

**EC EFTA Convention on Jurisdiction
and the Enforcement of Judgements in
Civil and Commercial Matters, Lugano,
16 September 1988**

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EC EFTA Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters Lugano, 16 September 1988

Preamble

The High Contracting Parties to this Convention,

Anxious to strengthen in their territories the legal protection of persons therein established,

Considering that it is necessary for this purpose to determine the international jurisdiction of their courts, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgements, authentic instruments and court settlements.

Aware of the links between them, which have been sanctioned in the economic field by the free trade agreements concluded between the European Economic Community and the States members of the European Free Trade Association,

Taking into account the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgements in civil and commercial matters, as amended to the Accession Conventions under the successive enlargements of the European Communities.

Persuaded that the extension of the principles of that Convention to the State parties to this instrument will strengthen legal and economic co-operation in Europe,

Desiring to ensure as uniform an interpretation as possible of this instrument,

Have in this spirit decided to conclude this Convention and Have agreed as follows:

Title I - Scope

Article 1

This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

The Convention shall not apply to

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
2. bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
3. social security;
- 4 arbitration.

Title II - Jurisdiction

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Section 1 - General Provisions

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Article 2

21

Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.

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Persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that state

23

Article 3

24

Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title.

25

In particular the following provisions shall not be applicable as against them:

26

- in Belgium: Article 15 of the civil code (Code civil - Burgerlijk Wetboek) and Article 638 of the judicial code (Code judiciaire - Gerechtelijk Wetboek),

27

- in Denmark: Article 246 (2) and (3) of the law on civil procedure (Lov om retsens pleje),

28

- in the Federal Republic of Germany: Article 23 of the code of civil procedure (Zivilprozessordnung),

29

- in Greece: Article 40 of the code of civil procedure [greek text],

30

- in France: Articles 14 and 15 of the civil code (Code civil),

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- in Ireland: the rules which enable jurisdiction to be founded on the document instituting the proceedings having been served on the defendant during this temporary presence in Ireland,

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- in Iceland: Article 77 of the Civil Proceedings Act [icelandic text],

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- in Italy: Articles 2 and 4, Nos 1 and 2 of the code of civil procedure (Codice di procedura civile),

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- in Luxembourg: Articles 14 and 15 of the civil code (Code civil),

35

- in the Netherlands: Articles 126 (3) and 127 of the code of civil procedure (Wetboek van Burgerlijke Rechtsvordering),

36

- in Norway: Section 32 of the Civil Proceedings Act (tvistemålsloven),

37

- in Austria: Article 99 of the Law on Court Jurisdiction (Jurisdiktionsnorm)

38

- in Portugal: Articles 65 (1) (c), 65 (2) and 65A (c) of the code of civil procedure (Codigo de Processo Civil) and Article 11 of the code of labour procedure (Codigo de Processo de Trabalho),

39

- in Switzerland: le for du lieu du sequestre/ Gerichtsstand des Arrestortes/foro del luogo del sequestro within the meaning of Article 4 of the loi federale sur le droit international prive/Bundesgesetz uber das internationale Privatrecht/legge federale sul diritto internazionale privato, 40
- in Finland: the second, third and fourth sentences of Section 1 of Chapter 10 of the Code of Judicial Procedure [finnish text], 41
- in Sweden: the first sentence of Section 3 of Chapter 10 of Code of Judicial Procedure (Rattegångsbalken), 42
- in the United Kingdom: the rules which enable jurisdiction to be founded on: 43
 - (a) the document instituting the proceedings having been served on the defendant during his temporary presence in the United Kingdom; or 44
 - (b) the presence within the United Kingdom of property belonging to the defendant; or 45
 - (c) the seizure by the plaintiff of property situated in the United Kingdom. 46

Article 4 47

If the defendant is not domiciled in a Contracting State, the jurisdiction of the courts of each Contracting State shall, subject to the provisions of Article 16, be determined by the law of that State. 48

As against such a defendant, any person domiciled in a Contracting State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in the second paragraph of Article 3, in the same way as the nationals of that State. 49

Section 2 - Special jurisdiction 50

Article 5 51

A person domiciled in a Contracting State may, in another Contracting State, be sued: 52

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question; in matters relating to individual contracts of employment, this place is that where the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, this place shall be the place of business through which he was engaged; 53

2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties; 54

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred; 55

4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings; 56

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; 57

6. in his capacity as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Contracting State in which the trust is domiciled; 7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question: 58

(a) has been arrested to secure such payment, or 59

(b) could have been so arrested, but bail or other security has been given; provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage. 60

Article 6 61

A person domiciled in a Contracting State may also be sued: 62

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled; 63

2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case; 64

3. on a counterclaim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending; 65

4. in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights in rem in immovable property, in the court of the Contracting State in which the property is situated. 66

Article 6A 67

Where by virtue of this Convention a court of a Contracting State has jurisdiction in actions relating to liability arising from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that State, shall also have jurisdiction over claims for limitation of such liability. 68

Section 3 - Jurisdiction in matters relating to insurance 69

Article 7 70

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5 (5). 71

Article 8 72

An insurer domiciled in a Contracting State may be sued: 73

1. in the courts of the State where he is domiciled. or 74
2. in another Contracting State, in the courts for the place where the policy-holder is domiciled, or 75
3. if he is a co-insurer, in the courts of a Contracting State in which proceedings are brought against the leading insurer. 76

An insurer who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State. 77

Article 9 78

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency. 79

Article 10 80

In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured. 81

The provisions of Articles 7, 8 and 9 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted. 82

If the law governing such direct actions provides that the policy-holder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them. 83

Article 11 84

Without prejudice to the provisions of the third paragraph of Article 10, an insurer may bring proceedings only in the courts of the Contracting State in which the defendant is domiciled, irrespective of whether he is the policy-holder, the insured or a beneficiary. 85

The provisions of this Section shall not affect the right to bring a counterclaim in the court in which, in accordance with the Section, the original claim is pending. 86

Article 12 87

The provisions of this Section may be departed from only by an agreement on jurisdiction: 88

1. which is entered into after the dispute has arisen, or 89
2. which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or 90
3. which is concluded between a policy-holder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or 91
4. which is concluded with a policy-holder who is not domiciled in a Contracting State, except in so far as the insurance is compulsory or relates to immovable property in a Contracting State, or 92
5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 12A. 93

Article 12A 94

The following are the risks referred to in Article 12 (5): 95

1. any loss of or damage to 96
 - (a) sea-going ships, installations situated off-shore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes, 97
 - (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft; 98
2. any liability, other than for bodily injury to passengers or loss of or damage to their baggage, 99
 - (a) arising out of the use or operation of ships, installations or aircraft as referred to in (1) (a) above in so far as the law of the Contracting State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks, 100
 - (b) for loss or damage caused by goods in transit as described in (1) (b) above; 101
3. any financial loss connected with the use or operation of ships, installations or aircraft as referred to in (1) (a) above, in particular loss of freight or charter-hire; 102

4. any risk or interest connected with any of those referred to in (1) to (3) above. 103

Section 4 - Jurisdiction over consumer contracts 104

Article 13 105

In proceedings concerning a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, hereinafter called the consumer, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5 (5), if it is: 106

1. a contract for the sale of goods on instalment credit terms, or 107

2. a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods, or 108

3. any other contract for the supply of goods or a contract for the supply of services, and 109

(a) in the State of the consumer's domicile the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and 110

(b) the consumer took in that State the steps necessary for the conclusion of the contract. 111

Where a consumer enters into a contract with a party who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State. 112

This Section shall not apply to contracts of transport. 113

Article 14 114

A consumer may bring proceedings against the other party to a contract either in the courts of the Contracting State in which that party is domiciled or in the courts of the Contracting State in which he is himself domiciled. 115

Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Contracting State in which the consumer is domiciled. 116

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. 117

Article 15 118

The provisions of this Section may be departed from only by an agreement: 119

1. which is entered into after the dispute has arisen, or 120

2. which allows the consumer to bring proceedings in courts other than those indicated 121

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 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 122

Section 5 - Exclusive jurisdiction 123

Article 16 124

The following courts shall have exclusive jurisdiction, regardless of domicile: 125

1. 126

(a) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Contracting State in which the property is situated: 127

(b) however, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Contracting State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and neither party is domiciled in the Contracting State in which the property is situated; 128

2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the decisions of their organs, the courts of the Contracting State in which the company, legal person or association has its seat; 129

3. in proceedings which have as their object the validity of entries in public registers, the courts of the Contracting State in which the register is kept; 130

4. in proceedings concerned with the registration or validity of patents, trade marks, designs or other similar rights required to be deposited or registered, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place or is under the terms of an international convention deemed to have taken place; 131

5. in proceedings concerned with the enforcement of judgements, the courts of the Contracting State in which the judgement has been or is to be enforced. 132

Section 6 - Prorogation of jurisdiction 133

Article 17 134

1. If the parties, one or more of whom is domiciled in a Contracting State, have agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal 135

relationship, that court or those courts shall have exclusive jurisdiction. Such an agreement conferring jurisdiction shall be either:

- (a) in writing or evidenced in writing, or 136
- (b) in a form which accords with practices which the parties have established between themselves, or 137
- (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned. 138

Where such an agreement is concluded by parties, none of whom is domiciled in a Contracting State, the courts of other Contracting States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction. 139

2. The court or courts of a Contracting State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved. 140

3. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 12 or 15, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 16. 141

4. If an agreement conferring jurisdiction was concluded for the benefit of only one of the parties, that party shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of this Convention. 142

5. In matters relating to individual contracts of employment an agreement conferring jurisdiction shall have legal force only if it is entered into after the dispute has arisen. 143

Article 18 144

Apart from jurisdiction derived from other provisions of this Convention, a court of a Contracting State before whom a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered solely to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 16. 145

Section 7 - Examination as to jurisdiction and admissibility 146

Article 19 147

Where a court of a Contracting State is seised of a claim which is principally concerned with a matter over which the courts of another Contracting State have exclusive jurisdiction by virtue of Article 16, it shall declare of its own motion that it has no jurisdiction. 148

Article 20

149

Where a defendant domiciled in one Contracting State is sued in a court of another Contracting State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Convention.

150

The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

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The provisions of the foregoing paragraph shall be replaced by those of Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, if the document instituting the proceedings or notice thereof had to be transmitted abroad in accordance with that Convention

152

Section 8 - Lis Pendens - related actions

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Article 21

154

Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

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Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

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Article 22

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Where related actions are brought in the courts of different Contracting States, any court other than the court first seised may while the actions are pending at first instance, stay its proceedings.

158

A court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seised has jurisdiction over both actions.

159

For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgements resulting from separate proceedings.

160

Article 23

161

Where actions come within the exclusive jurisdiction of several courts, any court other

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than the court first seised shall decline jurisdiction in favour of that court.

Section 9 - Provisional, including protective, measures 163

Article 24 164

Application may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter. 165

Title III - Recognition and Enforcement 166

Article 25 167

For the purposes of this Convention, judgement means any judgement given by a court or tribunal of a Contracting State, whatever the judgement may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court. 168

Section 1 - Recognition 169

Article 26 170

A judgement given in a Contracting State shall be recognised in the other Contracting States without any special procedure being required. 171

Any interested party who raises the recognition of a judgement as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Title, apply for a decision that the judgement be recognised. 172

If the outcome of proceedings in a court of a Contracting State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question. 173

Article 27 174

A judgement shall not be recognised: 175

1. if such recognition is contrary to public policy in the State in which recognition is sought; 176

2. where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence; 177

3. if the judgement is irreconcilable with a judgement given in a dispute between the 178

same parties in the State in which recognition is sought;

4. if the court of the State of origin, in order to arrive at its judgement, has decided a preliminary question concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession in a way that conflicts with a rule of the private international law of the State in which the recognition is sought, unless the same result would have been reached by the application of the rules of private international law of that State; 179

5. if the judgement is irreconcilable with an earlier judgement given in a non-contracting State involving the same cause of action and between the same parties, provided that this latter judgement fulfils the conditions necessary for its recognition in the State addressed. 180

Article 28 181

Moreover, a judgement shall not be recognised if it conflicts with the provisions of Sections 3. 4 or 5 of Title II or in a case provided for in Article 59. 182

A judgement may furthermore be refused recognition in any case provided for in Article 54B (3) or 57 (4). 183

In its examination of the grounds of jurisdiction referred to in the foregoing paragraphs, the court or authority applied to shall be bound by the findings of fact on which the court of the State of origin based its jurisdiction. 184

Subject to the provisions of the first and second paragraphs, the jurisdiction of the court of the State of origin may not be reviewed; the test of public policy referred to in Article 27 (1) may not be applied to the rules relating to jurisdiction. 185

Article 29 186

Under no circumstances may a foreign judgement be reviewed as to its substance. 187

Article 30 188

A court of a Contracting State in which recognition is sought of a judgement given in another Contracting State may stay the proceedings if an ordinary appeal against the judgement has been lodged. 189

A court of a Contracting State in which recognition is sought of a judgement given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State of origin by reason of an appeal. 190

Section 2 - Enforcement 191

Article 31

192

A judgement given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, it has been declared enforceable there.

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However, in the United Kingdom, such a judgement shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

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Article 32

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1. The application shall be submitted:

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- in Belgium, to the tribunal de premiere instance or rechtbank van eerste aanleg,

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- in Denmark, to the byret, in the Federal Republic of Germany, to the presiding judge of a chamber of the Landgericht,

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- in Greece, to the [greek text],

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- in Spain, to the Juzgado de Primera Instancia,

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- in France, to the presiding judge of the tribunal de grande instance,

201

- in Ireland, to the High Court,

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- in Iceland, to the heradsdomari,

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- in Italy, to the corte d'appello,

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- in Luxembourg, to the presiding judge of the tribunal d'arrondissement,

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- in the Netherlands, to the presiding judge of the arrondissementsrechtbank,

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- in Norway, to the herredsrett or byrett as namsrett,

207

- in Austria, to the Landesgericht or the Kreisgericht,

208

- in Portugal, to the Tribunal Judicial de Circulo,

209

- in Switzerland:

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(a) in respect of judgements ordering the payment of a sum of money, to the juge de la mainlevee/Rechtsoffnungs- richter/giudice competente a pronunciare sul rigetto dell' opposizione, within the framework of the procedure governed by Article 80 and 81 of the loi federale sur la poursuite pour dettes et la faillite/Bundesgesetz uber Schuldbe- treibung und KonkursAegge federale sulla esecuzione e sul fallimento,

211

(b) in respect of judgements ordering a performance other than the payment of a sum of money, to the juge cantonal d'exequatur competent/zustandiger kantonaler Vollstreck- ungsrichter/ giudice cantonale competente a pronunciare l'exequatur,

212

- in Finland, to the ulosotonhaltija/overexekutor,

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- in Sweden, to the Svea hovratt, 214

- in the United Kingdom: 215

(a) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgement to the Magistrates' Court on transmission by the Secretary of State; 216

(b) in Scotland, to the Court of Session, or in the case of a maintenance judgement to the Sheriff Court on transmission by the Secretary of State; 217

(c) in Northern Ireland, to the High Court of Justice, in the case of a maintenance judgement to the Magistrates' Court on transmission by the Secretary of State. 218

2. The jurisdiction of local courts shall be determined by reference to the place of domicile of the party against whom enforcement is sought. If he is not domiciled in the State in which enforcement is sought, it shall be determined by reference to the place of enforcement. 219

Article 33 220

The procedure for making the application shall be governed by the law of the State in which enforcement is sought. 221

The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative ad litem. 222

The documents referred to in Articles 46 and 47 shall be attached to the application. 223

Article 34 224

The court applied to shall give its decision without delay; the party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application. 225

The application may be refused only for one of the reasons specified in Articles 27 and 28. 226

Under no circumstances may the foreign judgement be reviewed as to its substance. 227

Article 35 228

The appropriate officer of the court shall without delay bring the decision given on the application to the notice of the applicant in accordance with the procedure laid down by the law of the State in which enforcement is sought. 229

Article 36

230

If enforcement is authorised, the party against whom enforcement is sought may appeal against the decision within one month of service thereof.

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If that party is domiciled in a Contracting State other than that in which the decision authorising enforcement was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

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Article 37

233

1. An appeal against the decision authorising enforcement shall be lodged in accordance with the rules governing procedure in contentious matters:

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- in Belgium, with the tribunal de premiere instance or rechtbank van eerste aanleg,

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- in Denmark, with the landsret,

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- in the Federal Republic of Germany, with the Oberlandsgericht,

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- in Greece, with the [greek text];

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- in Spain, with the Audiencia Provincial

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- in France, with the cour d'appel,

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- in Ireland, with the High Court,

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- in Iceland, with the heradsdomari;

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- in Italy, with the corte d'appello,

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- in Luxembourg, with the Cour superieure de justice sitting as a court of civil appeal,

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- in the Netherlands, with the arrondissementsrechtbank,

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- in Norway, with the lagmannsrett,

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- in Austria, with the Landesgericht or the Kreisgericht,

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- in Portugal, with the Tribunal da Relacao,

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- in Switzerland, with the tribunal cantonal/Kantonsgericht/ tribunale cantonale,

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- in Finland, with the hovioikeus/hovratt,

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- in Sweden, with the Svea hovratt,

251

- in the United Kingdom:

252

(a) in England and Wales, with the High Court of Justice, or in the case of a maintenance judgement with the Magistrates' Court,

253

(b) in Scotland, with the Court of Session, or in the case of a maintenance judgement with the Sheriff Court, 254

(c) in Northern Ireland, with the High Court of Justice, or in the case of a maintenance judgement with the Magistrates' Court. 255

2. The judgement given on the appeal may be contested only: 256

- in Belgium, Greece, Spain, France, Italy, Luxembourg and 257

- in the Netherlands, by an appeal in cassation, 258

- in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice, 259

- in the Federal Republic of Germany, by a Rechtsbeschwerde, 260

- in Ireland, by an appeal on Court, 261

- in Iceland, by an appeal to the Hæstirettur, 262

- in Norway, by an appeal (kjæremål or anke) to the Høyesteretts Kjæremålsutvalg or Høyesterett, 263

- in Austria, in the case of an appeal, by a Revisionsrekurs and, in the case of opposition proceedings, by a Berufung with the possibility of a Revision, 264

- in Portugal, by an appeal on a point of law, 265

- in Switzerland, by a recours de droit public devant le tribunal federal/staatsrechtliche Beschwerde beim Bundesgericht/ricorso di diritto pubblico davanti al tribunale federale, 266

- in Finland, by an appeal to the korkein oikeus/högsta domstolen, 267

- in Sweden, by an appeal to the högsta domstolen, 268

- in the United Kingdom, by a single further appeal on a point of law to the Supreme 269

Article 38 270

The court with which the appeal under the first paragraph of Article 37 is lodged may, on the application of the appellant, stay the proceedings if an ordinary appeal has been lodged against the judgement in the State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within such an appeal is to be lodged. 271

Where the judgement was given in Ireland or the United Kingdom, any form of appeal available in the State of origin shall be treated as an ordinary appeal for the purposes of the first paragraph. 272

The court may also make enforcement conditional on the provision of such security as it shall determine. 273

Article 39 274

During the time specified for an appeal pursuant to Article 36 and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought. 275

The decision authorising enforcement shall carry with it the power to proceed to any such protective measures. 276

Article 40 277

1. If the application for enforcement is refused, the applicant may appeal: 278

- in Belgium, to the cour d'appel or hof van beroep, 279

- in Denmark, to the landsret, 280

- in the Federal Republic of Germany, to the Oberlandes- gericht, 281

- in Greece, to the [greek text]; 282

- in Spain, to the Audiencia Provincial, 283

- in France, to the cour d'appel, 284

- in Ireland, to the High Court, 285

- in Iceland, to the heradsdomari, 286

- in Italy, to the corte d'appello, 287

- in Luxembourg, to the Cour superieure de justice sitting as a court of civil appeal, 288

- in the Netherlands, to the gerechtshof, 289

- in Norway, to the lagmannsrett, 290

- in Austria, to the Landesgericht or the Kreisgericht, 291

- in Portugal, to the Tribunal da Relacao; 292

- in Switzerland, to the tribunal cantonal/ Kantonsgericht/ tribunale cantonale, 293

- in Finland, to the hovioikeus/hovratt, 294

- in Sweden, to the Svea hovratt, 295

- in the United Kingdom: 296

(a) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgement to the Magistrates' Court, 297

(b) in Scotland, to the Court of Session, or in the case of a maintenance judgement to the Sheriff Court, 298

(c) in Northern Ireland, to the High Court of Justice, or in the case of a maintenance 299

judgement to the Magistrates' Court.

2. The party against whom enforcement is sought shall be summoned to appear before the appellate court. If he fails to appear, the provisions of the second and third paragraphs of Article 20 shall apply even where he is not domiciled in any of the Contracting States. 300

Article 41 301

A judgement given on an appeal provided for in Article 40 may be contested only: 302

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation, 303

- in Denmark, by an appeal to the højesteret with the leave of the Minister of Justice, 304

- in the Federal Republic of Germany, by a Rechtsbeschwerde, 305

- in Ireland, by an appeal on a point of law to the Supreme Court, 306

- in Iceland, by an appeal to the Hæstirettur, 307

- in Norway, by an appeal (kjæremål or anke) to the Høyesteretts kjæremålsutvalg or Høyesterett, 308

- in Austria, by a Revisionsrekurs, 309

- in Portugal, by an appeal on a point of law, 310

- in Switzerland, by a recurs de droit public devant le tribunal federal/staatsrechtliche Beschwerde beim Bundesgericht/recorso di diritto pubblico davanti al tribunale federale, 311

- in Finland, by an appeal to the korkein oikeus/hogsta domstolen, 312

- in Sweden, by an appeal to the hogsta domstolen, 313

- in the United Kingdom, by a single further appeal on a point of law. 314

Article 42 315

Where a foreign judgement has been given in respect of several matters and enforcement cannot be authorised for all of them, the court shall authorise enforcement for one or more of them. 316

An applicant may request partial enforcement of a judgement. 317

Article 43 318

A foreign judgement which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State of origin. 319

Article 44

320

An applicant who in the State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedures provided for in Articles 32 to 35, to benefit from the most favourable legal aids or the most extensive exemption from costs or expenses provided for by the law of the State addressed.

321

However, an applicant who requests the enforcement of a decision given by an administrative authority in Denmark or Iceland in respect of a maintenance order may, in the State addressed, claim the benefits referred to in the first paragraph if he presents a statement from, respectively, the Danish Ministry of Justice or the Icelandic Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

322

Article 45

323

No security, bond or deposit, however described, shall be required of a party who in one Contracting State applies for enforcement of a judgement given in another Contracting State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

324

Section 3 - Common provisions

325

Article 46

326

A party seeking recognition or applying for enforcement of a judgement shall produce:

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1. a copy of the judgement which satisfies the conditions necessary to establish its authenticity;

328

2. in the case of a judgement given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the Proceedings or with an equivalent document.

329

Article 47

330

A party applying for enforcement shall also produce:

331

1. documents which establish that, according to the law of the State of origin, the judgement is enforceable and has been served;

332

2. where appropriate, a document showing that the applicant is in receipt of legal aid in the State of origin.

333

Article 48 334

If the documents specified in Article 46 (2) and Article 47 (2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production. 335

If the court so requires, a translation of the document shall be produced; the translation shall be certified by a person qualified to do so in one of the Contracting States. 336

Article 49 337

No legalisation or other similar formality shall be required in respect of the documents referred to in Articles 46 or 47 or the second paragraph of Article 48, or in respect of a document appointing a representative ad litem. 338

Title IV - Authentic Instruments and Court Settlements 339

Article 50 340

A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, be declared enforceable there, on application made in accordance with the procedures provided for in Article 31 et seq. The application may be refused only if enforcement of the instrument is contrary to public policy in the State addressed. 341

The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin. 342

The provisions of Section 3 of Title III shall apply as appropriate. 343

Article 51 344

A settlement which has been approved by a court in the course of proceedings and is enforceable in the State in which it was concluded shall be enforceable in the State addressed under the same conditions as authentic instruments 345

Title V - General Provisions 346

Article 52 347

In order to determine whether a party is domiciled in the Contracting State whose courts are seised of a matter, the Court shall apply its internal law. 348

If a party is not domiciled in the State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Contracting State, the court shall apply the law of that State. 349

Article 53

350

For the purposes of this Convention, the seat of a company or other legal person or association of natural or legal persons shall be treated as its domicile. However, in order to determine that seat, the court shall apply its rules of private international law.

351

In order to determine whether a trust is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its rules of private international law.

352

Title VI - Transnational Provisions

353

Article 54

354

The provisions of this Convention shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force in the State of origin and, where recognition or enforcement of a judgement or authentic instrument is sought, in the State addressed.

355

However, judgements given after the date of entry into force of this Convention between the State of origin and the State addressed in proceedings instituted before that date shall be recognised and enforced in accordance with the provisions of Title III if jurisdiction was founded upon rules which accorded with those provided for either in Title II of this Convention or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

356

If the parties to a dispute concerning a contract had agreed in writing before the entry into force of this Convention that the contract was to be governed by the law of Ireland or of a part of the United Kingdom, the courts of Ireland or of that part of the United Kingdom shall retain the right to exercise jurisdiction in the dispute.

357

Article 54A

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For a period of three years from the entry into force of this Convention for Denmark, Greece, Ireland, Iceland, Norway, Finland and Sweden, respectively, jurisdiction in maritime matters shall be determined in these States not only in accordance with the provisions of Title II, but also in accordance with the provisions of paragraphs 1 to 7 following. However, upon the entry into force of the International Convention relating to the arrest of sea-going ships, signed at Brussels on 10 May 1952, for one of these States, these provisions shall cease to have effect for that State.

359

1. A person who is domiciled in a Contracting State may be sued in the courts of one of the States mentioned above in respect of a maritime claim if the ship to which the claim relates or any other ship owned by him has been arrested by judicial process within the territory of the latter State to secure the claim, or could have been so arrested there but bail or other security has been given, and either:

360

(a) the claimant is domiciled in the latter State, or

361

- (b) the claim arose in the latter State, or 362
- (c) the claim concerns the voyage during which the arrest was made or could have been made, or 363
- (d) the claim arises out of a collision or out of damage caused by a ship to another ship or to goods or persons on board either ship, either by the execution or non-execution of a manoeuvre or by the non-observance of regulations, or 364
- (e) the claim is for salvage, or 365
- (f) the claim is in respect of a mortgage or hypothecation of the ship arrested. 366
2. A claimant may arrest either the particular ship to which the maritime claim relates, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship. However, only the particular ship to which the maritime claim relates may be arrested in respect of the maritime claims set out in (5) (o), (p) or (q) of this Article. 367
3. Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons. 368
4. When in the case of a charter by demise of a ship the charterer alone is liable in respect of a maritime claim relating to that ship, the claimant may arrest that ship or any other ship owned by the charterer, but no other ship owned by the owner may be arrested in respect of such claim. The same shall apply to any case in which a person other than the owner of a ship is liable in respect of a maritime claim relating to that ship. 369
5. The expression maritime claim means a claim arising out of one or more of the following: 370
- (a) damage caused by any ship either in collision or otherwise; 371
- (b) loss of life or personal injury caused by any ship or occurring in connection with the operation on any ship; 372
- (c) salvage; 373
- (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise; 374
- (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise; 375
- (f) loss of or damage to goods including baggage carried in any ship; 376
- (g) general average; 377
- (h) bottomry; 378
- (i) towage; 379
- (j) pilotage; 380
- (k) goods or materials wherever supplied to a ship for her operation or maintenance; 381

(l) construction, repair or equipment of any ship or dock charges and dues; 382

(m) wages of masters, officers or crew; 383

(n) master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner; 384

(o) dispute as to the title to or ownership of any ship; 385

(p) disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship; 386

(q) the mortgage or hypothecation of any ship. 387

6. In Denmark, the expression "arrest" shall be deemed as regards the maritime claims referred to in (5) (o) and (p) of this Article, to include a "forbud", where that is the only procedure allowed in respect of such a claim under Articles 646 to 653 of the law on civil procedure (lov om rettens pleje). 388

7. In Iceland, the expression "arrest" shall be deemed, as regards the maritime claims referred in (5) (o) and (p) of this Article, to include a logbann, where that is the only procedure allowed in respect of such a claim under Chapter III of the law on arrest and injunction (log um kyrretningu og logbann). 389

Title VII - Relationship to the Brussels Convention and to Other Conventions 390

Article 54B 391

1. This Convention shall not prejudice the application by the Member States of the European Communities of the Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, signed at Brussels on 27 September 1968 and of the Protocol on interpretation of that Convention by the Court of Justice, signed at Luxembourg on 3 June 1971, as amended by the Conventions of Accession to the said Convention and the said Protocol by the States acceding to the European Communities, all of these Conventions and the Protocol being hereinafter referred to as the "Brussels Convention". 392

2. However, this Convention shall in any event be applied: 393

(a) in matters of jurisdiction, where the defendant is domiciled in the territory of a Contracting State which is not a member of the European Communities, or where Articles 16 or 17 of this Convention confer a jurisdiction on the courts of such a Contracting State; 394

(b) in relation to a lis pendens or to related actions as provided for in Articles 21 and 22, when proceedings are instituted in a Contracting State which is not a member of the European Communities and in a Contracting State which is a member of the European Communities; 395

(c) in matters of recognition and enforcement, where either the State of origin or the State addressed is not a member of the European Communities. 396

3. In addition to the grounds provided for in Title III recognition or enforcement may be refused if the ground of jurisdiction on which the judgement has been based differs from that resulting from this Convention and recognition or enforcement is sought against a party who is domiciled in a Contracting State which is not a member of the European Communities, unless the judgement may otherwise be recognised or enforced under any rule of law in the State addressed. 397

Article 55 398

Subject to the provisions of the second paragraph of Article 54 and of Article 56, this Convention shall, for the States which are parties to it, supersede the following conventions concluded between two or more of them: 399

- the Convention between the Swiss Confederation and France on jurisdiction and enforcement of judgements in civil matters, signed at Paris on 15 June 1869, 400

- the Treaty between the Swiss Confederation and Spain on the mutual enforcement of judgements in civil or commercial matters, signed at Madrid on 19 November 1896, 401

- the Convention between the Swiss Confederation and the German Reich on the recognition and enforcement of judgements and arbitration awards, signed at Berne on 2 November 1929, 402

- the Convention between Denmark, Finland, Iceland, Norway and Sweden on the recognition and enforcement of judgements, signed at Copenhagen on 16 March 1932, 403

- the Convention between the Swiss Confederation and Italy on the recognition and enforcement of judgements, signed at Rome on 3 January 1933, 404

- the Convention between Sweden and the Swiss Confederation on 405

- the recognition and enforcement of judgements and arbitral awards signed at Stockholm on 15 January 1936, 406

- the Convention between the Kingdom of Belgium and Austria on the reciprocal recognition and enforcement of judgements and authentic instruments relating to maintenance obligations, signed at Vienna on 25 October 1957, 407

- the Convention between the Swiss Confederation and Belgium on the recognition and enforcement of judgements and arbitration awards, signed at Berne on 29 April 1959, 408

- the Convention between the Federal Republic of Germany and Austria on the reciprocal recognition and enforcement of judgements, settlements and authentic instruments in civil and commercial matters, signed at Vienna on 6 June 1959, 409

- the Convention between the Kingdom of Belgium and Austria on the reciprocal recog- 410

dition and enforcement of judgements, arbitral awards and authentic instruments in civil and commercial matters, signed at Vienna on 16 June 1959,

- the Convention between Austria and the Swiss Confederation on the recognition and enforcement of judgements, signed at Berne on 16 December 1960, 411

- the Convention between Norway and the United Kingdom providing for the reciprocal recognition and enforcement of judgements in civil matters, signed at London on 12 June 1961, 412

- the Convention between the United Kingdom and Austria providing for the reciprocal recognition and enforcement of judgements in civil and commercial matters, signed at Vienna on 14 July 1961, with amending Protocol signed at London on 6 March 1970, 413

- the Convention between the Kingdom of the Netherlands and Austria on the reciprocal recognition and enforcement of judgements and authentic instruments in civil and commercial matters, signed at the Hague on 6 February 1963, 414

- the Convention between France and Austria on the recognition and enforcement of judgements and authentic instruments in civil and commercial matters, signed at Vienna on 15 July 1966, 415

- the Convention between Luxembourg and Austria on the recognition and enforcement of judgements and authentic instruments in civil and commercial matters, signed at Luxembourg on 29 July 1971, 416

- the Convention between Italy and Austria on the recognition and enforcement of judgements in civil and commercial matters, of judicial settlements and of authentic instruments, signed at Rome on 16 November 1971, 417

- the Convention between Norway and the Federal Republic of Germany on the recognition and enforcement of judgements and enforceable documents, in civil and commercial matters, signed at Oslo on 17 June 1977, 418

- the Convention between Denmark, Finland, Iceland, Norway and Sweden on the recognition and enforcement of judgements in civil matters, signed at Copenhagen on 11 October 1977, 419

- the Convention between Austria and Sweden on the recognition and enforcement of judgements in civil matters, signed at Stockholm on 16 September 1982, 420

- the Convention between Austria and Spain on the recognition and enforcement of judgements, settlements and enforceable authentic instruments in civil and commercial matters, signed at Vienna on 17 February 1984, 421

- the Convention between Norway and Austria on the recognition and enforcement of judgements in civil matters, signed at Vienna on 21 May 1984, and 422

- the Convention between Finland and Austria on the recognition and enforcement of judgements in civil matters, signed at Vienna on 17 November 1986. 423

Article 56

424

The Treaty and the conventions referred to in Article 55 shall continue to have effect in relation to matters to which this Convention does not apply.

425

They shall continue to have effect in respect of judgements given and documents formally drawn up or registered as authentic instruments before the entry into force of this Convention.

426

Article 57

427

1. This Convention shall not effect any conventions to which the Contracting States are or will be parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgements.

428

2. This Convention shall not prevent a court of a Contracting State which is party to a convention referred to in the first paragraph from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in a Contracting State which is not a party to that convention. The court hearing the action shall, in any event, apply Article 20 of this Convention.

429

3. Judgements given in a Contracting State by a court in the exercise of jurisdiction provided for in a convention referred to in the first paragraph shall be recognised and enforced in the other Contracting States in accordance with Title III of this Convention.

430

4. In addition to the grounds provided for in Title III, recognition or enforcement may be refused if the State addressed is not a contracting party to a convention referred to in the first paragraph and the person against whom recognition or enforcement is sought is domiciled in that State, unless the judgements may otherwise be recognised or enforced under any rule of law in the State addressed.

431

5. Where a convention referred to in the first paragraph to which both the State of origin and the State addressed are parties lays down conditions for the recognition and enforcement of judgements, those conditions shall apply. In any event, the provisions of this Convention which concern the procedure for recognition and enforcement of judgements may be applied.

432

Article 58

433

(None)

434

Article 59

435

This Convention shall not prevent a Contracting State from assuming, in a convention on the recognition and enforcement of judgements, an obligation towards a third State

436

not to recognise judgements given in other Contracting States against defendants domiciled or habitually resident in the third State where, in cases provided for in Article 4, the judgement could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3.

However, a Contracting State may not assume an obligation towards a third State not to recognise a judgement given in another Contracting State by a court basing its jurisdiction on the presence within that State of property belonging to the defendant, or the seizure by the plaintiff of property situated there: 437

1. if the action is brought to assert or declare proprietary or possessory rights in that property, seeks to obtain authority to dispose of it, or arises from another issue relating to such property, or 438

2. if the property constitutes the security for a debt which is the subject-matter of the action. 439

Title VIII - Final Provisions 440

Article 60 441

The following may be parties to this Convention: 442

(a) States which, at the time of the opening of this Convention for signature, are members of the European Communities or of the European Free Trade Association; 443

(b) States which, after the opening of this Convention for signature, become members of the European Communities or of the European Free Trade Association; 444

(c) States invited to accede in accordance with Article 62 (1) (b). 445

Article 61 446

1. This Convention shall be opened for signature by the States members of the European Communities or of the European Free Trade Association. 447

2. The Convention shall be submitted for ratification by the signatory States. The instruments of ratification shall be deposited with the Swiss Federal Council. 448

3. The Convention shall enter into force on the first day of the third month following the date on which two States, of which one is a member of the European Communities and the other a member of the European Free Trade Association, deposit their instruments of ratification. 449

4. The Convention shall take effect in relation to any other signatory State on the first day of the third month following the deposit of its instrument of ratification 450

Article 62

451

1. After entering into force this Convention shall be open to accession by:

452

(a) the States referred to in Article 60 (b),

453

(b) other States which have been invited to accede upon a request made by one of the Contracting States to the depositary State. The depositary State shall invite the State concerned to accede only if, after having communicated the contents of the communications that this State intends to make in accordance with Article 63, it has obtained the unanimous agreement of the signatory States and the Contracting States referred to in Article 60 (a) and (b).

454

2. If an acceding State wishes to furnish details for the purposes of Protocol No. 1, negotiations shall be entered into to that end. A negotiating conference shall be convened by the Swiss Federal Council.

455

3. In respect of an acceding State, the Convention shall take effect on the first day of the third month following the deposit of its instrument of accession.

456

4. However, in respect of an acceding State referred to in paragraph 1 (a) or (b), the Convention shall take effect only in relations between the acceding State and the Contracting States which have not made any objections to the accession before the first day of the third month following the deposit of the instrument of accession.

457

Article 63

458

Each acceding State shall, when depositing its instrument of accession, communicate the information required for the application of Articles 3, 32, 37, 40, 41 and 55 of this Convention and furnish, if need be, the details prescribed during the negotiations for the purposes of Protocol No 1.

459

Article 64

460

1. This Convention is concluded for an initial period of five years from the date of its entry into force in accordance with Article 61 (3), even in the case of States which ratify it or accede to it after that date.

461

2. At the end of the initial five-year period, the Convention shall be automatically renewed from year to year.

462

3. Upon the expiry of the initial five-year period, any Contracting State may, at any time, denounce the Convention by sending a notification to the Swiss Federal Council.

463

4. The denunciation shall take effect at the end of the calendar year following the expiry of a period of six months from the date of receipt by the Swiss Federal Council of the notification of denunciation.

464

Article 65 465

The following are annexed to this Convention: 466

- a Protocol No. 1, on certain questions of jurisdiction, procedure and enforcement, 467
- a Protocol No. 2, on the uniform interpretation of the Convention, 468
- a Protocol No. 3, on the application of Article 57. These Protocols shall form an integral part of the Convention. 469

Article 66 470

Any Contracting State may request the revision of this Convention. To that end, the Swiss Federal Council shall issue invitations to a revision conference within a period of six months from the date of the request for revision. 471

Article 67 472

The Swiss Federal Council shall notify the States represented at the Diplomatic Conference of Lugano and the States who have later acceded to the Convention of: 473

- (a) the deposit of each instrument of ratification or accession, 474
- (b) the dates of entry into force of this Convention in respect of the Contracting States, 475
- (c) any denunciation received pursuant to Article 64, 476
- (d) any declaration received pursuant to Article Ia of Protocol No. 1, 477
- (e) any declaration received pursuant to Article Ib of Protocol No. 1, 478
- (f) any declaration received pursuant to Article IV of Protocol No. 1, 479
- (g) any communication made pursuant to Article VI of Protocol No. 1. 480

Article 68 481

This Convention, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Icelandic, Irish, Italian, Norwegian, Portuguese, Spanish and Swedish languages, all fourteen texts being equally authentic, shall be deposited in the archives of the Swiss Federal Council. The Swiss Federal Council shall transmit a certified copy to the Government of each State represented at the Diplomatic Conference of Lugano and to the Government of each acceding State. 482

Protocol No. 1 on Certain Questions of Jurisdiction, Procedure and Enforcement 483

The High Contracting Parties have agreed upon the following provisions, which shall be annexed to the Convention: 484

Article I

485

Any person domiciled in Luxembourg who is sued in a court of another Contracting State pursuant to Article 5 (1) may refuse to submit to the jurisdiction of that court. If the defendant does not enter an appearance the court shall declare of its own motion that it has no jurisdiction.

486

An agreement conferring jurisdiction, within the meaning of Article 17, shall be valid with respect to a person domiciled in Luxembourg only if that person has expressly and specifically so agreed.

487

Article Ia

488

1. Switzerland reserves the right to declare, at the time of depositing its instrument of ratification, that a judgement given in another Contracting State shall be neither recognised nor enforced in Switzerland if the following conditions are met:

489

(a) the jurisdiction of the court which has given the judgement is based only on Article 5 (1) of this Convention, and

490

(b) the defendant was domiciled in Switzerland at the time of the introduction of the proceedings; for the purposes of this Article, a company or other legal person is considered to be domiciled in Switzerland if it has its registered seat and the effective centre of activities in Switzerland, and

491

(c) the defendant raises an objection to the recognition or enforcement of the judgement in Switzerland, provided that he has not waived the benefit of the declaration foreseen under this paragraph.

492

2. This reservation shall not apply to the extent that at the time recognition or enforcement is sought a derogation has been granted from Article 59 of the Swiss Federal Constitution. The Swiss Government shall communicate such derogations to the signatory States and the acceding States.

493

3. This reservation shall cease to have effect on 31 December 1999.

494

It may be withdrawn at any time.

495

Article Ib

496

Any Contracting State may, by declaration made at the time of signing or of deposit of its instrument of ratification or of accession, reserve the right, notwithstanding the provisions of Article 28, not to recognise and enforce judgements given in the other Contracting States if the jurisdiction of the court of the State of origin is based, pursuant to Article 16 (1) (b), exclusively on the domicile of the defendant in the State of origin, and the property is situated in the territory of the State which entered the reservation.

497

Article II

498

Without prejudice to any more favourable provisions of national laws, persons domiciled in a Contracting State who are being prosecuted in the criminal courts of another Contracting State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person.

499

However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgement given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Contracting States.

500

Article III

501

In proceedings for the issue of an order for enforcement, no charge, duty or fee calculated by reference to the value of the matter in issue may be levied in the State in which enforcement is sought.

502

Article IV

503

Judicial and extrajudicial documents drawn up in one Contracting State which have to be served on persons in another Contracting State shall be transmitted in accordance with the procedures laid down in the conventions and agreements concluded between the Contracting States.

504

Unless the State in which service is to take place objects by declaration to the Swiss Federal Council, such documents may also be sent by the appropriate public officers of the State in which the document has been drawn up directly to the appropriate public officers of the State in which the addressee is to be found. In this case the officer of the State of origin shall send a copy of the document to the officer of the State applied to who is competent to forward it to the addressee. The document shall be forwarded in the manner specified by the law of the State applied to. The forwarding shall be recorded by a certificate sent directly to the officer of the State of origin.

505

Article V

506

The jurisdiction specified in Articles 6 (2) and 10 in actions on a warranty or guarantee or in any other third party proceedings may not be resorted to in the Federal republic of Germany, in Spain, in Austria and in Switzerland. Any person domiciled in another Contracting State may be sued in the courts:

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- of the Federal Republic Of Germany, pursuant to Articles 68, 72, 73 and 74 of the code of civil procedure (Zivilprozessordnung) concerning third-party notices;
- Of Spain, pursuant to Article 1482 of the civil code;

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- Of Austria, pursuant to Article 21 Of the code Of civil procedure (Zivilprozessordnung) 510
concerning third-party notices;

- Of Switzerland, pursuant to the appropriate provisions concerning third-party notices 511
of the cantonal codes Of civil procedure.

Judgements given in the other Contracting States by virtue of Article 6 (2) or Article 512
10 shall be recognised and enforced in the Federal Republic of Germany, in Spain, in
Austria and in Switzerland in accordance with Title III. Any effects which judgements
given in these States may have on third parties by application Of the provisions in the
preceding paragraph shall also be recognised in the other Contracting States.

Article Va 513

In matters relating to maintenance, the expression court includes the Danish, Icelandic 514
and Norwegian administrative authorities.

In civil and commercial matters, the expression court includes the Finnish ulosoton- 515
haltija/overexekutor.

Article Vb 516

In proceedings involving a dispute between the master and a member of the crew of 517
a sea-going ship registered in Denmark, in Greece, in Ireland, in Iceland, in Norway,
in Portugal or in Sweden concerning remuneration or other conditions Of service, a
court in a Contracting State shall establish whether the diplomatic or consular officer
responsible for the ship has been notified of the dispute. It shall stay the proceedings
so long as he has not been notified. It shall of its own motion decline jurisdiction if
the officer, having been duly notified, has exercised the powers accorded to him in the
matter by a consular convention, or in the absence of such a convention has, within the
time allowed, raised any objection to the exercise of such jurisdiction.

Article Vc 518

(None). 519

Article Vd 520

Without prejudice to the jurisdiction of the European Patent Office under the Convention 521
on the grant of European patents, signed at Munich on 5 October 1973, the courts
of each Contracting State shall have exclusive jurisdiction, regardless of domicile, in
proceedings concerned with the registration or validity of any European patent granted
for that State which is not a Community patent by virtue of the provision of Article 86 of
the Convention for the European patent for the common market, signed at Luxembourg
on 15 December 1975.

Article VI 522

The Contracting States shall communicate to the Swiss Federal Council the text of any provisions of their laws which amend either those provisions of their laws mentioned in the Convention or the lists of courts specified in Section 2 of Title III. 523

Protocol No. 2 On the Uniform Interpretation of the Convention 524
Preamble

- The High Contracting Parties, 525

- Having regard to Article 65 of this Convention, 526

- Considering the substantial link between this Convention and the Brussels Convention, 527

- Considering that the Court of Justice of the European Communities by virtue of the Protocol of 3 June 1971 has jurisdiction to give rulings on the interpretation of the provisions of the Brussels Convention, 528

- Being aware of the rulings delivered by the Court of Justice of the European Communities on the interpretation of the Brussels Convention up to the time of signature of this Convention, 529

- Considering that the negotiations which led to the conclusion of the Convention were based on the Brussels Convention in the light of these rulings, 530

- Desiring to prevent, in full deference to the independence of the courts, divergent interpretations and to arrive at as uniform an interpretation as possible of the provisions of the Convention, and of these provisions and those of the Brussels Convention which are substantially reproduced in this Convention, 531

Have agreed as follows: 532

Article 1 533

The courts of each Contracting State shall, when applying and interpreting the provisions of the Convention, pay due account to the principles laid down by any relevant decisions delivered by courts of the other Contracting States concerning provisions of this Convention. 534

Article 2 535

1. The Contracting Parties agree to set up a system of exchange of information concerning judgements delivered pursuant to this Convention as well as relevant judgements under the Brussels Convention This system shall comprise: 536

- transmission to a central body by the competent authorities of judgements delivered 537

by courts of last instance and the Court of Justice of the European Communities as well as judgements of particular importance which have become final and have been delivered pursuant to this Convention or the Brussels Convention;

- classification of these judgements by the central body including, as far as necessary, the drawing up and publication of translations and abstracts; 538

- communication by the central body of the relevant documents to the competent national authorities of all signatories and acceding States to the Convention and to the Commission of the European Communities. 539

2. The central body is the Registrar of the Court of Justice of the European Communities. 540

Article 3 541

1. A standing Committee shall be set up for the purposes of this Protocol. 542

2. The Committee shall be composed of representatives appointed by each signatory and acceding State. 543

3. The European Communities (Commission, Court of Justice and General Secretariat of the Council) and the European Free Trade Association may attend the meetings as observers. 544

Article 4 545

1. At the request of a Contracting Party, the depositary of the Convention shall convene meetings of the Committee for the purpose of exchanging views on the functioning of the Convention and in particular on 546

- the development of the case-law as communicated under the first paragraph first indent of Article 2, 547

- the application of Article 57 of the Convention. 548

2. The Committee, in the light of these exchanges, may also examine the appropriateness of starting on particular topics a revision of the Convention and make recommendations. 549

Protocol No. 3 on the Application of 57 550

The High Contracting Parties have agreed as follows: 551

I. For the purposes of the Convention, provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgements and which are or will be contained in acts of the Institutions of the European Communities shall be treated in the same way as the conventions referred to in paragraph 1 of Article 57. 552

2. If one Contracting State is of the opinion that a provision contained in an act of the Institutions of the European Communities is incompatible with the Convention, the Contracting States shall promptly consider amending the Convention pursuant to Article 66, without prejudice to the procedure established by Protocol No. 2. 553

Declaration by the Representatives of the Governments of the State Signatories to the Lugano Convention which are Members of the European Communities on Protocol No. 3 on the Application of Article 57 of the Convention 554

Upon signature of the Convention on jurisdiction and the enforcement of judgements in civil and commercial matters done at Lugano on 16 September 1988, 555

The Representatives of the Governments of the member states of the European Communities, 556

Taking into account the undertakings entered into vis-a-vis the member states of the European Free Trade Association, 557

Anxious not to prejudice the unity of the legal system set up by the Convention, 558

Declare that they will take all measures in their power to ensure, when Community acts referred to in paragraph 1 of Protocol No. 2 on the application of Article 57 are being drawn up, respect for the rules of jurisdiction and recognition and enforcement of judgements established by the Convention 559

Declaration by the Representatives of the Governments of the States Signatories to the Lugano Convention which are Members of the European Communities 560

Upon signature of the Convention on jurisdiction and the enforcement of judgements in civil and commercial matters done at Lugano on 16 September 1988. 561

The Representatives of the Governments of the member states of the European Communities 562

Declare that they consider as appropriate that the Court of Justice of the European Communities, when interpreting the Brussels Convention, pay due account to the rulings contained in the case law of the Lugano Convention. 563

Declaration by the Representatives of the Governments of the States Signatories to the Lugano Convention which are Members of the European Free Trade Association 564

Upon signature of the Convention on jurisdiction and the enforcement of judgements in 565

civil and commercial matters done at Lugano on 16 September 1988.

The Representatives of the Governments of the member states of the European Free
Trade Association 566

Declare that they consider as appropriate that their courts, when interpreting the Lugano
Convention, pay due account to the rulings contained in the case law of the Court
of Justice of the European Communities and of courts of the Member States of the
European Communities in respect of provisions of the Brussels Convention which are
substantially reproduced in the Lugano Convention. 567

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