

EUROPEAN GROUP FOR PRIVATE INTERNATIONAL LAW
Sub-Committee on External Relations

The Application of Regulation 44/2001 to External Relations

DRAFT MODIFICATIONS TO REGULATION 44/2001

(06.06.2008)

Article 4: delete

Article 5:

Replace the first sentence with:

A person, whether or not domiciled in a Member State, may be sued in a Member State other than the State of his domicile:

Add paragraph 4 bis:

4 bis). as regards an action concerning tangible movable property, in the courts for the place where the property is situated;

Article 9:

Replace the words “An insurer domiciled in a Member State may be sued” with the words “*An insurer, whether or not domiciled in a Member State, may be sued*”.

Article 19:

Replace the words “An employer domiciled in a Member State may be sued” with the words “*An employer, whether or not domiciled in a Member State, may be sued*”.

Article 22 bis:

1. Where no court of a Member State has jurisdiction under Article 22, a court [of a Member State] before which proceedings are brought concerning a matter to which that Article applies and which has jurisdiction under another provision of this Regulation shall stay its proceedings if it is established that the courts of a non-member State have exclusive jurisdiction under the law of that State on the basis of provisions similar to those in Article 22.

It shall decline jurisdiction once the foreign court gives a judgment that is subject to recognition under the law of the [Member] State of the court seised. It shall hear the proceedings before it, if it appears that the foreign court will not give judgment within a reasonable time.

2. By way of exception to paragraph 1, when the validity of the rights referred to in paragraph 4 of Article 22 is raised as an incidental question in proceedings brought before the courts of a Member State and the answer to that question depends on whether the courts of a non-member State have exclusive jurisdiction [according to the law of that State], the courts of that Member State shall have jurisdiction to decide that question.

3. *If a court of a Member State gives judgment in one of the cases to which this Article applies, that judgment shall have effect only as between the parties.*

Article 23:

Paragraph 3, add: <Forum non conveniens>

The court or courts designated may decline jurisdiction if, in view of all the circumstances, it appears that the case has no significant connection with the State of the court seised.

Amend paragraph 5 and structure it as follows:

5. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force:

- (a) if they are contrary to Articles 13, 17 or 21;
- (b) if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22; or
- (c) *if the court seised is obliged to stay the proceedings [before it], or to decline jurisdiction, under Article 22 bis.*

Add a paragraph 6:

6. *This Article shall not apply to the choice by the parties of a foreign court when all other elements relevant to the situation at the time of the choice are located in the same country.*

Article 23 bis

1. *A court seised of proceedings over which it has jurisdiction under this Regulation, and with regard to which the parties have given exclusive jurisdiction to a court or the courts of a non-member State under an agreement complying with the conditions laid down by Article 23, shall not hear the proceedings unless and until the chosen court has declined jurisdiction.*

It shall stay the proceedings as long as the foreign court has not been seised or, if it has been seised, has not declined jurisdiction.

Nevertheless, it may hear the proceedings:

- (a) *if the foreign court has not given judgment within a reasonable time; or*
- (b) *if it appears that the foreign court will give a decision which will not be subject to recognition under the law of the State of the court seised.*

2. *This Article shall not apply to the choice by the parties of a foreign court when all other elements relevant to the situation at the time of the choice are located in the same Member State.*

Article 24:

Replace the words “by virtue of Article 22” with the words “by virtue of Article 22 or Article 22 bis”.

Article 24 bis: <Subsidiary jurisdiction and *forum non conveniens*>

1. *Where no court of a Member State has jurisdiction under Articles 2 to 22, a person may be sued before a court:*

- (a) of the place where property of the defendant is situated; or*
- (b) of the place where the claimant has his domicile or habitual residence.*

2. *In cases falling under paragraph 1, the court seised shall not exercise jurisdiction if, in view of all the circumstances, it appears that it is not the most appropriate court to decide the proceedings, and those proceedings could be brought before a court of a non-member State on the basis of a jurisdictional ground which, if it had applied to a Member State, would have established the jurisdiction of the courts of that State.*

Article 24 ter: <*forum necessitatis*>

When no court of a Member State has jurisdiction under this Regulation, a person may be sued before the courts of a Member State with which the proceedings have a sufficient connection, if the right to a fair trial so requires, and in particular:

- (a) if an action in a non-member State is shown to be impossible;*
- (b) if the proceedings cannot reasonably be required to be brought before the courts of a non-member State; or*
- (c) if a judgment given in the proceedings in a non-member State could not be recognised in the State of the court seised under the law of that State.*

Article 30 bis

In the case of lis pendens or related actions as understood in Articles 27 and 28, when one of the proceedings is pending before the courts of a non-member State, the court of a Member State seised second may stay the proceedings before it until the foreign court gives judgment, if it appears that judgment will be given within a reasonable time and that it will be subject to recognition under the law of the [Member] State in question.

Article 31

Delete the words “under this Regulation”.

Replace the words “another Member State” with the words “*another State*”.