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A Single Market for everything - except Justice: The Case for the Establishment of the Centralised E.U. Convention Causebook and Judgment Registry Database

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Foreword

We are rightly proud to be members of the European Union, particularly as we approach the new millennium - living as we do in the European Information Society; with the Electronic Age now a working reality; and Monetary Union imminent for the greater part of Europe. In the history of mankind, no such unification has occurred, peacefully, on such a scale.

This has been achieved by the sustained desire of the European peoples, with their disparate languages, cultures and traditions, to unite and create a New European Society of Citizens with modern ideals for growth and development, whilst at the same time demanding standards for workers and consumers of goods and services alike, unencumbered by outdated institutions which beset other world powers.

Background

The engine that drives our still-developing Union is the Single Market. Now that we find ourselves within the European Union we are beginning to forget that until only recently we were members of the European Community -- and before that, of the European Economic Community. It was the objective of creating the Single Market that brought us together. It is this objective that will keep us together, until the work of forging the New European Identity is complete. Even the most-reluctantly-European of member-states, Britain, is thoroughly committed to a single market -- with reservations only on how it is to be achieved.

This market is immense and is binding us ever closer together. With Ireland's membership of the E.U. -- 'International Trade has now become the life-blood of the Irish economy - with one job in four directly dependent on exports'. We depend on imports for much of our raw materials and consumer goods. Ireland having a young, bright, English-speaking workforce (43% of our population will be under 25 years on entering the new millennium) has benefited from the fall of the International Trade Barriers. This in turn has attracted substantial Inward Investment and job opportunities for Ireland as a gateway for foreign firms into the European Market as the process of Electronic Economic Globalisation continues inexorably.

The European Union is now in control of over one-fifth of world trade, and within the Union itself there are in excess of three hundred and seventy-two million consumers, of whom, in 1995, ninety million made significant purchases in other member states. In Ireland, the second-worst-placed Member State geographically to take advantage of the single market, 18% of annual sales in 1995 were from Trans-border shopping. Commercial transactions between citizens of different member states can only be expected to increase. The European Commission for Consumer Affairs, for example, from its survey conducted in 1996, found that 40% of

European consumers intend to shop in another Member State.

Introduction

There is at this point – for the more than 15.8 million firms and individuals who produce goods and services and the more than three hundred and seventy-two million who consume them -- a Single Market within the E.U. for everything – for automobiles, soap, and workers; for books, films and toothpaste; for ideas, air transport, and underwear – for everything, that is, except Justice.

All the structures are in place, from the European Court of Justice, to the regulations assuring equal rights of all consumers within the EU, to the Brussels Convention. The Brussels Convention, in principle, is the key to a Single Market in Justice, to equal access to civil remedies for all E.U. Citizens. It allows lawyers working in the civil and commercial arena across the Member and EFTA States to deal with the affairs of their clients under a system which accommodates the diversity of the various national legal systems, but at the same time operates within a framework which is common to all. It should permit a firm in one member state to deal as confidently with a firm in another as it would with a domestic firm; it should permit a consumer in one member state to buy as confidently from a firm in another as it would from a domestic firm. At present, however, this confidence would be misplaced.

It is a remarkable achievement of those who negotiated, implemented and use the Brussels Convention that, in the areas where it is applicable, a dispute is justiciable in any of the courts of the member states, subject to the rules contained in the Brussels Convention on Jurisdiction; that a final judgment, once obtained, can be enforced in the court of another territory as though it was a judgment of that court; that the implementation of pre-judgment protective measures (such as freezing of assets) allows the court of one state to act in aid of a litigant in a court in another jurisdiction without being concerned as to the merits of the litigation taking place there.

The Brussels Convention, as a framework document, continues to develop and it forms the basic core structure of the new and emerging Conventions. For example in 1995 the ministers of the fifteen member states approved the complementary Convention on Bankruptcy and Insolvency, which was produced after twenty-five years of negotiations. This Convention allows for officials, such as liquidators, and for court decisions, to be recognised in different jurisdictions, facilitating co-ordination of complex trans-border insolvencies.

There will, certainly throughout the lifetimes of all those here today, remain differences between the experience of seeking legal redress against a citizen of one's own state and the citizen of another. The Law, and legal practices, are rightly conservative – and differences among E.U. member states in this area will persist. However, when citizens use the mechanisms of the Conventions to prosecute or defend their civil and commercial litigation they are currently – and quite unnecessarily – hampered by a lack of information. Ludicrously hampered, given that we are now living very much in The Electronic Information Age.

Citizens of the European Union and others have a legitimate and compelling Right in having authoritative and up-to-date information of the core facts in relation to the existence and progress of such litigation in which they may have a legitimate interest centrally available. It is not.

- At present, if proceedings are instituted in Ireland under the Convention against an English company for damage caused by faulty goods there is a record of those proceedings only in Ireland.
- Yet at the same time proceedings could have been instituted in Germany under the Convention against the exact same English company for similar faulty goods - and again there would be a record of those proceedings only in Germany.
- Thus at present no record of either sets of proceedings would appear on any search or check undertaken by anyone in England against the English company.
- Furthermore, if, for example, an American businessman wanted to invest in the English company, no search undertaken on his behalf would disclose either the Irish or German proceedings in being, but not served, instituted under the Convention against the English company. A "due diligence" requirement cannot disclose Proceedings in being which have not been served.

Information on such Proceedings should be readily available for three reasons:

Firstly

Not least, from a practitioner's point of view, is the fact that at the point when the litigation is initiated, the lawyers for the claimant are certifying that "no proceedings between the parties concerning this cause of action are pending before the courts in any other contracting state" -to use the Irish form of words. At present, this information is known to the claimant – but can be confirmed by his lawyer only after searches in each member state and even then only to the extent that each jurisdiction makes the information available prior to judgment. The claimant would know, and claimants do sometimes, lie to their lawyers - yet it is the lawyers who are certifying to this personally!

Secondly

The existence of litigation is an increasingly important factor taken into consideration when making investment and credit decisions. Those responsible for collecting this information, such as credit agencies, can no longer confine themselves to the data available in the home jurisdiction of a firm that, whatever its size, might have extensive dealings in many other member states. Accountants certify company annual reports, which include statements of pending litigation that they should find difficult or impossible to confirm independently. At present, those interested in the potential liabilities arising from litigation must conduct expensive searches in each member state, and be content with only partial information.

Thirdly

most importantly perhaps, a lawyer whose client has a potential product-liability claim will be influenced in the decision of whether it should be pursued, and how to pursue it, by the existence of other, similar claims – against both the manufacturer of the product and the manufacturers of similar products. This information is simply not available on an EU-wide basis.

Every year in Europe 40 million Citizens are injured in accidents involving Consumer Products; 80,000 people are killed and 300,000 are annually left with a permanent disability. Every year, with the growth of intra-EU commerce, an ever higher percentage of these people have a potential claim against a manufacturer based in an EU member-state other than their own. They remain at a disadvantage, in pursuing their claims, relative to those who "bought locally".

In the past, when firms largely confined their activities to a single state, information was, at least informally, available to lawyers, investors, creditors, and consumers on the existence and status of legal proceedings in which a firm might be involved. The EU is too big for that. The systematic collection and dissemination of this information is now a requirement, if the Legal System is to play its part in assuring that there is a fair and accessible Single Market within the E.U.

Solution

As a remedy for this, the European Union Convention Causebook and Judgment Registry Database has been proposed. It would record, as in the illustrated Standard Tabular Format at URL: Error! Reference source not found. , the following information/data as extracted from the Court Records in the respective Jurisdictions for each Trans-legal Action brought within the E.U. :-

- The name of the Plaintiff;
- The Country of Origin under the 1968 Convention from which the proceedings were instituted;
- The Record and File Number of the Action in the country of the Institution of the Action;
- The name of the Defendant;
- The Domicile of the Defendant for Convention purposes;
- The information as to whether or not the proceedings are live/dead/settled and further whether or not any Judgment/Orders have been given, registered, are under appeal or transmitted as the case may

be;

- The existence of any Pre-Judgment Protective Orders such as freezing of assets etc;
- The subject matter of the Action;
- And the breach of an International Standard/s, if applicable.

The foregoing key-list of basic information/data is needed in order to determine whether further Inquiries in another E.U. Jurisdiction are required.

The proposal for the creation of this Database has been vetted and endorsed by The International Bar Association and is supported by members of the Legal Profession and Judiciary; The Stock Exchange; The Irish Maritime Law Association (National Branch of the Comite Maritime International); by individual commercial firms and their representative bodies, by consumer organisations, and by organisations – such as Dunn & Bradstreet (Stubbs Gazette) – which have special requirements for the information it would provide.

The intellectual property rights to the work already carried out on the creation of the database have been offered to the E.U. in return for the capital investment necessary to establish the system here in Ireland. It is appropriate that the E.U. should own and operate this "Scheme", since it is intended to advance Europe's overall objectives, as expressed, for example, by Peter Sutherland in his Report as Chairman of the H.L.M. Committee to the European Commission entitled: " The Internal Market after 1992 - Meeting the Challenge":-

"Action must be taken now by the European institutions and Member States... to overcome consumer uncertainty, local or sectoral resistance to change, and commercial and industrial anxieties... The challenge now is to reassure the consumer and to capture the imagination of business, particularly the smaller firm, that the rules of a really frontier free market will be applied across the Community. When this is achieved the internal market will truly be seen as the basic stepping stone in the construction of Europe."

Would the Infrastructure proposed in this "Scheme" for the establishment of the electronic Centralised E.U. Convention Causebook and Judgment Registry Database meet these Challenges?

We say Yes because the "Scheme" would:

1. Integrate Legal Procedures throughout the Domestic Courts of the E.U. would facilitate the Courts, and would further improve the Administrative efficiency of Trans-European and Inter-Community Case Law and most importantly give certainty to the Law and to the Legal Effects of the Law. Although the Brussels Convention is 30 years old a U.K. Appeal Court was recently asked if Belgium Consent Decrees were "Judgments" under the Convention.

We say Yes because the "Scheme" would:

2. Enable Advisers, be they legal , financial, commercial , or otherwise to be in a position to give Opinions on facts as distinct from Qualified Opinions , which are now the order of the day.

We say Yes because the "Scheme" would:

3. Reduce the Costs and Delays of enforcing Foreign Judgments - by its speed of collection, collation and dissemination of information/data, up-date and transmission. Currently if the value of the Judgment is less than ECU 2,500 - it is uneconomic to enforce it - with the implementation of the "Scheme" these claims would be viable.

We say Yes because the "Scheme" would:

4. Relieve the existing Commercial anxieties whereby 7% of "Economic Operators" are afraid to export because they doubt they'll be able to get their money back in the event of trouble.

We say Yes because the "Scheme" would:

5. Provide the necessary Legal Infrastructure for the E.U. to utilise Global Electronic Commerce - the

expected size of which (according to the International Data Corporation) will have risen from \$2.6 Billion dollars in 1996 to over \$220 Billion dollars during 2001.

We say YES because the "Scheme" would:

6. Attract Inward Investors and stimulate Capital Investment and its Protection throughout the E.U. - and thus create more jobs and opportunities for our Citizens.

In this regard, we would remind you:

- (a) That there will be 117 million people aged under 25 years in the E.U. on entering the new millennium (i.e. 32% of the total E.U. population) - and that Ireland has the greatest proportion of young people with 43% of our population aged under 25 years on entering the new millennium.
- (b) That 54% of all new companies go "bust" within their first five years. This figure would be dramatically reduced by the implementation of the "Scheme".
- (c) That the Unemployment figure of 18million Citizens - which is rising, and is currently costing the E.U. a staggering £210 Billion per year - would likewise be dramatically reduced, as would the human misery caused by the unemployment, with the implementation of the "Scheme".

We say YES because the "Scheme" would:

1. Protect and enable our Citizens and others to Inquire and access quickly their Product Liability Claim. With all our E.U. Standards and Regulations - it is a disgrace that 40million Citizens are injured every year in Europe as a result of a Consumer Product, that 80,000 are killed and that 300,000 E.U. Citizens are annually left with a permanent disability. On the other hand, it would enable the Commission to monitor the compliance of companies and their products with the International standards - and to act on breaches. It would further enable our MEPs to act as "Watch-dogs" independently and over the Commission and thus enable them to speak out for us Citizens in the European Parliament.

We say Yes because the "Scheme" would:

2. Tackle Fraud (including breaches of Copyright) in all its guises which is rampant and which is costing all of us. (Aside comment: it is interesting to note that under Brehon Law - the laws of Ireland which developed before 250 AD until 17th Century - private ownership of Copyright was recognised in the celebrated case of Abbot Finnian - v - Columba (561 AD) with the famous maxim:
 "Le Gach bain a bainin, Le Gach leabhar a leabhran."
 "To Every Cow its Calf, Likewise To Every Book its Copy."

We say Yes because the "Scheme" would:

3. Provide a valuable centralised information / data resource which would be accessible from all the Convention States.

In Conclusion

Despite the framework of the 1968 Brussels Convention as amended and extended - without this Legal Electronic Infrastructure, which would be created by the establishment of the Centralised E.U Causebook and Judgment Registry Database - there can be no Single Market for Justice within the E.U. - and further neither the benefits of the Single European Market can be realised nor - the Citizen's Rights and Remedies be accessed and protected.

" A man who is not informed is a subject: A man who is informed is a Citizen" - A. Sauvy

Post Script

"It is time for us to unite and adopt the strategy of the Dolphins. Pursued by a large Shark, a pack of

Dolphins will suddenly turn en masse, dive below the Shark and drive their blunt noses into its belly, one after another. It is the perfect strategy. With no ribs or diaphragm to protect its vital organs, the Shark is vulnerable. For all its power the Shark is depleted by the knowledge, intelligence and sheer force of numbers." - Jacques Cousteau

The European Ombudsman is currently investigating our Complaints against the E.U. Institutions charged with evaluating the "Scheme" - full details are at URL: <http://www.cyberia.ie/~twinkle>

I would like to take this opportunity to express my sincere thanks to all who have contributed to this speech and who are acknowledged under the heading Credits and Links in the Report on this "Scheme" at URL: <http://www.cyberia.ie/homepage2.htm#credits> and URL: <http://www.cyberia.ie/homepage2.htm#links>
