>>.

Left S (2000) 'The Death of EU Commerce: MEP's Slam E-tail Regulation', <<http://www.silicon.com/bin/bladerunner?30REQEVENT=&REQAUTH=21046&14001REQSUB=REQINT1=41268>>.

OECD (2000), 'OECD Conference to Examine Alternative Dispute Resolution Mechanisms for On-Line Commerce The Hague, 11-12 December 2000', Copyright OECD News Release, 23 November 2000 at <<http://www.oecd.org/media/release/nw00-121a.htm>>.

Regan K (2000) 'EU OK's E-Commerce Dispute Law', <<http://www.EcommerceTimes.com/perl/story/5635.html>>.