

PEOPIL EU-UK WORKING GROUP



POSITION PAPER ON RIGHTS OF PERSONAL INJURY AND FATAL ACCIDENT VICTIMS IN THE FIELD OF JURISDICTION AND ENFORCEMENT: CALL FOR EU-UK COOPERATION

About PEOPIL

1. PEOPIL, as a leading European organisation of personal injury lawyers and academics, is devoted to the study of European law and to the development of a full and fair redress protection of personal injury and fatal accident victims without any frontiers between European jurisdictions.
2. PEOPIL has contributed to the development of Recast Regulation (Regulation EC No. 1215/2012), Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) and the Motor Insurance Directives. PEOPIL's members have actively engaged in the development and implementation of the Hague Judgments Convention 2019 and the impact of this Convention's shortcomings on injury victims.

Overview of key issues

3. Since the UK left the EU neither the Recast Brussels Regulations nor the Lugano Convention apply to matters involving the UK and the EU/EFTA. This has caused a considerable amount of uncertainty in respect of where a claim should be brought and whether a judgment will be recognised or enforceable in another state.
4. Hague 2019 is in force in the EU27 and has been ratified by the UK, coming into force on 1 July 2025. However, parties involved in cross border litigation will continue to experience jurisdictional and enforcement issues because Hague 2019 is also an incomplete solution to the issue of enforcement for injury victims, with many gaps in its provisions meaning it falls very considerably short of the protections on enforcement for victims available through the Lugano Convention.
5. PEOPIL considers there is no legal basis for the EU refusing the UK's request to rejoin the Lugano Convention. The suggestion from the EU Commission previously that accession to Lugano depends on participation (even if only

partially) in the EU's single market is not supported by a literal or purposive interpretation of Lugano. Furthermore, it overlooks the status of Northern Ireland under the Windsor Framework and the reality of the close alignment between the EU and UK under the Trade and Cooperation Agreement; close alignment which is to be further bolstered following the EU-UK summit and reset in May 2025 (see below). The present position does arguably demonstrate the UK's partial participation in the single market.

6. In the alternative to Lugano, a new bi-lateral arrangement is required between the EU and UK that ensures full protection for injury victims on the combined issues of jurisdiction and enforcement.

The EU-UK reset – May 2025

7. PEOPIIL strongly welcomes the productive outcome of the UK-EU Summit 2025.
8. PEOPIIL endorses the joint recognition of "*... the importance of positive civil judicial cooperation, which supports access to justice for our families and underpins confidence in trade for our businesses.*"
9. PEOPIIL urgently encourages the EU and UK to go further in the field of civil judicial cooperation. In particular:
 - a. The EU and UK must now take substantive action to fulfil its commitment to putting people at the centre of the EU-UK relationship.
 - b. A comprehensive regime on enforcement of judgments and jurisdiction in cross-border disputes that protects injury victims, preserving and promoting their rights, is essential to effectively fulfil the commitment in the Common Understanding agreed at the May 2025 EU-UK Summit. A predictable, comprehensive regime on jurisdiction and enforcement is an essential component if the EU and UK are to convincingly commit to underpinning confidence in trade for businesses, and for individuals operating, working for or making use of the goods and services provided by those businesses.
 - c. For the reasons set out in this position paper, the EU and UK must formally acknowledge that the Hague Judgments Convention 2019 does not go anywhere near far enough in supporting access to justice for injury victims and that further steps must be taken in the field of judicial cooperation in civil matters.

Summary of impact on victims, consumers and workers

10. The UK's departure from the EU on 31 December 2020 means that the protections of the Recast Regulation (Regulation EC No. 1215/2012) and the Lugano Convention (which deal with jurisdiction and recognition/enforcement of judgments between EU Member States, as well as Iceland, Switzerland and Norway) no longer apply in relation to victims, including injured persons and their relatives, consumers and workers in their dealings with UK-based individuals and entities, and vice-versa.

11. The Recast Regulation can only apply between EU Member States. The Lugano Convention, on the other hand, is an international instrument operating in the field of private international law on jurisdiction and enforcement.
- a. We consider that the UK should now be permitted to accede to the Lugano Convention to maintain certainty and predictability for citizens of the EU27 and UK and ensure they continue to benefit from protections afforded by the Convention when they are the weaker party to a dispute.
 - b. In the alternative, a new and comprehensive bi-lateral treaty should be entered into between the EU and UK that plugs the gaps left by Hague 2019 (see further below) on enforcement of judgments for injury victims.
 - c. A comprehensive legal framework on jurisdiction and enforcement is essential to support the EU and UK's aim of underpinning confidence in trade for business, signalling that there is a clear, predictable path to effective redress if things go wrong when businesses and individuals are travelling, working or purchasing goods and services between the EU and UK.
12. The Lugano Convention, which also must be construed with regard to the case-law of the Court of Justice of the European Union, enables access to justice for thousands of victims, consumers and workers in the EU27 and EFTA states. The Convention enables them to bring proceedings against an individual or company based in another state-signatory to the Convention. It also enables the claimant to then effectively enforce a judgment obtained in proceedings relying on the Lugano Convention. The possibility of EU and UK victims, including injured persons and their relatives, consumers and workers to seek redress in their home courts is of the utmost importance when ensuring a high degree of protection is provided to the weaker party to a dispute.
13. Importantly, the Lugano Convention provides for a direct right of action against the liability insurer in the claimant's home court where this is possible under the applicable law. A direct right of action exists in motor accidents by virtue of the Motor Insurance Directive regime. The UK has preserved the direct right of action against UK motor insurers.
14. As indicated above, the Convention prioritises legal certainty and predictability of outcome and, therefore, facilitates the provision of secure and accurate legal advice as to enforcement of judgments for EU27/EFTA nationals injured in the UK or to consumers and workers who have entered into a contract or been engaged to work by a UK based individual or entity. It allows the joinder of a defendant not domiciled in a signatory-state to proceedings where there is a close connection making it expedient to hear the cases together to avoid the risk of irreconcilable judgments. The Convention ensures the effectiveness of contractual choice of jurisdiction clauses. The UK's re-accession to the Lugano Convention would enable EU and UK victims to benefit from its provisions, the additional certainty this brings in cross-border disputes and the significant saving in legal costs flowing from this certainty and predictability.
15. The Convention provides for the automatic recognition and enforcement of judgments from the EU27/EFTA courts in other signatory states. Without this

system, victims seeking to recover damages must take further steps in the courts of the country where they are seeking to enforce a judgment, creating delay, additional cost and significantly prejudicing access to justice. For a judgment emanating from the EU27/EFTA, this means a victim is forced to start fresh proceedings in the UK. As indicated, the status quo creates increased uncertainty, delay and additional cost. The difficulties and challenges relating to enforcement may even deter some victims, consumers or workers from seeking access to justice in perfectly meritorious cases. This will have an obvious and significant impact in serious injury cases. Moreover, it is desirable to keep judicial scrutiny applying to enforcement proceedings under the same legal standards, including the case-law on public order.

16. As things stand, access to justice is more challenging for injury victims from the EU27, EFTA states and UK. Those who have a meritorious claim may be put off pursuing it because of the procedural complexity and enforcement risks, thereby increasing the burden on individual countries and denying access to justice to thousands of cross-border personal injury claimants each year.

17. What happens with the UK's accession to the Lugano Convention is not just an issue for personal injury claimants, but personal injury claimants have much more to lose, particularly those who have sustained life-changing injuries.

Example cases

18. Examples of the type of case where victims are severely impacted by the current position on enforcement include:

- a. Road traffic accidents
- b. Consumer contracts
- c. Accidents at work
- d. Sports Accidents
- e. Product liability

19. The reality is that thousands of EU, EFTA and UK citizens travel to each other's countries every year, for holidays and business, many are exposed to products and services from each other's countries, and sadly many hundreds will be involved in similar accidents, suffering injury and loss as a result of someone else's negligence.

20. Under the Lugano Convention, it is possible for these victims to take action in their home courts, notably in the following situations:

- a. Direct action against insurers. Injured persons and their relatives can bring a claim directly against the motor insurer of the person/entity responsible for a car accident.
- b. Consumer contracts. If an individual is injured while enjoying services provided as part of a contract, then they may have a claim for breach of

contract. In many circumstances, this claim can be brought in the individual's home court.

- c. Multiple party cases, collective actions and class actions. Where there is a defendant based in the claimant's home court and another based in a different signatory state, the Lugano Convention allows a claimant to bring the other defendant into the proceedings in their home courts where there is a close connection between the claims against each defendant. This avoids the risk of irreconcilable judgments being given by the courts of two or more different countries.

21. There will be many thousands of cases falling into the above special jurisdiction protections for injured persons and the weaker party to a dispute, including personal injury victims, who currently do not have a full complement of enforcement and jurisdictional safeguards provided for in the Lugano Convention. Some of the key advantages of the Lugano regime to injured persons and their relatives, who will often be at the most vulnerable time in their lives, include:

- The case would be conducted in their own language.
- Legal representation would be easily accessible.
- Any medical examinations and court hearings would be easy to attend.
- Judgments would automatically be enforceable against the foreign defendant.
- The predictability of the Lugano regime in relation to enforcement of judgments would encourage the parties to co-operate in the resolution of the case, saving costs through increased certainty and predictability.

22. The above issues are of heightened importance to weaker parties to a dispute, namely serious injury victims in a cross-border context. This is particularly so on the fundamental question of access to justice and in circumstances where bringing a claim in the victim's home courts may be the only viable option, failing which a victim may be unable to pursue a claim for damages at all.

23. On claims arising from a consumer or employment contract, the UK has 'domesticised' the consumer and employee special jurisdiction protections on jurisdiction. Unfortunately, however, sections 15A and 15B of the Civil Jurisdiction & Judgments Act 1982 do not provide anywhere near the same level of protection to weaker parties as the Lugano Convention:

- a. The UK has only imported the consumer and employee jurisdiction provisions; there is no equivalent provision in relation to actions against insurers, which accounts for the majority of cross-border serious injury claims where the case is pursued directly against the motor liability insurer.
- b. It is still open to a defendant to challenge jurisdiction under the 1982 Act in a way that would not be possible under the Lugano Convention.

- c. Perhaps most importantly, there is no protection on the question of recognition and enforcement of judgments, which (as detailed throughout this position paper) remains a significant risk and concern for cross border serious injury victims unless and until the UK re-joins the Lugano Convention or equivalent protections are put in place through a separate bi-lateral arrangement between the EU/EFTA states and the UK.

Insurance industry perspective

24. Legal certainty and predictability on jurisdictional issues and enforcement of judgments are fundamental to insurers too. It is acknowledged that the lack of a legal framework in respect to jurisdiction and enforcement increases legal costs and the cycle times of claims. With the absence of certainty, cross border claims have seen a significant increase in the number of claims going through the court system. This will add to the time from incident to conclusion of these claims with insurers having to respond to one incident in the courts of multiple jurisdictions.
25. Consultation has taken place with the Forum of Insurance Lawyers ("FOIL"). It has been confirmed that there is a wish from leading European-based insurance companies to see a return to a more certain legal framework in order that insurers can deal with the claims of victims in a timely manner and pursuant to a legal framework that provides certainty.

Hague 2019 Judgments Convention

26. PEOPIL welcomes the Hague Judgments Convention 2019 ("Hague 2019") as a significant step forward in terms of wider international cooperation in the field of recognition and enforcement of judgments in civil and commercial matters. PEOPIL notes, however, that Hague 2019 has notable shortcomings and does not provide a comprehensive solution for victims, consumers and workers.
27. Hague 2019 is not a substitute for the Lugano Convention.
28. Specifically, Hague 2019 does not come close to protecting the weaker party to a dispute in the same way that the Lugano Convention does. Hague 2019 is of limited assistance to victims, consumers and workers and does not replace the need and importance of the Lugano Convention to EU, EFTA and UK citizens in the field of cross-border cooperation and the requirements of the legal landscape following Brexit.
29. Firstly, self-evidently, Hague 2019 only deals with enforcement. It does not protect the weaker party to a dispute on the important question of jurisdiction. Victims, consumers and workers from the EU, EFTA and UK require a comprehensive regime in their future dealings that provides certainty on jurisdiction as well as on the issue of enforcement of a judgment from their respective countries. This is of particular importance when serious injury victims need to pursue an overseas defendant and in ensuring access to justice for such parties.
30. Hague 2019 excludes the carriage of passengers and goods from its scope: Art 2.1(f). This could potentially extend to a claim for damages by a passenger in a

car involved in a road traffic accident as well as victims of an air accident/disaster. On the other hand, Hague 2019 would cover a claim made by a pedestrian injured in the same accident (this is specifically contemplated by the Explanatory Notes to the Convention) which gives rise to considerable unfairness, putting two innocent victims of the same accident on an unequal footing when seeking to enforce a judgment for damages.

31. The way in which Hague 2019 will be interpreted and the scope of its application remains unclear. However, carriage of passengers and goods are obvious areas where individuals need protection on jurisdiction and enforcement but where Hague 2019 falls short (and will fall short on the question of jurisdiction which is outside of its scope).

32. Art 3.1(b): excludes interim measures. This could extend to a request for an interim payment of damages which is often of crucial importance to serious injury victims. It may also cause difficulty for the weaker party to a dispute when, for example, seeking to enforce an order for disclosure or preliminary action taken in proceedings (for example the Article 145 pre-action disclosure procedure under the French Code of Civil Procedure or the diligencias procedure available in Spain).

33. Under Art 5.1(j) of Hague 2019, a judgment is eligible for recognition and enforcement if one of the following requirements is met –

... the judgment ruled on a non-contractual obligation arising from death, physical injury, damage to or loss of tangible property, and the act or omission directly causing such harm occurred in the State of origin, irrespective of where that harm occurred;

- a. This provision is ambiguous. In the case of a tort/non-contractual obligation (which many injury victims rely upon in order to bring a claim for damages), for the judgment to be enforceable Hague 2019 appears to require the act or omission to have occurred in the State of origin but then adds the words 'irrespective of where that harm occurred' which conflicts with the proposition the act or omission directly causing the harm (ie the tort) must have occurred in the State of origin.
- b. The Explanatory Notes to Hague 2019 at paragraphs 197-198 highlight a number of further shortcomings in its scope and application. Specifically, any judgment obtained in proceedings in a State which was not the place where the harm occurred would appear to be excluded from its scope. This means that a serious injury victim who suffers an accident overseas, returns home and brings proceedings in their home court would be prevented from enforcing that judgment against a defendant overseas under Hague 2019. This is in stark contrast to the special jurisdiction provisions of the Lugano Convention. Hague 2019 could also arbitrarily exclude enforcement of a judgment obtained by a claimant who is bringing a claim for loss of financial dependency following a fatal accident on the basis this is an 'indirect' loss; the approach in the Explanatory Notes is that the question of interpretation of this part of Hague 2019 should be left to national courts, further highlighting the uncertainty of the regime when compared to the Lugano Convention.

34. Art 7: uncertainty of public policy decisions to refuse enforcement. This is a important safeguard to ensure the highest standards in relation to procedural fairness and the rule of law are being observed by the receiving State, however it does open the way to potential abuse when a party is trying to resist enforcement. There are already issues with judgments which should be automatically recognised and enforced between signatory states being refused on public policy grounds, even though such an abuse should not happen under the European regime. So, if there is a wider scope under Hague 2019 then ultimately there is no certainty of outcome on enforcement when public policy could be invoked on an inconsistent basis across state signatories to Hague 2019.
35. Also, Art 7 highlights the need for a regime on jurisdiction which goes hand-in-hand with enforcement, as if there are parallel proceedings or a jurisdiction battle with conflicting judgments given in two different Convention States then Hague 2019 cannot be used to achieve enforcement. On the other hand, the Lugano Convention has a specific mechanism for dealing with parallel proceedings; and recognition/enforcement of a judgment given in those proceedings then follows under the Lugano Convention.
36. The above commentary seeks to highlight some of the areas of concern for victims, consumers and workers under Hague 2019 and to demonstrate why this cannot be seen as a substitute or replacement for the Lugano Convention to maintain high levels of protection for victims. Fundamentally, the scope and protections afforded to the weaker party to a dispute under the Lugano Convention should not be confused with the significant limitations, notably those outlined above, under Hague 2019.
37. While, Hague 2019 is a positive step forward, particularly for commercial parties on the question of enforcement, it does not and is not intended to provide the same level of certainty and cross-border cooperation as is provided for in the Lugano Convention.

Conclusion

38. The loss of the right by EU and UK injured persons and their relatives to:

- i. Bring a claim for damages in their home courts following an injury whilst travelling overseas; or pursuant to their consumer or employment/worker contracts; and
- ii. Thereafter to have an effective means of enforcing a judgment overseas;

Are probably the two most important issues of concern to PEOPIL in current EU-UK relations.

39. The present position has a vast detrimental impact to EU, EFTA and UK citizens, families and victims, and a knock-on effect on the demands placed on individual countries where it is not possible for a victim to seek redress and obtain compensation as a result of another party's negligence. The EU27, EFTA and UK governments will be forced to pick up the bill for meeting the needs of those who are injured and unable to effectively enforce their rights to bring a claim

against the individual/entity responsible and their insurer. Fundamentally, the landscape on access to justice for victims is significantly weakened, and the aim of underpinning confidence in trade for businesses and supporting families is undermined, unless and until urgent action is taken to plug the gaps on jurisdiction and enforcement.

PEOPIL, EU-UK Working Group, June 2025