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Legislation

Contents

I *Acts whose publication is obligatory*

.....

II *Acts whose publication is not obligatory*

Council

78/884/EEC:

* Convention of Accession of 9 October 1978 of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice	1
Danish version of the 1968 Convention and the 1971 Protocol	17
English version of the 1968 Convention and the 1971 Protocol	36
Irish version of the 1968 Convention and the 1971 Protocol	55
Joint Declaration	74
Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters (*)	77
Protocol annexed to the Convention (*)	93
Joint Declaration	96
Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters (*)	97
Joint Declaration	101

(*) These texts are published in the version as amended by the Convention of Accession; they have been brought up to date by the services of the Council of the European Communities on the basis of the official texts.

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other Acts are printed in bold type and preceded by an asterisk.

II

(Acts whose publication is not obligatory)

COUNCIL

CONVENTION

on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice

(Signed on 9 October 1978 (*))

(78/884/EEC)

PREAMBLE

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY,

CONSIDERING that the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, in becoming members of the Community, undertook to accede to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on the interpretation of that Convention by the Court of Justice, and to this end undertook to enter into negotiations with the original Member States of the Community in order to make the necessary adjustments thereto,

HAVE DECIDED to conclude this Convention and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Renaat VAN ELSLANDE,

Minister for Justice;

HER MAJESTY THE QUEEN OF DENMARK:

Nathalie LIND,

Minister for Justice;

(*) The date of entry into force of the Convention will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Dr Hans-Jochen VOGEL,
Federal Minister for Justice;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Alain PEYREFITTE,
Keeper of the Seals,
Minister for Justice;

THE PRESIDENT OF IRELAND:

Gerard COLLINS,
Minister for Justice;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Paolo BONIFACIO,
Minister for Justice;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Robert KRIEPS,
Minister of Education and Justice;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Prof. Mr J. DE RUITER,
Minister for Justice;

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

The Right Honourable the Lord ELWYN-JONES, CH,
Lord High Chancellor of Great Britain;

WHO, meeting within the Council, having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

TITLE I

GENERAL PROVISIONS

Article 1

The Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland

hereby accede to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, signed at Brussels on 27 September 1968 (hereinafter called 'the 1968 Convention'), and to the Protocol on its interpretation by the Court of Justice, signed at Luxembourg on 3 June 1971 (hereinafter called 'the 1971 Protocol').

Article 2

The adjustments to the 1968 Convention and to the 1971 Protocol are set out in Titles II to IV of this Convention.

TITLE II

ADJUSTMENTS TO THE 1968 CONVENTION

Article 3

The following shall be added to the first paragraph of Article 1 of the 1968 Convention:

'It shall not extend, in particular, to revenue, customs or administrative matters.'

Article 4

The following shall be substituted for the second paragraph of Article 3 of the 1968 Convention:

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

- in Belgium: Article 15 of the civil code (Code civil — Burgerlijk Wetboek) and Article 638 of the judicial code (Code judiciaire — Gerechtelijk Wetboek);
- in Denmark: Article 248 (2) of the law on civil procedure (Lov om retsens pleje) and Chapter 3, Article 3 of the Greenland law on civil procedure (Lov for Grønland om retsens pleje);
- in the Federal Republic of Germany: Article 23 of the code of civil procedure (Zivilprozeßordnung);
- in France: Articles 14 and 15 of the civil code (Code civil);
- in Ireland: the rules which enable jurisdiction to be founded on the document instituting the proceedings having been served on the defendant during his temporary presence in Ireland;
- in Italy: Articles 2 and 4, Nos 1 and 2 of the code of civil procedure (Codice di procedura civile);
- in Luxembourg: Articles 14 and 15 of the civil code (Code civil);
- in the Netherlands: Articles 126 (3) and 127 of the code of civil procedure (Wetboek van Burgerlijke Rechtsvordering);
- in the United Kingdom: the rules which enable jurisdiction to be founded on:

- (a) the document instituting the proceedings having been served on the defendant during his temporary presence in the United Kingdom; or
- (b) the presence within the United Kingdom of property belonging to the defendant; or
- (c) the seizure by the plaintiff of property situated in the United Kingdom.'

Article 5

1. The following shall be substituted for the French text of Article 5 (1) of the 1968 Convention:

'1. en matière contractuelle, devant le tribunal du lieu où l'obligation qui sert de base à la demande a été ou doit être exécutée;'

2. The following shall be substituted for the Dutch text of Article 5 (1) of the 1968 Convention:

'1. ten aanzien van verbintenissen uit overeenkomst: voor het gerecht van de plaats, waar de verbintenis, die aan de eis ten grondslag ligt, is uitgevoerd of moet worden uitgevoerd;'

3. The following shall be substituted for Article 5 (2) of the 1968 Convention:

'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;'

4. The following shall be added to Article 5 of the 1968 Convention:

'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

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

(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.'

Article 6

The following Article shall be added to Title II,
Section 2, of the 1968 Convention:

'Article 6a

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.'

Article 7

The following shall be substituted for Article 8 of the
1968 Convention:

'Article 8

An insurer domiciled in a Contracting State may
be sued:

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

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.'

Article 8

The following shall be substituted for Article 12 of
the 1968 Convention:

'Article 12

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

1. which is entered into after the dispute has
arisen, or
2. which allows the policy-holder, the insured or
a beneficiary to bring proceedings in courts
other than those indicated in this Section, or
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
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
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.'

Article 9

The following Article shall be added to Section 3 of
Title II of the 1968 Convention:

'Article 12a

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

1. Any loss of or damage to
 - (a) sea-going ships, installations situated
offshore or on the high seas, or aircraft,
arising from perils which relate to their use
for commercial purposes,
 - (b) goods in transit other than passengers'
baggage where the transit consists of or
includes carriage by such ships or aircraft;
2. Any liability, other than for bodily injury to
passengers or loss of or damage to their
baggage,
 - (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,

- (b) for loss or damage caused by goods in transit as described in 1 (b) above;
- 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;
- 4. Any risk or interest connected with any of those referred to in 1 to 3 above.'

Article 10

The following shall be substituted for Section 4 of Title II of the 1968 Convention:

'Section 4

Jurisdiction over consumer contracts

Article 13

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:

- 1. a contract for the sale of goods on instalment credit terms, or
- 2. a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods, or
- 3. any other contract for the supply of goods or a contract for the supply of services, and
 - (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
 - (b) the consumer took in that State the steps necessary for the conclusion of the contract.

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.

This section shall not apply to contracts of transport.

Article 14

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.

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.

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

Article 15

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

- 1. which is entered into after the dispute has arisen, or
- 2. which allows the consumer to bring proceedings in courts other than those indicated in this Section, or
- 3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same 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.'

Article 11

The following shall be substituted for Article 17 of the 1968 Convention.

'Article 17

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 relationship, that court or those courts shall have exclusive jurisdiction. Such an agreement conferring jurisdiction shall be either in writing or evidenced in writing or, in international trade or commerce, in a form which accords with practices in that trade or commerce of which the parties are or ought to have

been aware. 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.

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.

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

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.'

Article 12

The second paragraph of Article 20 of the 1968 Convention shall be replaced by the following:

'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.'

Article 13

1. Article 27 (2) of the 1968 Convention shall be replaced by the following:

'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 a equivalent document in sufficient time to enable him to arrange for his defence;'

2. The following shall be added to Article 27 of the 1968 Convention:

'5. if the judgment is irreconcilable with an earlier judgment given in a non-Contracting State involving the same cause of action and between the same parties, provided that this

latter judgment fulfils the conditions necessary for its recognition in the State addressed.'

Article 14

The following paragraph shall be added to Article 30 of the 1968 Convention:

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

Article 15

The following paragraph shall be added to Article 31 of the 1968 Convention:

'However, in the United Kingdom, such a judgment 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.'

Article 16

The following shall be substituted for the first paragraph of Article 32 of the 1968 Convention:

'The application shall be submitted:

- in Belgium, to the tribunal de première instance or rechtbank van eerste aanleg,
- in Denmark, to the underret,
- in the Federal Republic of Germany, to the presiding judge of a chamber of the Landgericht,
- in France, to the presiding judge of the tribunal de grande instance,
- in Ireland, to the High Court,
- in Italy, to the corte d'appello,
- in Luxembourg, to the presiding judge of the tribunal d'arrondissement'
- in the Netherlands, to the presiding judge of the arrondissementsrechtbank,
- in the United Kingdom:

1. in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State;

2. in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court on transmission by the Secretary of State;
3. in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State.'

Article 17

The following shall be substituted for Article 37 of the 1968 Convention:

'Article 37

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

- in Belgium, with the tribunal de première instance or rechtbank van eerste aanleg,
- in Denmark, with the landsret,
- in the Federal Republic of Germany, with the Oberlandesgericht,
- in France, with the cour d'appel,
- in Ireland, with the High Court,
- in Italy, with the corte d'appello,
- in Luxembourg, with the Cour supérieure de Justice sitting as a court of civil appeal,
- in the Netherlands, with the arrondissementsrechtbank,
- in the United Kingdom:
 1. in England and Wales, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court;
 2. in Scotland, with the Court of Session, or in the case of a maintenance judgment with the Sheriff Court;
 3. in Northern Ireland, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court.

The judgment given on the appeal may be contested only:

- in Belgium, France, Italy, Luxembourg and the Netherlands, by an appeal in cassation,
- in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,

- in the Federal Republic of Germany, by a Rechtsbeschwerde,
- in Ireland, by an appeal on a point of law to the Supreme Court,
- in the United Kingdom, by a single further appeal on a point of law.'

Article 18

The following paragraph shall be added after the first paragraph of Article 38 of the 1968 Convention:

'Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the State in which it was given shall be treated as an ordinary appeal for the purposes of the first paragraph.'

Article 19

The following shall be substituted for the first paragraph of Article 40 of the 1968 Convention:

'If the application for enforcement is refused, the applicant may appeal:

- in Belgium, to the cour d'appel or hof van beroep,
- in Denmark, to the landsret,
- in the Federal Republic of Germany, to the Oberlandesgericht,
- in France, to the cour d'appel,
- in Ireland, to the High Court,
- in Italy, to the corte d'appello,
- in Luxembourg, to the Cour supérieure de Justice sitting as a court of civil appeal,
- in the Netherlands, to the gerechtshof,
- in the United Kingdom:
 1. in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court;
 2. in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court;
 3. in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court.'

Article 20

The following shall be substituted for Article 41 of the 1968 Convention:

'Article 41

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

- in Belgium, France, Italy, Luxembourg and the Netherlands, by an appeal in cassation,
- in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,
- in the Federal Republic of Germany, by a Rechtsbeschwerde,
- in Ireland, by an appeal on a point of law to the Supreme Court,
- in the United Kingdom, by a single further appeal on a point of law.'

Article 21

The following shall be substituted for Article 44 of the 1968 Convention:

'Article 44

An applicant who, in the State in which the judgment was given, 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 aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.

An applicant who requests the enforcement of a decision given by an administrative authority in Denmark 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 the Danish 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.'

Article 22

Article 46 (2) of the 1968 Convention is replaced by the following:

- '2. in the case of a judgment 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.'

Article 23

The following paragraph shall be added to Article 53 of the 1968 Convention:

'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.'

Article 24

The following shall be inserted at the appropriate places in chronological order in the list of Conventions set out in Article 55 of the 1968 Convention:

- the Convention between the United Kingdom and the French Republic providing for the reciprocal enforcement of judgments in civil and commercial matters, with Protocol, signed at Paris on 18 January 1934,
- the Convention between the United Kingdom and the Kingdom of Belgium providing for the reciprocal enforcement of judgments in civil and commercial matters, with Protocol, signed at Brussels on 2 May 1934,
- the convention between the United Kingdom and the Republic of Italy for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Bonn on 14 July 1960,
- the convention between the United Kingdom and the Republic of Italy for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 7 February 1964, with amending Protocol signed at Rome on 14 July 1970,
- the Convention between the United Kingdom and the Kingdom of the Netherlands providing for the reciprocal recognition and enforcement of judgments in civil matters, signed at The Hague on 17 November 1967.

Article 25

1. The following shall be substituted for Article 57 of the 1968 Convention:

'Article 57'

This Convention shall not affect 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 judgments.

This Convention shall not affect the application of provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonized in implementation of such acts.

2. With a view to its uniform interpretation, paragraph 1 of Article 57 shall be applied in the following manner:

- (a) the 1968 Convention as amended shall not prevent a court of a Contracting State which is a party to a convention on a particular matter from assuming jurisdiction in accordance with that Convention, even where the defendant is domiciled in another Contracting State which is not a party to that Convention. The court shall, in any event, apply Article 20 of the 1968 Convention as amended;
- (b) a judgment given in a Contracting State in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognized and enforced in the other Contracting States in accordance with the 1968 Convention as amended.

Where a convention on a particular matter to which both the State of origin and the State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of the 1968 Convention as amended which concern the procedures for recognition and enforcement of judgments may be applied.

Article 26

- The following paragraph shall be added to Article 59 of the 1968 Convention:

'However, a Contracting State may not assume an obligation towards a third State not to recognize a judgment 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:

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

Article 27

- The following shall be substituted for Article 60 of the 1968 Convention:

'Article 60'

This Convention shall apply to the European territories of the Contracting States, including Greenland, to the French overseas departments and territories, and to Mayotte.

The Kingdom of the Netherlands may declare at the time of signing or ratifying this Convention or at any later time, by notifying the Secretary-General of the Council of the European Communities, that this Convention shall be applicable to the Netherlands Antilles. In the absence of such declaration, proceedings taking place in the European territory of the Kingdom as a result of an appeal in cassation from the judgment of a court in the Netherlands Antilles shall be deemed to be proceedings taking place in the latter court.

Notwithstanding the first paragraph, this Convention shall not apply to:

- 1. the Faroe Islands, unless the Kingdom of Denmark makes a declaration to the contrary,
- 2. any European territory situated outside the United Kingdom for the international relations of which the United Kingdom is responsible, unless the United Kingdom makes a declaration to the contrary in respect of any such territory.

Such declarations may be made at any time by notifying the Secretary-General of the Council of the European Communities.

Proceedings brought in the United Kingdom on appeal from courts in one of the territories referred to in subparagraph 2 of the third paragraph shall be deemed to be proceedings taking place in those courts.

Proceedings which in the Kingdom of Denmark are dealt with under the law on civil procedure for the Faroe Islands (lov for Færøerne om rettens pleje) shall be deemed to be proceedings taking place in the courts of the Faroe Islands.

Article 28

The following shall be substituted for Article 64 (c) of the 1968 Convention:

‘(c) any declaration received pursuant to Article 60;’

TITLE III

ADJUSTMENTS TO THE PROTOCOL ANNEXED TO THE 1968 CONVENTION

Article 29

The following Articles shall be added to the Protocol annexed to the 1968 Convention:

Article Va

In matters relating to maintenance, the expression “court” includes the Danish administrative authorities.

Article Vb

In proceedings involving a dispute between the master and a member of the crew of a sea-going ship registered in Denmark or in Ireland, 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

Articles 52 and 53 of this Convention shall, when applied by Article 69 (5) of the Convention for the European Patent for the common market, signed at Luxembourg on 15 December 1975, to the provisions relating to “residence” in the English text of that Convention, operate as if “residence” in that text were the same as “domicile” in Articles 52 and 53.

Article Vd

Without prejudice to the jurisdiction of the European Patent Office under the Convention 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 provisions of Article 86 of the Convention for the European Patent for the common market, signed at Luxembourg on 15 December 1975.

TITLE IV

ADJUSTMENTS TO THE 1971 PROTOCOL

Article 30

The following paragraph shall be added to Article 1 of the 1971 Protocol:

‘The Court of Justice of the European Communities shall also have jurisdiction to give rulings on the interpretation of the Convention on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention of 27 September 1968 and to this Protocol.’

Article 31

The following shall be substituted for Article 2 (1) of the 1971 Protocol:

- ‘1. — in Belgium: la Cour de Cassation — het Hof van Cassatie and le Conseil d’Etat — de Raad van State,
- in Denmark: højesteret,
- in the Federal Republic of Germany: die obersten Gerichtshöfe des Bundes,

- in France: la Cour de Cassation and le Conseil d'Etat,
- in Ireland: the Supreme Court,
- in Italy: la Corte Suprema di Cassazione,
- in Luxembourg: la Cour supérieure de Justice when sitting as Cour de Cassation,
- in the Netherlands: de Hoge Raad,
- in the United Kingdom: the House of Lords and courts to which application has been made under the second paragraph of Article 37 or under Article 41 of the Convention;’.

Article 32

The following shall be substituted for Article 6 of the 1971 Protocol:

‘Article 6

This Protocol shall apply to the European territories of the Contracting States, including Greenland, to the French overseas departments and territories, and to Mayotte.

The Kingdom of the Netherlands may declare at the time of signing or ratifying this Protocol or at any later time, by notifying the Secretary-General of the Council of the European Communities, that this Protocol shall be applicable to the Netherlands Antilles.

Notwithstanding the first paragraph, this Protocol shall not apply to:

1. the Faroe Islands, unless the Kingdom of Denmark makes a declaration to the contrary,
2. any European territory situated outside the United Kingdom for the international relations of which the United Kingdom is responsible, unless the United Kingdom makes a declaration to the contrary in respect of any such territory.

Such declarations may be made at any time by notifying the Secretary-General of the Council of the European Communities.’

Article 33

The following shall be substituted for Article 10 (d) of the 1971 Protocol:

- ‘(d) any declaration received pursuant to Article 6.’

TITLE V

TRANSITIONAL PROVISIONS

Article 34

1. The 1968 Convention and the 1971 Protocol, with the amendments made by this Convention, shall apply only to legal proceedings instituted and to authentic instruments formally drawn up or registered after the entry into force of this Convention in the State of origin and, where recognition or enforcement of a judgment or authentic instrument is sought, in the State addressed.

2. However, as between the six Contracting States to the 1968 Convention, judgments given after the date of entry into force of this Convention in proceedings instituted before that date shall be recognized and enforced in accordance with the provisions of Title III of the 1968 Convention as amended.

3. Moreover, as between the six Contracting States to the 1968 Convention and the three States mentioned in Article 1 of this Convention, and as between those three States, judgments 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 also be recognized and enforced in accordance with the provisions of Title III of the 1968 Convention as amended if jurisdiction was founded upon rules which accorded with the provisions of Title II, as amended, or with provisions of a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

Article 35

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.

Article 36

For a period of three years from the entry into force of the 1968 Convention for the Kingdom of Denmark and Ireland respectively, jurisdiction in maritime matters shall be determined in these States not only in accordance with the provisions of that Convention

but also in accordance with the provisions of paragraphs 1 to 6 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.

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:
 - (a) the claimant is domiciled in the latter State; or
 - (b) the claim arose in the latter State; or
 - (c) the claim concerns the voyage during which the arrest was made or could have been made; or
 - (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
 - (e) the claim is for salvage; or
 - (f) the claim is in respect of a mortgage or hypothecation of the ship arrested.
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 subparagraphs (o), (p) or (q) of paragraph 5 of this Article.
3. Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.
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.

5. The expression 'maritime claim' means a claim arising out of one or more of the following:
 - (a) damage caused by any ship either in collision or otherwise;
 - (b) loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;
 - (c) salvage;
 - (d) agreement relating to the use or hire of any ship whether by charter-party or otherwise;
 - (e) agreement relating to the carriage of goods in any ship whether by charter-party or otherwise;
 - (f) loss of or damage to goods including baggage carried in any ship;
 - (g) general average;
 - (h) bottomry;
 - (i) towage;
 - (j) pilotage;
 - (k) goods or materials wherever supplied to a ship for her operation or maintenance;
 - (l) construction, repair or equipment of any ship or dock charges and dues;
 - (m) wages of masters, officers or crew;
 - (n) master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
 - (o) dispute as to the title to or ownership of any ship;
 - (p) disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;
 - (q) the mortgage or hypothecation of any ship.

6. In Denmark, the expression 'arrest' shall be deemed as regards the maritime claims referred to in subparagraphs (o) and (p) of paragraph 5 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).

TITLE VI

FINAL PROVISIONS

Article 37

The Secretary-General of the Council of the European Communities shall transmit a certified copy of the 1968 Convention and of the 1971 Protocol in the Dutch, French, German and Italian languages to the Governments of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland.

The texts of the 1968 Convention and the 1971 Protocol, drawn up in the Danish, English and Irish languages, shall be annexed to this Convention ⁽¹⁾. The texts drawn up in the Danish, English and Irish languages shall be authentic under the same conditions as the original texts of the 1968 Convention and the 1971 Protocol.

Article 38

This Convention shall be ratified by the signatory States. The instruments of ratification shall be

⁽¹⁾ See pages 17, 36 and 55 of this Official Journal.

deposited with the Secretary-General of the Council of the European Communities.

Article 39

This Convention shall enter into force, as between the States which shall have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the original Member States of the Community and one new Member State.

It shall enter into force for each new Member State which subsequently ratifies it on the first day of the third month following the deposit of its instrument of ratification.

Article 40

The Secretary-General of the Council of the European Communities shall notify the signatory States of:

- (a) the deposit of each instrument of ratification,
- (b) the dates of entry into force of this Convention for the Contracting States.

Article 41

This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Irish and Italian languages, all seven texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne konvention.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Übereinkommen gesetzt.

In witness whereof, the undersigned Plenipotentiaries have affixed their signatures below this Convention.

En foi de quoi, les plénipotentiaires soussignés ont apposé leurs signatures au bas de la présente convention.

Dá fhianú sin, cuir na Lánchumhachtaigh thíos-sínithe a lámh leis an gCoinbhinsiún seo.

In fede di che, i plenipotenziari sottoscritti hanno apposto le loro firme in calce alla presente convenzione.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder dit Verdrag hebben gesteld.

Udfærdiget i Luxembourg, den niende oktober nitten hundrede og otteoghalvfjerds.

Geschehen zu Luxemburg am neunten Oktober neunzehnhundertachtundsiebzig.

Done at Luxembourg on the ninth day of October in the year one thousand nine hundred and seventy-eight.

Fait à Luxembourg, le neuf octobre mil neuf cent soixante-dix-huit.

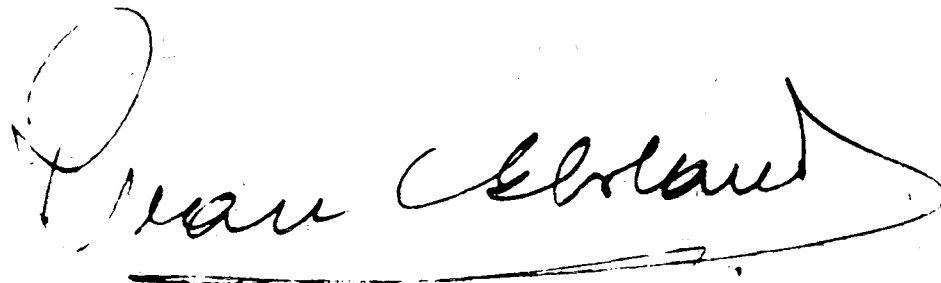
Arna dhéanamh i Lucsamburg, an naoú lá de Dheireadh Fómhair sa bhliain míle naoi gcéad seachtó a hocht.

Fatto a Lussemburgo, addì nove ottobre millenovecentosettantotto.

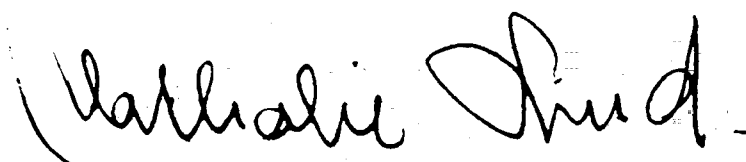
Gedaan te Luxemburg, de negende oktober negentienhonderd achtenzeventig.

Pour Sa Majesté le roi des Belges

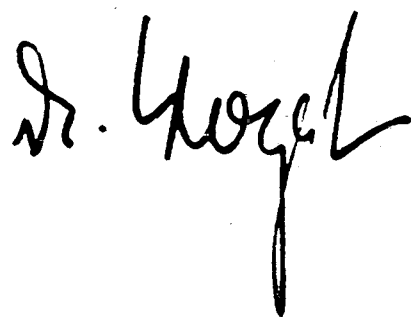
Voor Zijne Majesteit de Koning der Belgen

A handwritten signature in cursive script, reading "Jean Cabiaux". The signature is written in black ink and is underlined with a single horizontal stroke.

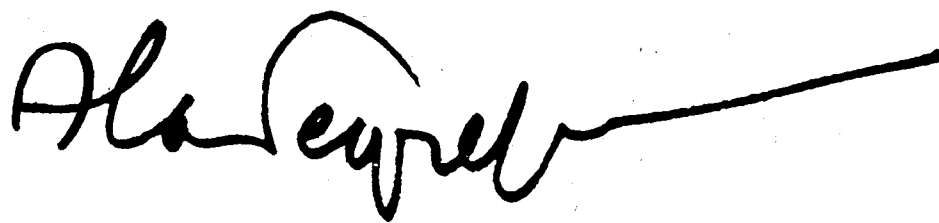
For Hendes Majestæt Danmarks Dronning

A handwritten signature in cursive script, reading "Nathalie Lind". The signature is written in black ink.

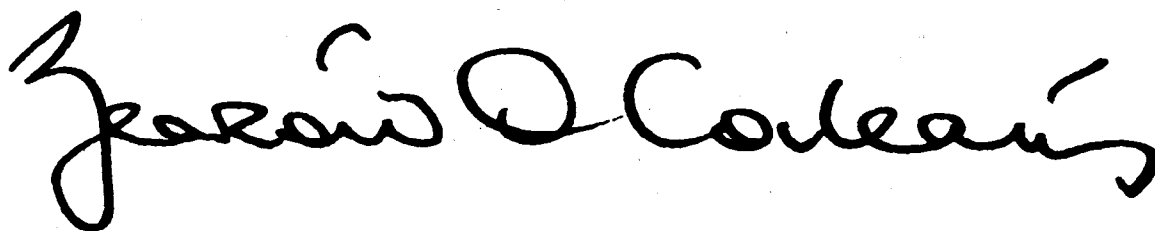
Für den Präsidenten der Bundesrepublik Deutschland

A handwritten signature in cursive script, reading "Dr. Hoyer". The signature is written in black ink.

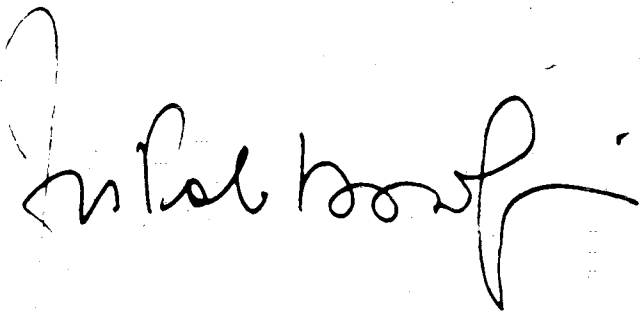
Pour le président de la République française

A handwritten signature in cursive script, reading "Alain Levet". The signature is written in black ink and features a long horizontal stroke at the end.

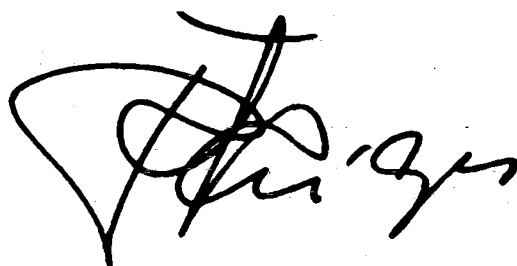
Thar ceann Uachtarán na hÉireann

A handwritten signature in cursive script, reading "Seán O'Connell". The signature is written in black ink.

Per il presidente della Repubblica italiana

A handwritten signature in black ink, appearing to read 'Sandro Pertini', written in a cursive style.

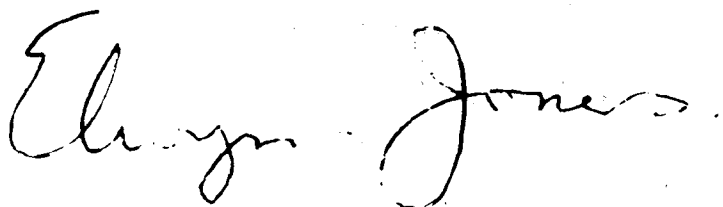
Pour Son Altesse Royale le grand-duc de Luxembourg

A handwritten signature in black ink, appearing to read 'Jean', written in a cursive style.

Voor Hare Majesteit de Koningin der Nederlanden

A handwritten signature in black ink, appearing to read 'Beatrix', written in a cursive style.

For Her Majesty the Queen of the United Kingdom of
Great Britain and Northern Ireland

A handwritten signature in black ink, appearing to read 'Elizabeth Jones', written in a cursive style.

KONVENTION

om retternes kompetence og om fuldbyrdelse af retsafgørelser i borgerlige sager, herunder handelssager

PRÆAMBEL

DE HØJE KONTRAHERENDE PARTER I TRAKTATEN OM OPRETTELSE AF DET EUROPÆISKE ØKONOMISKE FÆLLESSKAB HAR —

i ønsket om at gennemføre bestemmelserne i artikel 220 i nævnte traktat, hvorefter de har forpligtet sig til at tilvejebringe en forenkling af formaliteterne vedrørende gensidig anerkendelse og fuldbyrdelse af retsafgørelser,

i bestræbelserne for inden for Fællesskabet at styrke retsbeskyttelsen for de der bosiddende personer, og

ud fra den betragtning, at det med henblik herpå er nødvendigt at fastlægge deres retters internationale kompetence, at lette anerkendelsen af retsafgørelser og at indføre en hurtig procedure for at sikre fuldbyrdelsen af sådanne afgørelser samt af officielt bekræftede dokumenter og retsforlig —

vedtaget at indgå denne konvention og har med dette mål for øje udpeget som befuldmægtigede:

HANS MAJESTÆT BELGIERNES KONGE:

Pierre HARMEL,
udenrigsminister;

PRÆSIDENTEN FOR FORBUNDSREPUBLIKKEN TYSKLAND:

Willy BRANDT,
vicekansler, udenrigsminister;

PRÆSIDENTEN FOR DEN FRANSKE REPUBLIK:

Michel DEBRÉ,
udenrigsminister;

PRÆSIDENTEN FOR DEN ITALIENSKE REPUBLIK:

Giuseppe MEDICI,
udenrigsminister;

HANS KONGELIGE HØJHED STORHERTUGEN AF LUXEMBOURG:

Pierre GRÉGOIRE,
udenrigsminister;

HENDES MAJESTÆT DRONNINGEN AF NEDERLANDENE:

J.M.A.H. LUNS,
udenrigsminister;

SOM, FORSAMLET I RÅDET, efter at have udvekslet deres fuldmagter og fundet dem i god og behørig form,

ER BLEVET ENIGE OM FØLGENDE BESTEMMELSER:

AFSNIT I

ANVENDELSESOMRÅDE

Artikel 1

Denne konvention finder anvendelse på borgerlige sager, herunder handelssager, uanset domsmyndighedens art.

Den finder ikke anvendelse på:

1. fysiske personers retlige status samt deres rets- og handleevne, formueforholdet mellem ægtefæller samt arv efter loven eller testamente;
2. konkurs, akkord og andre lignende ordninger;
3. social sikring;
4. voldgift.

AFSNIT II

KOMPETENCE

Afdeling 1

Almindelige bestemmelser

Artikel 2

Med forbehold af bestemmelserne i denne konvention skal personer, der har bopæl på en kontraherende stats område, uanset deres nationalitet, sagsøges ved retterne i denne stat.

Personer, som ikke er statsborgere i den stat, hvor de har bopæl, er undergivet de kompetenceregler, der gælder for landets egne statsborgere.

Artikel 3

Personer, der har bopæl på en kontraherende stats område, kan kun sagsøges ved retterne i en anden

kontraherende stat i medfør af de regler, der er fastsat i afdeling 2-6 i dette afsnit.

I særdeleshed kan følgende bestemmelser ikke gøres gældende imod dem:

- i Belgien: artikel 15 i Borgerlig Lovbog (Code civil) og bestemmelserne i artikel 52, 52 bis og 53 i værnetingsloven af 25. marts 1976 (loi sur la compétence);
- Forbundsrepublikken Tyskland: artikel 23 i civilprocesloven (Zivilprozeßordnung);
- i Frankrig: artikel 14 og 15 i Borgerlig Lovbog (Code civil);
- i Italien: artikel 2 og artikel 4, nr. 1 og 2, i civilprocesloven (Codice di procedura civile);
- i Luxembourg: artikel 14 og 15 i Borgerlig Lovbog (Code civil);
- i Nederlandene: artikel 126, stk. 3, og artikel 127 i civilprocesloven (Wetboek van Burgerlijke Rechtsvordering).

Artikel 4

Såfremt sagsøgte ikke har bopæl på en kontraherende stats område, afgøres retternes kompetence i hver enkelt kontraherende stat efter statens egen lovgivning, dog med forbehold af bestemmelserne i artikel 16.

Over for en sagsøgt, der ikke har bopæl på en kontraherende stats område, kan enhver, der har bopæl på en kontraherende stats område, uanset sin nationalitet, i lighed med landets egne statsborgere påberåbe sig de kompetenceregler, som gælder der, herunder navnlig de regler, der er nævnt i artikel 3, stk. 2.

Afdeling 2

Specielle kompetenceregler

Artikel 5

En person, der har bopæl på en kontraherende stats område, kan sagsøges i en anden kontraherende stat:

1. i sager om kontraktforhold, ved retten på det sted, hvor den forpligtelse, der ligger til grund for sagen, er opfyldt eller skal opfyldes;
2. i sager om underholdspligt, ved retten på det sted, hvor den berettigede har sin bopæl eller sit sædvanlige opholdssted;
3. i sager om erstatning uden for kontrakt, ved retten på det sted, hvor skadetilføjelsen er foregået;
4. i sager, i hvilke der påstås erstatning eller genoprettelse af en tidligere tilstand i anledning af en strafbar handling, ved den ret, hvor straffesagen er anlagt, såfremt denne ret i henhold til den nationale lovgivning kan påkende borgerlige krav;
5. i sager vedrørende driften af en filial, et agentur eller en lignende virksomhed, ved retten på det sted, hvor virksomheden er beliggende.

Artikel 6

En person, der har bopæl på en kontraherende stats område, kan endvidere sagsøges:

1. såfremt der er flere sagsøgte, ved retten i den retskreds, hvor en af de sagsøgte har bopæl;
2. som tredjemand i sager om opfyldelse af en forpligtelse eller ved intervention, ved den ret, hvor den oprindelige sag er anlagt, medmindre denne kun er anlagt for at unddrage sagsøgte hans almindelige værneting;
3. i sager om modfordringer, der udspringer af den samme kontrakt eller det samme forhold, som hovedfordringen støttes på, ved den ret hvor sagen om hovedfordringen er indbragt.

Afdeling 3

Kompetence i forsikringsager

Artikel 7

I forsikringsager afgøres kompetencen efter bestemmelserne i denne afdeling, dog med forbehold af artikel 4 og artikel 5, nr. 5.

Artikel 8

En forsikringsgiver, der har bopæl på en kontraherende stats område, kan sagsøges enten ved retterne i denne stat eller i en anden kontraherende stat ved retten på det sted, hvor forsikringstageren har bopæl, eller i tilfælde, hvor flere forsikringsgivere er sagsøgt, ved retterne i en kontraherende stat, hvor en af de sagsøgte har bopæl.

Såfremt den lovgivning, der gælder for vedkommende ret, indeholder bestemmelser om en sådan kompe-

tence, kan forsikringsgiveren endvidere i en anden kontraherende stat end den, hvor han har bopæl, sagsøges ved retten i den kreds, hvor den person, som har formidlet afslutningen af forsikringsaftalen, har bopæl, når denne bopæl er anført i forsikringspolice eller forsikringsbegæringen.

En forsikringsgiver, som uden at have bopæl på en kontraherende stats område, har en filial eller et agentur i en af disse stater, anses for at have bopæl på denne stats område i sager vedrørende driften af den pågældende filial eller det pågældende agentur.

Artikel 9

I sager om ansvarsforsikring eller forsikring af fast ejendom kan forsikringsgiveren endvidere sagsøges ved retten på det sted, hvor skadetilføjelsen er foregået. Det samme gælder, når fast ejendom og løsøre er omfattet af samme forsikringsaftale og genstand for samme skadestilfælde.

Artikel 10

I sager om ansvarsforsikring kan forsikringsgiveren endvidere sagsøges ved den ret, hvor skadelidte har anlagt sag mod den sikrede, såfremt den lovgivning, der gælder for denne ret, indeholder hjemmel dertil.

Bestemmelserne i artikel 7, 8 og 9 finder anvendelse i tilfælde, hvor skadelidte anlægger sag direkte mod forsikringsgiveren, såfremt der er hjemmel for et direkte sagsanlæg.

Såfremt lovgivningen om et sådant direkte sagsanlæg indeholder hjemmel til at inddrage forsikringstageren eller den sikrede i sagen, er den samme ret også kompetent i forhold til disse personer.

Artikel 11

Med forbehold af bestemmelserne i artikel 10, stk. 3, kan forsikringsgiveren kun anlægge sag ved retterne i den kontraherende stat, på hvis område sagsøgte har bopæl, hvad enten sagsøgte er forsikringstager, sikret eller begunstiget.

Bestemmelserne i denne afdeling berører ikke retten til at fremsætte modfordringer ved den ret, der behandler det oprindelige krav i overensstemmelse med bestemmelserne i denne afdeling.

Artikel 12

Bestemmelserne i denne afdeling kan kun fraviges ved aftale:

1. såfremt denne er indgået, efter at tvisten er opstået, eller

2. såfremt aftalen giver forsikringstageren, den sikrede eller den begunstigede ret til at anlægge sag ved andre retter end dem, der er nævnt i denne afdeling, eller
3. såfremt aftalen er indgået mellem en forsikringstager og en forsikringsgiver, der har bopæl i samme kontraherende stat, med det formål, at retterne i denne stat skal være kompetente også i tilfælde af, at skadetilføjelsen er foregået i udlandet, medmindre en sådan aftale ikke er tilladt efter lovgivningen i den pågældende stat.

Afdeling 4

Kompetence ved visse former for kreditkøb og lån

Artikel 13

I sager om køb om løsørestande, hvor købesummen skal betales i rater, eller om lån, der skal tilbagebetales i rater og er direkte bestemt til finansiering af køb af sådanne genstande, afgøres kompetencen efter bestemmelserne i denne afdeling, dog med forbehold af artikel 4 og artikel 5, nr. 5.

Artikel 14

En sælger eller en långiver, der har bopæl på en kontraherende stats område, kan sagsøges enten ved retterne i den pågældende stat, eller ved retterne i den kontraherende stat, på hvis område køberen eller låntageren har bopæl.

Sælgeren kan kun anlægge sag mod køberen, og långiveren kan kun anlægge sag mod låntageren, ved retterne i den stat, på hvis område sagsøgte har bopæl.

Disse bestemmelser berører ikke retten til at fremsætte modfordringer ved den ret, der behandler det oprindelige krav i overensstemmelse med bestemmelserne i denne afdeling.

Artikel 15

Bestemmelserne i denne afdeling kan kun fraviges ved aftale:

1. såfremt denne er indgået efter at tvisten er opstået, eller
2. såfremt aftalen giver køberen eller låntageren ret til at anlægge sag ved andre retter end dem, der er nævnt i denne afdeling, eller
3. såfremt aftalen er indgået mellem en køber og en sælger eller mellem en låntager og en långiver, der har bopæl eller sædvanligt opholdssted i samme

kontraherende stat, og aftalen tillægger retterne i denne stat kompetence, medmindre en sådan aftale ikke er tilladt efter lovgivningen i den pågældende stat.

Afdeling 5

Enekompetence

Artikel 16

Enekompetente, uden hensyn til bopæl, er:

1. i sager om rettigheder over fast ejendom samt om leje eller forpagtning af fast ejendom, retterne i den kontraherende stat, hvor ejendommen er beliggende;
2. i sager om gyldighed, ugyldighed eller opløsning af selskaber eller juridiske personer, der har deres hjemsted på en kontraherende stats område, eller om beslutninger truffet af disses organer, retterne i den pågældende stat;
3. i sager om gyldigheden af indførelse i offentlige registre, retterne i den kontraherende stat, på hvis område registrene føres;
4. i sager om registrering eller gyldighed af patenter, varemærker, mønstre og modeller samt andre lignende rettigheder, der medfører deponering eller registrering, retterne i den kontraherende stat, på hvis område der er ansøgt om deponering eller registrering, eller hvor deponering eller registrering er foretaget eller ifølge bestemmelserne i en international konvention anses for at være foretaget;
5. i sager om fuldbyrdelse af retsafgørelser, retterne i den kontraherende stat, hvor fuldbyrdelsesstedet er beliggende.

Afdeling 6

Aftaler om kompetence

Artikel 17

Såfremt parterne i tilfælde, hvor mindst én af dem har bopæl på en kontraherende stats område, ved en skriftlig aftale eller ved en mundtlig aftale, der er skriftligt bekræftet, har vedtaget, at en ret eller retterne i en kontraherende stat skal være kompetente til at påkende allerede opståede tvister eller fremtidige tvister i anledning af et bestemt retsforhold, er alene denne ret eller retterne i den pågældende stat kompetente.

Aftaler om retternes kompetence er ugyldige, såfremt de strider mod bestemmelserne i artikel 12 og 15, eller såfremt de udelukker kompetencen for de retter, som i medfør af artikel 16 er enekompetente.

Såfremt aftalen om retternes kompetence kun er indgået til fordel for én af parterne, bevarer denne retten til at anlægge sag ved enhver anden ret, der er kompetent efter denne konvention.

Artikel 18

For så vidt retten i en kontraherende stat ikke allerede er kompetent i medfør af andre bestemmelser i denne konvention, bliver den kompetent, når sagsøgte giver møde for den. Denne regel finder ikke anvendelse, såfremt sagsøgte kun giver møde for at bestride rettens kompetence, eller såfremt en anden ret i medfør af artikel 16 er enekompetent.

Afdeling 7

Prøvelse af kompetencen og af sagens antagelse til påkendelse

Artikel 19

En ret i en kontraherende stat, for hvilken der som det væsentligste indbringes en retsvist, der i medfør af artikel 16 henhører under en i en anden kontraherende stat beliggende rets enekompetence, skal på embeds vegne erklære sig inkompetent.

Artikel 20

Såfremt en sagsøgt, der har bopæl på en kontraherende stats område, er sagsøgt ved en ret i en anden kontraherende stat, men ikke giver møde, skal den pågældende ret på embeds vegne erklære sig inkompetent, såfremt den ikke er kompetent efter reglerne i denne konvention.

Retten skal udsætte påkendelsen, indtil det er fastslået, at sagsøgte har haft mulighed for at modtage sagens indledende processkrift i så god tid, at han har kunnet varetage sine interesser under sagen, eller at alle hertil fornødne foranstaltninger har været truffet.

Bestemmelserne i artikel 15 i Haager-konventionen af 15. november 1965 om forkyndelse i udlandet af retslige og udenretslige dokumenter i sager om civile eller kommercielle spørgsmål træder i stedet for bestemmelserne i foregående stykke, såfremt det indledende processkrift i sagen skal fremsendes i medfør af nævnte konvention.

Afdeling 8

Litispændens og indbyrdes sammenhængende krav

Artikel 21

Såfremt krav, der har samme genstand og hviler på samme grundlag, fremsættes mellem de samme parter

for retter i forskellige kontraherende stater, skal enhver anden ret end den, ved hvilken sagen først er anlagt, på embeds vegne erklære sig inkompetent til fordel for denne ret.

Den ret, som herefter skulle erklære sig inkompetent, kan udsætte afgørelsen, såfremt den anden rets kompetence bestrides.

Artikel 22

Såfremt krav, som er indbyrdes sammenhængende, fremsættes for retter i forskellige kontraherende stater, og sagerne verserer for disse retter i første instans, kan enhver anden ret end den, ved hvilken sagen først er anlagt, udsætte afgørelsen.

Denne ret kan ligeledes på begæring af en af parterne erklære sig inkompetent, forudsat at dens lovgivning tillader forening af indbyrdes sammenhængende krav, og at den ret, ved hvilken sagen først er anlagt, er kompetent til at påkende begge krav.

Ved indbyrdes sammenhængende krav forstås i denne artikel krav, der er så snævert forbundne, at det er ønskeligt at behandle og påkende dem samtidigt for at undgå uforenelige afgørelser i tilfælde af, at kravene blev påkendt hver for sig.

Artikel 23

Såfremt kravene henhører under flere retters enekompetence, skal enhver anden ret, end den ved hvilken sagen først er anlagt, erklære sig inkompetent til fordel for denne ret.

Afdeling 9

Foreløbige, herunder sikrende retsmidler

Artikel 24

De foreløbige, herunder sikrende retsmidler, der er fastsat i en kontraherende stats lovgivning, kan kræves anvendt af den pågældende stats retslige myndigheder, selv om en ret i en anden kontraherende stat i medfør af denne konvention er kompetent til at påkende sagens realitet.

AFSNIT III

ANERKENDELSE OG FULDBYRDELSE

Artikel 25

I denne konvention forstås ved »retsafgørelse« enhver afgørelse truffet af en ret i en kontraherende stat,

uanset hvorledes den betegnes, såsom dom, kendelse eller fuldbyrdelsesordre, herunder justitssekretærens fastsættelse af sagsomkostninger.

Afdeling 1

Anerkendelse

Artikel 26

Retsafgørelser, der er truffet i en kontraherende stat, skal anerkendes i de øvrige kontraherende stater, uden at der stilles krav om anvendelse af en særlig fremgangsmåde.

Bestrides et krav, kan en berettiget part, der som det væsentligste påberåber sig anerkendelsen, efter fremgangsmåden i afdeling 2 og 3 i dette afsnit få fastslået, at retsafgørelsen skal anerkendes.

Gøres anerkendelsen gældende under en verserende sag ved en ret i en kontraherende stat, og har anerkendelsen betydning for afgørelsen, er denne ret kompetent til at afgøre spørgsmålet om anerkendelse.

Artikel 27

En retsafgørelse kan ikke anerkendes:

1. såfremt en anerkendelse vil stride mod grundlæggende retsprincipper i den stat, som begæringen rettes til;
2. såfremt det indledende processkrift i sagen ikke forskriftsmæssigt er blevet forkyndt for eller meddelt den udeblevne sagsøgte i så god tid, at han har kunnet varetage sine interesser under sagen;
3. såfremt afgørelsen er uforenelig med en afgørelse mellem de samme parter truffet i den stat, som begæringen rettes til;
4. såfremt retten i domsstaten ved sin afgørelse har afgjort et præjudicielt spørgsmål om fysiske persons retlige status eller deres rets- og handleevne, om formueforholdet mellem ægtefæller eller om arv efter loven eller testamente i modstrid med en bestemmelse i den internationale privatret i den stat, som begæringen rettes til, medmindre afgørelsen fører til samme resultat som i det tilfælde, hvor bestemmelserne i sidstnævnte stats internationale privatret havde været anvendt.

Artikel 28

En retsafgørelse kan endvidere ikke anerkendes, såfremt bestemmelserne i afsnit II, afdeling 3, 4 og 5, er tilsidesat, eller der foreligger tilfælde, som omfattes af artikel 59.

Ved prøvelsen af de i foranstående stykke nævnte kompetenceregler er den myndighed, som begæringen rettes til, bundet af de faktiske omstændigheder, på hvilke retten i domsstaten har støttet sin kompetence.

Med forbehold af bestemmelserne i stk. 1 kan kompetencen for retterne i domsstaten ikke efterprøves; kompetencereglerne er ikke omfattet af de i artikel 27, nr. 1, omhandlede grundlæggende retsprincipper.

Artikel 29

Den udenlandske retsafgørelse kan i intet tilfælde efterprøves med hensyn til sagens realitet.

Artikel 30

Gøres anerkendelse af en afgørelse, der er truffet i en kontraherende stat, gældende ved en ret i en anden kontraherende stat, kan denne udsætte sagen, såfremt afgørelsen er blevet anfægtet ved ordinær appel eller genoptagelse.

Afdeling 2

Fuldbyrdelse

Artikel 31

De i en kontraherende stat trufne retsafgørelser, som er eksigible i den pågældende stat, kan fuldbyrdes i en anden kontraherende stat, når de på begæring af en berettiget part er forsynet med fuldbyrdelsespåtegning i sidstnævnte stat.

Artikel 32

Begæringen skal fremsættes:

- i Belgien, over for »tribunal de première instance« eller »rechtbank van eerste aanleg«;
- i Forbundsrepublikken Tyskland, over for formanden for et »Kammer des Landgerichts«;
- i Frankrig, over for præsidenten for »tribunal de grande instance«;
- i Italien, over for »corte d'appello«;
- i Luxembourg, over for præsidenten for »tribunal d'arrondissement«;
- i Nederlandene, over for præsidenten for »arrondissementsrechtbank«.

Rettens stedlige kompetence afgøres efter den parts bopæl, mod hvem fuldbyrdelsen begæres. Såfremt

denne part ikke har bopæl på den stats område, som begæringen rettes til, er stedet for fuldbyrdelsen afgørende for kompetencen.

Artikel 33

Fremgangsmåden ved fremsættelse af begæringen afgøres efter lovgivningen i den stat, som begæringen rettes til.

Den, som fremsætter begæringen, skal vælge en processuel bopæl i retskredsen for den ret, som begæringen er indgivet til. Såfremt lovgivningen i den stat, som begæringen rettes til, ikke har regler om et sådant valg af bopæl, skal den, som fremsætter begæringen, udpege en procesfuldmægtig.

De dokumenter, som er nævnt i artikel 46 og 47, skal vedlægges begæringen.

Artikel 34

Den ret, som behandler begæringen, skal træffe sin afgørelse snarest muligt, uden at den part, mod hvem fuldbyrdelsen begæres, på dette tidspunkt af sagens behandling kan fremsætte bemærkninger over for retten.

Begæringen kan kun afslås af en af de i artikel 27 og 28 anførte grunde.

Den udenlandske afgørelse kan i intet tilfælde efterprøves med hensyn til sagens realitet.

Artikel 35

Justitssekretæren drager omsorg for, at den, der har fremsat begæringen, straks og på den måde, der er foreskrevet i lovgivningen i den stat, begæringen er rettet til, får underretning om den afgørelse, der er truffet vedrørende begæringen.

Artikel 36

Såfremt fuldbyrdelse tillades, kan den part, mod hvem fuldbyrdelsen begæres, anfægte afgørelsen ved appel eller genoptagelse inden en måned efter, at afgørelsen er forkyndt.

Såfremt den pågældende part har bopæl i en anden kontraherende stat end den, hvor afgørelsen, der tillader fuldbyrdelse, er truffet, er fristen for appel eller genoptagelse to måneder og løber fra den dag, hvor afgørelsen er blevet forkyndt for ham personligt eller på hans bopæl. Denne frist kan ikke forlænges på grund af afstanden.

Artikel 37

Appel skal ske, og begæring om genoptagelse skal indgives i overensstemmelse med reglerne om kontradiktorisk procedure:

- i Belgien, til »tribunal de première instance« eller »rechtbank van eerste aanleg«;
- i Forbundsrepublikken Tyskland, til »Oberlandesgericht«;
- i Frankrig, til »cour d'appel«;
- i Italien, til »corte d'appello«;
- i Luxembourg, til »Cour supérieure de Justice« som appelinstans i borgerlige sager;
- i Nederlandene, til »arrondissementsrechtbank«.

Afgørelsen i appel- eller genoptagelsessagen kan kun anfægtes ved en kassationsappel og i Forbundsrepublikken Tyskland ved en »Rechtsbeschwerde«.

Artikel 38

Den ret, der behandler appel- eller genoptagelsessagen, kan efter begæring fra den part, som har indbragt sagen, udsætte sin afgørelse, såfremt den udenlandske afgørelse i domsstaten er anfægtet ved ordinær appel eller genoptagelse, eller såfremt fristen herfor endnu ikke er udløbet; i sidstnævnte tilfælde kan retten fastsætte en frist for iværksættelse af appel eller indgivelse af begæring om genoptagelse.

Den pågældende ret kan endvidere gøre fuldbyrdelsen betinget af, at der stilles en sikkerhed, som fastsættes af retten.

Artikel 39

Så længe den i artikel 36 fastsatte frist for appel eller genoptagelse ikke er udløbet, og så længe der ikke er truffet afgørelse i appel- eller genoptagelsessagen, kan der kun anvendes sikrende retsmidler vedrørende den parts formuegoder, mod hvem fuldbyrdelsen begæres.

Den afgørelse, der tillader fuldbyrdelse, giver også hjemmel til at anvende sådanne retsmidler.

Artikel 40

Såfremt begæringen afslås, kan ansøgeren appellere eller indgive begæring om genoptagelse:

- i Belgien, til »cour d'appel« eller »hof van beroep«;

- i Forbundsrepublikken Tyskland, til »Oberlandesgericht«;
- i Frankrig, til »cour d'appel«;
- i Italien, til »corte d'appello«;
- i Luxembourg, til »Cour supérieure de Justice« som appelinstans i borgerlige sager;
- i Nederlandene, til »gerechtshof«.

Den part, mod hvem fuldbyrdelsen begæres, skal tilsiges til at give møde ved den ret, for hvilken appel- eller genoptagelsessagen er indbragt. Såfremt han ikke giver møde, finder bestemmelserne i artikel 20, stk. 2 og 3, anvendelse, selv om den pågældende part ikke har bopæl på en kontraherende stats område.

Artikel 41

Den afgørelse, der træffes i den i artikel 40 nævnte appel- eller genoptagelsessag, kan kun anfægtes ved en kassationsappel og i Forbundsrepublikken Tyskland ved en »Rechtsbeschwerde«.

Artikel 42

Såfremt der ved den udenlandske afgørelse er taget stilling til flere krav, og fuldbyrdelse ikke kan tillades for så vidt angår dem alle, skal retten tillade fuldbyrdelse af et eller flere af dem.

Den, som fremsætter begæringen, kan begære delvis fuldbyrdelse.

Artikel 43

Udenlandske retsafgørelser, hvorved der fastsættes en tvangsbøde, er kun eksigible i den stat, som begæringen rettes til, såfremt bødens størrelse er endeligt fastsat af retterne i domsstaten.

Artikel 44

Har den, som fremsætter begæringen, haft fri proces i den stat, hvor afgørelsen er truffet, er han uden videre berettiget til fri proces i forbindelse med den i artikel 32-35 omhandlede fremgangsmåde.

Artikel 45

Det kan ikke pålægges den part, som i en kontraherende stat begærer fuldbyrdelse af en retsafgørelse, der er truffet i en anden kontraherende stat, at stille sikkerhed eller depositum af nogen art med den begrundelse, at han er udlænding eller ikke har bopæl eller ophold i det pågældende land.

Afdeling 3

Fælles bestemmelser

Artikel 46

Den part, der søger anerkendelse af en retsafgørelse eller begærer fuldbyrdelse af en sådan, skal fremlægge:

1. en genpart af afgørelsen, der opfylder de nødvendige betingelser med hensyn til godtgørelse af dens ægthed;
2. hvor det drejer sig om en udeblivelsesdom, det originale dokument eller en bekræftet genpart, hvoraf det fremgår, at det indledende processkrift i sagen er blevet forkyndt for eller meddelt den udeblevne part.

Artikel 47

Den part, der begærer fuldbyrdelse, skal endvidere fremlægge:

1. et dokument, hvoraf det fremgår, at retsafgørelsen efter domsstatens lovgivning er eksigibel og er forkyndt;
2. i givet fald et dokument, der godtgør, at der er meddelt ansøgeren fri proces i domsstaten.

Artikel 48

Såfremt de i artikel 46, nr. 2, og artikel 47, nr. 2, nævnte dokumenter ikke fremlægges, kan retten fastsætte en frist for deres tilvejebringelse eller anerkende tilsvarende dokumenter eller, såfremt den anser sagen for tilstrækkeligt oplyst, fritage for kravet om en sådan fremlæggelse.

Såfremt retten kræver det, skal der foretages en oversættelse af dokumenterne; oversættelsen skal bekræftes af en person, der er bemyndiget hertil i en af de kontraherende stater.

Artikel 49

Der kræves ingen legalisering eller opfyldelse af tilsvarende formalitet med hensyn til de i artikel 46, 47 og artikel 48, andet afsnit, nævnte dokumenter eller eventuelle procesfuldmagter.

AFSNIT IV

OFFICIelt BEKRÆFTEDE DOKUMENTER OG RETSFORLIG

Artikel 50

Officielt bekræftede dokumenter, der er udstedt og eksigible i en kontraherende stat, skal efter begæring

forsynes med fuldbyrdelsespåtegning i en anden kontraherende stat i overensstemmelse med den i artikel 31 og følgende fastsatte fremgangsmåde. Begæringen kan kun afslås, såfremt en fuldbyrdelse af det officielt bekræftede dokument vil stride mod grundlæggende retsprinsipper i den stat, som begæringen rettes til.

Det fremlagte dokument skal med hensyn til godtgørelse af dets ægthed opfylde de betingelser, der stilles i den stat, hvor dokumentet er udstedt.

Bestemmelserne i afsnit III, afdeling 3, finder anvendelse i givet fald.

Artikel 51

Forlig, der er indgået for retten under en retssag, og som er eksigible i den stat, hvor de er indgået, kan fuldbyrdes i den stat, som begæringen rettes til, på samme betingelser som officielt bekræftede dokumenter.

AFSNIT V

ALMINDELIGE BESTEMMELSER

Artikel 52

Ved afgørelsen af, om en part har en bopæl i den kontraherende stat, for hvis domstole sagen er indbragt, skal retten anvende denne stats interne lovgivning.

Har en part ikke bopæl i den stat, ved hvis retter sagen er anlagt, skal retten ved afgørelsen af, om parten har bopæl i en anden kontraherende stat, anvende sidstnævnte stats lovgivning.

Såfremt en parts bopæl efter lovgivningen i det land, hvor han er statsborger, afhænger af en anden persons bopæl eller en myndigheds hjemsted, skal denne stats lovgivning dog anvendes ved afgørelsen af, hvor parten har bopæl.

Artikel 53

Selskabers og juridiske personers hjemsted skal ved anvendelsen af denne konvention ligestilles med fysiske personers bopæl. Ved afgørelsen af, hvor dette hjemsted er beliggende, skal retten dog anvende de internationale privatretlige regler, som gælder for den.

AFSNIT VI

OVERGANGSBESTEMMELSER

Artikel 54

Bestemmelserne i denne konvention finder kun anvendelse på retssager, der er anlagt, og på officielt

bekræftede dokumenter, der er udstedt efter konventionens ikrafttræden.

Retsafgørelser, som er truffet efter denne konventions ikrafttrædelsesdato i sager, der er anlagt før dette tidspunkt, skal dog anerkendes og fuldbyrdes efter bestemmelserne i afsnit III, såfremt de anvendte kompetenceregler er i overensstemmelse med de regler, der er fastsat i afsnit II eller i en konvention, der, da sagen blev anlagt, var gældende mellem domsstaten og den stat, som begæringen er rettet til.

AFSNIT VII

FORHOLDET TIL ANDRE KONVENTIONER

Artikel 55

Med forbehold af bestemmelserne i artikel 54, stk. 2, og artikel 56 træder denne konvention, for så vidt angår de stater, der er parter i den, i stedet for følgende konventioner, der er indgået mellem to eller flere af disse stater:

- konventionen mellem Belgien og Frankrig om retternes kompetence samt gyldighed og fuldbyrdelse af retsafgørelser, voldgiftskendelser og officielt bekræftede dokumenter, undertegnet i Paris den 8. juli 1899;
- konventionen mellem Belgien og Nederlandene om retternes stedlige kompetence, om konkurs samt om gyldighed og fuldbyrdelse af retsafgørelser, voldgiftskendelser og officielt bekræftede dokumenter, undertegnet i Bruxelles den 28. marts 1925;
- konventionen mellem Frankrig og Italien om fuldbyrdelse af domme i civile og kommercielle sager, undertegnet i Rom den 3. juni 1930;
- konventionen mellem Tyskland og Italien om anerkendelse og fuldbyrdelse af retsafgørelser i civile og kommercielle sager, undertegnet i Rom den 9. marts 1936;
- konventionen mellem Forbundsrepublikken Tyskland og kongeriget Belgien om gensidig anerkendelse og fuldbyrdelse i civile og kommercielle sager af retsafgørelser, voldgiftskendelser og officielt bekræftede dokumenter, undertegnet i Bonn den 30. juni 1958;
- konventionen mellem kongeriget Nederlandene og Den italienske Republik om anerkendelse og fuldbyrdelse af retsafgørelser i civile og kommercielle sager, undertegnet i Rom den 17. april 1959;
- konventionen mellem kongeriget Belgien og Den italienske Republik om anerkendelse og fuldbyrdelse af retsafgørelser og andre eksigible doku-

menter i civile og kommercielle sager, undertegnet i Rom den 6. april 1962;

- konventionen mellem kongeriget Nederlandene og Forbundsrepublikken Tyskland om gensidig anerkendelse og fuldbyrdelse af retsafgørelser og andre eksigible dokumenter i civile og kommercielle sager, undertegnet i Haag den 30. august 1962,

og for så vidt den er i kraft:

- traktaten mellem Belgien, Nederlandene og Luxembourg om retternes kompetence, om konkurs samt om gyldighed og fuldbyrdelse af retsafgørelser, voldgiftskendelser og officielt bekræftede dokumenter, undertegnet i Bruxelles den 24. november 1961.

Artikel 56

Den traktat og de konventioner, der er nævnt i artikel 55, bevarer deres gyldighed på de sagsområder, hvor denne konvention ikke finder anvendelse.

De bevarer ligeledes deres gyldighed for så vidt angår retsafgørelser, der er truffet, og officielt bekræftede dokumenter, der er udstedt før denne konventions ikrafttræden.

Artikel 57

Denne konvention berører ikke konventioner, som de kontraherende stater har tiltrådt eller vil tiltræde, og som på særlige områder fastsætter regler for retternes kompetence samt for anerkendelse og fuldbyrdelse af retsafgørelser.

Artikel 58

Bestemmelserne i denne konvention berører ikke rettigheder, der er indrømmet schweiziske statsborgere ved den mellem Frankrig og Det schweiziske Edsforbund den 15. juli 1869 indgåede konvention om retternes kompetence og om fuldbyrdelse af domme i borgerlige sager.

Artikel 59

Denne konvention er ikke til hinder for, at en kontraherende stat inden for rammerne af en konvention om anerkendelse og fuldbyrdelse af domme over for en tredjestat forpligter sig til ikke at anerkende en retsafgørelse, som i en anden kontraherende stat er truffet mod en sagsøgt, der har sin bopæl eller sit sædvanlige opholdssted på denne tredjestats område, såfremt afgørelsen i et af de i artikel 4 nævnte tilfælde kun har kunnet støttes på en af de kompetenceregler, som er nævnt i artikel 3, andet afsnit.

AFSNIT VIII

AFSLUTTENDE BESTEMMELSER

Artikel 60

Denne konvention gælder for de kontraherende staters europæiske områder, for de franske oversøiske departementer og for de franske oversøiske territorier.

Kongeriget Nederlandene kan i forbindelse med undertegnelsen eller ratifikationen af denne konvention eller på ethvert senere tidspunkt ved en meddelelse til generalsekretæren for Rådet for De europæiske Fællesskaber erklære, at denne konvention skal gælde for Surinam og De nederlandske Antiller. Såfremt der ikke afgives en sådan erklæring med hensyn til De nederlandske Antiller, anses retssager, der verserer inden for kongerigets europæiske område som følge af en kassationsappel vedrørende afgørelser truffet af retterne på De nederlandske Antiller, som sager, der verserer for disse retter.

Artikel 61

Denne konvention skal ratificeres af signatarstaterne. Ratifikationsdokumenterne skal deponeres hos generalsekretæren for Rådet for De europæiske Fællesskaber.

Artikel 62

Denne konvention træder i kraft den første dag i den tredje måned, der følger efter deponeringen af det sidste ratifikationsdokument.

Artikel 63

De kontraherende stater anerkender, at enhver stat, som bliver medlem af Det europæiske økonomiske Fællesskab, skal erklære sig indforstået med, at denne konvention anvendes som grundlag for de forhandlinger, der er nødvendige for, mellem de kontraherende stater og den pågældende stat, at sikre gennemførelsen af artikel 220, sidste stykke, i traktaten om oprettelse af Det europæiske økonomiske Fællesskab.

De nødvendige tilpasninger kan fastsættes i en særlig konvention mellem de kontraherende stater på den ene side og den pågældende stat på den anden side.

Artikel 64

Generalsekretæren for Rådet for De europæiske Fællesskaber giver signatarstaterne meddelelse om:

- a) deponeringen af ethvert ratifikationsdokument;
- b) datoen for denne konventions ikrafttræden;
- c) erklæringer modtaget i henhold til artikel 60, andet afsnit;
- d) erklæringer modtaget i henhold til artikel IV i protokollen;
- e) meddelelser i henhold til artikel VI i protokollen.

Artikel 65

Den protokol, der efter fælles aftale mellem de kontraherende stater er knyttet som bilag til denne konvention, udgør en integrerende del af konventionen.

Artikel 66

Denne konvention er indgået for ubegrænset tid.

Artikel 67

Enhver kontraherende stat kan fremsætte anmodning om ændring af denne konvention. I så fald indkalder formanden for Rådet for De europæiske Fællesskaber til en konference med henblik på ændring af konventionen.

Artikel 68

Denne konvention, udfærdiget i ét eksemplar på fransk, italiensk, nederlandsk og tysk, hvilke fire tekster har samme gyldighed, deponeres i arkiverne i sekretariat for Rådet for De europæiske Fællesskaber. Generalsekretæren fremsender en bekræftet genpart til hver af signatarstaternes regeringer.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne konvention.

Udfærdiget i Bruxelles, den syvogtyvende september nitten hundrede og otteogtres.

For Hans Majestæt belgiernes konge,

Pierre HARMEL

For præsidenten for Forbundsrepublikken Tyskland,

Willy BRANDT

For præsidenten for Den franske Republik,

Michel DEBRÉ

For præsidenten for Den italienske Republik,

Giuseppe MEDICI

For Hans kongelige Højhed storhertugen af Luxembourg,

Pierre GRÉGOIRE

For Hendes Majestæt dronningen af Nederlandene,

J.M.A.H. LUNS

PROTOKOL

De høje kontraherende parter er blevet enige om følgende bestemmelser, der knyttes som bilag til konventionen:

Artikel I

Enhver person, der har bopæl i Luxembourg, og som i henhold til artikel 5, nr. 1, søges ved en ret i en anden kontraherende stat, kan gøre indsigelse mod den pågældende rets kompetence. Såfremt søgten ikke giver måde, skal denne ret på embeds vegne erklære sig for inkompetent.

Enhver aftale om kompetence som nævnt i artikel 17 får kun gyldighed for en person, der har bopæl i Luxembourg, såfremt den pågældende udtrykkeligt og specielt har accepteret aftalen.

Artikel II

Med forbehold af mere gunstige nationale bestemmelser kan personer, der har bopæl i en kontraherende stat, og mod hvem der indledes retsforfølgning for en uagtsom lovovertrædelse ved retter kompetente i straffesager i en anden kontraherende stat, hvor de pågældende ikke er statsborgere, selv når de ikke personligt giver møde, til deres forsvar vælge personer, der er bemyndiget hertil.

Den ret, der behandler sagen, kan dog bestemme, at den pågældende skal give møde personligt; såfremt dette ikke sker, skal den afgørelse, der er truffet med hensyn til et borgerligt krav, uden at den pågældende har haft mulighed for at varetage sine interesser under sagen, ikke anerkendes eller fuldbyrdes i de øvrige kontraherende stater.

Artikel III

Ingen form for skat, afgift eller gebyr, som beregnes i forhold til sagens værdi, må i forbindelse med behandlingen af en begæring om fuldbyrdelsespåtegning opkræves i den stat, som begæringen rettes til.

Artikel IV

De inden- og udenretslige dokumenter, der udfærdiges inden for en kontraherende stats område, og som skal meddeles eller forkyndes for personer, der befinder sig inden for en anden kontraherende stats område, skal fremsendes i overensstemmelse med de

fremgangsmåder, der er fastsat ved konventioner eller aftaler indgået mellem de kontraherende stater.

Medmindre modtagerstaten ved en erklæring rettet til generalsekretæren for Rådet for De europæiske Fællesskaber modsætter sig dette, kan de pågældende dokumenter ligeledes fremsendes direkte af vedkommende offentligt godkendte personer i den stat, hvor dokumenterne er udfærdiget, til vedkommende offentligt godkendte personer i den stat, på hvis område dokumentets adressat befinder sig. I dette tilfælde fremsender vedkommende offentligt godkendte person i domsstaten en genpart af dokumentet til vedkommende offentligt godkendte person i den stat, begæringen rettes til, når den pågældende er kompetent til at aflevere det til adressaten. Denne aflevering sker efter de regler, der er foreskrevet i lovgivningen i den stat, som begæringen rettes til. Afleveringen bekræftes ved en attestation, som sendes direkte til vedkommende offentligt godkendte person i den stat, hvor dokumentet er udfærdiget.

Artikel V

Den i artikel 6, nr. 2, og artikel 10 fastsatte kompetence i sager om opfyldelse af en forpligtelse eller ved intervention kan ikke gøres gældende i Forbundsrepublikken Tyskland. I denne stat kan enhver, der har bopæl inden for en anden kontraherende stats område, inddrages i sagen i henhold til civilproceslovens artikel 68, 72, 73 og 74 vedrørende procesunderretning.

De retsafgørelser, der træffes i de øvrige kontraherende stater i medfør af artikel 6, nr. 2, og artikel 10, skal anerkendes og fuldbyrdes i Forbundsrepublikken Tyskland i overensstemmelse med afsnit III. De retsvirkninger, som domme, afsagt i Forbundsrepublikken Tyskland, har over for tredjemand i henhold til artikel 68, 72, 73 og 74 i civilprocesloven, skal ligeledes anerkendes i de andre kontraherende stater.

Artikel VI

De kontraherende stater skal meddele generalsekretæren for Rådet for De europæiske Fællesskaber teksterne til lovbestemmelser, som medfører ændringer enten med hensyn til de bestemmelser i deres lovgivning, der er nævnt i konventionen, eller med hensyn til de retter, der er anført i afsnit III, afdeling 2, i konventionen.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne protokol.

Udfærdiget i Bruxelles, den syvogtyvende september nitten hundrede og otteogtres.

For Hans Majestæt belgiernes konge,

Pierre HARMEL

For præsidenten for Forbundsrepublikken Tyskland,

Willy BRANDT

For præsidenten for Den franske Republik,

Michel DEBRÉ

For præsidenten for Den italienske Republik,

Giuseppe MEDICI

For Hans kongelige Højhed storhertugen af Luxembourg,

Pierre GRÉGOIRE

For Hendes Majestæt dronningen af Nederlandene,

J.M.A.H. LUNS

FÆLLESERKLÆRING

Regeringerne for kongeriget Belgien, Forbundsrepublikken Tyskland, Den franske Republik, Den italienske Republik, storhertugdømmet Luxembourg og kongeriget Nederlandene —

som på tidspunktet for undertegnelsen af konventionen om retternes kompetence og om fuldbyrdelse af retsafgørelser i borgerlige sager, herunder handelssager,

ønsker at sikre en så effektiv gennemførelse som muligt af konventionens bestemmelser,

tilstræber at undgå, at forskellige fortolkninger af konventionens bestemmelser skal skade dens enhedskarakter, og

erkender, at der eventuelt kan opstå positive eller negative kompetencekonflikter ved konventionens anvendelse —

erklærer sig rede til:

1. at undersøge disse spørgsmål, og i særdeleshed at undersøge muligheden for at tillægge De europæiske Fællesskabers Domstol kompetence på visse områder, og i påkommende tilfælde indlede forhandlinger om en aftale med henblik herpå,
2. at etablere kontakter med regelmæssige mellemrum mellem deres repræsentanter.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne fælleserklæring.

Udfærdiget i Bruxelles, den syvogtyvende september nitten hundrede og otteogtres.

Pierre HARMEL

Willy BRANDT

Michel DEBRÉ

Giuseppe MEDICI

Pierre GRÉGOIRE

J.M.A.H. LUNS

PROTOKOL

vedrørende Domstolens fortolkning af konventionen af 27. september 1968 om retternes kompetence og om fuldbyrdelse af retsafgørelser i borgerlige sager, herunder handelssager

DE HØJE KONTRAHERENDE PARTER I TRAKTATEN OM OPRETTELSE AF DET EUROPÆISKE ØKONOMISKE FÆLLESSKAB HAR —

under henvisning til den erklæring, der er knyttet som bilag til konventionen om retternes kompetence og om fuldbyrdelse af retsafgørelser i borgerlige sager, herunder handelssager, undertegnet i Bruxelles den 27. september 1968 —

vedtaget at afslutte en protokol, ved hvilken der tillægges De europæiske Fællesskabers Domstol kompetence til at fortolke den nævnte konvention, og har med dette mål for øje udpeget som befuldmægtigede:

HANS MAJESTÆT BELGIERNES KONGE:

Alfons VRANCKX,
justitsminister;

PRÆSIDENTEN FOR FORBUNDSREPUBLIKKEN TYSKLAND:

Gerhard JAHN,
forbundsjustitsminister;

PRÆSIDENTEN FOR DEN FRANSKE REPUBLIK:

René PLEVEN,
seglbevarer,
justitsminister;

PRÆSIDENTEN FOR DEN ITALIENSKE REPUBLIK:

Erminio PENNACCHINI,
understatssekretær i justitsministeriet;

HANS KONGELIGE HØJHED STORHERTUGEN AF LUXEMBOURG:

Eugène SCHAUS,
justitsminister,
viceministerpræsident;

HENDES MAJESTÆT DRONNINGEN AF NEDERLANDENE:

C.H.F. POLAK,
justitsminister;

SOM, FORSAMLET I RÅDET, efter at have udvekslet deres fuldmagter og fundet dem i god og behørig form,

ER BLEVET ENIGE OM FØLGENDE BESTEMMELSER:

Artikel 1

De europæiske Fællesskabers Domstol har kompetence til at træffe afgørelse med hensyn til fortolkningen af konventionen om retternes kompetence og om fuldbyrdelse af retsafgørelser i borgerlige sager, herunder handelssager, og af den til denne konvention som bilag knyttede protokol, undertegnet i Bruxelles den 27. september 1968, samt af nærværende protokol.

Artikel 2

Følgende retter kan anmode Domstolen om at træffe præjudiciel afgørelse vedrørende et fortolknings spørgsmål:

1. i Belgien: la Cour de Cassation — het Hof van Cassatie og le Conseil d'État — de Raad van State,
i Forbundsrepublikken Tyskland: die obersten Gerichtshöfe des Bundes,
i Frankrig: la Cour de Cassation og le Conseil d'État,
i Italien: la Corte Suprema di Cassazione,
i Luxembourg: la Cour supérieure de Justice i dens egenskab af kassationsret,
i Nederlandene: de Hoge Raad;
2. retterne i de kontraherende stater, såfremt de træffer afgørelse som appelinstans;
3. i de i konventionens artikel 37 anførte tilfælde, de i samme artikel nævnte retter.

Artikel 3

1. Såfremt et spørgsmål vedrørende fortolkningen af konventionen og de øvrige i artikel 1 nævnte tekster rejses under en retssag ved en i artikel 2, nr. 1, anført ret, skal denne ret, hvis den skønner, at en afgørelse af dette spørgsmål er nødvendig, for at den kan afsige dom, anmode Domstolen om at afgøre spørgsmålet.

2. Såfremt et sådant spørgsmål rejses ved en i artikel 2, nr. 2 og 3, anført ret, kan denne ret på de i stk. 1 fastsatte betingelser anmode Domstolen om at afgøre spørgsmålet.

Artikel 4

1. Den kompetente myndighed i en kontraherende stat kan anmode Domstolen om at udtale sig om et spørgsmål vedrørende fortolkningen af konventionen og de øvrige i artikel 1 nævnte tekster, såfremt afgørelser truffet af retter i denne stat er i modstrid

med den fortolkning, der er anlagt af Domstolen eller kommet til udtryk i en afgørelse truffet af en i artikel 2, nr. 1 og 2, nævnt ret i en anden kontraherende stat. Bestemmelserne i dette stykke gælder kun for retskraftige afgørelser.

2. Den fortolkning, som anlægges af Domstolen i anledning af en sådan anmodning, er uden virkning for de afgørelser, der har givet anledning til anmodningen om en fortolkning.

3. Det offentlige øverste repræsentant ved kassationsretterne i de kontraherende stater eller enhver anden myndighed udpeget af en kontraherende stat har kompetence til at anmode Domstolen om en fortolkning i henhold til stk. 1.

4. Justitssekretæren ved Domstolen giver meddelelse om anmodningen til de kontraherende stater, samt til Kommissionen og Rådet for De europæiske Fællesskaber, som inden to måneder fra denne meddelelse kan indgive indlæg eller andre skriftlige udtalelser til Domstolen.

5. Den i nærværende artikel fastlagte fremgangsmåde giver ikke anledning til hverken opkrævning eller godtgørelse af gebyrer og sagsomkostninger.

Artikel 5

1. Medmindre andet er bestemt i denne protokol, finder de bestemmelser i traktaten om oprettelse af Det europæiske økonomiske Fællesskab og i den dertil knyttede protokol vedrørende statuten for Domstolen, der gælder ved Domstolens afgørelse af præjudicielle spørgsmål, tilsvarende anvendelse på fremgangsmåden ved fortolkning af konventionen og de øvrige i artikel 1 nævnte tekster.

2. Domstolens procesreglement tilpasses og suppleres om nødvendigt i henhold til artikel 188 i traktaten om oprettelse af Det europæiske økonomiske Fællesskab.

Artikel 6

Denne protokol gælder for de kontraherende staters europæiske områder, for de franske oversøiske departementer og for de franske oversøiske territorier.

Kongeriget Nederlandene kan i forbindelse med undertegnelsen eller ratifikationen af denne protokol eller på ethvert senere tidspunkt ved en meddelelse til generalsekretæren for Rådet for De europæiske Fællesskaber erklære, at denne protokol skal gælde for Surinam og De nederlandske Antiller.

Artikel 7

Denne protokol skal ratificeres af signatarstaterne. Ratifikationsdokumenterne skal deponeres hos generalsekretæren for Rådet for De europæiske Fællesskaber.

Artikel 8

Denne protokol træder i kraft den første dag i den tredje måned, der følger efter deponeringen af det sidste ratifikationsdokument. Den træder dog tidligst i kraft samtidig med konventionen af 27. september 1968 om retternes kompetence og om fuldbyrdelse af retsafgørelser i borgerlige sager, herunder handels-sager.

Artikel 9

De kontraherende stater anerkender, at enhver stat, som bliver medlem af Det europæiske økonomiske Fællesskab, og på hvilken artikel 63 i konventionen om retternes kompetence og om fuldbyrdelsen af retsafgørelser i borgerlige sager, herunder handelssager, finder anvendelse, skal godkende bestemmelserne i denne protokol, med forbehold af de nødvendige tilpasninger.

Artikel 10

Generalsekretæren for Rådet for De europæiske Fællesskaber giver signatarstaterne meddelelse om:

- a) deponeringen af ethvert ratifikationsdokument;
- b) datoen for denne protokols ikrafttræden;

c) erklæringer modtaget i henhold til artikel 4, stk. 3;

d) erklæringer modtaget i henhold til artikel 6, stk. 2.

Artikel 11

De kontraherende stater skal meddele generalsekretæren for Rådet for De europæiske Fællesskaber teksterne til lovbestemmelser, som medfører en ændring i listen over de i artikel 2, nr. 1, nævnte retter.

Artikel 12

Denne protokol er indgået for ubegrænset tid.

Artikel 13

Enhver kontraherende stat kan fremsætte anmodning om ændring af denne protokol. I så fald indkalder formanden for Rådet for De europæiske Fællesskaber til en konference med henblik på ændring af protokollen.

Artikel 14

Denne protokol, udfærdiget i ét eksemplar på fransk, italiensk, nederlandsk og tysk, hvilke fire tekster har samme gyldighed, deponeres i arkiverne i sekretariatet for Rådet for De europæiske Fællesskaber. Generalsekretæren fremsender en bekræftet genpart til hver af signatarstaternes regeringer.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne protokol.

Udfærdiget i Luxembourg, den tredje juni nitten hundrede og enoghalvfjerds.

For Hans Majestæt belgiernes konge,

Alfons VRANCKX

For præsidenten for Forbundsrepublikken Tyskland,

Gerhard JAHN

For præsidenten for Den franske Republik,

René PLEVEN

For præsidenten for Den italienske Republik,

Erminio PENNACCHINI

For Hans kongelige Højhed storhertugen af Luxembourg,

Eugène SCHAUS

For Hendes Majestæt dronningen af Nederlandene,

C.H.F. POLAK

FÆLLESERKLÆRING

Regeringerne for kongeriget Belgien, Forbundsrepublikken Tyskland, Den franske Republik, Den italienske Republik, storhertugdømmet Luxembourg og kongeriget Nederlandene —

som på tidspunktet for undertegnelsen af protokollen vedrørende Domstolens fortolkning af konventionen af 27. september 1968 om retternes kompetence og om fuldbyrdelse af retsafgørelser i borgerlige sager, herunder handelssager,

ønsker at sikre en så effektiv og ensartet gennemførelse som muligt af protokollens bestemmelser —

erklærer sig rede til i samarbejde med Domstolen at foranstalte en udveksling af oplysninger vedrørende de afgørelser, der af de retter, som er anført i artikel 2, nr. 1, i nævnte protokol, træffes ved anvendelse af konventionen og protokollen af 27. september 1968.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne fælleserklæring.

Udfærdiget i Luxembourg, den tredje juni nitten hundrede og enoghalvfjerds.

For Hans Majestæt belgiernes konge,

Alfons VRANCKX

For præsidenten for Forbundsrepublikken Tyskland,

Gerhard JAHN

For præsidenten for Den franske Republik,

René PLEVEN

For præsidenten for Den italienske Republik,

Erminio PENNACCHINI

For Hans kongelige Højhed storhertugen af Luxembourg,

Eugène SCHAUS

For Hendes Majestæt dronningen af Nederlandene,

C.H.F. POLAK

CONVENTION

on jurisdiction and the enforcement of judgments in civil and commercial matters

PREAMBLE

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY,

Desiring to implement the provisions of Article 220 of that Treaty by virtue of which they undertook to secure the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals,

Anxious to strengthen in the Community 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 judgments, authentic instruments and court settlements,

Have decided to conclude this Convention and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Mr Pierre HARMEL,
Minister for Foreign Affairs;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Mr Willy BRANDT,
Vice-Chancellor, Minister for Foreign Affairs;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr Michel DEBRÉ,
Minister for Foreign Affairs;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr Giuseppe MEDICI,
Minister for Foreign Affairs;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Mr Pierre GRÉGOIRE
Minister for Foreign Affairs;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr J.M.A.H. LUNS,
Minister for Foreign Affairs;

WHO, meeting within the Council, having exchanged their Full Powers, found in good and due form,

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.

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

Section 1

General provisions

Article 2

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.

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.

Article 3

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.

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

- in Belgium: Article 15 of the civil code (*Code civil*), or the provisions of Articles 52, 52 *bis* and 53 of the law of 25 March 1976 on jurisdiction (*loi sur la compétence*);
- in the Federal Republic of Germany: Article 23 of the code of civil procedure (*Zivilprozeßordnung*);
- in France: Articles 14 and 15 of the civil code (*Code civil*);
- in Italy: Article 2 and Article 4, Nos 1 and 2, of the code of civil procedure (*Codice di procedura civile*);
- in Luxembourg: Articles 14 and 15 of the civil code (*Code civil*);
- in the Netherlands: Articles 126(3) and 127 of the code of civil procedure (*Wetboek van Burgerlijke Rechtsvordering*).

Article 4

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.

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.

Section 2

Special jurisdiction

Article 5

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

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question;
2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident;
3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;
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;
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.

Article 6

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

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

Section 3

Jurisdiction in matters relating to insurance

Article 7

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

Article 8

An insurer domiciled in a Contracting State may be sued, either in the courts of that State, or in another Contracting State in the courts for the place where the policy-holder is domiciled, or, if two or more insurers are the defendants, in the courts of the Contracting State where any one of them is domiciled.

An insurer may also, if there is provision for such jurisdiction in the law of the court seised of the matter, be sued in a Contracting State other than that of his domicile in the courts for the place where the agent who acted as intermediary in the making of the contract of insurance has his domicile, provided that this domicile is mentioned in the insurance policy or proposal.

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

Article 9

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.

Article 10

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.

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.

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.

Article 11

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.

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

Article 12

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

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

2. which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section or
3. which is concluded between a policy-holder and an insurer, both of whom are domiciled 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.

Section 4

Jurisdiction in matters relating to instalment sales and loans

Article 13

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

Article 14

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

Proceedings may be brought by a seller against a buyer or by a lender against a borrower only in the courts of the State in which the defendant is domiciled.

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

Article 15

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

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

jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State.

Section 5

Exclusive jurisdiction

Article 16

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

1. in proceedings which have as their object rights *in rem* in, or tenancies of, immovable property, the courts of the Contracting State in which the property is situated;
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;
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;
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;
5. in proceedings concerned with the enforcement of judgments, the courts of the Contracting State in which the judgment has been or is to be enforced.

Section 6

Prorogation of jurisdiction

Article 17

If the Parties, one or more of whom is domiciled in a Contracting State, have, by agreement in writing or by an oral agreement evidenced in writing, 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 relationship, that court or those courts shall have exclusive jurisdiction.

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

If the 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.

Article 18

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.

Section 7

Examination as to jurisdiction and admissibility

Article 19

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.

Article 20

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.

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 in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

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.

Section 8

Lis Pendens — related actions

Article 21

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 decline jurisdiction in favour of that court.

A court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested.

Article 22

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.

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.

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 judgments resulting from separate proceedings.

Article 23

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

Section 9

Provisional, including protective, measures

Article 24

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.

TITLE III

RECOGNITION AND ENFORCEMENT

Article 25

For the purposes of this Convention, 'judgment' means any judgment given by a court or tribunal of a

Contracting State, whatever the judgment 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.

Section 1 Recognition

Article 26

A judgment given in a Contracting State shall be recognized in the other Contracting States without any special procedure being required.

Any interested party who raises the recognition of a judgment 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 judgment be recognized.

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.

Article 27

A judgment shall not be recognized:

1. if such recognition is contrary to public policy in the State in which recognition is sought;
2. where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings in sufficient time to enable him to arrange for his defence;
3. if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;
4. if the court of the State in which the judgment was given, in order to arrive at its judgment, 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.

Article 28

Moreover, a judgment shall not be recognized if it conflicts with the provisions of Section 3, 4 or 5 of Title II, or in a case provided for in Article 59.

In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the State in which the judgment was given based its jurisdiction.

Subject to the provisions of the first paragraph, the jurisdiction of the court of the State in which the judgment was given 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.

Article 29

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

Article 30

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

Section 2

Enforcement

Article 31

A judgment 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, the order for its enforcement has been issued there.

Article 32

The application shall be submitted:

- in Belgium, to the 'tribunal de première instance' or 'rechtbank van eerste aanleg',
- in the Federal Republic of Germany, to the presiding judge of a chamber of the 'Landgericht',
- in France, to the presiding judge of the 'tribunal de grande instance',
- in Italy, to the 'corte d'appello',
- in Luxembourg, to the presiding judge of the 'tribunal d'arrondissement',
- in the Netherlands, to the presiding judge of the 'arrondissementsrechtbank'.

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.

Article 33

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

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*.

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

Article 34

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.

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

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

Article 35

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.

Article 36

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

If that party is domiciled in a Contracting State other than that in which the decision authorizing 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.

Article 37

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

- in Belgium, with the 'tribunal de première instance' or 'rechtbank van eerste aanleg',
- in the Federal Republic of Germany, with the 'Oberlandesgericht',
- in France, with the 'cour d'appel',
- in Italy, with the 'corte d'appello',
- in Luxembourg, with the 'Cour supérieure de Justice' sitting as a court of civil appeal,
- in the Netherlands, with the 'arrondissementsrechtbank'.

The judgment given on the appeal may be contested only by an appeal in cassation or, in the Federal Republic of Germany, by a 'Rechtsbeschwerde'.

Article 38

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 judgment in the State in which that judgment was given or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

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

Article 39

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.

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

Article 40

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

- in Belgium, to the 'Cour d'appel' or 'hof van beroep';

- in the Federal Republic of Germany, to the 'Oberlandesgericht';
- in France, to the 'cour d'appel';
- in Italy, to the 'corte d'appello';
- in Luxembourg, to the 'Cour supérieure de Justice' sitting as a court of civil appeal;
- in the Netherlands, to the 'gerechtshof'.

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.

Article 41

A judgment given on a appeal provided for in Article 40 may be contested only by an appeal in cassation or, in the Federal Republic of Germany, by a 'Rechtsbeschwerde'.

Article 42

Where a foreign judgment has been given in respect of several matters and enforcement cannot be authorized for all of them, the court shall authorize enforcement for one or more of them.

An applicant may request partial enforcement of a judgment.

Article 43

A foreign judgment 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 in which the judgment was given.

Article 44

An applicant who has been granted legal aid in the State in which the judgment was given shall automatically also qualify for legal aid in the procedures provided for in Articles 32 to 35.

Article 45

No security, bond or deposit, however described, shall be required of a party who in one Contracting State applies for enforcement of a judgment 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.

Section 3

Common provisions

Article 46

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

1. a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
2. in the case of a judgment 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.

Article 47

A party applying for enforcement shall also produce:

1. documents which establish that, according to the law of the State in which it has been given, the judgment is enforceable and has been served;
2. where appropriate, a document showing that the applicant is in receipt of legal aid in the State in which the judgment was given.

Article 48

If the documents specified in Articles 46 (2) and 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.

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

Article 49

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

TITLE IV

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 50

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, have an order for its enforcement issued 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 in which enforcement is sought.

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

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

Article 51

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 in which enforcement is sought under the same conditions as authentic instruments.

TITLE V GENERAL PROVISIONS

Article 52

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

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.

The domicile of a party shall, however, be determined in accordance with his national law if, by that law, his domicile depends on that of another person or on the seat of an authority.

Article 53

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.

TITLE VI TRANSITIONAL PROVISIONS

Article 54

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.

However, judgments given after the date of entry into force of this Convention in proceedings instituted before that date shall be recognized 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.

TITLE VII RELATIONSHIP TO OTHER CONVENTIONS

Article 55

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:

- the Convention between Belgium and France on jurisdiction and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Paris on 8 July 1899,
- the Convention between Belgium and the Netherlands on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 28 March 1925,
- the Convention between France and Italy on the enforcement of judgments in civil and commercial matters, signed at Rome on 3 June 1930,
- the Convention between Germany and Italy on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 9 March 1936,
- the Convention between the Federal Republic of Germany and the Kingdom of Belgium on the mutual recognition and enforcement of judgments, arbitration awards and authentic instruments in civil and commercial matters, signed at Bonn on 30 June 1958,
- the Convention between the Kingdom of the Netherlands and the Italian Republic on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 17 April 1959,
- the Convention between the Kingdom of Belgium and the Italian Republic on the recognition and enforcement of judgments and other enforceable

instruments in civil and commercial matters, signed at Rome on 6 April 1962,

- the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the mutual recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at The Hague on 30 August 1962,

and, in so far as it is in force:

- the Treaty between Belgium, the Netherlands and Luxembourg on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 24 November 1961.

Article 56

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.

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

Article 57

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

Article 58

This Convention shall not affect the rights granted to Swiss nationals by the Convention concluded on 15 June 1869 between France and the Swiss Confederation on jurisdiction and the enforcement of judgments in civil matters.

Article 59

This Convention shall not prevent a Contracting State from assuming, in a convention on the recognition and enforcement of judgments, an obligation towards a third State not to recognize judgments given in other Contracting States against defendants domiciled or habitually resident in the third State where, in cases provided for in Article 4, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3.

TITLE VIII FINAL PROVISIONS

Article 60

This Convention shall apply to the European territories of the Contracting States, to the French overseas departments and to the French overseas territories.

The Kingdom of the Netherlands may declare at the time of signing or ratifying this Convention or at any later time, by notifying the Secretary-General of the Council of the European Communities, that this Convention shall be applicable to Surinam and the Netherlands Antilles. In the absence of such declaration with respect to the Netherlands Antilles, proceedings taking place in the European territory of the Kingdom as a result of an appeal in cassation from the judgment of a court in the Netherlands Antilles shall be deemed to be proceedings taking place in the latter court.

Article 61

This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

Article 62

This Convention shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last signatory State to take this step.

Article 63

The Contracting States recognize that any State which becomes a member of the European Economic Community shall be required to accept this Convention as a basis for the negotiations between the Contracting States and that State necessary to ensure the implementation of the last paragraph of Article 220 of the Treaty establishing the European Economic Community.

The necessary adjustments may be the subject of a special convention between the Contracting States of the one part and the new Member State of the other part.

Article 64

The Secretary-General of the Council of the European Communities shall notify the signatory States of:

- (a) the deposit of each instrument of ratification;
- (b) the date of entry into force of this Convention;
- (c) any declaration received pursuant to the second paragraph of Article 60;
- (d) any declaration received pursuant to Article IV of the Protocol;
- (e) any communication made pursuant to Article VI of the Protocol.

Article 65

The Protocol annexed to this Convention by common accord of the Contracting States shall form an integral part thereof.

Article 66

This Convention is concluded for an unlimited period.

Article 67

Any Contracting State may request the revision of this Convention. In this event, a revision conference shall be convened by the President of the Council of the European Communities.

Article 68

This Convention, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

In witness whereof, the undersigned Plenipotentiaries have signed this Convention.

Done at Brussels this twenty-seventh day of September in the year one thousand nine hundred and sixty-eight.

For His Majesty the King of the Belgians,

Pierre HARMEL

For the President of the Federal Republic of Germany,

Willy BRANDT

For the President of the French Republic,

Michel DEBRÉ

For the President of the Italian Republic,

Giuseppe MEDICI

For His Royal Highness the Grand Duke of Luxembourg,

Pierre GRÉGOIRE

For Her Majesty the Queen of the Netherlands,

J.M.A.H. LUNS

PROTOCOL

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

Article I

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.

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

Article II

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.

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

Article III

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.

Article IV

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.

Unless the State in which service is to take place objects by declaration to the Secretary-General of the Council of the European Communities, 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 addressed who is competent to forward it to the addressee. The document shall be forwarded in the manner specified by the law of the State addressed. The forwarding shall be recorded by a certificate sent directly to the officer of the State of origin.

Article V

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 that State, any person domiciled in another Contracting State may be sued in the courts in pursuance of Articles 68, 72, 73 and 74 of the code of civil procedure (*Zivilprozeßordnung*) concerning third-party notices.

Judgments given in the other Contracting States by virtue of Article 6 (2) or 10 shall be recognized and enforced in the Federal Republic of Germany in accordance with Title III. Any effects which judgments given in that State may have on third parties by application of Articles 68, 72, 73 and 74 of the code of civil procedure (*Zivilprozeßordnung*) shall also be recognized in the other Contracting States.

Article VI

The Contracting States shall communicate to the Secretary-General of the Council of the European Communities the text of any provisions of their laws which amend either those articles of their laws mentioned in the Convention or the lists of courts specified in Section 2 of Title III of the Convention.

In witness whereof, the undersigned Plenipotentiaries have signed this Protocol.

Done at Brussels this twenty-seventh day of September in the year one thousand nine hundred and sixty-eight.

For His Majesty the King of the Belgians,

Pierre HARMEL

For the President of the Federal Republic of Germany,

Willy BRANDT

For the President of the French Republic,

Michel DEBRÉ

For the President of the Italian Republic,

Giuseppe MEDICI

For His Royal Highness the Grand Duke of Luxembourg,

Pierre GRÉGOIRE

For Her Majesty the Queen of the Netherlands,

J.M.A.H. LUNS

JOINT DECLARATION

The Governments of the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,

On signing the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters,

Desiring to ensure that the Convention is applied as effectively as possible,

Anxious to prevent differences of interpretation of the Convention from impairing its unifying effect,

Recognizing that claims and disclaimers of jurisdiction may arise in the application of the Convention,

Declare themselves ready:

1. to study these questions and in particular to examine the possibility of conferring jurisdiction in certain matters on the Court of Justice of the European Communities and, if necessary, to negotiate an agreement to this effect;
2. To arrange meetings at regular intervals between their representatives.

In witness whereof, the undersigned Plenipotentiaries have signed this Joint Declaration.

Done at Brussels this twenty-seventh day of September in the year one thousand nine hundred and sixty-eight.

Pierre HARMEL

Willy BRANDT

Michel DEBRÉ

Giuseppe MEDICI

Pierre GRÉGOIRE

J.M.A.H. LUNS

PROTOCOL

**on the interpretation by the Court of Justice of the Convention of 27 September 1968
on jurisdiction and the enforcement of judgments in civil and commercial matters**

**THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE
EUROPEAN ECONOMIC COMMUNITY,**

Having regard to the Declaration annexed to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, signed at Brussels on 27 September 1968,

Have decided to conclude a Protocol conferring jurisdiction on the Court of Justice of the European Communities to interpret that Convention, and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Mr Alfons VRANCKX,
Minister of Justice;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Mr Gerhard JAHN,
Federal Minister of Justice;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr René PLEVEN,
Keeper of the Seals,
Minister of Justice;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr Erminio PENNACCHINI,
Under-Secretary of State in the Ministry of Justice;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Mr Eugène SCHAUS,
Minister of Justice,
Deputy Prime Minister;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr C.H.F. POLAK,
Minister of Justice;

WHO, meeting within the Council, having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

Article 1

The Court of Justice of the European Communities shall have jurisdiction to give rulings on the interpretation of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and of the Protocol annexed to that Convention, signed at Brussels on 27 September 1968, and also on the interpretation of the present Protocol.

Article 2

The following courts may request the Court of Justice to give preliminary rulings on questions of interpretation:

1. in Belgium: la Cour de Cassation — het Hof van Cassatie and le Conseil d'État — de Raad van State,
in the Federal Republic of Germany: die obersten Gerichtshöfe des Bundes,
in France: la Cour de Cassation and le Conseil d'État,
in Italy: la Corte Suprema di Cassazione,
in Luxembourg: la Cour supérieure de Justice, when sitting as Cour de Cassation,
in the Netherlands: de Hoge Raad;
2. the courts of the Contracting States when they are sitting in an appellate capacity;
3. in the cases provided for in Article 37 of the Convention, the courts referred to in that Article.

Article 3

1. Where a question of interpretation of the Convention or of one of the other instruments referred to in Article 1 is raised in a case pending before one of the courts listed in Article 2 (1), that court shall, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.
2. Where such a question is raised before any court referred to in Article 2 (2) or (3), that court may, under the conditions laid down in paragraph 1, request the Court of Justice to give a ruling thereon.

Article 4

1. The competent authority of a Contracting State may request the Court of Justice to give a ruling on a question of interpretation of the Convention or of one of the other instruments referred to in Article 1 if judgments given by courts of that State conflict with

the interpretation given either by the Court of Justice or in a judgment of one of the courts of another Contracting State referred to in Article 2 (1) or (2). The provisions of this paragraph shall apply only to judgments which have been *res judicata*.

2. The interpretation given by the Court of Justice in response to such a request shall not affect the judgments which gave rise to the request for interpretation.

3. The Procurators-General of the Courts of Cassation of the Contracting States, or any other authority designated by a Contracting State, shall be entitled to request the Court of Justice for a ruling on interpretation in accordance with paragraph 1.

4. The Registrar of the Court of Justice shall give notice of the request to the Contracting States, to the Commission and to the Council of the European Communities; they shall then be entitled within two months of the notification to submit statements of case or written observations to the Court.

5. No fees shall be levied or any costs or expenses awarded in respect of the proceedings provided for in this Article.

Article 5

1. Except where this Protocol otherwise provides, the provisions of the Treaty establishing the European Economic Community and those of the Protocol on the Statute of the Court of Justice annexed thereto, which are applicable when the Court is requested to give a preliminary ruling, shall also apply to any proceedings for the interpretation of the Convention and the other instruments referred to in Article 1.

2. The Rules of Procedure of the Court of Justice shall, if necessary, be adjusted and supplemented in accordance with Article 188 of the Treaty establishing the European Economic Community.

Article 6

This Protocol shall apply to the European territories of the Contracting States, to the French overseas departments and to the French overseas territories.

The Kingdom of the Netherlands may declare at the time of signing or ratifying this Protocol or at any later time, by notifying the Secretary-General of the Council of the European Communities, that this Protocol shall be applicable to Surinam and the Netherlands Antilles.

Article 7

This Protocol shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

Article 8

This Protocol shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last signatory State to take this step; provided that it shall at the earliest enter into force at the same time as the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.

Article 9

The Contracting States recognize that any State which becomes a member of the European Economic Community, and to which Article 63 of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters applies, must accept the provisions of this Protocol, subject to such adjustments as may be required.

Article 10

The Secretary-General of the Council of the European Communities shall notify the signatory States of:

- (a) the deposit of each instrument of ratification;
- (b) the date of entry into force of this Protocol;

- (c) any designation received pursuant to Article 4 (3);
- (d) any declaration received pursuant to the second paragraph of Article 6.

Article 11

The Contracting States shall communicate to the Secretary-General of the Council of the European Communities the texts of any provisions of their laws which necessitate an amendment to the list of courts in Article 2 (1).

Article 12

This Protocol is concluded for an unlimited period.

Article 13

Any Contracting State may request the revision of this Protocol. In this event, a revision conference shall be convened by the President of the Council of the European Communities.

Article 14

This Protocol, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

In witness whereof, the undersigned Plenipotentiaries have signed this Protocol.

Done at Luxembourg this third day of June in the year one thousand nine hundred and seventy-one.

For His Majesty the King of the Belgians,

Alfons VRANCKX

For the President of the Federal Republic of Germany,

Gerhard JAHN

For the President of the French Republic,

René PLEVEN

For the President of the Italian Republic,

Erminio PENNACCHINI

For His Royal Highness the Grand Duke of Luxembourg,

Eugène SCHAUS

For Her Majesty the Queen of the Netherlands,

C.H.F. POLAK

JOINT DECLARATION

The Governments of the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,

On signing the Protocol on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters,

Desiring to ensure that the provisions of that Protocol are applied as effectively and as uniformly as possible,

Declare themselves ready to organize, in cooperation with the Court of Justice, an exchange of information on the judgments given by the courts referred to in Article 2 (1) of that Protocol in application of the Convention and the Protocol of 27 September 1968.

In witness whereof, the undersigned Plenipotentiaries have signed this Joint Declaration.

Done at Luxembourg this third day of June in the year one thousand nine hundred and seventy-one.

For His Majesty the King of the Belgians,

Alfons VRANCKX

For the President of the Federal Republic of Germany,

Gerhard JAHN

For the President of the French Republic,

René PLEVEN

For the President of the Italian Republic,

Erminio PENNACCHINI

For His Royal Highness the Grand Duke of Luxembourg,

Eugène SCHAUS

For Her Majesty the Queen of the Netherlands,

C.H.F. POLAK

COINBHINSIÚN

ar dhlínse agus ar fhorghníomhú breithiúnas in ábhair shibhialta agus tráchtála

BROLLACH

TÁ NA hARDPHÁIRTITHE CONARTHACHA SA CHONRADH AG BUNÚ CHOMH-
PHOBAL EACNAMAÍOCHTA NA HEORPA,

Ós mian leo go gcuirfear i ngníomh na forálacha in Airteagal 220 den Chonradh sin ar ghabh siad orthu féin dá mbua a áirithint go simpleofaí na foirmiúlachtaí a bhaineann le breithiúnais ó chúirteanna nó ó bhinsí a aithint agus a fhorghníomhú go cómhalartach;

Ós é a miangas go neartófar sa Chomhphobal an chosaint dhlíthiúil ar dhaoine atá bunaithe ann;

De bhrí gur gá chun na críche sin dlínse idirnáisiúnta a gcúirteanna a chinneadh, aithint a éascú agus nós imeachta gasta a thabhairt isteach chun a áirithint go bhforghníomhófar breithiúnais, ionstraimí barántúla agus socraíochtaí cúirte;

Tar éis cinneadh ar an gCoinbhinsiún seo a chur i gcrích agus chuige sin tar éis na daoine seo a leanas a cheapadh mar Lánchumhachtaigh:

A SHOILSE RÍ NA mBEILGEACH:

M. Pierre HARMEL,
Aire Gnóthaí Eachtracha;

UACHTARÁN PHOBLACHT CHÓNAIDHME NA GEARMÁINE:

M. Willy BRANDT,
Leas-Seansailéir, Aire Gnóthaí Eachtracha;

UACHTARÁN PHOBLACHT NA FRAINCE:

M. Michel DEBRÉ,
Aire Gnóthaí Eachtracha;

UACHTARÁN PHOBLACHT NA hIODÁILE:

M. Giuseppe MEDICI,
Aire Gnóthaí Eachtracha;

A MHÓRGACHT RÍOGA ARD-DIÚC LUCSAMBURG:

M. Pierre GRÉGOIRE,
Aire Gnóthaí Eachtracha;

A SOILSE BANRÍON NA hÍSILTÍRE:

M. J.M.A.H. LUNS,
Aire Gnóthaí Eachtracha;

NOCH A RINNE, i dtionól na Comhairle, tar éis dóibh a Lánchumhachtaí, agus iad i bhfoirm cheart chuí, a thabhairt ar aird dá chéile,

COMHAONTÚ MAR A LEANAS:

TEIDEAL I

RAON FEIDHME

Airteagal 1

Beidh feidhm leis an gCoinbhinsiún seo in ábhair shibhialta agus tráchtála, cibé cineál cúirte nó binse a bheidh i gceist.

Eisiatar ó fheidhm an Choinbhinsiúin:

1. stádas nó inniúlacht dhlíthiúil daoine nádúrtha, maoin-chearta de bhua cóngais phósta, uachtanna agus comharbais;
2. féimheacht, imeachtaí maidir le foirceannadh cuideachtaí dócmhainneacha nó daoine dlítheana-cha eile atá dócmhainneach, comhshocraíochtaí breithiúnacha, imshocraíochtaí agus imeachtaí cosúil leo sin;
3. slándáil shóisialta;
4. eadráin.

TEIDEAL II

DLÍNSE

Roinn I

Forálacha Ginearálta

Airteagal 2

Faoi réir forálacha an Choinbhinsiúin seo, beidh daoine a bhfuil sainchónaí orthu i Stát Conarthach inagartha, cibé náisiúntacht atá acu, i gcúirteanna an Stáit sin.

Daoine nach náisiúnaigh den Stát ina bhfuil sainchónaí orthu, beidh siad faoi rialú ag na rialacha dlínse a bhaineann le náisiúnaigh an Stáit sin.

Airteagal 3

Daoine a bhfuil sainchónaí orthu i Stát Conarthach, ní féidir iad a agairt i gcúirteanna Stáit

Chonarthach eile ach amháin de bhua na rialacha atá leagtha síos i Ranna 2 go 6 den Teideal seo.

Go háirithe, ní bheidh na forálacha seo a leanas infheidhme ina gcoinne:

- sa Bheilg: Airteagal 15 den chód sibhialta (*Code civil*), nó forálacha Airteagal 52, 52 *bis* agus 53 de Dhlí an 25 Márta 1976 ar ghlínse (*loi sur la compétence*);
- i bPoblacht Chónaidhme na Gearmáine: Airteagal 23 de chód an nós imeachta shibhialta (*Zivilprozeßordnung*);
- sa Fhrainc: Airteagail 14 agus 15 den chód sibhialta (*Code civil*);
- san Iodáil: Airteagal 2 agus Airteagal 4, Uimh. 1 agus 2, de chód an nós imeachta shibhialta (*Codice di procedura civile*);
- i Lucsamburg: Airteagail 14 agus 15 den chód sibhialta (*Code civil*);
- san Ísiltír: Airteagal 126 (3) agus Airteagal 127 de chód an nós imeachta shibhialta (*Wetboek van Burgerlijke Rechtsvordering*).

Airteagal 4

Mura bhfuil sainchónaí i Stát Conarthach ar an gcosantóir, rialófar dlínse na gcúirteanna i ngach Stát Conarthach de réir dlí an Stáit sin, faoi réir forálacha Airteagal 16.

Aon duine a bhfuil sainchónaí air i Stát Conarthach, cibé náisiúntacht atá aige, féadfaidh sé, ar nós náisiúnaigh an Stáit sin, leas a bhaint sa Stát sin, i gcoinne an chosantóra sin, as na rialacha dlínse atá i bhfeidhm ann agus go háirithe as na cinn a fhoráiltear sa dara mír d'Airteagal 3.

Roinn 2

Dlínse speisialta

Airteagal 5

Duine a bhfuil sainchónaí air i Stát Conarthach, féadfar é a agairt, i Stát Conarthach eile:

1. in ábhair a bhaineann le Conradh, sna cúirteanna don áit i gcomhair chomhlíonadh na hoibleagáide áirithe;
2. in ábhair a bhaineann le cothabháil, sna cúirteanna don áit ina bhfuil sainchónaí nó gnáthchónaí ar an gcreidiúnaí cothabhála;
3. in ábhair a bhaineann le tort, míghníomh nó samhail mhíghníomh, sna cúirteanna don áit inar tharla an teagmhas díobhálach;
4. i gcás éileamh sibhialta chun damáistí nó aisíocaíocht a ghnóthú mar gheall ar shárú ba shiocair le himeachtaí coiriúla, sa chúirt ar tugadh na himeachtaí sin faoina bráid, sa mhéid go bhfuil dlínse ag an gcúirt sin faoina dlí féin glacadh le himeachtaí sibhialta;
5. i gcás díospóide a éiríonn as oibriochtaí brainse nó gníomhaireachta nó bunaíochta eile, sna cúirteanna don áit ina bhfuil an brainse, an gníomhaireacht nó an bhunaíocht eile.

Airteagal 6

Féadfar duine a bhfuil sainchónaí air i Stát Conarthach a agairt freisin:

1. más duine de líon cosantóirí é, sna cúirteanna don áit a bhfuil sainchónaí ar dhuine ar bith díobh;
2. mar thríú páirtí i gcaingean ar bharántas nó ráthaíocht nó in aon imeachtaí eile tríú páirtí, sa chúirt inar tionscnaíodh na himeachtaí bunaidh, mura rud é gur tionscnaíodh iad sin d'aontoisc chun é a thabhairt amach as dlínse na cúirte ab iomchuí ina chás;
3. i gcás frithéilimh a thig den chonradh céanna nó de na fíorais chéanna ab fhoras don éileamh bunaidh, sa chúirt ina bhfuil an t-éileamh bunaidh ar feitheamh.

Roinn 3

Dlínse in ábhair a bhaineann le hárachas

Airteagal 7

In ábhair a bhaineann le hárachas, cinnfear dlínse de réir na Roinne seo, gan dochar d'fhorálacha Airteagail 4 agus 5 (5).

Airteagal 8

Féadfar árachóir ar a bhfuil sainchónaí i Stát Conarthach a agairt i gcúirteanna an Stáit sin, nó i Stát Conarthach eile sna cúirteanna don áit a bhfuil sainchónaí ar shealbhóir an pholasaí, nó, i gcás breis is árachóir amháin a bheith ina gcosantóirí, i gcúirteanna an Stáit Chonarthach ina bhfuil sainchónaí ar dhuine díobh.

Má fhoráiltear don dlínse sin i ndlí na cúirte ar tugadh an t-ábhar faoina bráid, féadfar mar an gcéanna árachóir a agairt, i Stát Conarthach seachas an ceann a bhfuil a shainchónaí ann, sna cúirteanna don áit a bhfuil sainchónaí ar an ngníomhaire a rinne idirghabháil chun an conradh árachais a thabhairt i gcrích, ar an gcoinníoll go luaitear an sainchónaí sin sa pholasaí árachais nó sa tairiscint ina leith.

Árachóir nach bhfuil sainchónaí air i Stát Conarthach ach a bhfuil brainse nó gníomhaireacht aige i gceann de na Stáit Chonarthacha, measfar, i gcás díospóidí maidir le hoibriochtaí an bhrainse nó na gníomhaireachta sin, sainchónaí a bheith air sa Stát sin.

Airteagal 9

Féadfar fairis sin an t-árachóir a agairt sna cúirteanna don áit inar tharla an teagmhas díobhálach más é a bhíonn i gceist árachas i leith dliteanais nó árachas ar mhaoín dhochorraithe. Is é an dála chéanna é má chumhdaítear maoín shochorraithe agus maoín dhochorraithe leis an bpolasaí céanna árachais agus go dtéann an teagmhas céanna chun dochair dóibh araon.

Airteagal 10

I gcás árachais i leith dliteanais, féadfar mar an gcéanna, má cheadaíonn dlí na cúirte é, an t-árachóir a uamadh in imeachtaí a thionscain an duine díobhálaithe i gcoinne an árachais.

Beidh feidhm le forálacha Airteagail 7, 8 agus 9 i gcás caingne a thionscain an duine díobhálaithe go díreach i gcoinne an árachóra, má cheadaítear na caingne díreacha sin.

Má fhorálann an dlí maidir leis na caingne díreacha sin go bhféadfar sealbhóir an pholasaí nó an t-árachais a uamadh mar pháirtí sa chaingean, beidh dlínse ag an gcúirt chéanna ina leith.

Airteagal 11

Gan dochar d'fhorálacha an tríú mír d'Airteagal 10, ní féidir leis an árachóir imeachtaí a thionscnamh ach amháin i gcúirteanna an Stáit Chonarthach ina bhfuil sainchónaí ar an gcosantóir, cibé acu sealbhóir an pholasaí, nó an t-árachais nó tairbhí é.

Ní dhéanfaidh forálacha na Roinne seo difear don cheart chun frithéileamh a thabhairt sa chúirt ina bhfuil an t-éileamh bunaidh ar feitheamh, de réir na Roinne seo.

Airteagal 12

Ní féidir imeacht ó fhorálacha na Roinne seo ach amháin trí chomhaontú:

1. a dhéanfar tar éis díospóid a theacht ar barr; nó

2. a cheadóidh do shealbhóir an pholasáí, don áracháí nó do thairbhí imeachtaí a thionscnamh i gcúirteanna seachas na cinn a luaitear sa Roinn seo; nó
3. a chuirfear i gcrích idir sealbhóir polasaí agus árachóir, a bhfuil sainchónaí orthu araon sa Stát Conarthach céanna, agus arb é is éifeacht dó dlínse a thabhairt do chúirteanna an Stáit sin fiú i gcás an teagmhas díobhálach a tharlú ar an gcoigrích, ar an gcoiníoll nach bhfuil an comhaontú sin contrártha do dhlí an Stáit sin.

Roinn 4

Dlínse in ábhair a bhaineann le díolacháin agus iasachtaí ina dtráthchodanna

Airteagal 13

In ábhair a bhaineann le hearraí a dhíol ar théarmaí creidmhease tráthchoda, nó le hiasachtaí a tugadh go sainráite chun díolachán earraí a mhaoiniú agus is inaisíoctha ina dtráthchodanna, cinnfear dlínse de réir na Roinne seo, gan dochar d'fhorálacha Airteagail 4 agus 5 (5).

Airteagal 14

Féadfar díoltóir nó iasachtóir a bhfuil sainchónaí air i Stát Conarthach a agairt i gcúirteanna an Stáit sin nó i gcúirteanna an Stáit Chonarthach ina bhfuil sainchónaí ar an gceannaitheoir nó ar an iasachtaí.

Ní féidir le díoltóir imeachtaí a thabhairt i gcoinne ceannaitheora ná le hiasachtóir imeachtaí a thabhairt i gcoinne iasachtaí ach amháin i gcúirteanna an Stáit ina bhfuil sainchónaí ar an gcosantóir.

Ní dhéanfaidh na forálacha seo difear don cheart chun frithéileamh a thabhairt sa chúirt ina bhfuil an t-éileamh bunaidh ar feitheamh, de réir na Roinne seo.

Airteagal 15

Ní féidir imeacht ó fhorálacha na Roinne seo ach amháin trí chomhaontú;

1. a dhéanfar tar éis an díospóid a theacht ar barr; nó
2. a cheadóidh don cheannaitheoir nó don iasachtaí imeachtaí a thionscnamh i gcúirteanna seachas na cinn a luaitear sa Roinn seo; nó
3. a chuirfear i gcrích idir ceannaitheoir agus díoltóir nó idir iasachtaí agus iasachtóir, a bhfuil sainchónaí nó gnáthchónaí orthu araon sa Stát

Conarthach céanna, agus a thabharfaidh dlínse do chúirteanna an Stáit sin, ar an gcoiníoll nach bhfuil an comhaontú sin contrártha do dhlí an Stáit sin.

Roinn 5

Dlínse eisiatach

Airteagal 16

Beidh dlínse eisiatach ag na cúirteanna seo a leanas, ar neamhchead do shainchónaí:

1. in imeachtaí arb é is cuspóir dóibh cearta *in rem*, nó tionóntachtaí, ar mhaoín dhochorraithe, cúirteanna an Stáit Chonarthach ina bhfuil an mhaoin;
2. in imeachtaí arb é is cuspóir dóibh bailíocht chomhdhéanamh, neamhniú nó díscáileadh cuideachtaí nó daoine dlítheanacha eile nó comhlachas de dhaoine nádúrtha nó dlítheanacha, nó cinntí a thug orgáin dá gcuid, cúirteanna an Stáit Chonarthach ina bhfuil suíomh na cuideachta, an duine dhlítheanaigh nó an chomhlachais;
3. in imeachtaí arb é is cuspóir dóibh bailíocht taifead i gcláir phoiblí, cúirteanna an Stáit Chonarthach ina bhfuil an clár á choimeád;
4. in imeachtaí a bhaineann le clárú nó le bailíocht paitinní, trádmharcanna, dearthaí, nó le cearta eile dá leithéid sin is gá a thaisceadh nó a chlárú, cúirteanna an Stáit Chonarthach inar iarradh an taisceadh nó an clárú, nó arb ann a rinneadh nó a mheastar faoi théarmaí coinbhinsiúin idirnáisiúnta go ndearnadh é;
5. in imeachtaí a bhaineann le breithiúnais a fhorghníomhú, cúirteanna an Stáit Chonarthach ina ndearnadh, nó in ndéanfar, an breithiúnas a fhorghníomhú.

Roinn 6

Dlínse a iarchur

Airteagal 17

Más rud é, trí chomhaontú i scríbhinn nó trí chomhaontú ó bhéal arna fhianú i scríbhinn, go ndearna na páirtithe, a bhfuil sainchónaí ar pháirtí nó páirtithe díobh i Stát Conarthach, comhaontú chun dlínse a bheith ag cúirt nó cúirteanna de chuid Stáit Chonarthach aon díospóidí a réiteach a tharla nó a tharlódh i ndáil le comhbhaint dhlíthiúil áirithe, beidh dlínse eisiatach ag an gcúirt nó ag na cúirteanna sin.

Ní bheidh aon éifeacht dhlíthiúil le comhaontuithe chun dlínse a thabhairt má bhíonn siad contrártha d'fhorálacha Airteagail 12 nó 15 nó má bhíonn dlínse

eisiatach de bhua Airteagal 16 ag na cúirteanna a n-airbheartaíonn siad iad a chur ó dhlínse.

Más ar mhaithe le haon cheann amháin de na páirtithe a rinneadh an comhaontú chun dlínse a thabhairt, beidh ag an bpáirtí sin i gcónaí an ceart chun imeachtaí a thabhairt in aon chúirt eile a bhfuil dlínse aici de bhua an Choinbhinsiúin seo.

Airteagal 18

Amach ó na cásanna ina bhfuil dlínse aici de bhua forálacha eile den Choinbhinsiún seo, beidh dlínse ag cúirt Stáit Chonarthaigh a dtaifeadfaidh cosantóir láithreas os a comhair. Ní bheidh feidhm leis an riail seo más conspóid na dlínse ba chuspóir don láithreas a thaifeadadh, nó má bhíonn dlínse eisiatach ag cúirt eile ann de bhua Airteagal 16.

Roinn 7

Fíorú ar dhlínse agus ar inghlacthacht

Airteagal 19

Cúirt de chuid Stáit Chonarthaigh a dtabharfar os a comhair éileamh a bhaineann go príomha le hábhar a bhfuil dlínse eisiatach ina leith ag cúirteanna Stáit Chonarthaigh eile de bhua Airteagal 16, dearbhóidh sí as a treoir féin nach bhfuil aon dlínse aici.

Airteagal 20

Má dhéantar cosantóir a bhfuil sainchónaí air i Stát Conarthach amháin a agairt i gcúirt de chuid Stáit Chonarthaigh eile agus nach dtaifeadfaidh sé láithreas, dearbhóidh an chúirt as a treoir féin nach bhfuil aon dlínse aici mura bhfuil dlínse aici atá bunaithe ar fhorálacha an Choinbhinsiúin seo.

Cuirfidh an chúirt bac ar na himeachtaí fad a bheifear gan a shuíomh go raibh caoi ag an gcosantóir doiciméad tionscanta na n-imeachtaí a fháil in am trátha chun socrú a dhéanamh é féin a chosaint, nó go ndearnadh gach dícheall chuig sin.

Cuirfear in ionad forálacha na míre roimhe seo forálacha Airteagal 15 de Choinbhinsiún na Háige dar dáta 15 Samhain 1965 ar sheirbheáil doiciméad dlíthiúil agus seachdlíthiúil in ábhair shibhialta nó tráchtála ar an gcoigrích, má ba ghá doiciméad tionscanta na n-imeachtaí, nó fógra ina dtaobh, a sheoladh amach ar an gcoigrích de réir an Choinbhinsiúin sin.

Roinn 8

Lis Pendens — Caingne gaolmhara

Airteagal 21

Má dhéantar imeachtaí leis an gcúis chéanna chaingne agus idir na páirtithe céanna a

thionscnamh i gcúirteanna Stát Conarthach éagsúil, dlífidh cúirt ar bith seachas an chéad chúirt ar tugadh os a comhair iad dlínse a dhiúltú, ar a treoir féin, i bhfabhar na chéad chúirte sin.

Cúirt a dhlífeadh dlínse a dhiúltú, féadfaidh sí bac a chur ar a himeachtaí má chonspóidtear dlínse na cúirte eile.

Airteagal 22

Má thionscnaítear caingne gaolmhara i gcúirteanna Stát Conarthach éagsúil, féadfaidh cúirt ar bith seachas an chéad chúirt ar tugadh os a comhair iad, le linn na caingne a bheidh ar feitheamh ar an gcéad chéim, bac a chur ar a himeachtaí.

Féadfaidh cúirt seachas an chéad chúirt ar tugadh na caingne os a comhair dlínse a dhiúltú freisin, ar iarratas ó cheann de na páirtithe, má cheadaíonn dlí na cúirte sin caingne gaolmhara a dhlúthú agus go bhfuil dlínse i leith an dá chaingean ag an gcéad chúirt ar tugadh os a comhair iad.

Chun críocha an Airteagail seo, meastar caingne a bheith gaolmhar má bhíonn baint chomh dlúth sin acu lena chéile go bhfuil sé fóirsteanach iad a éisteacht agus breith a thabhairt orthu i dteannta a chéile ionas go seachnófaí breithiúnais bunoscionn lena chéile mar ab fhéidir a theacht d'imeachtaí ar leithligh.

Airteagal 23

Má thagann caingne faoi dhlínse eisiatach cúirteanna éagsúla, dlífidh cúirt ar bith seachas an chéad chúirt ar tugadh os a comhair iad dlínse a dhiúltú i bhfabhar na chéad chúirte sin.

Roinn 9

Bearta sealadacha, lena n-áirítear bearta cosantacha

Airteagal 24

Féadfar cibé bearta sealadacha, lena n-áirítear bearta cosantacha, a bheidh ar fáil faoi dhlí Stáit Chonarthaigh a iarraidh ar chúirteanna an Stáit sin, fiú más rud é, faoin gCoinbhinsiún seo, go bhfuil dlínse ag cúirteanna Stáit Chonarthaigh eile maidir le substaint an ábhair.

TEIDEAL III

AITHINT AGUS FORGHNIOMHÚ

Airteagal 25

Chun críocha an Choinbhinsiúin seo, ciallaíonn 'breithiúnas' aon bhreithiúnas arna thabhairt ag

cúirt nó binse de chuid Stáit Chonarthaigh, cibé ainm a thugtar ar an mbreithiúnas, lena n-áirítear foraithe, ordú, cinneadh, nó eascaire fhorghníomhaithe, mar aon le cinneadh ar chostais nó caiteachais ag oifigeach den chúirt.

Roinn 1

Aithint

Airteagal 26

Gheobhaidh breithiúnas a tugadh i Stát Conarthach aithint sna Stáit Chonarthacha eile gan aon nós imeachta speisialta a bheith riachtanach chuige sin.

Aon pháirtí leasmhar a thabharfaidh aithint bhreithiúnais faoi thrácht mar phríomhshaincheist i gconspóid féadfaidh sé, de réir an nós imeachta dá bhforáiltear i Ranna 2 agus 3 den Teideal seo, iarratas a dhéanamh ar chinneadh go ndlitear an breithiúnas a aithint.

Má bhíonn toradh imeachtaí i gcúirt de chuid Stáit Chonarthaigh ag brath ar cheist theagmhasach aithinte a chinneadh beidh dlínse ag an gcúirt sin ar an gceist sin..

Airteagal 27

Ní aithneofar breithiúnas:

1. má bhíonn an aithint sin contrártha don ord poiblí sa Stát ina n-iarrtar an aithint;
2. más d'éagmais láithris a tugadh an breithiúnas, mura ndearnadh doiciméad tionscanta na n-imeachtaí, nó fógra ina dtaobh, a sheirbheáil go cuí ar an gcosantóir in am trátha chun socrú a dhéanamh é féin a chosaint;
3. má bhíonn an breithiúnas bunoscionn le breithiúnas a tugadh i ndíodpóid idir na páirtithe céanna sa Stát ina n-iarrtar an aithint;
4. má rinne cúirt an Stáit inar tugadh an breithiúnas, d'fhonn teacht ar a breithiúnas, réamhcheist maidir le stádas nó le hinniúlacht dhlíthiúil daoine nádúrtha, le maoin-chearta de thoradh cóngais phósta, le huachtanna nó le comharbas, a chinneadh ar dhóigh atá contrártha le riail de dhlí idirnáisiúnta príobháideach an Stáit ina n-iarrtar an aithint, mura rud é gurb é an toradh céanna a thiocfadh de rialacha dlí idirnáisiúnta príobháideach an Stáit sin a chur chun feidhme.

Airteagal 28

Ina theannta sin, ní aithneofar breithiúnas má bhíonn sé contrártha le forálacha alt 3, 4 nó 5 de Theideal II, ná i gcás dá bhforáiltear in Airteagal 59.

Nuair a bheidh na forais dlínse a luaitear sa mhír roimhe seo faoi bhreithniú aige nó aici, beidh an t-údarás nó an chúirt chun a ndearnadh an t-iarratas faoi cheangal ag na cinntí fóraais a ndearna cúirt an Stáit inar tugadh an breithiúnas a dlínse a bhunú orthu.

Faoi réir forálacha na chéad mhíre, ní féidir dlínse chúirt an Stáit inar tugadh an breithiúnas a athbhreithniú; nó bheidh an fhoráil i dtaobh ord poiblí dá dtagraítear in Airteagal 27 (1) inchurtha chun feidhme ar na rialacha maidir le dlínse.

Airteagal 29

Ní féidir i gcás ar bith breithiúnas coigríche a aithbhreithniú ó thaobh a shubstainte.

Airteagal 30

Féadfaidh cúirt i Stát Conarthach ar a n-iarrfar aithint bhreithiúnais a tugadh i Stát Conarthach eile bac a chur ar na himeachtaí má taisceadh gnáthachomharc i gcoinne an bhreithiúnais sin.

Roinn 2

Forghníomhú

Airteagal 31

Déanfar breithiúnas a tugadh i Stát Conarthach agus is infhorghníomhaithe sa Stát sin a fhorghníomhú i Stát Conarthach eile nuair a bheidh, ar iarratas ó aon pháirtí leasmhar, ordú a fhorghníomhaithe eisithe sa Stát eile sin.

Airteagal 32

Is chucu seo a bheidh an t-iarratas le déanamh:

- sa Bheilg, an 'tribunal première instance' nó an 'rechtbank van eerste aanleg',
- i bPoblacht Chónaidhme na Gearmáine, uachtarán dlísheomra den 'Landgericht',
- sa Fhrainc, uachtarán an 'tribunal de grande instance',
- san Iodáil, an 'corte d'appello',
- i Lucsamburg, uachtarán an 'tribunal d'arrondissement',
- san Ísiltír, uachtarán an 'Arrondissementsrechtbank'.

Cinnfear dlínse cúirteanna áitiúla de réir na háite a bhfuil sainchónaí ar an bpáirtí a n-iarrtar

forghníomhú ina choinne. Mura bhfuil sainchónaí air sa Stát a n-iarrtar an forghníomhú ann, cinnfear í de réir áit an fhorghníomhaithe.

Airteagal 33

Is de réir dlí an Stáit a n-iarrtar forghníomhú ann a rialófar an nós imeachta maidir leis an iarratas a thaisceadh.

Ní foláir don iarratasóir seoladh a thabhairt le haghaidh seirbheála próise i limistéar dlínse na cúirte chun a ndéantar an t-iarratas. Ach más rud é nach bhforálann dlí an Stáit a n-iarrtar forghníomhú ann seoladh mar sin a bheith le tabhairt, ceapfaidh an t-iarratasóir ionadaí *ad litem*.

Ní foláir na doiciméid a luaitear in Airteagail 46 agus 47 a bheith i gceangal leis an iarratas.

Airteagal 34

Tabharfaidh an chúirt chun a ndéantar an t-iarratas a breith ar an iarratas gan mhoill; agus ní féadfaidh an páirtí a n-iarrtar forghníomhú ina choinne aon aighneachtaí a dhéanamh maidir leis an iarratas ag an gcéim seo de na himeachtaí.

Ní féidir diúltú don iarratas ach ar chúis dá bhforáiltear in Airteagail 27 agus 28.

Ní féidir i gcás ar bith an breithiúnas coigríche a athbhreithniú ó thaobh a shubstainte.

Airteagal 35

Déanfaidh oifigeach iomchuí na cúirte, gan mhoill, an bhreith a tugadh ar an iarratas a chur in iúl don iarratasóir, de réir an nós imeachta a leagadh síos le dlí an Stáit a n-iarrtar forghníomhú ann.

Airteagal 36

Má údaraítear forghníomhú, féadfaidh an páirtí ar iarradh forghníomhú ina choinne achomharc a dhéanamh i gcoinne na breithe laistigh de mhí ó lá a seirbheála.

Má tá sainchónaí ar an bpáirtí sin i Stát Conarthach seachas an ceann inar tugadh an bhreith a d'údaraigh forghníomhú, beidh tréimhse dhá mhí ann le haghaidh achomhairc agus rithfidh sí ó lá na seirbheála, air féin go pearsanta nó ag a ionad cónaithe. Ní féidir cur leis an tréimhse sin mar gheall ar fhad slí ó bhaile.

Airteagal 37

Beidh achomharc i gcoinne breithe a d'údaraigh forghníomhú le taisceadh, de réir rialacha an nós imeachta i gcás ábhar cointinneach:

- sa Bheilg, sa 'tribunal de première instance' nó sa 'rechtbank van eerste aanleg',
- i bPoblacht Chónaidhme na Gearmáine, san 'Oberlandesgericht',
- sa Fhrainc, sa 'cour d'appel',
- san Iodáil, sa 'corte d'appello',
- i Lucsamburg, sa 'Cour supérieure de Justice' ina suí di mar chúirt achomhairc shibhialta,
- san Isiltír, san 'Arrondissementsrechtbank'.

Ní féidir an breithiúnas a tugadh ar an achomharc a chonspóid ach amháin trí chomharc 'en cassation' nó, i bPoblacht Chónaidhme na Gearmáine, trí Rechtsbeschwerde.

Airteagal 38

Féadfaidh an chúirt ar tugadh an t-achomharc faoin gcéad mhír d'Airteagal 37 ós a comhair, má iarrann an t-achomharcóir é, bac a chur leis na himeachtaí i gcás gnáthachomharc i gcoinne an bhreithiúnais a bheith taiscthe sa Stát inar tugadh an breithiúnas, nó mura bhfuil an tréimhse le haghaidh achomhairc den sórt sin dulta in éag fós; sa chás deiridh sin, féadfaidh an chúirt a shonrú cad é an tréimhse le haghaidh achomharc den sórt sin a thaisceadh.

Féadfaidh an chúirt freisin é a chur de choinníoll leis an bhforghníomhú go dtabharfar don chúirt cibé urrús a chinnfidh sí.

Airteagal 39

Le linn na tréimhse a shonraítear le haghaidh achomhairc de bhun Airteagal 36 agus go dtí go mbeidh breith tugtha ar aon achomharc den sórt sin, ní féidir a dhéanamh maidir leis an bhforghníomhú ach amháin bearta cosanta in aghaidh maoin an pháirtí a n-iarrtar forghníomhú ina choinne.

Gabhfaidh údarás chun aon bhearta cosanta den sórt sin a ghlacadh leis an mbreith a údaróidh forghníomhú.

Airteagal 40

Má dhiúltaítear don iarratas ar fhorghníomhú, féadfaidh an t-iarratasóir achomharc a dhéanamh:

- sa Bheilg, chuig an 'cour d'appel' nó an 'hof van beroep';
- i bPoblacht Chónaidhme na Gearmáine, chuig an 'Oberlandesgericht';
- sa Fhrainc, chuig an 'cour d'appel';
- san Iodáil, chuig an 'corte d'appello';

— i Lucsamburg, chun an 'Cour supérieure de Justice' ina suí di mar chúirt achomhairc shibhialta;

— san Ísiltír, chun an 'Gerechtshof'.

Cuirfear toghairm ar an bpáirtí a n-iarrtar forghníomhú ina choinne á cheangal air láithriú os comhair na cúirte achomhairc. Mura láithreoidh sé, beidh forálacha an dara agus an tríú mír d'Airteagal 20 infheidhme, fiú mura bhfuil sainchónaí air in aon cheann de na Stáit Chonarthacha.

Airteagal 41

Ní féidir breithiúnas a tugadh ar achomharc dá bhforáiltear in Airteagal 40 a chonspóid ach amháin trí achomharc 'en cassation' nó, i bPoblacht Chónaidhme na Gearmáine, trí 'Rechtsbeschwerde'.

Airteagal 42

Má bhíonn breithiúnas coigríche tugtha i leith ábhar éagsúil agus nach féidir forghníomhú a údarú ina dtaobh go léir, déanfaidh an chúirt forghníomhú a údarú i gcás ábhair amháin nó níos mó díobh.

Féadfaidh iarratasóir forghníomhú páirteach ar bhreithiúnas a iarrfaidh.

Airteagal 43

Ní fhéadfar breithiúnas coigríche a d'ordaigh íocaíoch phionósach thréimhsiúil a fhorghníomhú sa Stát a n-iarrtar forghníomhú ann mura mbeidh méad na híocaíochta arna chinneadh go críochnaitheach ag cúirteanna an Stáit inar tugadh an breithiúnas.

Airteagal 44

Iarratasóir dar deonaíodh cabhair dhlíthiúil sa Stát inar tugadh an breithiúnas, tairbheoidh sé de chabhair dhlíthiúil freisin, gan a chás a athscrúdú, sna nósanna imeachta dá bhforáiltear in Airteagal 32 go 35.

Airteagal 45

Ní féidir urrús, banna ná taisce, de chineál ar bith, a éileamh ar pháirtí a iarrfaidh forghníomhú i Stát Conarthach amháin ar bhreithiúnas a tugadh i Stát Conarthach eile ar an bhforas gur náisiúnach eachtrach é ná ar an bhforas nach bhfuil sainchónaí ná gnáthchónaí air sa Stát a n-iarrtar na forghníomhú ann.

Roinn 3

Forálacha comhchoiteanna

Airteagal 46

Dlífidh páirtí a iarrfaidh aithint nó forghníomhú ar bhreithiúnas na nithe seo a leanas a thabhairt ar aird:

1. cóip den bhreithiúnas a shásóidh na coinníollacha is gá chun a barántúlacht a shuíomh;
2. i gcás breithiúnas mainneachtana, an chóip bhunaidh nó cóip dhílis dheimhnithe den doiciméad á shuíomh gur seirbheáladh doiciméad tionscanta na n-imeachtaí ar an bpáirtí mainneachtnach.

Airteagal 47

Dlífidh páirtí a iarrfaidh forghníomhú na nithe seo a leanas a thabhairt ar aird freisin:

1. doiciméid á shuíomh go bhfuil an breithiúnas infhorghníomhaithe, agus gur seirbheáladh é, de réir dlí an Stáit inar tugadh an breithiúnas;
2. más cuí, doiciméad á thaispeáint go bhfuil cabhair dhlíthiúil á fáil ag an iarratasóir sa Stát inar tugadh an breithiúnas.

Airteagal 48

Mura dtugtar ar aird na doiciméid a luaitear in Airteagail 46 (2) agus 47 (2), féadfaidh an chúirt tréimhse a shonrú chun iad a thabhairt ar aird, nó glacadh le doiciméid chomhionanna, nó déanamh d'éagmais na ndoiciméad má mheasann sí go bhfuil a saith faisnéise os a comhair.

Déanfar aistriúchán ar na doiciméid a thabhairt ar aird má éilíonn an chúirt é; ní foláir an t-aistriúchán a bheith deimhnithe ag duine atá cáilithe chuige sin i gceann de na Stáit Chonarthacha.

Airteagal 49

Ní gá aon dlíthiúilíocht ná aon fhoirmiúlacht dá samhail i leith na ndoiciméad a luaitear in Airteagail 46 nó 47 nó sa dara mír d'Airteagal 48, ná i leith doiciméad ag ceapadh ionadaí *ad litem*.

TEIDEAL IV

IONSTRAIMÍ BARÁNTÚLA AGUS SOCRAÍOCHTAÍ CÚIRTE

Airteagal 50

Doiciméad a tarraingíodh suas go foirmiúil nó a cláraíodh mar ionstraim bharántúil agus is

infhorghníomhaithe i Stát Conarthach amháin, déanfar, arna iarraidh sin de réir an nós imeachta dá bhforáiltear in Airteagal 31 *et seq.* ordú a fhorghníomhaithe a eisiúint i Stát Conarthach eile. Ní féidir diúltú don iarratas ach amháin i gcás forghníomhú na hionstraime a bheith contrártha don ord poiblí sa Stát a n-iarrtar forghníomhú ann.

Ní foláir an ionstraim a thabharfar ar aird a bheith de réir na gcoinníollacha is gá chun a bharántúlacht i Stát a tionscanta a shuíomh.

Beidh feidhm le forálacha Roinn 3 de Theideal III de réir mar is cuí.

Airteagal 51

Socraíocht ar tugadh formheas uirthi sa chúirt i gcúrsa imeachtaí agus is infhorghníomhaithe sa Stát inar tugadh i gcrích í féadfar í a fhorghníomhú sa Stát a n-iarrtar forghníomhú ann, faoi na coinníollacha céanna le hionstraimí barántúla.

TEIDEAL V

FORÁLACHA GINEARÁLTA

Airteagal 52

Chun a chinneadh an bhfuil sainchónaí ar pháirtí i Stát Conarthach ar tugadh ábhar os comhair a chúirteanna, cuirfidh an chúirt a dlí inmheánach chun feidhme.

Mura bhfuil sainchónaí ar pháirtí sa Stát ar tugadh an t-ábhar os comhair a chúirteanna, déanfaidh an chúirt, chun a chinneadh an bhfuil sainchónaí i Stát Conarthach eile ar an bpáirtí, dlí an Stáit sin a chur chun feidhme.

Déanfar sainchónaí páirtí a chinneadh, áfach, de réir a dhlí náisiúnta féin más rud é, de réir an dlí sin, go mbraitheann a shainchónaí ar shainchónaí duine eile nó ar an áit a bhfuil suíomh údaráis.

Airteagal 53

Chun críocha an Choinbhinsiúin seo, measfar sainchónaí a bheith ar chuideachta nó ar dhuine dlítheanach nó ar chomhlachas de dhaoine nádúrtha nó dlítheanacha san áit a bhfuil a suíomh. Ach chun an suíomh sin a chinneadh cuirfidh an chúirt rialacha a dlí idirnáisiúnta phríobháidigh chun feidhme.

TEIDEAL VI

FORÁLACHA IDIRTHRÉIMHSEACHA

Airteagal 54

Ní bhainfidh forálacha an Choinbhinsiúin seo ach le himeachtaí dlíthiúla a thionscnófar agus le doiciméid a tharraingeofar suas go foirmiúil nó a chlárófar mar ionstraimí barántúla tar éis a theachta i bhfeidhm.

Déanfar, áfach, breithiúnais a thabharfar tar éis dáta an Choinbhinsiúin seo a theacht i bhfeidhm, i gcás imeachtaí a tionscnaíodh roimh an dáta sin, a aithint agus a fhorghníomhú de réir forálacha Theideal III má bhí dlínse bunaithe ar rialacha i gcomhréir leis na rialacha dá bhforáiltear i dTeideal II den Choinbhinsiún seo nó i gcoinbhinsiún a tugadh i gcrích idir an Stát tionscnaimh agus an Stát chun a ndéantar an t-iarratas agus a raibh feidhm aige nuair a tionscnaíodh na himeachtaí.

TEIDEAL VII

GAOL LE COINBHINSIÚIN EILE

Airteagal 55

Faoi réir forálacha an dara mír d'Airteagal 54, agus Airteagal 56, gabhfaidh an Coinbhinsiún seo, i gcás na Stát is páirtithe ann, ionad na gCoinbhinsiún seo a leanas a tugadh i gcrích idir dhá cheann nó níos mó díobh:

- an Coinbhinsiún idir an Bheilg agus an Fhrainc ar dhlínse agus ar bhailíocht agus forghníomhú breithiúnas, dámhachtaintí eadrána agus ionstraimí barántúla, a síníodh i bPáras an 8 Iúil 1899,
- an Coinbhinsiún idir an Bheilg agus an Ísiltír ar dhlínse, ar fhéimheacht, agus ar bhailíocht agus forghníomhú breithiúnas, dámhachtaintí eadrána agus ionstraimí barántúla, a síníodh sa Bhruiséil an 28 Márta 1925,
- an Coinbhinsiún idir an Fhrainc agus an Iodáil ar fhorghníomhú breithiúnas in ábhair shibhialta agus tráchtála, a síníodh sa Róimh an 3 Meitheamh 1930,
- an Coinbhinsiún idir an Ghearmáin agus an Iodáil ar aithint agus forghníomhú breithiúnas in ábhair shibhialta agus tráchtála, a síníodh sa Róimh an 9 Márta 1936,
- an Coinbhinsiún idir Poblacht Chónaidhme na Gearmáine agus Ríocht na Beilge ar aithint agus forghníomhú breithiúnas, dámhachtaintí eadrána agus ionstraimí barántúla go cómhalmartach in ábhair shibhialta agus tráchtála, a síníodh in Bonn an 30 Meitheamh 1958,
- an Coinbhinsiún idir Ríocht na hÍsiltíre agus Poblacht na hIodáile ar aithint agus forghníomhú breithiúnas in ábhair shibhialta agus tráchtála, a síníodh sa Róimh an 17 Aibreán 1959,
- an Coinbhinsiún idir Ríocht na Beilge agus Poblacht na hIodáile ar aithint agus forghníomhú breithiúnas agus ionstraimí infhorghníomhaithe eile in ábhair shibhialta agus tráchtála, a síníodh sa Róimh an 6 Aibreán 1962,

- an Coinbhinsiún idir Ríocht na hÍsiltíre agus Poblacht Chónaidhme na Gearmáine ar aithint agus forghníomhú breithiúnas agus ionstraimí infhorghníomhaithe eile go cómhálartach in ábhair shibhialta agus tráchtála a síníodh sa Háig an 30 Lúnasa 1962,

agus, sa mhéid go bhfuil sé i bhfeidhm,

- an Conradh idir an Bheilg, an Ísiltír agus Lucsamburg ar dhlínse, ar fhéimheacht, agus ar bhailíocht agus forghníomhú breithiúnas, dámhachtaintí eadrána agus ionstraimí barántúla a síníodh sa Bhrúiséil an 24 Samhain 1961.

Airteagal 56

Leanfaidh an Conradh agus na Coinbhinsiúin a luaitear in Airteagal 55 d'éifeacht a bheith acu maidir le hábhair nach mbaineann an Coinbhinsiún seo leo.

Leanfaidh siad d'éifeacht a bheith acu i leith breithiúnas a tugadh agus ionstraimí barántúla a tarraingíodh suas go foirmiúil nó a cláraíodh mar ionstraimí barántúla roimh theacht i bhfeidhm don Choinbhinsiún seo.

Airteagal 57

Ní dhéanfaidh an Coinbhinsiún seo difear d'aon choinbhinsiúin a bhfuil nó a mbeidh na Stáit Chonarhacha ina bpáirtithe iontu agus, i ndáil le hábhair áirithe, a rialaíonn dlínse agus aithint agus forghníomhú bhreithiúnas.

Airteagal 58

Ní dhéanfaidh an Coinbhinsiún seo difear do na cearta a deonaíodh do náisiúnaigh Eilvéiseacha leis an gCoinbhinsiún a tugadh i gcrích an 15 Meitheamh 1869 idir, an Fhrainc agus Cónaidhm na hEilvéise ar dhlínse agus ar fhorghníomhú breithiúnas in ábhair shibhialta.

Airteagal 59

Ní choiscfidh an Coinbhinsiún seo ar Stát Conarthach a ghabháil d'oibleagáid air féin i leith tríú Stát, i gcoinbhinsiún um aithint agus forghníomhú breithiúnas, gan breithiúnais a aithint a tugadh i Stáit Chonarhacha eile i gcoinne cosantóirí a raibh sainchónaí nó ngáthchónaí orthu sa tríú Stát más rud é, i gcásanna dá bhforáiltear in Airteagal 4, nárbh fhéidir an breithiúnas a bhunú ach amháin ar fhoras dlínse a shonraítear sa dara mír d'Airteagal 3.

TEIDEAL VIII

FORÁLACHA CRÍOCHNAITHEACHA

Airteagal 60

Bainfidh an Coinbhinsiún seo le críocha Eorpacha na Stát Conarthach, leis na Ranna Francacha thar lear agus leis na críocha Francacha thar lear.

Féadfaidh Ríocht na hÍsiltíre a dhearbhu, tráth an Choinbhinsiúin seo a shínú nó a dhaingniú nó tráth ar bith ina dhiaidh sin, trí fhógra a thabairt d'Ard-Rúnaí Chomhairle na gComhphobal Eorpach, go mbainfidh an Coinbhinsiún seo le Suranam agus le hAintillí na hÍsiltíre. Mura ndéantar dearbhu mar sin i leith Aintillí na hÍsiltíre, measfar i gcás imeachtaí a bheidh ar bun i gcríoch Eorpach na Ríochta, de bhíthin achomharc 'en cassation' i gcoinne breithiúnas ó chúirt in Aintillí na hÍsiltíre na himeachtaí sin a bheidh ar bun sa chúirt deiridh sin.

Airteagal 61

Déanfaidh Stáit a shínte daingniú ar an gCoinbhinsiún seo. Taiscfear na hionstraimí daingniúcháin le hArd-Rúnaí Chomhairle na gComhphobal Eorpach.

Airteagal 62

Tiocfaidh an Coinbhinsiún seo a bhfeidhm an chéad lá den tríú mí i ndiaidh taisceadh na hionstraime daingniúcháin ag an gceaan is déanaí de Stáit a shínte a dhéanfaidh an taisceadh sin.

Airteagal 63

Aithníonn na Stáit Chonarhacha go ndlífidh aon Stát a thiocfaidh chun bheith ina chomhalta de Chomhphobal Eacnamaíochta na hEorpa glacadh leis an gCoinbhinsiún seo mar bhonn do na caibidlí is gá idir na Stáit Chonarhacha agus an Stát sin chun a áirithint go bhfeidhmeofar an fhomhír dheireanach d'Airteagal 220 den Chonradh ag bunú Chomhphobal Eacnamaíochta na hEorpa.

Is féidir na hoiriúnuithe is gá a bheith ina n-ábhar do choinbhinsiún speisialta idir na Stáit Chonarhacha de pháirt agus an Ballstát nua den pháirt eile.

Airteagal 64

Cuirfidh Ard-Rúnaí Chomhairle na gComhphobal Eorpach in iúl do na Stáit a shíneoidh an Coinbhinsiún seo:

- (a) taisceadh gach ionstraime daingniúcháin;
- (b) dáta an Choinbhinsiúin seo a theacht i bhfeidhm;
- (c) aon dearbhú a fuarthas de bhun an dara mír d'Airteagal 60;
- (d) aon dearbhú a fuarthas de bhun Airteagal IV den Phrótacal;
- (e) aon téacsanna a fuarthas de bhun Airteagal VI den Phrótacal.

Airteagal 65

Is cuid dhílis den Choinbhinsiún seo an Prótacal atá curtha i gceangal leis de chomhthoil na Stát Conarthach.

Airteagal 66

Tá an Coinbhinsiún seo tugtha i gcrích go ceann tréimhse gan teorainn.

Airteagal 67

Féadfaidh Stát Conarthach ar bith athbhreithniú ar an gCoinbhinsiún seo a iarraidh. Sa chás sin, comórfaidh Uachtarán Chomhairle na gComhphobal Eorpach comhdháil lena athbreithniú.

Airteagal 68

Tarraingíodh an Coinbhinsiún seo suas i scríbhinn bhunaidh amháin sa Fhraincis, sa Ghearmáinis, san Iodáilis agus san Ollainnis, agus comhúdarás ag gach ceann de na ceithre théacs; taiscfear é i gcartlann Rúnaíocht Chomhairle na gComhphobal Eorpach, agus cuirfidh an tArd-Rúnaí cóip dheimhnithe chuig Rialtas gach ceann de Stáit a shínithe.

Dá fhianú sin, chuir na Lánchumhachtaigh thíos-sínithe a lámh leis an gCoinbhinsiún seo.

Arna dhéanamh sa Bhruiséil, an seachtú lá is fiche de Mheán Fómhair sa bhliain míle naoi gcéad seasca a hocht.

Thar ceann a Shoilse Rí na mBeilgeach,

Pierre HARMEL

Thar ceann Uachtarán Phoblacht Chónaidhme na Gearmáine,

Willy BRANDT

Thar ceann Uachtarán Phoblacht na Fraince,

Michel DEBRÉ

Thar ceann Uachtarán Phoblacht na hIodáile,

Giuseppe MEDICI

Thar ceann a Mhórgacht Ríoga Ard-Diúc Lucsamburg,

Pierre GRÉGOIRE

Thar ceann a Soilse Banríon na hÍsiltíre,

J.M.A.H. LUNS

PRÓTACAL

Tá na hArdpháirtithe Conarthacha tar éis comhaontú ar na forálacha seo a leanas, a chuirfear i gceangal leis an gCoinbhinsiún:

Airteagal I

Aon duine ina shainchónaí i Lucsamburg a agrófar i gcúirt Stáit Chonarthach eile de bhun Airteagal 5 (1), féadfaidh sé diúltú géilleadh do dhlínse na cúirte sin. Mura dtaifeadfaidh an cosantóir láithreas, dearbhóidh an chúirt, as a treoir féin, nach bhfuil dlínse aici.

Beidh comhaontú chun dlínse a thabhairt, de réir brí Airteagal 17, gan bailíocht i leith duine ina shainchónaí i Lucsamburg murar aontaigh an duine sin leis go sainráite agus go speisialta.

Airteagal II

Gan dochar d'aon fhorálacha níos fabhraí i ndlíthe náisiúnta, má bhíonn daoine a bhfuil sainchónaí orthu i Stát Conarthach á n-ionchúiseamh mar gheall ar chion neamhthoiliúil i gcúirteanna coiriúla Stáit Chonarthach eile nach náisiúnaigh dá chuid iad, féadfaidh daoine atá cáilithe chuige sin feidhmiú ar a son lena gcosaint, fiú gan iad a bheith i láthair go pearsanta.

Ach féadfaidh an chúirt ar tugadh an t-ábhar os a comhair a ordú do dhuine láithriú go pearsanta; mura ndearnadh láithriú níl sé riachtanach aithint a thabhairt ná forghníomhú a dhéanamh sna Stáit Chonarthacha eile ar bhreithiúnas a tugadh sa chaingean shibhialta gan caoi a bheith ag an duine a cúisíodh socrú a dhéanamh chun é féin a chosaint.

Airteagal III

In imeachtaí chun ordú forghníomhaithe a eisiúint, ní dhéanfar muirear, dleacht ná cáin ar bith, arna ríomh de réir luach an ábhair i saincheist, a thobhach sa Stát a n-iarrtar an forghníomhú ann.

Airteagal IV

Doiciméid dhlíthiúla nó seachdhlíthiúla a tarraingíodh suas i Stát Conarthach amháin agus a dhlífear a sheirbheáil ar dhaoine i Stát Conarthach eile, tarchuirfear iad de réir an nós imeachta dá bhforáiltear sna coinbhinsiúin agus sna

comhaontuithe a cuireadh i gcrích idir na Stáit Chonarthacha.

Mura ndéanfaidh an Stát a bhfuil siad le seirbheáil ann agóid ina choinne sin trí dhearbhu d'Ardrúnaí Chomhairle na gComhphobal Eorpach, is féidir freisin d'oifigigh phoiblí iomchuí an Stáit inar tarraingíodh suas an doiciméad é a chur go díreach chuig oifigigh phoiblí iomchuí an Stáit ina bhfuil seolaí an doiciméid le fáil. Sa chás sin, déanfaidh oifigeach Stát a thionscanta cóip den doiciméad a chur chuig an oifigeach de chuid an Stáit chun a ndéantar an t-iarratas a bhfuil údarás aige í a chur ar aghaidh chuig an seolaí. Cuirfear an doiciméad ar aghaidh ar an modh a shonraítear le dlí an Stáit chun a ndéantar an t-iarratas. Dearbhófar go ndearnadh amhlaidh i ndeimhniú a chuirfear go díreach go dtí oifigeach Stát a thionscanta.

Airteagal V

I bPoblacht Chónaidhme na Gearmáine ní féidir feidhm a bhaint as an dlínse a shonraítear in Airteagal 6 (2) agus in Airteagal 10 i gcaingne ar bharántas nó ar ráthaíocht nó in aon imeachtaí eile tríú páirtí. Sa Stát sin, féadfar aon duine ina shainchónaí i Stát Conarthach eile a agairt sna cúirteanna de bhun Airteagail 68, 72, 73 agus 74 de chód na nós imeachta shibhialta (*Zivilprozeßordnung*) maidir le fógraí tríú páirtí.

Déanfar breithiúnais a tugadh sna Stáit Chonarthacha eile de bhua Airteagal 6 (2) nó Airteagal 10 a aithint agus a fhorghníomhú i bPoblacht Chónaidhme na Gearmáine de réir Theideal III. Aithneofar mar an gcéanna sna Stáit Chonarthacha eile aon éifeachtaí a bheadh ag breithiúnais a tugadh sa Stát sin ar thríú páirtithe, de bhun Airteagail 68, 72, 73 agus 74 de chód na nós imeachta shibhialta (*Zivilprozeßordnung*) a chur chun feidhme.

Airteagal VI

Cuirfidh an Stáit Chonarthacha in iúil d'Ardrúnaí Chomhairle na gComhphobal Eorpach téacsanna aon fhorálacha ina ndlíthe a dhéanann leasú ar na hairteagail sin dá ndlíthe a luaitear sa Choinbhinsiún nó ar liosta na gcúirteanna a shonraítear i Roinn 2 de Theideal III den Choinbhinsiún.

Dá fhianú sin chuir na Lánchumhachtaigh thíos-sínithe a lámh leis an bPrótacal seo.

Arna dhéanamh sa Bhruiséil an seachtú lá is fiche de Mheán Fómhair sa bhliain míle naoi gcéad seasca a hocht.

Thar ceann a Shoilse Rí na mBeilgeach,

Pierre HARMEL

Thar ceann Uachtarán Phoblacht Chónaidhme na Gearmáine,

Willy BRANDT

Thar ceann Uachtarán Phoblacht na Fraince,

Michel DEBRÉ

Thar ceann Uachtarán Phoblacht na hIodáile,

Guiseppe MEDICI

Thar ceann a Mhórgacht Ríoga Ard-Diúc Lucsamburg,

Pierre GRÉGOIRE

Thar ceann a Soilse Banríon na hÍsiltíre,

J.M.A.H. LUNS

DEARBHÚ COMHPHÁIRTEACH

Tá Rialtais Ríocht na Beilge, Phoblacht Chónaidhme na Gearmáine, Phoblacht na Fraince, Phoblacht ha hIodáile, Ard-Diúiceacht Lucsamburg agus Ríocht na hÍsiltíre,

Tráth sínithe an Choinbhinsiúin ar Dhlínse agus ar Fhorghníomhú Breithiúnas in Ábhair Shibhialta agus Tráchtála,

Ós mian leo a áirithint go gcuirfear an Coinbhinsiún chun feidhme chomh héifeachtach agus is féidir;

Ós é a miangas nach mbeadh difríochtaí léiriúcháin ag baint óna éifeacht aontach;

Á aithint dóibh go bhféadfadh éileamh ar dhlínse agus séanadh ar dhlínse teacht i gceist i bhfeidhmiú an Choinbhinsiúin;

Ag dearbhú a bhfonnmhaireachta:

1. chun staidéar a dhéanamh ar na ceisteanna sin agus go háirithe chun féachaint arbh fhéidir dlínse in ábhair áirithe a thabhairt do Chúirt Bhreithiúnais na gComhphobal Eorpach agus, más gá, chun comhaontú dá réir sin a chur i gcrích;
2. chun cruinnithe idir a n-ionadaithe a thionól go tráthrialta.

Dá fhianú sin chuir na Lánchumhachtaigh thíos-sínithe a lámh leis an Dearbhú Comhpháirteach seo.

Arna dhéanamh sa Bhruiséil an seachtú lá is fiche seo de Mheán Fómhair sa bhliain míle naoi gcéad seasca a hocht.

Pierre HARMEL

Willy BRANDT

Michel DEBRÉ

Giuseppe MEDICI

Pierre GRÉGOIRE

J.M.A.H. LUNS

PRÓTACAL

ar léiriú ag an gCúirt Bhreithiúnais ar Choinbhinsiún 27 Meán Fómhair 1968 ar dhlínse agus ar fhorghníomhú breithiúnas in ábhair shibhialta agus tráchtála

TÁ NA hARDPHÁIRTITHE CONARTHACHA SA CHONRADH AG BUNÚ CHOMH-
PHOBAL EACNAMAÍOCHTA NA hEORPA,

Ag féachaint dóibh don Dearbhú atá i gceangal leis an gCoinbhinsiún ar dhlínse agus ar fhorghníomhú breithiúnas in ábhair shibhialta agus tráchtála, a síníodh sa Bhruiséil an 27 Meán Fómhair 1968,

Tar éis cinneadh ar Phrótacal a chur i gcrích chun dlínse a thabhairt do Chúirt Bhreithiúnais na gComhphobal Eorpach an Coinbhinsiún sin a léiriú agus chuige sin tar éis na daoine seo a leanas a cheapadh mar Lánchumhachtaigh:

A SHOILSE RÍ NA mBEILGEACH:

M. Alfons VRANCKX,
Aire Dlí agus Cirt;

UACHTARÁN PHOBLACHT CHÓNAIDHME NA GEARMÁINE:

M. Gerhard JAHN,
Aire Dlí agus Cirt na Cónaidhme;

UACHTARÁN PHOBLACHT NA FRAINCE:

M. René PLEVEN,
Coimeádaí na Séalaí,
Aire Glí agus Cirt;

UACHTARÁN PHOBLACHT NA hIODÁILE:

M. Erminio PENNACCHINI,
Fo-Rúnaí Stáit san
Aireacht Dlí agus Cirt;

A MHÓRGACHT RÍOGA ARD-DIÚC LUCSAMBURG:

M. Eugène SCHAUS,
Aire Dlí agus Cirt
Leas-Uachtarán an Rialtais;

A SOILSE BANRÍON NA hÍSILTÍRE:

M. C.H.F. POLAK,
Aire Dlí agus Cirt;

NOCH A RINNE, i dtionól na Comhairle, tar éis dóibh a Lánchumhachtaí, agus iad i bhfoirm cheart chuí, a thabhairt ar aird dá chéile,

COMHAONTÚ MAR A LEANAS:

Airteagal 1

Beidh dlínse ag Cúirt Bhreithiúnais na gComhphobal Eorpach chun rialú a thabhairt i dtaobh léiriú an Choinbhinsiúin ar dhlínse agus ar fhorghníomhú breithiúnas in abhair shibhialta agus tráchtála agus an Phrótacail atá i gceangal leis an gCoinbhinsiúin sin, a síníodh sa Bhruiséil an 27 Meán Fómhair 1968, agus fós i dtaobh léiriú an Phrótacail seo.

Airteagal 2

Féadfaidh na cúirteanna seo a leanas a iarraidh ar an gCúirt Bhreithiúnais réamhrialú a thabhairt ar cheisteanna léiriúcháin:

1. sa Bheilg: la Cour de Cassation — het Hof van Cassatie
agus le Conseil d'État — de Raad van State;
i bPoblacht Chónaidhme na Gearmáine: die obersten Gerichtshöfe des Bundes;
sa Fhrainc: la Cour de Cassation agus le Conseil d'État;
san Iodáil: la Corte Suprema di Cassazione;
i Lucsamburg: la Cour Supérieure de Justice, ina suí di mar Cour de Cassation;
san Ísiltír: de Hoge Raad;
2. cúirteanna na Stát Conarthach ina suí dóibh i gcáil achomharcach;
3. sna cásanna dá bhforáiltear in Airteagal 37 den Choinbhinsiún, na cúirteanna a luaitear san Airteagal sin.

Airteagal 3

1. Nuair a dhéanfar ceist i dtaobh léiriú an Choinbhinsiúin nó ionstraim eile dá luaitear in Airteagal 1 a tharraingt anuas i gcás a bheidh ar feitheamh os comhair cúirte dá luaitear in Airteagal 2 (1), iarraidh an chúirt sin ar an gCúirt Bhreithiúnais, má mheasann sí gur gá cinneadh ar an gceist ionas go bhféadfaidh sí breithiúnas a thabhairt, rialú a thabhairt ar an gceist sin.
2. Má tharraingítear ceist mar sin anuas os comhair aon chúirte dá dtagraítear in Airteagal 2 (2) nó (3), féadfaidh an chúirt sin, ar na coinníollacha atá leagtha síos a mír (1), a iarraidh ar an gCúirt Bhreithiúnais rialú a thabhairt uirthi.

Airteagal 4

1. Féadfaidh údarás inniúil Stáit Chonarthaigh a iarraidh ar an gCúirt Bhreithiúnais rialú a thabhairt ar cheist i dtaobh léiriú an Choinbhinsiúin nó i dtaobh léiriú ceann de na hionstraimí eile a luaitear in Airteagal 1 má bhíonn breithiúnas ó chúirteanna

sa Stát sin ar neamhréir leis an léiriú a thug an Chúirt Bhreithiúnais nó a tugadh i mbreithiúnas ó chúirt de chuid Stáit Chonarthaigh eile a luaitear in Airteagal 2 (1) nó (2). Ní bhainfidh forálacha na míre seo ach le breithiúnais a bhfuil éifeacht *res judicata* leo.

2. Ní dhéanfaidh an léiriú a dhéanfaidh an Chúirt Bhreithiúnais de bhun iarratais den sórt sin difear do na breithiúnais ba bhun leis an léiriú sin a iarraidh.

3. Beidh Ionchúisitheoirí Ginearálta na gCúirteanna Uachtaracha Achomhairc sna Stáit Chonarthacha nó údarás ar bith eile a bheidh ainmnithe chuige sin ag Stát Conarthach, i dteideal rialú ar an léiriú a iarraidh ar an gCúirt Bhreithiúnais de réir mhír 1.

4. Tabharfaidh Cláraitheoir na Cúirte Breithiúnais fógra faoin iarratas do na Stáit Chonarthacha, don Choimisiún agus do Chomhairle na gComhphobal Eorpach; beidh siadsan i dteideal ansin, laistigh de dhá mhí tar éis an fógra a fháil, sonruithe cáis nó tuairimí i scríbhinn a chur faoi bhráid na Cúirte.

5. Ní fhéadfar aon táillí a thobhach ná aon chostais nó caiteachas a dhámhachtain i leith na n-imeachtaí dá bhforáiltear san Airteagal seo.

Airteagal 5

1. Na forálacha sin den Chonradh ag bunú Chomhphobal Eacnamaíochta na hEorpa, agus na cinn sin den Phrótacal ar Reacht an Cúirte Breithiúnais atá i gceangal leis, is infheidhme nuair a iarrrtar ar an gCúirt réamhrialú a thabhairt, beidh feidhm acu mar an gcéanna, ach amháin mar a bhforáiltear a mhalairt leis an bPrótacal seo, ar an nós imeachta maidir le léiriú an Choinbhinsiúin agus na n-ionstraimí eile a luaitear in Airteagal 1.

2. Déanfar, más gá, Rialacha Nós Imeachta na Cúirte Breithiúnais a oiriúnú agus a chomhlánú de réir Airteagal 188 den Chonradh ag bunú Chomhphobal Eacnamaíochta na hEorpa.

Airteagal 6

Bainfidh an Prótacal seo le críocha Eorpacha na Stát Conarthach, leis na Ranna Francacha thar lear agus leis na críocha Francacha thar lear.

Féadfaidh Ríocht na hÍsiltíre a dhearbhu tráth an Phrótacail seo a shíniú nó a dhaingniú nó tráth ar bith ina dhiaidh sin, trí fhógra a thabhairt d'Ardrúnaí Chomhairle na gComhphobal Eorpach, go mbainfidh an Prótacal seo le Súranam agus le hAintillí na hÍsiltíre.

Airteagal 7

Déanfaidh Stáit a shínithe daingniú ar an gCoinbhinsiún seo. Taiscfear na hionstraimí daingniúcháin le hArdrúnaí Chomhairle na gComhphobal Eorpach.

Airteagal 8

Tiocfaidh an Prótacal seo i bhfeidhm an chéad lá den tríú mí i ndiaidh taisceadh na hionstraime daingniúcháin ag an gceann is déanaí de Stáit a shínithe a dhéanfaidh an taisceadh sin; ach ní thiocfaidh sé i bhfeidhm tráth is luaithe ná teacht i bhfeidhm Choinbhinsiún an 27 Meán Fómhair 1968 ar dhlínse agus ar fhorghníomhú breithiúnas in abhair shibhialta agus tráchtála.

Airteagal 9

Aithníonn na Stáit Chonarthacha go ndlífidh gach Stát a thiocfaidh chun bheith ina chomhalta de Chomhphobal Eacnamaíochta na hEorpa, agus a mbainfidh Airteagal 63 den Choinbhinsiún ar dhlínse agus ar fhorghníomhú breithiúnas in ábhair shibhialta agus tráchtála leis, glacadh le forálacha an Phrótacail seo, faoi réir cibé oiriúnuithe is gá.

Airteagal 10

Cuirfidh Ardrúnaí Chomhairle na gComhphobal Eorpach in iúl do na Stáit a shíneoidh an Prótacal seo:

- (a) taisceadh gach ionstraime daingniúcháin;
- (b) dáta an Phrótacail seo a theacht i bhfeidhm;

(c) aon ainmniú a fuarthas de bhun Airteagal 4 (3);

(d) aon dearbhú a fuarthas de bhun an dara mír d'Airteagal 6.

Airteagal 11

Cuirfidh na Stáit Chonarthacha in iúl d'Ardrúnaí Chomhairle na gComhphobal Eorpach téacsanna aon fhorálacha ina ndlíthe a bheireann gur gá liosta na gcúirteanna in Airteagal 2 (1) a leasú.

Airteagal 12

Tá an Prótacal seo tugtha i gcrích go ceann tréimhse gan teorainn.

Airteagal 13

Féadfaidh Stát Conarthach ar bith athbhreithniú ar an bPrótacal seo a iarraidh. Sa chás sin comórfaidh Uachtarán Chomhairle na gComhphobal Eorpach comhdháil lena athbhreithniú.

Airteagal 14

Tarraingíodh an Prótacal seo suas i scríbhinn bhunaidh amháin sa Fhraincis, sa Ghearmáinis, san Iodáilis agus san Ollainnis, agus comhúdarás ag gach ceann de na ceithre théacs; taiscfear é i gcartlann Rúnaíocht Chomhairle na gComhphobal Eorpach, agus cuirfidh an tArdrúnaí cóip dheimhnithe chuig Rialtas gach ceann Stáit a shínithe.

Dá fhianú sin, chuir na Lánchumhachtaigh thíos-sínithe a lámh leis an bPrótacal seo.

Arna dhéanamh i Lucsamburg, an tríú lá seo de Mheitheamh sa bhliain míle naoi gcéad seachtó a haon.

Thar ceann a Shoilse Rí na mBeilgeach,

Alfons VRANCKX

Thar ceann Uachtarán Phoblacht Chónaidhme na Gearmáine

Gerhard JAHN

Thar ceann Uachtarán Phoblacht na Fraince,

René PLEVEN

Thar ceann Uachtarán Phoblacht na hIodáile,

Erminio PENNACCHINI

Thar ceann a Mhórgacht Ríoga Ard-Diúc Lucsamburg,

Eugène SCHAUS

Thar ceann a Soilse Banríon na hÍsiltíre,

C.H.F. POLAK

DEARBHÚ COMHPHÁIRTEACH

Tá rialtais Ríocht na Beilge, Phoblacht Chónaidhme na Gearmáine, Phoblacht na Fraince, Phoblacht na hIodáile, Ard-Diúceacht Lucsamburg agus Ríocht na hÍsiltíre,

Tráth sínithe an Phrótacail ar Léiriú ag an gCúirt Bhreithiúnais ar Choinbhinsiún an 27 Meán Fómhair 1968 ar dhlínse agus ar fhorghníomhú breithiúnas in ábhair shibhialta agus tráchtála;

Os mian leo a áirithint go gcuirfear forálacha an Phrótacail sin chun feidhme chomh héifeachtach agus leis an oiread comhionannais agus is féidir;

Ag dearbhú a bhfonnmhaircachta chun eagrú a thabhairt, i gcomhar leis an gCúirt Bhreithiúnais, ar mhalartú faisnéise i dtaobh na mbreithiúnas a bhéarfaidh na cúirteanna a luaitear in Airteagal 2 (1) den Phrótacal sin i bhfeidhmiú Choinbhinsiún agus Phrótacal an 27 Meán Fómhair 1968.

Dá fhianú sin, chuir na Lánchumhachtaigh thíos-sínithe a lámh leis an Dearbhú Comhpháirteach seo.

Arna dhéanamh i Lucsamburg, an tríú lá seo de Mheitheamh sa bhliain míle naoi gcéad seachtó a haon.

Thar ceann a Shoilse Rí na mBeilgeach,

Alfons VRANCKX

Thar ceann Uachtarán Phoblacht Chónaidhme na Gearmáine,

Gerhard JAHN

Thar ceann Uachtarán Phoblacht na Fraince,

René PLEVEN

Thar ceann Uachtarán Phoblacht na hIodáile,

Erminio PENNACCHINI

Thar ceann a Mhórgacht Ríoga Ard-Diúc Lucsamburg,

Eugène SCHAUS

Thar ceann a Soilse Banríon na hÍsiltíre,

C.H.F. POLAK

JOINT DECLARATION

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN ECONOMIC COMMUNITY, MEETING WITHIN THE COUNCIL,

Desiring to ensure that in the spirit of the Convention of 27 September 1968 uniformity of jurisdiction should also be achieved as widely as possible in maritime matters,

Considering that the International Convention relating to the arrest of sea-going ships, signed at Brussels on 10 May 1952, contains provisions relating to such jurisdiction,

Considering that all of the Member States are not parties to the said Convention,

Express the wish that Member States which are coastal States and have not already become parties to the Convention of 10 May 1952 should do so as soon as possible.

Udfærdiget i Luxembourg, den niende oktober nitten hundrede og otteoghalvfjerds.

Geschehen zu Luxemburg am neunten Oktober neunzehnhundertachtundsiebzig.

Done at Luxembourg on the ninth day of October in the year one thousand nine hundred and seventy-eight.

Fait à Luxembourg, le neuf octobre mil neuf cent soixante-dix-huit.

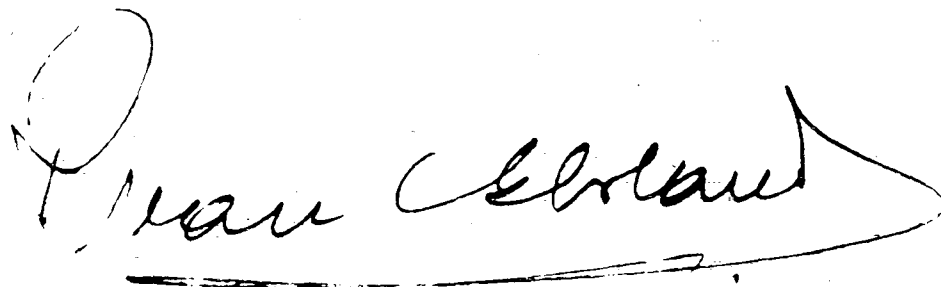
Arna dhéanamh i Lucsamburg, an naoú lá de Dheireadh Fómhair sa bhliain míle naoi gcéad seachtó a hocht.

Fatto a Lussemburgo, addì nove ottobre millenovecentosettantotto.

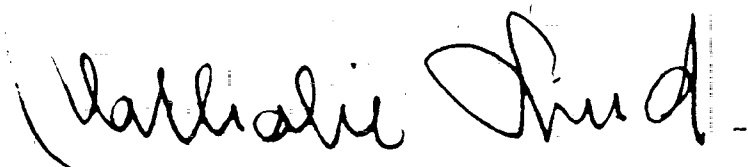
Gedaan te Luxemburg, de negende oktober negentienhonderd achtenzeventig.

Pour Sa Majesté le roi des Belges

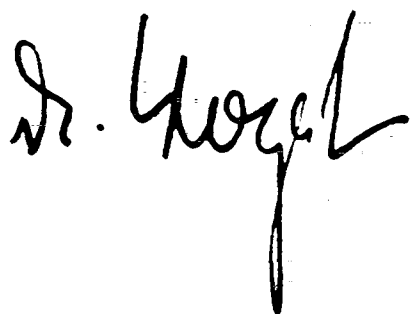
Voor Zijne Majesteit de Koning der Belgen

A handwritten signature in black ink, appearing to read "Jean-Claude", with a long horizontal stroke extending from the end.

For Hendes Majestæt Danmarks Dronning

A handwritten signature in black ink, appearing to read "Nathalie", with a long horizontal stroke extending from the end.

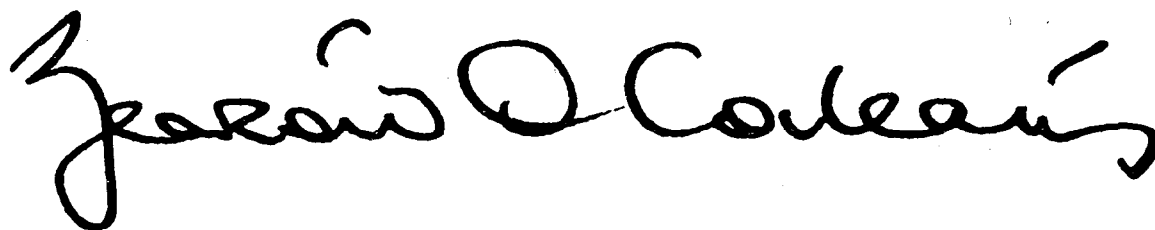
Für den Präsidenten der Bundesrepublik Deutschland

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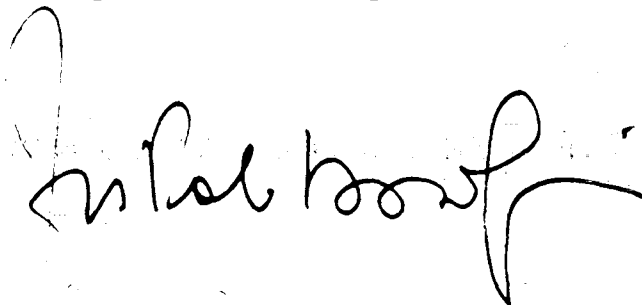
Pour le président de la République française

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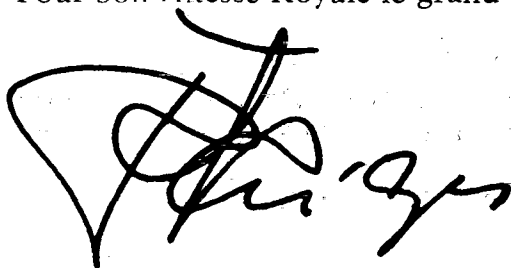
Thar ceann Uachtarán na hÉireann

A handwritten signature in black ink, appearing to read "Seán O'Connell", with a long horizontal stroke extending from the end.

Per il presidente della Repubblica italiana

A handwritten signature in black ink, appearing to read 'Sandro Pertini', written in a cursive style.

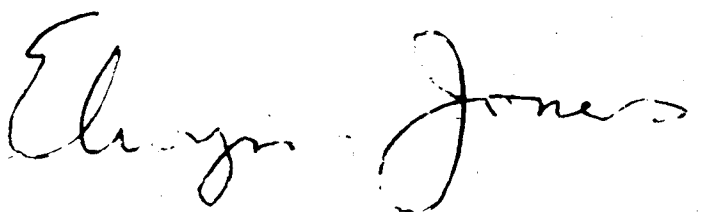
Pour Son Altesse Royale le grand-duc de Luxembourg

A handwritten signature in black ink, appearing to read 'Jean', written in a cursive style.

Voor Hare Majesteit de Koningin der Nederlanden

A handwritten signature in black ink, appearing to read 'Beatrix', written in a cursive style.

For Her Majesty the Queen of the United Kingdom of
Great Britain and Northern Ireland

A handwritten signature in black ink, appearing to read 'Elizabeth Jones', written in a cursive style.

CONVENTION

on jurisdiction and the enforcement of judgments in civil and commercial matters (*)

PREAMBLE

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY,

Desiring to implement the provisions of Article 220 of that Treaty by virtue of which they undertook to secure the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals;

Anxious to strengthen in the Community 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 judgments, authentic instruments and court settlements;

Have decided to conclude this Convention and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Mr Pierre HARMEL,
Minister for Foreign Affairs;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Mr Willy BRANDT,
Vice-Chancellor,
Minister for Foreign Affairs;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr Michel DEBRÉ,
Minister for Foreign Affairs;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr Giuseppe MEDICI,
Minister for Foreign Affairs;

(*) Text as amended by the Convention of Accession.

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Mr Pierre GRÉGOIRE,
Minister for Foreign Affairs;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr J.M.A.H. LUNS,
Minister for Foreign Affairs;

WHO, meeting within the Council, having exchanged their Full Powers, found in good and due form,

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 ⁽¹⁾.

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

Section 1

General provisions

Article 2

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.

⁽¹⁾ Second sentence added by Article 3 of the Convention of Accession.

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.

Article 3

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.

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

- in Belgium: Article 15 of the civil code (Code civil — Burgerlijk Wetboek) and Article 638 of the judicial code (Code judiciaire — Gerechtelijk Wetboek),
- in Denmark: Article 248 (2) of the law on civil procedure (Lov om retsens pleje) and Chapter 3, Article 3 of the Greenland law on civil procedure (Lov for Grønland om retsens pleje),
- in the Federal Republic of Germany: Article 23 of the code of civil procedure (Zivilprozeßordnung),
- in France: Articles 14 and 15 of the civil code (Code civil),
- in Ireland: the rules which enable jurisdiction to be founded on the document instituting the proceedings having been served on the defendant during his temporary presence in Ireland,

- in Italy: Articles 2 and 4, Nos 1 and 2 of the code of civil procedure (Codice di procedura civile),
- in Luxembourg: Articles 14 and 15 of the civil code (Code civil),
- in the Netherlands: Articles 126 (3) and 127 of the code of civil procedure (Wetboek van Burgerlijke Rechtsvordering),
- in the United Kingdom: the rules which enable jurisdiction to be founded on:
 - (a) the document instituting the proceedings having been served on the defendant during his temporary presence in the United Kingdom; or
 - (b) the presence within the United Kingdom of property belonging to the defendant; or
 - (c) the seizure by the plaintiff of property situated in the United Kingdom ⁽¹⁾.

Article 4

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.

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.

Section 2

Special jurisdiction

Article 5

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

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question;
2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is

⁽¹⁾ Second paragraph as modified by Article 4 of the Convention of Accession.

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 ⁽²⁾;

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;
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;
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;
6. 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 ⁽³⁾;
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:
 - (a) has been arrested to secure such payment, or
 - (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 ⁽⁴⁾;

Article 6

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

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

⁽²⁾ No 2 as amended by Article 5 (3) of the Convention of Accession.

⁽³⁾ No 6 added by Article 5 (4) of the Convention of Accession.

⁽⁴⁾ No 7 added by Article 5 (4) of the Convention of Accession.

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

Article 6a ⁽¹⁾

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.

Section 3

Jurisdiction in matters relating to insurance

Article 7

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

Article 8 ⁽²⁾

An insurer domiciled in a Contracting State may be used:

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

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.

Article 9

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.

Article 10

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.

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.

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.

Article 11

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.

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

Article 12 ⁽³⁾

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

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

⁽¹⁾ Article added by Article 6 of the Convention of Accession.

⁽²⁾ Text as amended by Article 7 of the Convention of Accession.

⁽³⁾ Text as amended by Article 8 of the Convention of Accession.

2. which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or
3. which is concluded between a policy-holder and an insurer, both of whom are domiciled 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
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
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.

Article 12a ⁽¹⁾

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

1. Any loss of or damage to
 - (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,
 - (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft;
2. Any liability, other than for bodily injury to passengers or loss of or damage to their baggage,
 - (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,
 - (b) for loss or damage caused by goods in transit as described in (1) (b) above;

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

Section 4 ⁽²⁾

Jurisdiction over consumer contracts

Article 13

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:

1. a contract for the sale of goods on instalment credit terms, or
2. a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods, or
3. any other contract for the supply of goods or a contract for the supply of services, and
 - (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
 - (b) the consumer took in that State the steps necessary for the conclusion of the contract.

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.

This Section shall not apply to contracts of transport.

Article 14

A consumer may bring proceedings against the other party to a contract either in the courts of the

⁽¹⁾ Article added by Article 9 of the Convention of Accession.

⁽²⁾ Text as amended by Article 10 of the Convention of Accession.

Contracting State in which that party is domiciled or in the courts of the Contracting State in which he is himself domiciled.

These provisions shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 15

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

1. which is entered into after the dispute has arisen, or
2. which allows the consumer to bring proceedings in courts other than those indicated in this Section, or
3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same 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.

Section 5

Exclusive jurisdiction

Article 16

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

1. in proceedings which have as their object rights *in rem* in, or tenancies of, immovable property, the courts of the Contracting State in which the property is situated;
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;
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;
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;

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

Section 6

Prorogation of jurisdiction

Article 17 ⁽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 relationship, that court or those courts shall have exclusive jurisdiction. Such an agreement conferring jurisdiction shall be either in writing or evidenced in writing or, in international trade or commerce, in a form which accords with practices in that trade or commerce of which the parties are or ought to have been aware. 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.

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.

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

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.

⁽¹⁾ Text as amended by Article 11 of the Convention of Accession.

Article 18

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.

Section 7

Examination as to jurisdiction and admissibility

Article 19

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.

Article 20

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.

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 ⁽¹⁾.

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.

Section 8

Lis Pendens — related actions

Article 21

Where proceedings involving the same cause of action and between the same parties are brought in

⁽¹⁾ Second paragraph as amended by Article 12 of the Convention of Accession.

the courts of different Contracting States, any court other than the court first seised shall of its own motion decline jurisdiction in favour of that court.

A court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested.

Article 22

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.

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.

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 judgments resulting from separate proceedings.

Article 23

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

Section 9

Provisional, including protective, measures

Article 24

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.

TITLE III

RECOGNITION AND ENFORCEMENT

Article 25

For the purposes of this Convention, 'judgment' means any judgment given by a court or tribunal of a

Contracting State, whatever the judgment 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.

Section 1

Recognition

Article 26

A judgment given in a Contracting State shall be recognized in the other Contracting States without any special procedure being required.

Any interested party who raises the recognition of a judgment 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 judgment be recognized.

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.

Article 27

A judgment shall not be recognized:

1. if such recognition is contrary to public policy in the State in which recognition is sought;
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 ⁽¹⁾;
3. if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;
4. if the court of the State in which the judgment was given, in order to arrive at its judgment, 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;
5. if the judgment is irreconcilable with an earlier judgment given in a non-Contracting State

⁽¹⁾ 2 as amended by Article 13 (1) of the Convention of Accession.

involving the same cause of action and between the same parties, provided that this latter judgment fulfils the conditions necessary for its recognition in the State addressed ⁽²⁾.

Article 28

Moreover, a judgment shall not be recognized if it conflicts with the provisions of Section 3, 4 or 5 of Title II, or in a case provided for in Article 59.

In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the State in which the judgment was given based its jurisdiction.

Subject to the provisions of the first paragraph, the jurisdiction of the court of the State in which the judgment was given 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.

Article 29

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

Article 30

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

A court of a Contracting State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State in which the judgment was given by reason of an appeal ⁽³⁾.

Section 2

Enforcement

Article 31

A judgment given in a Contracting State and enforceable in that State shall be enforced in another

⁽²⁾ 5 added by Article 13 (2) of the Convention of Accession.

⁽³⁾ Second paragraph added by Article 14 of the Convention of Accession.

Contracting State when, on the application of any interested party, the order for its enforcement has been issued there.

However, in the United Kingdom, such a judgment 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 ⁽¹⁾.

Article 32

The application shall be submitted:

- in Belgium, to the tribunal de première instance or rechtbank van eerste aanleg,
- in Denmark, to the underret,
- in the Federal Republic of Germany, to the presiding judge of a chamber of the Landgericht,
- in France, to the presiding judge of the tribunal de grande instance,
- in Ireland, to the High Court,
- in Italy, to the corte d'appello,
- in Luxembourg, to the presiding judge of the tribunal d'arrondissement,
- in the Netherlands, to the presiding judge of the arrondissementsrechtbank,
- in the United Kingdom:
 1. in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State;
 2. in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court on transmission by the Secretary of State;
 3. in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State ⁽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.

⁽¹⁾ Second paragraph added by Article 15 of the Convention of Accession.

⁽²⁾ First paragraph as amended by Article 16 of the Convention of Accession.

Article 33

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

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*.

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

Article 34

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.

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

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

Article 35

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.

Article 36

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

If that party is domiciled in a Contracting State other than that in which the decision authorizing 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.

Article 37 ⁽³⁾

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

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

⁽³⁾ Text as amended by Article 17 of the Convention of Accession.

- in Denmark, with the landsret,
- in the Federal Republic of Germany, with the Oberlandesgericht,
- in France, with the cour d'appel,
- in Ireland, with the High Court,
- in Italy, with the corte d'appello,
- in Luxembourg, with the Cour supérieure de justice sitting as a court of civil appeal,
- in the Netherlands, with the arrondissementsrechtbank,
- in the United Kingdom:
 1. in England and Wales, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court;
 2. in Scotland, with the Court of Session, or in the case of a maintenance judgment with the Sheriff Court;
 3. in Northern Ireland, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court.

The judgment given on the appeal may be contested only:

- in Belgium, France, Italy, Luxembourg and the Netherlands, by an appeal in cassation,
- in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,
- in the Federal Republic of Germany, by a Rechtsbeschwerde,
- in Ireland, by an appeal on a point of law to the Supreme Court,
- in the United Kingdom, by a single further appeal on a point of law.

Article 38

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 judgment in the State in which that judgment was given or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the

State in which it was given shall be treated as an ordinary appeal for the purposes of the first paragraph ⁽¹⁾.

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

Article 39

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.

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

Article 40

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

- in Belgium, to the cour d'appel or hof van beroep,
- in Denmark, to the landsret,
- in the Federal Republic of Germany, to the Oberlandesgericht,
- in France, to the cour d'appel,
- in Ireland, to the High Court,
- in Italy, to the corte d'appello,
- in Luxembourg, to the Cour supérieure de justice sitting as a court of civil appeal,
- in the Netherlands, to the gerechtshof,
- in the United Kingdom:
 1. in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court;
 2. in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court;
 3. in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court ⁽²⁾.

⁽¹⁾ Second paragraph added by Article 18 of the Convention of Accession.

⁽²⁾ First paragraph as amended by Article 19 of the Convention of Accession.

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.

Article 41 ⁽¹⁾

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

- in Belgium, France, Italy, Luxembourg and the Netherlands, by an appeal in cassation,
- in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,
- in the Federal Republic of Germany, by a Rechtsbeschwerde,
- in Ireland, by an appeal on a point of law to the Supreme Court,
- in the United Kingdom, by a single further appeal on a point of law.

Article 42

Where a foreign judgment has been given in respect of several matters and enforcement cannot be authorized for all of them, the court shall authorize enforcement for one or more of them.

An applicant may request partial enforcement of a judgment.

Article 43

A foreign judgment 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 in which the judgment was given.

Article 44 ⁽²⁾

An applicant who, in the State in which the judgment was given, 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 aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.

However, an applicant who requests the enforcement of a decision given by an administrative authority in Denmark 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 the Danish 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.

Article 45

No security, bond or deposit, however described, shall be required of a party who in one Contracting State applies for enforcement of a judgment 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.

Section 3

Common provisions

Article 46

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

1. a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
2. in the case of a judgment 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 ⁽³⁾.

Article 47

A party applying for enforcement shall also produce:

1. documents which establish that, according to the law of the State in which it has been given, the judgment is enforceable and has been served;

⁽¹⁾ Text as amended by Article 20 of the Convention of Accession.

⁽²⁾ Text as amended by Article 21 of the Convention of Accession.

⁽³⁾ 2 as amended by Article 22 of the Convention of Accession.

2. where appropriate, a document showing that the applicant is in receipt of legal aid in the State in which the judgment was given.

Article 48

If the documents specified in Articles 46 (2) and 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.

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

Article 49

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

TITLE IV

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 50

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, have an order for its enforcement issued 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 in which enforcement is sought.

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

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

Article 51

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 in which enforcement is sought under the same conditions as authentic instruments.

TITLE V

GENERAL PROVISIONS

Article 52

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.

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.

The domicile of a party shall, however, be determined in accordance with his national law if, by that law, his domicile depends on that of another person or on the seat of an authority.

Article 53

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.

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 ⁽¹⁾.

TITLE VI

TRANSITIONAL PROVISIONS ⁽²⁾

Article 54

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.

However, judgments given after the date of entry into force of this Convention in proceedings instituted before that date shall be recognized and enforced in accordance with the provisions of Title III if jurisdiction was founded upon rules which accorded

⁽¹⁾ Second paragraph added by Article 23 of the Convention of Accession.

⁽²⁾ Transitional provisions for the Convention of Accession are to be found in Title V of that Convention.

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.

TITLE VII

RELATIONSHIP TO OTHER CONVENTIONS

Article 55

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:

- the Convention between Belgium and France on jurisdiction and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Paris on 8 July 1899,
- the Convention between Belgium and the Netherlands on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 28 March 1925,
- the Convention between France and Italy on the enforcement of judgments in civil and commercial matters, signed at Rome on 3 June 1930,
- the Convention between the United Kingdom and the French Republic providing for the reciprocal enforcement of judgments in civil and commercial matters, with Protocol, signed at Paris on 18 January 1934 ⁽¹⁾,
- the Convention between the United Kingdom and the Kingdom of Belgium providing for the reciprocal enforcement of judgments in civil and commercial matters, with Protocol, signed at Brussels on 2 May 1934 ⁽¹⁾,
- the Convention between Germany and Italy on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 9 March 1936,
- the Convention between the Federal Republic of Germany and the Kingdom of Belgium on the mutual recognition and enforcement of judgments, arbitration awards and authentic instruments in civil and commercial matters, signed at Bonn on 30 June 1958,

- the Convention between the Kingdom of the Netherlands and the Italian Republic on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 17 April 1959,
- the Convention between the United Kingdom and the Federal Republic of Germany for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Bonn on 14 July 1960 ⁽¹⁾,
- the Convention between the Kingdom of Belgium and the Italian Republic on the recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at Rome on 6 April 1962,
- the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the mutual recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at The Hague on 30 August 1962,
- the Convention between the United Kingdom and the Republic of Italy for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 7 February 1964, with amending Protocol signed at Rome on 14 July 1970 ⁽²⁾,
- the Convention between the United Kingdom and the Kingdom of the Netherlands providing for the reciprocal recognition and enforcement of judgments in civil matters, signed at The Hague on 17 November 1967 ⁽²⁾,

and, in so far as it is in force:

- the Treaty between Belgium, the Netherlands and Luxembourg on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 24 November 1961.

Article 56

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.

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

⁽¹⁾ Fourth, fifth and ninth indents added by Article 24 of the Convention of Accession.

⁽²⁾ 12th and 13th indents added by Article 24 of the Convention of Accession.

Article 57 ⁽¹⁾

This Convention shall not affect 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 judgments ⁽²⁾.

This Convention shall not affect the application of provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonized in implementation of such acts.

Article 58

This Convention shall not affect the rights granted to Swiss nationals by the Convention concluded on 15 June 1869 between France and the Swiss Confederation on Jurisdiction and the enforcement of judgments in civil matters.

Article 59

This Convention shall not prevent a Contracting State from assuming, in a convention on the recognition and enforcement of judgments, an obligation towards a third State not to recognize judgments given in other Contracting States against defendants domiciled or habitually resident in the third State where, in cases provided for in Article 4, the judgment 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 recognize a judgment 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:

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,

2. if the property constitutes the security for a debt which is the subject-matter of the action ⁽³⁾.

TITLE VIII

FINAL PROVISIONS ⁽⁴⁾*Article 60* ⁽⁵⁾

This Convention shall apply to the European territories of the Contracting States, including Greenland, to the French overseas departments and territories, and to Mayotte.

The Kingdom of the Netherlands may declare at the time of signing or ratifying this Convention or at any later time, by notifying the Secretary-General of the Council of the European Communities, that this Convention shall be applicable to the Netherlands Antilles. In the absence of such declaration, proceedings taking place in the European territory of the Kingdom as a result of an appeal in cassation from the judgment of a court in the Netherlands Antilles shall be deemed to be proceedings taking place in the latter court.

Notwithstanding the first paragraph, this Convention shall not apply to:

1. the Faroe Islands, unless the Kingdom of Denmark makes a declaration to the contrary;
2. any European territory situated outside the United Kingdom for the international relations of which the United Kingdom is responsible, unless the United Kingdom makes a declaration to the contrary in respect of any such territory.

Such declarations may be made at any time by notifying the Secretary-General of the Council of the European Communities.

Proceedings brought in the United Kingdom on appeal from courts in one of the territories referred to in subparagraph 2 of the third paragraph shall be deemed to be proceedings taking place in those courts.

Proceedings which in the Kingdom of Denmark are dealt with under the law on civil procedure for the

⁽¹⁾ Text as amended by Article 25 (1) of the Convention of Accession.

⁽²⁾ Implementing provisions for this paragraph are laid down in Article 25 (2) of the Convention of Accession.

⁽³⁾ Second paragraph added by Article 26 of the Convention of Accession.

⁽⁴⁾ Final provisions for the Convention of Accession are to be found in Title VI of that Convention.

⁽⁵⁾ Text as amended by Article 27 of the Convention of Accession.

Faroe Islands (lov for Faeroerne om rettens pleje) shall be deemed to be proceedings taking place in the courts of the Faroe Islands.

Article 61

This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

Article 62 (1)

This Convention shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last signatory State to take this step.

Article 63

The Contracting States recognize that any State which becomes a member of the European Economic Community shall be required to accept this Convention as a basis for the negotiations between the Contracting States and that State necessary to ensure the implementation of the last paragraph of Article 220 of the Treaty establishing the European Economic Community.

The necessary adjustments may be the subject of a special convention between the Contracting States of the one part and the new Member States of the other part.

Article 64

The Secretary-General of the Council of the European Communities shall notify the signatory States of:

(1) For the entry into force of the Convention of Accession, see Article 39 of that Convention.

- (a) the deposit of each instrument of ratification;
- (b) the date of entry into force of this Convention;
- (c) any declaration received pursuant to Article 60⁽²⁾;
- (d) any declaration received pursuant to Article IV of the Protocol;
- (e) any communication made pursuant to Article VI of the Protocol.

Article 65

The Protocol annexed to this Convention by common accord of the Contracting States shall form an integral part thereof.

Article 66

This Convention is concluded for an unlimited period.

Article 67

Any Contracting State may request the revision of this Convention. In this event, a revision conference shall be convened by the President of the Council of the European Communities.

Article 68 (3)

This Convention, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

(2) (c) as amended by Article 28 of the Convention of Accession.

(3) See also the second paragraph of Article 37 of the Convention of Accession which provides that the Danish, English and Irish texts are equally authentic.

In witness whereof, the undersigned Plenipotentiaries have signed this Convention.

Done at Brussels this twenty-seventh day of September in the year one thousand nine hundred and sixty-eight.

For His Majesty the King of the Belgians,

Pierre HARMEL

For the President of the Federal Republic of Germany,

Willy BRANDT

For the President of the French Republic,

Michel DEBRÉ

For the President of the Italian Republic,

Giuseppe MEDICI

For His Royal Highness the Grand Duke of Luxembourg,

Pierre GRÉGOIRE

For Her Majesty the Queen of the Netherlands,

J.M.A.H. LUNS

PROTOCOL (*)

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

Article I

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.

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.

Article II

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.

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

Article III

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.

Article IV

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.

Unless the State in which service is to take place objects by declaration to the Secretary-General of the Council of the European Communities, 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.

Article V

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 that State, any person domiciled in another Contracting State may be sued in the courts in pursuance of Articles 68, 72, 73 and 74 of the code of civil procedure (*Zivilprozeßordnung*) concerning third-party notices.

Judgments given in the other Contracting States by virtue of Article 6 (2) or 10 shall be recognized and enforced in the Federal Republic of Germany in accordance with Title III. Any effects which judgments given in that State may have on third parties by application of Articles 68, 72, 73 and 74 of the code of civil procedure (*Zivilprozeßordnung*) shall also be recognized in the other Contracting States.

Article Va ⁽¹⁾

In matters relating to maintenance, the expression 'court' includes the Danish administrative authorities.

(*) Text as amended by the Convention of Accession.

⁽¹⁾ Articles added by Article 29 of the Convention of Accession.

Article Vb (1)

In proceedings involving a dispute between the master and a member of the crew of a sea-going ship registered in Denmark or in Ireland, 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 (1)

Articles 52 and 53 of this Convention shall, when applied by Article 69 (5) of the Convention for the European patent for the common market, signed at Luxembourg on 15 December 1975, to the provisions relating to 'residence' in the English text of that

Convention, operate as if 'residence' in that text were the same as 'domicile' in Articles 52 and 53.

Article Vd (1)

Without prejudice to the jurisdiction of the European Patent Office under the Convention 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 provisions of Article 86 of the Convention for the European patent for the common market, signed at Luxembourg on 15 December 1975.

Article VI

The Contracting States shall communicate to the Secretary-General of the Council of the European Communities the text of any provisions of their laws which amend either those articles of their laws mentioned in the Convention or the lists of courts specified in Section 2 of Title III of the Convention.

(1) Articles added by Article 29 of the Convention of Accession.

In witness whereof, the undersigned Plenipotentiaries have signed this protocol.

Done at Brussels this twenty-seventh day of September in the year one thousand nine hundred and sixty-eight.

For His Majesty the King of the Belgians,

Pierre HARMEL

For the President of the Federal Republic of Germany,

Willy BRANDT

For the President of the French Republic,

Michel DEBRÉ

For the President of the Italian Republic,

Giuseppe MEDICI

For His Royal Highness the Grand Duke of Luxembourg,

Pierre GRÉGOIRE

For Her Majesty the Queen of the Netherlands,

J.M.A.H. LUNS

JOINT DECLARATION

The Governments of the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands;

On signing the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters;

Desiring to ensure that the Convention is applied as effectively as possible;

Anxious to prevent differences of interpretation of the Convention from impairing its unifying effect;

Recognizing that claims and disclaimers of jurisdiction may arise in the application of the Convention;

Declare themselves ready:

1. to study these questions and in particular to examine the possibility of conferring jurisdiction in certain matters on the Court of Justice of the European Communities and, if necessary, to negotiate an agreement to this effect;
2. to arrange meetings at regular intervals between their representatives.

In witness whereof, the undersigned Plenipotentiaries have signed this Joint Declaration.

Done at Brussels this twenty-seventh day of September in the year one thousand nine hundred and sixty-eight.

Pierre HARMEL
Giuseppe MEDICI

Willy BRANDT
Pierre GRÉGOIRE

Michel DEBRÉ
J.M.A.H. LUNS

PROTOCOL

on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (*)

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY,

Having regard to the Declaration annexed to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, signed at Brussels on 27 September 1968,

Have decided to conclude a Protocol conferring jurisdiction on the Court of Justice of the European Communities to interpret that Convention, and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Mr Alfons VRANCKX,
Minister of Justice;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Mr Gerhard JAHN,
Federal Minister of Justice;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr René PLEVEN,
Keeper of the Seals,
Minister of Justice;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr Erminio PENNACCHINI,
Under Secretary of State in the Ministry of Justice;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Mr Eugène SCHAUS,
Minister of Justice,
Deputy Prime Minister;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr C.H.F. POLAK,
Minister of Justice;

WHO, meeting within the Council, having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

(*) Text as amended by the Convention of Accession.

Article 1

The Court of Justice of the European Communities shall have jurisdiction to give rulings on the interpretation of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and of the Protocol annexed to that Convention, signed at Brussels on 27 September 1968, and also on the interpretation of the present Protocol.

The Court of Justice of the European Communities shall also have jurisdiction to give rulings on the interpretation of the Convention on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention of 27 September 1968 and to this Protocol ⁽¹⁾.

Article 2

The following courts may request the Court of Justice to give preliminary rulings on questions of interpretation:

1. — in Belgium: la Cour de Cassation — het Hof van Cassatie and le Conseil d'État — de Raad van State,
 — in Denmark: højesteret,
 — in the Federal Republic of Germany: die obersten Gerichtshöfe des Bundes,
 — in France: la Cour de Cassation and le Conseil d'État,
 — in Ireland: the Supreme Court,
 — in Italy: la Corte Suprema di Cassazione,
 — in Luxembourg: la Cour supérieure de Justice when sitting as Cour de Cassation,
 — in the Netherlands: de Hoge Raad,
 — in the United Kingdom: the House of Lords and courts to which application has been made under the second paragraph of Article 37 or under Article 41 of the Convention ⁽²⁾;
2. the courts of the Contracting States when they are sitting in an appellate capacity;
3. in the cases provided for in Article 37 of the Convention, the courts referred to in that Article.

⁽¹⁾ Second paragraph added by Article 30 of the Convention of Accession.

⁽²⁾ (1) as amended by Article 31 of the Convention of Accession.

Article 3

1. Where a question of interpretation of the Convention or of one of the other instruments referred to in Article 1 is raised in a case pending before one of the courts listed in Article 2 (1), that court shall, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.
2. Where such a question is raised before any court referred to in Article 2 (2) or (3), that court may, under the conditions laid down in paragraph 1, request the Court of Justice to give a ruling thereon.

Article 4

1. The competent authority of a Contracting State may request the Court of Justice to give a ruling on a question of interpretation of the Convention or of one of the other instruments referred to in Article 1 if judgments given by courts of that State conflict with the interpretation given either by the Court of Justice or in a judgment of one of the courts of another Contracting State referred to in Article 2 (1) or (2). The provisions of this paragraph shall apply only to judgments which have become *res judicata*.
2. The interpretation given by the Court of Justice in response to such a request shall not affect the judgments which gave rise to the request for interpretation.
3. The Procurators-General of the Courts of Cassation of the Contracting States, or any other authority designated by a Contracting State, shall be entitled to request the Court of Justice for a ruling on interpretation in accordance with paragraph 1.
4. The Registrar of the Court of Justice shall give notice of the request to the Contracting States, to the Commission and to the Council of the European Communities; they shall then be entitled within two months of the notification to submit statements of case or written observations to the Court.
5. No fees shall be levied or any costs or expenses awarded in respect of the proceedings provided for in this Article.

Article 5

1. Except where this Protocol otherwise provides, the provisions of the Treaty establishing the European Economic Community and those of the Protocol on the Statute of the Court of Justice annexed thereto, which are applicable when the Court is requested to give a preliminary ruling, shall also apply to any proceedings for the interpretation of

the Convention and the other instruments referred to in Article 1.

2. The Rules of Procedure of the Court of Justice shall, if necessary, be adjusted and supplemented in accordance with Article 188 of the Treaty establishing the European Economic Community.

Article 6 ⁽¹⁾

This Protocol shall apply to the European territories of the Contracting States, including Greenland, to the French overseas departments and territories, and to Mayotte.

The Kingdom of the Netherlands may declare at the time of signing or ratifying this Protocol or at any later time, by notifying the Secretary-General of the Council of the European Communities, that this Protocol shall be applicable to the Netherlands Antilles.

Notwithstanding the first paragraph, this Convention shall not apply to:

1. the Faroe Islands, unless the Kingdom of Denmark makes a declaration to the contrary,
2. any European territory situated outside the United Kingdom for the international relations of which the United Kingdom is responsible, unless the United Kingdom makes a declaration to the contrary in respect of any such territory.

Such declarations may be made at any time by notifying the Secretary-General of the Council of the European Communities.

Article 7

This Protocol shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

Article 8 ⁽²⁾

This Protocol shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last signatory State to take this step; provided that it shall at the earliest enter into force at the same time as the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.

⁽¹⁾ Text as amended by Article 32 of the Convention of Accession.

⁽²⁾ For the entry into force of the Convention of Accession, see Article 39 thereof.

Article 9

The Contracting States recognize that any State which becomes a member of the European Economic Community, and to which Article 63 of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters applies, must accept the provisions of this Protocol, subject to such adjustments as may be required.

Article 10

The Secretary-General of the Council of the European Communities shall notify the signatory States of:

- (a) the deposit of each instrument of ratification;
- (b) the date of entry into force of this Protocol;
- (c) any designation received pursuant to Article 4 ⁽³⁾;
- (d) any declaration received pursuant to Article 6 ⁽³⁾.

Article 11

The Contracting States shall communicate to the Secretary-General of the Council of the European Communities the texts of any provisions of their laws which necessitate an amendment to the list of courts in Article 2 ⁽¹⁾.

Article 12

This Protocol is concluded for an unlimited period.

Article 13

Any Contracting State may request the revision of this Protocol. In this event, a revision conference shall be convened by the President of the Council of the European Communities.

Article 14 ⁽⁴⁾

This Protocol, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

⁽³⁾ (d) as amended by Article 33 of the Convention of Accession.

⁽⁴⁾ See also the second paragraph of Article 37 of the Convention of Accession which provides that the Danish, English and Irish texts are equally authentic.

In witness whereof, the undersigned Plenipotentiaries have signed this Protocol.

Done at Luxembourg this third day of June in the year one thousand nine hundred and seventy-one.

For His Majesty the King of the Belgians,

Alfons VRANCKX

For the President of the Federal Republic of Germany,

Gerhard JAHN

For the President of the French Republic,

René PLEVEN

For the President of the Italian Republic,

Erminio PENNACCHINI

For His Royal Highness the Grand Duke of Luxembourg,

Eugène SCHAUS

For Her Majesty the Queen of the Netherlands,

C.H.F. POLAK

JOINT DECLARATION

The Governments of the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands;

On signing the Protocol on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters;

Desiring to ensure that the provisions of that Protocol are applied as effectively and as uniformly as possible;

Declare themselves ready to organize, in cooperation with the Court of Justice, an exchange of information on the judgments given by the courts referred to in Article 2 (1) of that Protocol in application of the Convention and the Protocol of 27 September 1968.

In witness whereof, the undersigned Plenipotentiaries have signed this Joint Declaration.

Done at Luxembourg this third day of June in the year one thousand nine hundred and seventy-one.

For His Majesty the King of the Belgians,

Alfons VRANCKX

For the President of the Federal Republic of Germany,

Gerhard JAHN

For the President of the French Republic,

René PLEVEN

For the President of the Italian Republic,

Erminio PENNACCHINI

For His Royal Highness the Grand Duke of Luxembourg,
Eugène SCHAUS

For Her Majesty the Queen of the Netherlands,
C.H.F. POLAK
